

**AGREEMENT FOR DESIGN, INSTALLATION AND COMMISSIONING
OF ENERGY SYSTEMS**

This Agreement for Design, Installation and Commissioning of Energy Systems ("Agreement" also referred to as "ESA") is made as of _____, 202_, between the **Berkeley Unified School District** ("District") and **[Name of Design-Builder]** ("Design-Builder") (each a "Party" and together the "Parties") for the _____ project ("Project").

RECITALS

WHEREAS, Government Code section 4217.12 authorizes a public agency to enter into an energy service contract with respect to an energy conservation facility on terms that the public agency's governing board determines are in the best interests of the public agency and if the governing board finds that the anticipated cost to the public agency for the energy provided by the energy conservation facility will be less than the anticipated marginal cost to the District of thermal, electrical or other energy that would have been consumed by the public agency in the absence of those purchases;

WHEREAS, the District is a public agency under the provision of Government Code section 4217.10 *et seq.* pertaining to energy service contracts;

WHEREAS, under Government Code section 4217.11, an "energy service contract" means a public contract that "will provide electrical or thermal energy or conservation services to a public agency from an 'energy conservation facility,'" including "conservation measures located in public buildings" such as "equipment, maintenance, load management techniques and equipment, or other measures to reduce energy use or make for a more efficient use of energy;"

WHEREAS, the District desires to implement energy conservation measures by designing and installing solar energy generating facilities. Provide a complete solar photovoltaic (PV) system to offset 85% of the electrical energy used at each of the seven campuses/BUSD properties listed. ("Project");

WHEREAS, the Parties intend to enter into this energy service contract as defined by Government Code section 4217.11 ("Agreement");

WHEREAS, Design-Builder represents that it has the expertise and experience to perform the services set forth in this Agreement; and

WHEREAS, the Parties have performed all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Agreement and all those conditions precedent do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the Parties hereto are now duly authorized to execute and enter into this Agreement; and

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained, the Parties hereto do hereby agree as follows:

1. **Services.** Design-Builder shall furnish to the District the labor, equipment, material, and services as described in **Exhibit A** attached hereto and incorporated herein by this

reference ("Services" or "Work"). The Work will be performed at _____.

2. Term. Design-Builder shall commence providing services under this Agreement upon execution of the Agreement by both parties, and will diligently perform such Services as required and will achieve Final Completion of the Services on or before _____, 202__.

2.1. "Substantial Completion" is when a permission to operate ("PTO") request is submitted to PG&E provided that, if PTO is delayed due to the fault of Design-Builder, Substantial Completion shall be when any related deficiency is cured.

2.2. "Final Completion" means that each of the following has been achieved in accordance with Prudent Industry Practices and the other requirements of the Contract Documents: (a) Written documentation from the Project Inspector certifying that the system has been installed in accordance with the DSA approved design; (b) All of the electrical works and all other infrastructure necessary to achieve connection of the System to the Utility's electricity transmission system are fully energized; (c) Successful testing of all systems comprising the System in accordance with the requirements of the Agreement; and (d) The System is capable of operating safely in accordance with Prudent Industry Practices and all applicable Laws.

3. Liquidated Damages. Time is of the essence for all Work under this Agreement. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that the District will sustain in the event of and by reason of Design-Builder's delay; therefore, Design-Builder agrees that it shall pay to the District the sum of ONE THOUSAND DOLLARS (\$1,000) per day as liquidated damages for each and every day's delay beyond the Substantial Completion date that Substantial Completion is not achieved, provided that in no case will Design-Builder be liable for more than 365 days of delay liquidated damages. Such delay liquidated damages shall be the sole and exclusive remedy for delays.

It is hereby understood and agreed that this amount is not a penalty.

In the event any portion of the liquidated damages is not paid to the District, the District may deduct that amount from any money due or that may become due the Design-Builder under this Agreement, the District may seek recovery of Liquidated Damages from the Design-Builder's Performance Bond Surety and/or the District may seek recovery of Liquidated Damages from the Design-Builder or the Performance Bond Surety without having exhausted remedies against the other.

4. Grants/Rebates/Incentives. Design-Builder shall use commercially reasonable efforts to support the District in obtaining or maintaining grants/rebates/incentives for the Site(s), including but not limited to Inflation Reduction Act and NEM 2.0. Design-Builder shall use commercially reasonable efforts to achieve and keep in standing NEM 2.0 approval. If the District does not obtain and/or maintain NEM 2.0 approval, the District, in its sole discretion, may terminate this Agreement for convenience upon written notice to Design-Builder without liability to either Party.

5. Contract Documents. The following documents comprise the "Contract Documents" for the Work under this Agreement:

<input checked="" type="checkbox"/> Signed Agreement	<input checked="" type="checkbox"/> Exhibit A-1: System Description
<input checked="" type="checkbox"/> Notice to Proceed	<input checked="" type="checkbox"/> Exhibit A-2: Scope of Work
<input checked="" type="checkbox"/> Terms and Conditions to Contract	<input checked="" type="checkbox"/> Exhibit A-3.1 – A-3.3: Warranties
<input checked="" type="checkbox"/> Performance Bond	<input checked="" type="checkbox"/> Exhibit A-4: Project Milestone and Completion Schedule
<input checked="" type="checkbox"/> Payment Bond	<input checked="" type="checkbox"/> Exhibit A-5: Array Layout
<input checked="" type="checkbox"/> Worker’s Compensation Certification	<input checked="" type="checkbox"/> Exhibit A-6: BESS Layout
<input checked="" type="checkbox"/> Prevailing Wage Certification	<input checked="" type="checkbox"/> Exhibit A-7: EVSE Layout
<input checked="" type="checkbox"/> Drug-Free Workplace Certification	<input checked="" type="checkbox"/> Exhibit B: Escrow Bid Documentation
<input checked="" type="checkbox"/> Tobacco-Free Workplace Certification	<input checked="" type="checkbox"/> Exhibit C: Allowance Expenditure Directive
<input checked="" type="checkbox"/> Hazardous Material Certification	<input checked="" type="checkbox"/> Construction Documents, when 100% complete.
<input checked="" type="checkbox"/> Lead-Based Materials Certification	<input checked="" type="checkbox"/> Operations & Maintenance Agreement, including Performance Guarantee and Savings Guarantee
<input checked="" type="checkbox"/> Imported Materials Certification	
<input checked="" type="checkbox"/> Insurance Certificates and Endorsements	

The entire Agreement between the Parties consists of all Contract Documents as identified above and incorporated herein by this reference. Any and all obligations of the District and Design-Builder are fully set forth and described in the Contract Documents. All Contract Documents are intended to cooperate so that any work called for in one of those documents, but not mentioned in the other or vice versa, shall be executed the same as if mentioned in all Contract Documents.

Unless specifically enumerated in this Agreement, the Contract Documents do not include the request for proposals, instructions to bidders, sample forms, other information furnished by the District in anticipation of receiving bids or proposals, the Design-Builder’s bid or proposal, or portions of Addenda relating to bidding requirements.

If a conflict exists between the terms and conditions in this Agreement and **Exhibit A-2**, this Agreement shall control over **Exhibit A-2**.

Should any questions arise concerning the intent or meaning of Contract Documents, including the Drawings or Specifications, the Parties shall work together in good faith to resolve the issue and, if not so resolved, may be referred to dispute resolution by either Party. If a conflict exists in the Contract Documents, modifications, beginning with the most recent, shall control over this Agreement (if any). Once DSA approves the plans and specifications, in no case shall a document calling for lower quality and/or quantity material or workmanship control without the District’s consent.

6. Submittal of Documents.

- 6.1. Design-Builder shall not commence the Work under this Agreement until the Design-Builder has submitted and the District has approved the performance bond, payment (labor and material) bond, the certificate(s) and affidavit(s), and the endorsement(s) of insurance required under this Agreement and listed above. The aforementioned documents shall be presented to the District for approval within seven (7) days after execution of the Agreement.
- 6.2. Within fifteen (15) days after execution of this Agreement or before any Work commences, whichever is sooner, Design-Builder shall provide the District with the name and DIR registration number, and any other information required in a PWC-100 form, for Design-Builder and all tiers of subcontractors. Design-Builder has a continuing obligation throughout the duration of the Agreement to provide information to update the PWC-100 form for all subsequent subcontractors before their work commences or before their access onto the Site, whichever is earlier.
- 6.3. Within seven (7) days after the date of the Notice of Award, Design-Builder shall submit, one copy of all documentary information received or generated by Design-Builder in preparation of Total Contract Price for this Contract, as specified herein. This material is referred to herein as "Escrow Bid Documentation" and the requirements are further detailed in **Exhibit B**.

7. Compensation. As compensation for the Work, the District shall pay to the Design-Builder **[NUMBER OF] DOLLARS (\$_____)** ("Total Contract Price"). Such amount shall not be increased without the express approval of the Board.

Total Contract Price includes an Allowance of **[NUMBER OF] DOLLARS (\$_____)** for additional Work authorized at the District's sole discretion, which may include, but is not limited to, District-driven site improvements. The Allowance Value for an Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. All other costs, including design fees, Developer's overall project management and general conditions costs, overhead and fee, are deemed to be included in the original Total Contract Price, and are not subject to adjustment regardless of the actual amount of the Allowance Item. Payment for items covered by this allowance shall be documented and presented to District for review. The District shall process expenditures from the Allowances in the form of an Allowance Expenditure Directive ("AED"). A form of AED is attached hereto as **Exhibit C**. The District shall have sole discretion to authorize all expenditures from the Allowances. Any unused Allowance or portion thereof left unspent at Final Completion shall be deducted from District's final payment and/or retention payment to Design-Builder as a deductive Change Order.

8. Expenses. District shall not be liable to Design-Builder for any costs or expenses paid or incurred by Design-Builder in performing services for District.

9. Payment. On a monthly basis, Design-Builder shall submit an application for payment based upon the estimated value for materials delivered or services performed under the Agreement as of the date of submission ("Application for Payment"). Within thirty (30) days after District's approval of the Application for Payment, Design-Builder shall be paid a sum equal to ninety-five percent (95%), a higher retention amount is required

pursuant to Public Contract Code section 7201(b)(4), of the value of the Work performed (as verified by District's designated representative and Inspector and certified by Design-Builder) up to the last day of the previous month, less the aggregate of previous payments and amount to be withheld. The District may deduct from any payment an amount necessary to protect the District from loss because of: (1) any sums expended by the District in performing any of Design-Builder's obligations under the Agreement which Design-Builder has failed to perform or has performed inadequately; (2) defective Work not remedied; (3) stop payment notices as allowed by state law; (4) liquidated damages; (5) unsatisfactory prosecution of the Work by Design-Builder; (6) unauthorized deviations from the Agreement; (7) failure of the Design-Builder to maintain or submit on a timely basis proper and sufficient documentation as required by the Agreement or by District during the prosecution of the Work; (8) erroneous or false estimates by the Design-Builder of the value of the Work performed; (9) any sums representing expenses, losses, or damages, as determined by the District, incurred by the District for which Design-Builder is liable under the Agreement; and (10) any other sums which the District is entitled to recover from Design-Builder under the terms of the Agreement or pursuant to state law, including section 1727 of the Labor Code. The failure by the District to deduct any of these sums from a progress payment shall not constitute a waiver of the District's right to such sums. The District shall retain five percent (5%) from all amounts owing as retention. Retention shall be paid pursuant to Public Contract Code sections 7107 and 7200.

10. Independent Contractor. Design-Builder represents and warrants that Design-Builder is an independent contractor or business entity that is: (i) free from the control and direction of the District in connection with the performance of the Work, (ii) performing Work that are outside the usual course of the District's business, and (iii) customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the Work performed, District being interested only in the results obtained. Design-Builder understands and agrees that he/she and all of his/her employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Design-Builder shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Design-Builder's employees. Design-Builder shall be liable for its own actions, including its negligence or gross negligence, and shall be liable for the acts, omissions, or errors of its agents or employees.

11. Conflict of Interest. Design-Builder represents that it has no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner of degree with the performance of the Work required under this Agreement and that no person having any such interest shall be employed by Design-Builder.

12. Licensing. Design-Builder certifies that it is properly certified or licensed under the laws and regulations of the State of California to provide the professional services that it has herein agreed to perform. Design-Builder and all subcontractors shall be properly licensed and regulated by the Contractors State License Board, 3132 Bradshaw Road, Post Office Box 2600, Sacramento, California 98826, <http://www.cslb.ca.gov>, throughout the duration of the Work. Design-Builder hereby acknowledges that it or its subcontractors performing the work hold valid license(s).

13.Registration as Public Works Contractor: Design-Builder and all subcontractors currently are registered as public works contractors with the Department of Industrial Relations, State of California, in accordance with Labor Code section 1771.4. Design-Builder further acknowledges and agrees that it shall timely submit updated Registered Subcontractors List, included with this Agreement and as detailed further therein.

14.Standard of Care. Design-Builder's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of Solar Practices and all Applicable Law, including the applicable provisions of California Code of Regulations, Title 24, Pacific Gas and Electric, Co.'s ("PG&E") applicable interconnection requirements, and the requirements of the Division of State Architect ("DSA"), and the District's Design Guides and Technical Specifications. Design-Builder represents and warrants that it is fully experienced in projects of the nature and scope of Work, and that it is properly qualified, licensed and equipped to supply and perform the Work. The Work completed herein must meet the requirements set forth in **Exhibit A** and shall be subject to the District's general right of inspection to secure the satisfactory completion thereof.

15.Originality of Services. Design-Builder agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Design-Builder or Design-Builder's authorized agents or subcontractors and shall not be copied in whole or in part from any other source, except that submitted to Design-Builder by District as a basis for such services.

16.Copyright/Trademark/Patent. All drawings, specifications, calculations, data, notes and other materials and documents, including electronic data (other than System performance data provided during operation, which shall not be deemed "Work Product") furnished by Design-Builder to District under this Agreement ("Work Product") are the instruments of service of Design-Builder and Design-Builder will retain all common law, statutory and other reserved rights, including copyrights. Upon DSA approval of the Construction Documents, Design-Builder will grant the District, and its successors and assigns, a perpetual, royalty-free license to use the Work Product solely in connection with District's operation, maintenance, and repair of the PV System, and other uses approved in writing by Design-Builder. Except as provided above, the license granted under this Section is only valid for use in relation to the Project and this provision does not permit the District to use Design-Builder's intellectual property in relation to any other project or photovoltaic system. No other license in the Work Product is granted pursuant to this Agreement.

17.Notice to Proceed. The District shall provide a Notice to Proceed to Design-Builder within three (3) business days after Design-Builder submits satisfactory performance bond(s), payment (labor and material) bond(s), the certificate(s) and affidavit(s), and the endorsement(s) of insurance required under this Agreement. Upon issuance of a Notice to Proceed, the Design-Builder shall proceed with the Work. The District will have the opportunity to review and approve designs before construction commences, such approval not to be unreasonably withheld or delayed.

18.Site Examination. The District has submitted to Design-Builder various documents and reports related to conditions at the Site (e.g., survey, geotechnical engineering report,

electrical locations and PG&E information and bills, structural reports, etc.) and Design-Builder has made a reasonable examination of the Site. After the Notice to Proceed, Design-Builder, to the extent commercially reasonable, will make all Site examination(s) that it deems necessary as to the condition of the Site ("Due Diligence"). After its Due Diligence is completed, Design-Builder will warrant that it has made all reasonable Site examination(s) that it deems necessary as to the condition of the Site, its accessibility for materials, workers and utilities, and Design-Builder's ability to protect existing surface and subsurface improvements. If any variations to the scope of Work become necessary due to a change in Site conditions or due to Site conditions not reasonably known or foreseeable to Design-Builder based on such visual examination or from the Site Documents or from its Due Diligence, Design-Builder shall be entitled to apply for a Change Order to equitably adjust the Contract Price and/or project schedule in light of the changed or unknown conditions, to the extent such adjustments are not within the Allowance. No claim for time or money will be allowed as to any other undiscovered condition on the Site.

19. Materials. Design-Builder shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement.

19.1. Codes, Standards, and Methodologies. All products and components outlined in this Agreement must conform to all applicable codes, standards, and rating methodologies, including, without limitation, all applicable building codes.

19.2. Anti-Trust Claim. Design-Builder and its subcontractor(s) agree to assign to the District all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or a subcontract. This assignment shall be made and become effective at the time the District tenders final payment to the Design-Builder, without further acknowledgment by the parties.

19.3. Domestic Content Requirements. Design-Builder will endeavor to procure, to the extent practicable, manufactured products that are produced in the United States with the domestic content requirements in the Inflation Reduction Act, sections 13101 and 13102. The requirements of this section must be included in all subcontracts and purchase orders for work or products for the Project.

19.3.1. For steel or iron used in the Project, domestic content shall be applied in a manner consistent with section 661.5 of Title 49, Code of Federal Regulations.

19.3.2. The total costs of all manufactured products of the Project (including components), which are mined, produced, or manufactured in the United States, shall not be less than 40% of the total costs of all manufactured components of the Project.

19.4. Substitutions. No substitutions of material from those specified in the Work Specifications shall be made without the prior written approval of the District.

- 19.5. **Hazardous Materials.** If photovoltaic modules using hazardous materials are to be provided by Design-Builder, then the environmental impact of the hazardous material usage must be discussed, including any special maintenance requirements and proper disposal/recycling of the modules at the end of their useful life. Modules containing hazardous materials must comply with the EPA Landfill Disposal Requirements. Any additional costs and/or District responsibilities related to photovoltaic modules containing hazardous materials must be clearly identified.
- 19.6. **Technical Requirements.** Technical requirements will be as shown in **Exhibit A-2** (Scope of Work) of this Agreement.
20. **Equipment and Labor.** Design-Builder shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to furnish the services herein described, the services to be performed at such times and places as directed by and subject to the approval of the authorized District representative indicated in the Work specifications attached hereto.
21. **Warranty/Quality.** Warranties are attached hereto in **Exhibit A-3** and as provided in the Performance Bond incorporated herein. All workmanship and merchandise must be warranted to be in compliance with applicable California energy and environmental standards. Notwithstanding the expiration of the warranty period, Design-Builder may still have liability to District as allowed under California law for any latent or patent defect pursuant to California Code of Civil Procedure, sections 337.1 and 337.15.
22. **Correction of Errors.** Design-Builder shall perform, at its own cost and expense and without reimbursement from the District, any work necessary to correct errors or omissions which are caused by the Design-Builder's failure to comply with the standard of care required herein.
23. **Trench Shoring.** If this Agreement is in excess of \$25,000 and the Contract Documents include excavation of any trench deeper than five (5) feet, Design-Builder must submit and obtain District acceptance, in advance of excavation, of a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If the plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.
24. **Excavations Over Four Feet.** If the Contract Documents include excavations over four (4) feet, Design-Builder shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any: (1) Material that the Design-Builder believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (2) Subsurface or latent physical conditions at the site differing from those indicated; or (3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents. The District shall promptly investigate the conditions, and if the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Design-Builder's cost of, or the time required for, performance of any part of the Work shall issue a change order under the procedures described in the Contract Documents. Additionally, if environmental remediation or

cleanup work is needed, the Parties shall attempt to negotiate together in good faith a change order for such work. In the event that a dispute arises between the District and the Design-Builder whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Design-Builder's cost of, or time required for, performance of any part of the work, the Design-Builder shall not be excused from any scheduled completion date provided for by the Contract Documents, but shall proceed with all Work to be performed under the Contract Documents. Design-Builder shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

- 25. Safety and Health Standards; Lead-Based Paint.** Pursuant to the requirements of the Federal Occupational Safety and Health Administration ("Fed/OSHA") and the California Division of Occupational Safety and Health ("Cal/OSHA"), the Lead-Safe Schools Protection Act (Education Code Section 32240 et seq.) and other applicable law, no lead-based paint, lead plumbing and solder, or other potential sources of lead contamination shall be utilized on this Project, and only trained and state-certified contractors, inspectors and workers shall undertake any action to abate existing risk factors for lead. Design-Builder must execute the Lead-Based Materials Certification, if applicable.
- 26. Change in Scope of Work and Schedule.** Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted unless such change, addition, or deletion is approved in writing by a valid change order executed by the District and the Design Builder ("Change Order"), subject to Design-Builder's rights under the Disputes provisions herein. Design-Builder specifically understands, acknowledges, and agrees that the District shall have the right to request any alterations, deviations, reductions, or additions to the Project or Work, and Design-Builder shall be entitled to an equitable adjustment in the Total Contract Price, Project Schedule, or other time limitations based on such changes to the Scope of Work, delays not caused by Design-Builder, or unforeseen conditions, subject to the Design-Builder complying with the procedures provided herein and substantiation of the additional cost and/or time extension.

Design-Builder shall notify the District of any claim for additional compensation and/or extension of time within fourteen (14) calendar days after the first occurrence giving rise to the Proposed Change Order. Within twenty-five (25) calendar days of the foregoing Notice, Design-Builder agrees to provide the District with all reasonable information requested to substantiate the cost of the change order, including an analysis of any impacts to the critical path to the Project schedule, and to inform the District whether the Work will be done by the Design-Builder or a subcontractor. Design-Builder shall prepare a written Proposed Change Order requesting that the District issue a Change Order based upon a proposed change to the Total Contract Price, Scope of Work, or adjustment to the Project Schedule. If Design-Builder fails to comply with procedures provided herein, it shall be deemed to have waived its right to request such change order.

A Proposed Change Order shall include price breakdowns for any additional labor, services, and materials substantially in the form set forth below and other reasonable backup documentation requested by the District. For purposes of determining the cost, if any, of any change, addition, or omission to the Work hereunder, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall

accrue and be credited to Design-Builder, and Design-Builder shall make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be allowed as a reduction of Design-Builder's cost in determining the actual cost of construction for purposes of any change, addition, or omission in the Work as provided herein.

All deductive Change Order(s) must be prepared pursuant to the provisions herein. Where a portion of the Work is deleted from the scope of Work, the reasonable value of the deducted Work less the value of Work performed shall be considered the appropriate deduction. If Design-Builder offers a proposed amount for a deductive Change Order(s), Design-Builder shall include a minimum of five percent (5%) total profit and overhead to be deducted with the amount of the Work of the Change Order(s). If subcontractor work is involved, subcontractors shall also include a minimum of five percent (5%) profit and overhead to be deducted with the amount of its deducted work. Any deviation from this provision shall not be allowed.

Upon agreement to a Proposed Change Order, Design-Builder and District shall execute a written Change Order stating their agreement regarding any of the following: (i) a change in the Scope of Work; (ii) an adjustment to the Total Contract Price; or (iii) an adjustment to the Project Schedule.

If the Parties are unable to agree upon all terms for a Proposed Change Order, any unresolved disputes shall be submitted as a claim and resolved pursuant to the Disputes provisions herein below. Design-Builder shall continue to perform its Work under the Agreement and shall not cause a delay of the Work during any dispute, claim, negotiation, or mediation proceeding, except by written agreement by the District.

The following format shall be used for Proposed Change Orders, supported by attached documentation.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

	WORK PERFORMED OTHER THAN BY DESIGN-BUILDER	ADD
(a)	Material (attach itemized quantity & unit cost plus sales tax)	\$
(b)	Add Labor (attach itemized hours & rates, fully encumbered)	\$
(c)	Add Equipment (attach suppliers' invoice)	\$
(d)	Subtotal	\$
(e)	Add overhead and profit for any and all tiers of Subcontractor, the total not to exceed 10% of item (d)	\$
(f)	Subtotal	\$
(g)	Add General Conditions Costs (if Time is compensable; attach supporting documentation)	\$
(h)	Subtotal	\$
(i)	Add overhead and profit for Design-Builder, not to exceed 5% of Item (h)	\$
(j)	Subtotal	\$
(k)	Add Bond and Insurance, not to exceed two percent (2%) of Item (j)	\$
(l)	TOTAL	\$
(m)	Time (zero unless indicated; "TBD" not permitted)	___ Days

	WORK PERFORMED BY DESIGN-BUILDER	ADD
(a)	Material (attach itemized quantity & unit cost plus sales tax)	
(b)	Add Labor (attach itemized hours & rates, fully encumbered)	
(c)	Add Equipment (attach suppliers' invoice)	
(d)	Add General Conditions Cost (if Time is compensable; attach supporting documentation)	
(e)	Subtotal	
(f)	Add overhead and profit for Design-Builder, not to exceed 15% of item (e).	
(g)	Subtotal	
(h)	Add Bond and Insurance, not to exceed 2% of Item (g)	
(i)	TOTAL	
(j)	Time (zero unless indicated; "TBD" not permitted)	___ Days

27.Workers. Design-Builder shall at all times enforce strict discipline and good order among its employees and the employees of its subcontractors and shall not employ or work any unfit person or anyone not skilled in work assigned to him or her. The District may evaluate the Design-Builder in any manner which is permissible under the law. Any person in the employ of the Design-Builder or a subcontractor whom the District may deem incompetent or unfit shall be dismissed from the Site and shall not again be employed at Site without written consent from the District.

28.Design-Builder Supervision. Design-Builder shall provide competent supervision of personnel employed on the job Site, use of equipment, and quality of workmanship.

29.Safety and Security. Design-Builder is responsible for maintaining safety in the performance of this Agreement. Design-Builder shall be responsible to ascertain from

the District the rules and regulations pertaining to safety, security, and driving on school grounds.

- 30. Clean Up.** Debris shall be removed from the Premises. The Site shall be in order at all times when work is not actually being performed and shall be maintained in a reasonably clean condition.
- 31. Site Access.** District shall provide Design-Builder with reasonable access to the Site for purposes of Design-Builder's timely and efficient performance of the Work under this Agreement.
- 32. Access to Work.** District representatives shall at all time have access to the Work wherever it is in preparation or in progress, provided, however, that Design-Builder shall be entitled to have its personnel accompany any District personnel accessing the Work and provided further that District personnel shall strictly comply with all of Design-Builder's safety protocols. Design-Builder shall provide safe and proper facilities for such access.
- 33. Project Inspection.** Project inspection and acceptance of the Work shall be performed by [Name/Title] ("Project Inspector"). Project Inspector shall have free access to any or all parts of Work at any time, subject to the requirements set forth in Section 32 (Access to Work) applicable to the District's personnel. Design-Builder shall furnish the District's Project Inspector reasonable opportunities for obtaining such information as may be necessary to keep him/her fully informed respecting progress, manner of Work, and character of materials. Design-Builder shall be liable for any delay caused by its non-compliant Work or its failure to provide proper notification for inspection. Design-Builder hereby acknowledges that the Project Manager(s), the Project Inspector(s), and the Division of the State Architect have authority to approve and/or suspend the Work if Design-Builder's Work does not comply with the requirements of the Contract Documents, Title 24 of the California Code of Regulations, and all applicable laws. Design-Builder shall be liable for any delay caused by its non-compliant Work.
- 34. Protection of Work and Property.** Design-Builder shall erect and properly maintain at all times, as required by conditions and progress of the Work, all necessary safeguards, signs, barriers, lights, and security persons for protection of workers and the public, and shall post danger signs warning against hazards created by the Work. In an emergency affecting life and safety of life or of Work or of adjoining property, Design-Builder, without special instruction or authorization from District, is permitted to act at his discretion to prevent such threatened loss or injury.
- 35. Occupancy.** District reserves the right to occupy parking lot at any time before Final Completion, subject to safety restrictions and construction access specified by Design-Builder, and such occupancy shall not constitute final acceptance or approval of any part of the Work covered by this Contract, nor shall such occupancy extend the date specified for completion of the Work.
- 36. Force Majeure.** "Force Majeure" means any event or circumstance which are beyond the parties' control and makes performance of the contract impractical or impossible. The Party seeking to have its performance obligation(s) excused must demonstrate that there was such an insuperable interference occurring without the party's intervention as could not have been prevented by the exercise of prudence, diligence and care by providing prompt notice to the other Party, including full particulars of such event, of its

inability to perform its obligations due to such event, following commencement of the claiming Party's inability to so perform its obligations. To the extent satisfying these conditions, Force Majeure events include but are not limited to, the following: acts of God, war, civil unrest, epidemic, fire, smoke, volcanic eruption, earthquake, strike, unusually severe weather, flood, or shortage of transportation facilities, lock out, or commandeering of materials, product, plant, or facilities by the government. Force Majeure shall not be based on a Party's financial inability to perform under this Agreement unless there exists extreme and unreasonable difficulty, expense, injury, or loss involved. A Force Majeure event does not include an act of negligence or intentional wrongdoing by a Party. Any Party claiming a Force Majeure event shall use reasonable diligence to remove the condition that prevents performance and shall not be entitled to suspend performance of its obligations in any greater scope or for any longer duration than is required by the Force Majeure event. Each Party shall use its best efforts to mitigate the effects of such Force Majeure event, remedy its inability to perform, and resume full performance of its obligations hereunder. No obligation that arose before the Force Majeure event that could and should have been fully performed before such Force Majeure event is excused as a result of such Force Majeure event.

37. Termination.

37.1. For Failure of Conditions. Design-Builder's obligations under this Agreement are conditioned on the completion of the following conditions on or before [redacted]:

37.1.1. Completion of a physical inspection of the Facility and the property upon which the Facility is located (the "**Premises**") including, if applicable, geotechnical work, to confirm the suitability of the Facility and the Premises for the System;

37.1.2. Execution by Design-Builder of all necessary agreements with the Utility for interconnection of the System to the Utility's electric distribution system;

37.1.3. Confirmation that District will be grandfathered under NEM 2.0;

37.1.4. District has complied with the requirements of, and performed all of District's obligations related to, the California Environmental Quality Act ("**CEQA**") prior to commencement of construction.

37.1.5. If any of the conditions listed above are not satisfied, or, if applicable, waived, by the applicable date specified in that subsection, the Parties will attempt in good faith to negotiate new dates for the satisfaction of the failed conditions. If the parties are unable to negotiate new dates, then the Party that has not failed to meet an obligation may terminate this Agreement upon ten (10) days' written notice to the other Party without liability for costs or damages or triggering a default under this Agreement.

37.2. For Convenience by District. District may terminate this Agreement upon fifteen (15) calendar days of written notice to the Design-Builder ("Effective Date of Termination") and use any reasonable method the District deems expedient to complete the project, including contracting with replacement contractor or contractors, if it is found that reasons beyond the control of either the District or

Design-Builder make it impossible or against the District's interest to complete the Work. In such a case, District shall compensate Design-Builder for work completed to date as a pro-rata amount of the full fees, costs, and expenses necessarily incurred, including: (a) Work performed (including materials and equipment delivered to the Site) through the date of termination; (b) materials and equipment not yet delivered to the Site but in transit or in fabrication as of the date of termination, provided that such materials and equipment cannot be returned and refunded; (c) any transportation, storage, cancellation, and restocking costs incurred by Design-Builder in connection with a return of materials or equipment; and (d) reasonable demobilization costs and fees arising out of such early termination. All fees, costs and expenses must be justified, properly documented, and submitted to District for validation. Design-Builder will use commercially practicable efforts to mitigate these fees, costs, and expenses. The payment described herein shall be treated as a final payment in accordance with Public Contract Code section 7107.

37.3. With Cause. Either Party may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

37.3.1. material violation of this Agreement; or

37.3.2. any act exposing the other Party to liability to others for personal injury or property damage; or

37.3.3. District may terminate if Design-Builder is adjudged a bankrupt, Design-Builder makes a general assignment for the benefit of creditors or a receiver is appointed on account of Design-Builder's insolvency.

Written notice of termination for cause shall contain the reasons for such intention to terminate and unless within fifteen (15) calendar days after that notice the condition or violation shall cease, or appropriate arrangements for the correction thereof be commenced within fifteen (15) calendar days, this Agreement shall upon the expiration of the 15-day period cease and terminate.

In the event of termination by District, the District may secure the Work from another Design-Builder. If the expense, fees, and costs to the District exceed the cost of Work pursuant to this Agreement, Design-Builder shall pay, as sole remedy, the excess expense, fees, and/or costs to the District less any amounts paid to the District by the performance bond surety, within thirty (30) days of the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

In the event of termination by Design-Builder, if undisputed by District, District shall release any bonds provided hereunder and pay Design-Builder the amounts provided for in Section 7.

In the event either Party terminates this Agreement in accordance with this Section, if undisputed, District shall, within thirty (30) Days after receipt of an invoice, pay for (a) Work satisfactorily performed (including materials and equipment delivered to the Site) through the date of termination; and (b) materials and equipment not yet delivered to the Site but in transit or in

fabrication as of the date of termination, provided that such materials and equipment are delivered to the Site in acceptable condition.

37.4. Upon termination, Design-Builder shall provide the District with all documents produced maintained or collected by Design-Builder pursuant to this Agreement, whether or not such documents are final or draft documents.

38. Indemnification. Design-Builder shall, at its sole expense, defend, indemnify, and hold harmless the District, the State of California, and their agents, representatives, officers, consultants, employees, trustees, and volunteers ("District Indemnified Parties") from any and all demands, losses, liabilities, claims, suits, and actions (the "claims") of any kind, nature, and description, to the extent arising from third-party claims of personal injury, death, or property damage arising from the negligence or willful misconduct of or its performance or nonperformance under this Agreement by Design-Builder or its Subcontractors, except to the extent the claims are caused by the negligence or willful misconduct of District Indemnified Parties. Design-Builder shall also defend, indemnify, and hold harmless the District Indemnified Parties from any dispute between Design-Builder and its subcontractors/suppliers/ sureties, including, but not limited to, any failure or alleged failure of Design-Builder to pay any subcontractor or supplier of any tier or any other person employed in connection with Design-Builder's conduct arising from or related to and/or filing of any stop payment notice or mechanic's lien claims. The District shall have the right to accept or reject any legal representation that Design-Builder proposes to defend the indemnified parties, such acceptance not to be unreasonably conditioned, delayed or withheld.

39. Insurance.

39.1. The Design-Builder shall procure and maintain at all times it performs any portion of the Services the following insurance:

39.1.1. General Liability. Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage in the form of Comprehensive General Liability and Contractual Liability. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to each project/location or the general aggregate limit shall be twice the required occurrence limit. Limits may be met through a combination of primary and excess policies.

39.1.2. Automobile Liability Insurance. One Million Dollars (\$1,000,000) combined single limit per occurrence for any automobile that shall protect the Design-Builder and the District from all claims of bodily injury, property damage, personal injury, death, and medical payments arising performing any portion of the Services by Design-Builder.

39.1.3. Workers' Compensation and Employers' Liability Insurance. For all of the Design-Builder's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, Design-Builder shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide employers' liability coverage with minimum liability coverage of One Million Dollars (\$1,000,000) per accident for bodily injury or disease. Design-Builder ensures that the

insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.

39.1.4. Professional Liability (Errors and Omissions) Insurance. One Million Dollars (\$1,000,000) for errors and omissions as appropriate to the profession of engineer designing photovoltaic system, diesel generator with microgrid resiliency capabilities, and battery energy storage systems with microgrid resiliency capabilities, coverage to continue through completion of construction plus three (3) years thereafter.

39.1.5. Builder's Risk Insurance. On a replacement cost value basis, Design-Builder shall procure and maintain, during the life of this Agreement, Builder's Risk (Course of Construction), or similar first party property coverage to insure against all risks of accidental physical loss and shall include without limitation the perils of vandalism and/or malicious mischief (both without any limitation regarding vacancy or occupancy), sprinkler leakage, civil authority, theft, sonic disturbance, earthquake, flood, collapse, wind, fire, war, terrorism, lightning, smoke, and rioting. Coverage shall include debris removal, demolition, increased costs due to enforcement of all applicable ordinances and/or laws in the repair and replacement of damaged and undamaged portions of the property, and reasonable costs for engineering services and expenses required as a result of any insured loss upon the Work and Project, including completed Work and Work in progress, to the full insurable value thereof.

39.1.6. Excess Liability. Four Million Dollars (\$4,000,000) per occurrence to meet the policy limit requirements of the required policies if Design-Builder's underlying policy limits are less than required. There shall be no gap between the per occurrence amount of any underlying policy and the start of the coverage under the Excess Liability Insurance Policy. Any Excess Liability Insurance Policy shall protect Design-Builder, District, State, and Project Manager(s) in amounts, and that complies with all requirements for Commercial General Liability and Automobile Liability and Employers' Liability Insurance.

39.1.7. Proof of Insurance. Design-Builder shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

39.1.7.1. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation notice will be sent, and length of notice period.

39.1.7.2. For the general liability and automobile liability policies:

39.1.7.2.1. All policies shall be written on an occurrence form.

- 39.1.7.2.2.** All endorsements, certificates and insurance policies shall state that the District, its representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of Design-Builder; instruments of Service and completed operations of the Design-Builder; premises owned, occupied or used by Design-Builder; or automobiles owned, leased, hired or borrowed by Design-Builder. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.
- 39.1.7.2.3.** For any claims related to the projects, Design-Builder's insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of the Design-Builder's insurance and shall not contribute with it.
- 39.1.7.2.4.** All endorsements shall waive any right to subrogation against any of the named additional insureds.
- 39.1.7.2.5.** Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.
- 39.1.7.3.** Insurance written on a "claims made" basis shall be retroactive to a date that coincides with or precedes Design-Builder's commencement of Work, including subsequent policies purchased as renewals or replacements. Said policy is to be renewed by Design-Builder and all Subcontractors for a period of five (5) years following completion of the Work or termination of this Contract. Such insurance must have the same coverage and limits as the policy that was in effect during the term of this Contract and will cover Design-Builder and all Subcontractors for all claims made.
- 39.1.7.4.** Design-Builder's and Subcontractors' insurance policy(s) shall be primary and non-contributory to any insurance or self-insurance maintained by District, its Board Members, employees and/or agents, the State of California, Construction Manager(s), Project Manager(s), and/or Inspector(s).
- 39.1.7.5.** Design-Builder's insurance shall apply separately to each insured against whom claim is made or suit is brought.

39.1.7.6. Each insurance policy shall include a clause stating that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice (except for ten (10) days' notice in event of cancellation due to non-payment).

39.1.8. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the District.

39.1.9. Failure of Design-Builder and/or its Subcontractor(s) to comply with the insurance requirements herein shall be deemed a material breach of the Contract and constitute a Default by Design-Builder pursuant to this Contract.

40.Payment Bond and Performance Bond. Design-Builder shall not commence the Work until it has provided to the District, in a form acceptable to the District, a Payment (Labor and Material) Bond and a Performance Bond, each in an amount equivalent to one hundred percent (100%) of the Construction Price issued by a surety admitted to issue bonds in the State of California and otherwise acceptable to the District.

41.Permits and Licenses. Design-Builder and all Design-Builder's employees or agents shall secure and maintain in force, at Design-Builder's sole cost and expense, such permits and licenses as are required by law in connection with the furnishing of materials, supplies, or services pursuant to this Agreement.

42.Assignment. The rights, burdens, duties, or obligations of Design-Builder pursuant to this Agreement shall not be assigned by the Design-Builder without the prior written consent of the District.

43. Subcontractors. Subcontractors, if any, other than those identified in Registered Subcontractors List hereto, engaged by the Design-Builder for any Service or Work under this Agreement shall be subject to the approval of the District, such approval not to be unreasonably conditioned, delayed or withheld. Design-Builder agrees to bind every subcontractor by the terms of the Agreement as far as such terms are applicable to subcontractor's work, including, without limitation, all indemnification, insurance, bond, and warranty requirements. If Design-Builder shall subcontract any part of this Agreement, Design-Builder shall be fully responsible to the District for acts and omissions of its subcontractor and of persons either directly or indirectly employed by itself. Nothing contained in this Agreement shall create any contractual relations between any subcontractor and the District.

44.Compliance with Laws. Design-Builder shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations applicable to the Work. Design-Builder shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Design-Builder observes that any of the Work required by this Agreement is at variance with any such laws, ordinance, rules or regulations, Design-Builder shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Design-Builder's receipt of a written termination notice from the District. If

Design-Builder performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Design-Builder shall bear all costs arising therefrom.

44.1. Labor Code Requirements. Design-Builder shall comply with all applicable provisions of the California Labor Code, Division 3, Part 7, Chapter 1, Articles 1-5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars (\$1,000). Copies of the prevailing rate of per diem wages are on file with the District. In addition, the Design-Builder and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the California Labor Code, beginning with Section 1720, and including Section 1735, 1777.5 and 1777.6, forbidding discrimination, and Sections 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Design-Builder or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts.

44.1.1. **Labor Compliance:** Design-Builder shall perform the Work of the Project while materially complying with all the applicable regulations, including section 16000, et seq., of Title 8 of the California Code of Regulations and is subject to labor compliance monitoring and enforcement by the Department of Industrial Relations.

44.1.2. **Project Stabilization Agreement/Certified Payroll Records.** The District has entered into a Project Stabilization Agreement ("PSA"), which covers this Project. As Design-Builder and its subcontractor(s) have agreed to be bound by the terms of the PSA entered into by the District on October 22, 2012, Design-Builder and its subcontractors may be excused from uploading CPRs electronically using DIR's eCPR System by uploading the CPRs by electronic XML file or entering each record manually using the DIR's iform (or current form) online at <http://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html>, or by using a more current application and URL. However, within ten (10) days of any request by the District or Labor Commissioner, Design-Builder and its subcontractors shall provide CPRs showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Design-Builder and/or each subcontractor in connection with the Work.

44.1.3. **Registered Subcontractor List:** Within 30 days of the award of contract or prior to commencing the Work under this Agreement, whichever occurs first, Design-Builder shall provide District all information required by Labor Code section 1773.3, as amended by Stats. 2017, Ch. 28, Sec. 21, for Design-Builder and all tiers of Subcontractors to enable District to provide notice to the Department of Industrial Relations (DIR) of the Contract (PWC-100 form). Design-Builder shall submit and maintain an updated Registered Subcontractor List including all Subcontractors of any tier furnishing labor, material, or equipment to the Project.

44.2. Federal Prevailing Wage and Apprenticeship Requirements: Design-Builder will comply with the following prevailing wage requirements and apprenticeship requirements in the Inflation Reduction Act.

44.2.1. Prevailing Wage Requirements mean any laborers and mechanics employed by the Design-Builder or subcontractor in the construction of the Project shall be paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which the Project is located as most recently determined by the Secretary of Labor, in accordance with subchapter IV of Chapter 31 of Title 40, United State Code.

44.2.2. Apprenticeship Requirements mean, with respect to the construction of the Project, not less than the applicable percentage of the total labor hours of the construction work shall be performed by qualified apprentices. The applicable percentage shall be 12.5 percent. The apprenticeship requirement shall be subject to any applicable requirements for apprentice-to-journeyworker ratios of the Department of Labor or the applicable State apprenticeship agency. The Design-Builder shall employ at least one or more qualified apprentices to perform the Work.

45.Audit. Design-Builder shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Design-Builder transacted under this Agreement. Design-Builder shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter. Design-Builder shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Design-Builder and shall conduct audit(s) during Design-Builder's normal business hours, unless Design-Builder otherwise consents.

46.Non-Discrimination. It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status and therefore the Design-Builder agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Design-Builder agrees to require compliance by all its subcontractors.

47.Environmental Attributes and Energy Credits. District shall own all right, title, and interest associated with or resulting from the development, construction, installation and ownership of any facilities installed on the Project ("Generating Facilities"). This ownership includes the production, sale, purchase or use of the energy output including, and includes without limitation:

47.1. All Environmental Incentives associated in any way with the Generating Facilities. "Environmental Incentives" means all rights, credits (including tax credits), rebates, benefits, reductions, offsets and allowances and entitlements of any kind, howsoever entitled or named (including carbon credits and allowances), whether arising under federal, state or local law, international treaty, trade association membership or the like arising from the Generating Facilities or the energy

produced or otherwise from the development, construction, installation or ownership of the Generating Facilities or the production, sale, purchase, consumption or use of the energy produced from the Generating Facilities. Without limiting the foregoing, Environmental Incentives includes green tags, renewable energy credits, tradable renewable certificates, portfolio energy credits, the right to apply for (and entitlement to receive) incentives under the Self-Generation Incentive Program or other incentive programs offered by the State of California and/or Load Serving Entity and the right to claim federal income tax credits under Section 45 or 48 of the Code as such credits are available arising from the Environmental Attributes of the Generating Facilities or the energy produced from the Generating Facilities or the production, sale, purchase, consumption or use of the energy produced from the Generating Facilities.

47.2. All rights and interests in incentive payments to be made under the Self-Generation Incentive Program.

47.3. All reporting rights and the exclusive rights to claim responsibility for the delivery of the energy from the Generating Facilities.

47.4. All reporting rights and the exclusive rights to claim responsibility for the reductions in emissions of pollution and greenhouse gases resulting from the generation and delivery of energy.

47.5. All carbon reduction credits as defined under the California Action Reserve or such similar definition as enacted by the State of California or the U.S. Federal Government.

47.6. All "renewable energy credits," as such term, is defined in Section 399.12(h)(2) of the California Public Utilities Code, associated with the Generating Facilities.

48. Limitation of Liability and Waiver of Consequential Damages. Other than as provided in this Agreement, and except for the obligations of indemnification set forth herein and liabilities arising from the District's willful misconduct, the District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event other than those arising from or related to the District's willful misconduct shall the District be liable, regardless of whether the claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including but not limited to, lost profits or revenue. The foregoing limitation shall not apply in the event of Termination for Convenience, the cost of contracting with a third party to complete or correct the Work hereunder, or reasonable costs, profit, or direct damages awarded by a court of competent jurisdiction or arbitrator in proceedings involving disputes related to changes in the Work.

49. Tax Credits. Design-Builder shall issue a credit to District as an offset to the Design Fee equal to fifty percent (50%) of the amount of any tax deduction and/or credit Design-Builder and/or any member of Design-Builder receives for the Project at any time under the Commercial Buildings Energy-Efficiency Tax Deduction, 26 U.S. Code § 179D ("Section 179D"). Design-Builder shall provide District with all necessary documentation to enable District to verify the amounts of the Section 179D tax deduction and the resulting credit owed to District. Design-Builder shall notify the District in writing of the

Section 179D tax deduction within 30 days of when Design-Builder and/or any member of Design-Builder receives IRS notice of the Section 179D tax deduction or receives the Section 179D tax refund, whichever occurs first.

50. Confidentiality. Design-Builder and all Design-Builder's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services to the extent allowed by law. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

51. Disputes. In the event of any demand by Design-Builder for (A) a time extension, including, without limitation, for relief from damages or penalties for delay assessed by the District under the Agreement, (B) payment by the District of money or damages arising from work done by, or on behalf of, Design-Builder pursuant to the Agreement and payment of which is not otherwise expressly provided for or to which Design-Builder is not otherwise entitled to, or (C) an amount of payment disputed by the District, the parties shall attempt to resolve the dispute by those procedures set forth in Public Contract Code section 9204 and/or Article 1.5 (commencing with section 20104) of Chapter 1, Part 3, Division 2, of the Public Contract Code, if applicable, the provisions of which are each attached hereto and incorporated herein by this reference. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, the Design-Builder shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Design-Builder's right to bring a civil action against the District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the claimant submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process. Pending resolution of the dispute, Design-Builder agrees it will neither rescind the Contract nor stop or delay the progress of the Work, during any dispute, claim, negotiation, mediation, or arbitration proceeding, except by written agreement of the District.

52. Attorney Fees and Costs. Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs, and attorney's fees.

53. Disabled Veteran Business Enterprises. Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building (SFP Funds) to have a participation of at least three percent (3%), per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). If this Contract uses SFP Funds, Design-Builder must submit, with its executed Contract, appropriate documentation to the District identifying the steps Design-Builder has taken to solicit DVBE participation in conjunction with this Contract.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

54. Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, addressed as follows or as instructed by the intended recipient:

DISTRICT

Berkeley Unified School District
1005 Parker Street
Berkeley, CA 94710

ATTN: Facilities
Email: johncalise@berkeley.net

With a copy to:

[counsel or delete]

DESIGN-BUILDER

ATTN:
Email:

With a copy to:

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail. A courtesy copy of the notice shall be sent by electronic mail.

55. Governing Law. This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in county in which the District's administrative offices are located.

56. Severability. If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

57. Waiver. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

58. Captions and Interpretations. Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party of its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.

59. Incorporation of Recitals and Exhibits. The Recitals and each exhibit attached hereto are hereby incorporated herein by reference. There shall be no offsets or cross defaults between this Agreement, the operation and maintenance agreement, the performance guarantee, or the savings guarantee agreement (all attached thereto).

60.Cooperation. The Parties hereto hereby agree to execute all such other documents and to take all such other action as may be reasonably necessary to effect the purposes of this Agreement.

61.Binding Contract. This Agreement shall be binding upon the parties hereto and upon their successors and assigns, and shall inure to the benefit of said parties and their successors and assigns.

62.Authority to Bind Parties. Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.

63.No Rights in Third Parties. This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.

64.Signature Authority. Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement.

65. Counterparts. This Agreement and all amendments to it may be executed in counterparts, each of which shall be deemed an original. A facsimile or electronic signature shall be deemed to be the equivalent of the actual original signature. All counterparts so executed shall constitute one document binding all the Parties hereto.

66. Provisions Required By Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.

67.Entire Contract. This Agreement sets forth the entire contract between the parties hereto and fully supersedes any and all prior agreements, understanding, written or oral, between the parties hereto pertaining to the subject matter thereof. This Agreement may be modified only in writing upon mutual consent.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

BERKELEY UNIFIED SCHOOL DISTRICT

[NAME OF DESIGN-BUILDER]

Date: _____, 202_

Date: _____, 202_

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Address: _____

License No.: _____

Telephone: _____

Address: _____

Facsimile: _____

Telephone: _____

E-Mail: _____

Facsimile: _____

E-Mail: _____

Information regarding Design-Builder:

Proper Name: _____

Employer Identification and/or Social Security Number

License No.: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

NOTE: Section 6041 of the Internal Revenue Code (26 U.S.C. 6041) and Section 1.6041-1 of Title 26 of the Code of Federal Regulations (26 C.F.R. 1.6041-1) requires the recipients of \$600.00 or more to furnish their taxpayer information to the payer. In order to comply with these requirements, the District requires the Design-Builder to furnish the information requested in this section.

Type of Business Entity:

- ___ Individual
- ___ Sole Proprietorship
- ___ Partnership
- ___ Limited Partnership
- ___ Corporation, State: _____

___ Limited Liability Company

___ Other: _____

[BEGIN STATUTORY CLAIMS PROVISIONS]

Public Contract Code section 9204

(a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:

(1) "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the public entity.

(2) "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.

(3) (A) "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(B) "Public entity" shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Department of Transportation as to any project under the jurisdiction of that department.

(iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

(iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.

(v) The Military Department as to any project under the jurisdiction of that department.

(vi) The Department of General Services as to all other projects.

(vii) The High-Speed Rail Authority.

(4) "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(5) "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.

(d) (1) (A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet

within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2) (A) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

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

(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

(4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

(e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

(g) This section applies to contracts entered into on or after January 1, 2017.

(h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

(i) This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2027, deletes or extends that date.

[NEXT STATUTE CONTINUES ON FOLLOWING SHEET.]

Public Contract Code sections 20104 – 20104.6

§ 20104.

(a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

(b) (1) "Public work" means "public works contract" as defined in Section 1101 but does not include any work or improvement contracted for by the state or the Regents of the University of California.

(2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

(c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.

(d) This article applies only to contracts entered into on or after January 1, 1991.

§ 20104.2.

For any claim subject to this article, the following requirements apply:

(a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

(b) (1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

(c) (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

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

(e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

(f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

§ 20104.4.

The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

(c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

§ 20104.6.

(a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

(b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

[END OF STATUTORY CLAIMS PROVISIONS.]

Exhibit A-1
SYSTEM DESCRIPTION

[THIS SCOPE WILL BE FINALIZED WITH THE SELECTED DESIGN-BUILDER.]

Exhibit A-2
SCOPE OF WORK

Design-Builder's Entire Proposal is not made part of this Agreement.

[INSERT NEGOTIATED SCOPE OF WORK HERE...]

EXHIBIT A-3.1

SYSTEM WARRANTY – [DURATION]

[SELECTED FIRM WILL ATTACH SYSTEM WARRANTY LANGUAGE HERE.]

EXHIBIT A-3.2

MODULE WARRANTY – [DURATION]

[SELECTED FIRM WILL ATTACH MANUFACTURER’S WARRANTY HERE.]

EXHIBIT A-3.3

BATTERY ENERGY SYSTEM WARRANTY – [DURATION]

[SELECTED FIRM WILL ATTACH MANUFACTURER’S WARRANTY HERE.]

EXHIBIT A-3.4

INVERTER WARRANTY – [DURATION]

[SELECTED FIRM WILL ATTACH MANUFACTURER’S WARRANTY HERE.]

Exhibit A-4

PROJECT MILESTONE AND COMPLETION SCHEDULE

MILESTONE	COMPLETION DATE
Notice to Proceed	
Site Investigation	
Design 50%	
Design 100%	
Permitting process	
Construction start	
Equipment Pads complete	
Structural Steel complete	
Equipment Installation	
PV install complete	
Overhead Electrical complete	
Commissioning	
Substantial Completion	
Operating Start Date	
Punch List Completion	
DSA Close-Out	

Exhibit A-5
ARRAY LAYOUT

Exhibit A-6
BESS LAYOUT

Exhibit B

ESCROW BID DOCUMENTATION

1. Requirement to Escrow Bid Documentation

- a. Design-Builder shall submit, within **SEVEN (7)** calendar days after the date of the Notice of Award, one copy of all documentary information received or generated by Design-Builder in preparation of Total Contract Price for this Contract, as specified herein. This material is referred to herein as "Escrow Bid Documentation." The Escrow Bid Documentation of Design-Builder will be held in escrow for the duration of the Contract.
- b. Design-Builder agrees, as a condition of award of the Contract, that the Escrow Bid Documentation constitutes all written information used in the preparation of its Total Contract Price, and that no other written bid preparation information shall be considered in resolving disputes or claims. Design-Builder also agrees that nothing in the Escrow Bid Documentation shall change or modify the terms or conditions of the Contract Documents.
- c. The Escrow Bid Documentation will not be opened by District except as indicated herein. The Escrow Bid Documentation will be used only for the resolution of change orders and claims disputes.
- d. Design-Builder's submission of the Escrow Bid Documentation, as with the bonds and insurance documents required, is considered an essential part of the Contract award. Should Design-Builder fail to make the submission within the allowed time specified above, District may deem Design-Builder to have failed to enter into the Contract, and District may award the Contract to the next lowest responsive responsible proposer.
- e. NO PAYMENTS WILL BE MADE, NOR WILL DISTRICT ACCEPT PROPOSED CHANGE ORDERS UNTIL THE ABOVE REQUIRED INFORMATION IS SUBMITTED AND APPROVED.
- f. The Escrow Bid Documentation shall be submitted in person by an authorized representative of Design-Builder to District.

2. Ownership of Escrow Bid Documentation

- a. The Escrow Bid Documentation is, and shall always remain, the property of Design-Builder, subject to review by District, as provided herein.
- b. Escrow Bid Documentation constitute trade secrets, not known outside Design-Builder's business, known only to a limited extent and only by a limited number of employees of Design-Builder, safeguarded while in Design-Builder's possession, extremely valuable to Design-Builder, and could be extremely valuable to Design-Builder's competitors by virtue of reflecting Design-Builder's contemplated techniques of construction. Subject to the provisions herein, District agrees to safeguard the Escrow Bid Documentation,

and all information contained therein, against disclosure to the fullest extent permitted by law.

3. Format and Contents of Escrow Bid Documentation

- a. Design-Builder may submit Escrow Bid Documentation in its usual cost-estimating format; a standard format is not required. The Escrow Bid Documentation shall be submitted in the language (e.g., English) of the specification.
- b. Escrow Bid Documentation must clearly itemize the estimated costs of performing the work of each bid item contained in the bid schedule, separating bid items into sub-items as required to present a detailed cost estimate and allow a detailed cost review. The Escrow Bid Documentation shall include all subcontractor bids or quotes, supplier bids or quotes, quantity takeoffs, crews, equipment, calculations of rates of production and progress, copies of quotes from subcontractors and suppliers, and memoranda, narratives, add/deduct sheets, and all other information used by the Design-Builder to arrive at the prices contained in the bid proposal. Estimated costs should be broken down into Design-Builder's usual estimate categories such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials, and subcontract costs as appropriate. All labor rates must be broken down to specify any and all burden costs including, but not limited to, health and welfare pay, vacation and holiday pay, pension contributions, training rates, benefits of any kind, insurance of any kind, workers' compensation, liability insurance, truck expenses, supply expenses of any kind, payroll taxes, and any other taxes of any kind. Plant and equipment and indirect costs should be detailed in Design-Builder's usual format. Design-Builder's allocation of indirect costs, contingencies, markup, and other items to each bid item shall be identified.
- c. All costs shall be identified. For bid items amounting to less than \$10,000, estimated unit costs are acceptable without a detailed cost estimate, provided that labor, equipment, materials, and subcontracts, as applicable, are included and provided that indirect costs, contingencies, and markup, as applicable, are allocated.
- d. Bid Documentation provided by District should not be included in the Escrow Bid Documentation unless needed to comply with the following requirements.

4. Submittal of Escrow Bid Documentation

- a. The Escrow Bid Documentation shall be submitted by the Design-Builder in a sealed container within **SEVEN (7)** calendar days after the date of the Notice of Award. The container shall be clearly marked on the outside with the Design-Builder's name, date of submittal, project name and the words "Escrow Bid Documentation – Intended to be opened in the presence of Authorized Representatives of Both District and Design-Builder".
- b. By submitting Escrow Bid Documentation, Design-Builder represents that the material in the Escrow Bid Documentation constitutes all the documentary information used in preparation of the bid and that Design-Builder has

personally examined the contents of the Escrow Bid Documentation container and has found that the documents in the container are complete.

- c. If Design-Builder's proposal is based upon subcontracting any part of the work, each subcontractor whose total subcontract price exceeds 5 percent of the total contract price proposed by Design-Builder, shall provide separate Escrow Documents to be included with those of Design-Builder. Those documents shall be opened and examined in the same manner and at the same time as the examination described above for Design-Builder.
- d. If Design-Builder wishes to subcontract any portion of the Work after award, District retains the right to require Design-Builder to submit Escrow Documents for the subcontractor before the subcontract is approved.

5. Storage, Examination and Final Disposition of Escrow Bid Documentation

- a. The Escrow Bid Documentation will be placed in escrow, for the life of the Contract, in a mutually agreeable institution. The cost of storage will be paid by Design-Builder for the duration of the project until final Contract payment. The storage facilities shall be the appropriate size for all the Escrow Bid Documentation and located conveniently to both District's and Design-Builder's offices.
- b. The Escrow Bid Documentation shall be examined by both District and Design-Builder, at any time deemed necessary by either District or Design-Builder, to assist in the negotiation of price adjustments and change orders or the settlement of disputes and claims. In the case of legal proceedings, Escrow Bid Documentation shall be used subject to the terms of an appropriate protective order if requested by Design-Builder and ordered by a court of competent jurisdiction. Examination of the Escrow Bid Documentation is subject to the following conditions:
 - (1) As trade secrets, the Escrow Bid Documentation is proprietary and confidential to the extent allowed by law.
 - (2) District and Design-Builder shall each designate, in writing to the other party **SEVEN (7)** calendar days prior to any examination, the names of representatives who are authorized to examine the Escrow Bid Documentation. No other person shall have access to the Escrow Bid Documentation.
 - (3) Access to the documents may take place only in the presence of duly designated representatives of the District and Design-Builder. If Design-Builder fails to designate a representative or appear for joint examination on **SEVEN (7)** calendar days' notice, then the District representative may examine the Escrow Bid Documents alone upon an additional **THREE (3)** calendar days' notice if a representative of the Design-Builder does not appear at the time set.
 - (4) If a subcontractor has submitted sealed information to be included in the Escrow Bid Documents, access to those documents may take place only in the presence of a duly designated representative of the District,

Design-Builder and that subcontractor. If that subcontractor fails to designate a representative or appear for joint examination on **SEVEN (7)** calendar days' notice, then the District representative and/or the Design-Builder may examine the Escrow Bid Documentation without that subcontractor present upon an additional **THREE (3)** calendar days' notice if a representative of that subcontractor does not appear at the time set.

- c. The Escrow Bid Documentation will be returned to Design-Builder at such time as the Contract has been completed and final settlement has been achieved.

END OF DOCUMENT

Exhibit C

ALLOWANCE EXPENDITURE DIRECTIVE FORM

Berkeley Unified School District
2020 Bonar Street
Berkeley, CA 94702



ALLOWANCE EXPENDITURE DIRECTIVE

Project: _____

Date: _____

Bid No.: _____

DSA File No.: _____

DSA Appl. No.: _____

The following parties agree to the terms of this Allowance Expenditure Directive ("AED"):

Owner Name, Address, Telephone:

Design-Builder Name, Address, Telephone:

Berkeley Unified School District
2020 Bonar Street
Berkeley, CA 94702

[Name of Design-Builder]
[Address]

Reference	Description	Allowance Authorized for Expenditure
Request for AED # Requested by: Performed by: Reason:	[Description of unforeseen item relating to Work] [Requester] [Performer] [Reason]	\$
Request for AED # Requested by: Performed by: Reason:	[Description of unforeseen item relating to Work] [Requester] [Performer] [Reason]	\$
Request for AED # Requested by: Performed by: Reason:	[Description of unforeseen item relating to Work] [Requester] [Performer] [Reason]	\$

Total Contract Allowance Amount:	\$
Amount of Previously Approved Allowance Expenditure Directive(s):	\$
Amount of this Allowance Expenditure Directive:	\$

The undersigned Design-Builder approves the foregoing release of allowance for completion of each specified item, and agrees to furnish all labor, materials and services and perform all work necessary to complete any additional work specified for the consideration stated

therein ("Work"). Submission of sums which have no basis in fact or which Design-Builder knows are false are at the sole risk of Design-Builder and may be a violation of the False Claims Act set forth under Government Code section 12650, et seq.

This Allowance Expenditure Directive must be signed by an authorized District representative.

It is expressly understood that the authorized allowance expenditure granted herein represents a full accord and satisfaction for any and all cost impacts of the items herein, and Design-Builder waives any and all further compensation based on the items herein. The value of the extra work or changes expressly includes any and all of the Design-Builder's costs and expenses, and its subcontractors, both direct and indirect. Any costs, expenses, or damages not included are deemed waived.

Signatures:

<p>DISTRICT:</p> <p>BERKELEY UNIFIED SCHOOL DISTRICT</p> <p>Date: _____</p> <p>By: _____ [Print Name and Title here]</p>	<p>DESIGN-BUILDER:</p> <p>[NAME OF DESIGN-BUILDER]</p> <p>Date: _____</p> <p>By: _____ [Print Name and Title here]</p>
<p>PROJECT INSPECTOR:</p> <p>_____</p> <p>Date: _____</p> <p>By: _____ [Print Name Here]</p>	

END OF DOCUMENT

PERFORMANCE BOND
(100% of Contract Price)

(Note: Respondents must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

That WHEREAS, the governing board ("Board") of the **Berkeley Unified School District**, ("District") and _____, ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

ENERGY PROJECT (Project Name)

("Project" or "Contract") which Contract dated _____, 20____, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

And WHEREAS, said Principal is required under the terms of the Contract to furnish a bond for the faithful performance of the Contract;

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

- Perform all the work required to complete the Project; and
- Pay to the District all damages the District incurs as a result of the Principal's failure to perform all the Work required to complete the Project.

Or, at the District's reasonable discretion and election, the Surety shall obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the District of the lowest responsible bidder, arrange for a contract between such bidder and the District and make available as Work progresses sufficient funds to pay the cost of completion less the "balance of the Total Contract Price," and to pay and perform all obligations of Principals under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages. The term "balance of the Total Contract Price," as used in this paragraph, shall mean the total amount payable to Principal by the District under the Contract and any modifications thereto, less the amount previously paid by the District to the Principal, less any withholdings by the District allowed under the Contract. The Surety cannot award the completion contract, without the District's consent, to the Principal or any of its subcontractors.

The condition of the obligation is such that, if the above bounden Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the Contract and any alteration thereof made as therein provided, on his or its part to be kept and performed at the time and in the intent and meaning, including all contractual

guarantees and warranties of materials and workmanship, and shall indemnify and save harmless the District, its trustees, officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and virtue.

Surety expressly agrees that the District may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Principal. Surety shall not utilize Principal in completing the Project nor shall Surety accept a Bid from Principal for completion of the Work if the District, when declaring the Principal in default, notifies Surety of the District's objection to Principal's further participation in the completion of the Work.

Surety expressly agrees that the District may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Principal. Surety shall not utilize Principal in completing the Project nor shall Surety accept a Bid from Principal for completion of the Work if the District, when declaring the Principal in default, notifies Surety of the District's objection to Principal's further participation in the completion of the Work.

As a condition precedent to the satisfactory completion of the Contract, the above obligation shall hold good for a period ending one year after the date of Operating Start Date during which time Surety's obligation shall continue if Design-Builder shall fail to make full, complete, and satisfactory repair and replacements and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship. The above obligation is separate from and does not affect to the obligations under the Output Guarantee, the Operations & Maintenance Agreement, or any warranty obligations that are effective for any period longer than one year following the Final Completion date. Nothing herein shall limit the District's rights or the Design-Builder or Surety's obligations under the Contract, law or equity, including, but not limited to, the District's rights against Design-Builder under California Code of Civil Procedure section 337.15

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

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the _____ day of _____, 20__.

(Affix Corporate Seal)

Principal

By

Surety

By

Name of California Agent of Surety

Address of California Agent of Surety

Telephone Number of California Agent of Surety

Successful Respondent must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.

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

(Note: Respondents must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

That WHEREAS, the governing board ("Board") of the **Berkeley Unified School District**, (or "District") and _____, ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

ENERGY PROJECT (Project Name)

("Project" or "Contract") which Contract dated _____, 20____, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

WHEREAS, pursuant to law and the Contract, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by which the Contract is awarded in an amount equal to one hundred percent (100%) of the Contract price, to secure the claims to which reference is made in sections 9000 through 9510 and 9550 through 9566 of the Civil Code, and division 2, part 7, of the Labor Code.

NOW, THEREFORE, the Principal and _____, ("Surety") are held and firmly bound unto all laborers, material men, and other persons referred to in said statutes in the sum of _____ Dollars (\$ _____), lawful money of the United States, being a sum not less than the total amount payable by the terms of Contract, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

The condition of this obligation is that if the Principal or any of his or its subcontractors, of the heirs, executors, administrators, successors, or assigns of any, all, or either of them shall fail to pay for any labor, materials, provisions, provender, or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that the Surety will pay the same in an amount not exceeding the amount herein above set forth, and also in case suit is brought upon this bond, will pay a reasonable attorney's fee to be awarded and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under section 9100 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

And the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of Contract or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the _____ day of _____, 20____.

(Affix Corporate Seal)

Principal

By

Surety

By

Name of California Agent of Surety

Address of California Agent of Surety

Telephone Number of California Agent of Surety

Successful Respondent must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.

WORKERS' COMPENSATION CERTIFICATION

PROJECT/CONTRACT NO.: **Energy Project** between the **Berkeley Unified School District** ("District") and **[Name of Design-Builder]** ("Design-Builder") ("Contract" or "Project").

Labor Code section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

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

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

Date: _____
Name of Design-Builder: _____
Signature: _____
Print Name: _____
Title: _____

(In accordance with Article 5 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any Work under this Contract.)

PREVAILING WAGE CERTIFICATION

PROJECT/CONTRACT NO.: **Energy Project** between the **Berkeley Unified School District** ("District") and **[Name of Design-Builder]** ("Design-Builder") ("Contract" or "Project").

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours' notice, payroll records, and apprentice and trainee employment requirements, for all Work on the above Project including, without limitation, labor compliance monitoring and enforcement by the Department of Industrial Relations.

I hereby certify that I will also conform to the Federal Labor Standards Provisions regarding minimum wages, withholding, payrolls and basic records, apprentice and trainee employment requirements, equal employment opportunity requirements, Copeland Act requirements, Davis-Bacon and Related Act requirements, Contract Work Hours and Safety Standards Act requirements, Inflation Reduction Act, and any and all other applicable requirements for federal funding for all Work on the above Project.

Date: _____

Name of Design-Builder: _____

Signature: _____

Print Name: _____

Title: _____

DRUG-FREE WORKPLACE CERTIFICATION

PROJECT/CONTRACT NO.: **Energy Project** between the **Berkeley Unified School District** ("District") and **[Name of Design-Builder]** ("Design-Builder") ("Contract" or "Project").

This Drug-Free Workplace Certification form is required from the successful Bidder pursuant to Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990. The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract or grant for the procurement of any property or service from any state agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a state agency may be subject to suspension of payments or termination of the contract or grant, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred. In addition, the District has implemented **Board Policy 2046 (Drug-Free Environment and Drug Prevention Program)**.

The District is not a "state agency" as defined in the applicable section(s) of the Government Code, but the District is a local agency and school district under California law and requires all contractors on District projects to comply with the provisions and requirements of the Drug-Free Workplace Act of 1990.

Contractor shall certify that it will provide a drug-free workplace by doing all of the following:

- a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying actions which will be taken against employees for violations of the prohibition.
- b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) The person's or organization's policy of maintaining a drug-free workplace.
 - (3) The availability of drug counseling, rehabilitation, and employee-assistance programs.
 - (4) The penalties that may be imposed upon employees for drug abuse violations.
- c. Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required above, and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I, the undersigned, agree to fulfill the terms and requirements of Government Code section 8355 listed above and will publish a statement notifying employees concerning (a) the prohibition of controlled substance at the workplace, (b) establishing a drug-free awareness program, and (c) requiring that each employee engaged in the performance of the Contract be given a copy of the statement required by section 8355(a), and requiring that the employee agree to abide by the terms of that statement.

I also understand that if the District determines that I have either (a) made a false certification herein, or (b) violated this certification by failing to carry out the requirements of section 8355, that the Contract awarded herein is subject to termination, suspension of payments, or both. I further understand that, should I violate the terms of the Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of the aforementioned Act.

I acknowledge that I am aware of the provisions of Government Code section 8350 et seq. and **Board Policy 2046 (Drug-Free Environment and Drug Prevention Program)** and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990 and the District's policy.

Date: _____

Name of Design-Builder: _____

Signature: _____

Print Name: _____

Title: _____

TOBACCO-FREE ENVIRONMENT CERTIFICATION

PROJECT/CONTRACT NO.: **Energy Project** between the **Berkeley Unified School District** ("District") and **[Name of Design-Builder]** ("Design-Builder") ("Contract" or "Project").

Pursuant to, without limitation, 20 U.S.C. section 6083, Labor Code section 6400 et seq., and Health & Safety Code section 104350 et seq., all District sites, including the Project site, are tobacco-free environments. Smoking and the use of tobacco products by all persons is prohibited on or in District property. District property includes school buildings, school grounds, school-owned vehicles and vehicles owned by others while on District property. The prohibition on smoking includes the use of any electronic smoking device that creates an aerosol or vapor, in any manner or in any form, and the use of any oral smoking device for the purpose of circumventing the prohibition of tobacco smoking. Further, Health & Safety Code section 11362.3 prohibits the smoking or use of cannabis or cannabis products in any place where smoking tobacco is prohibited.

I acknowledge that I am aware of the District's policy regarding tobacco-free environments at District sites, including the Project site and hereby certify that I will adhere to the requirements of that policy and not permit any of my firm's employees, agents, subcontractors, or my firm's subcontractors' employees or agents, to use tobacco and/or smoke on the Project site.

Date: _____

Name of Design-Builder: _____

Signature: _____

Print Name: _____

Title: _____

ASBESTOS & OTHER HAZARDOUS MATERIALS CERTIFICATION

Design-Builder hereby certifies that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations "New Material Hazardous", shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Design-Builder's work on the Project for District.

Design-Builder further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material.

Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the District's determination. The costs of any such tests shall be paid by Design-Builder if the material is found to be New Hazardous Material.

All Work or materials found to be New Hazardous Material or Work or material installed with "New Hazardous Material" containing equipment will be immediately rejected and this Work will be removed at Design-Builder's expense at no additional cost to the District.

Design-Builder has read and understood the document Hazardous Materials Procedures & Requirements, and shall comply with all the provisions outlined therein.

Date: _____

Name of Design-Builder: _____

Signature: _____

Print Name: _____

Title: _____

LEAD-BASED MATERIALS CERTIFICATION

PROJECT/CONTRACT NO.: **Energy Project** between the **Berkeley Unified School District** ("District") and _____
("Design-Builder") ("Contract" or "Project").

This certification provides notice to the Design-Builder that:

- (1) Design-Builder's work may disturb lead-containing building materials.
- (2) Design-Builder shall notify the District if any work may result in the disturbance of lead-containing building materials.
- (3) Design-Builder shall comply with the Renovation, Repair and Painting Rule, if lead-based paint is disturbed in a six-square-foot or greater area indoors or a 20-square-foot or greater area outdoors.

1. Lead as a Health Hazard

Lead poisoning is recognized as a serious environmental health hazard facing children today. Even at low levels of exposure, much lower than previously believed, lead can impair the development of a child's central nervous system, causing learning disabilities, and leading to serious behavioral problems. Lead enters the environment as tiny lead particles and lead dust disburse when paint chips, chalks, peels, wears away over time, or is otherwise disturbed. Ingestion of lead dust is the most common pathway of childhood poisoning; lead dust gets on a child's hands and toys and then into a child's mouth through common hand-to-mouth activity. Exposures may result from construction or remodeling activities that disturb lead paint, from ordinary wear and tear of windows and doors, or from friction on other surfaces.

Ordinary construction and renovation or repainting activities carried out without lead-safe work practices can disturb lead-based paint and create significant hazards. Improper removal practices, such as dry scraping, sanding, or water blasting painted surfaces, are likely to generate high volumes of lead dust.

Because the Design-Builder and its employees will be providing services for the District, and because the Design-Builder's work may disturb lead-containing building materials, DESIGN-BUILDER IS HEREBY NOTIFIED of the potential presence of lead-containing materials located within certain buildings utilized by the District. All school buildings built prior to 1978 are presumed to contain some lead-based paint until sampling proves otherwise.

2. Overview of Law

Both the Federal Occupational Safety and Health Administration ("Fed/OSHA") and the California Division of Occupational Safety and Health ("Cal/OSHA") have implemented safety orders applicable to all construction work where a contractor's employee may be occupationally exposed to lead.

The OSHA Regulations apply to all construction work where a contractor's employee may be occupationally exposed to lead. The OSHA Regulations contain specific and

detailed requirements imposed on contractors subject to those regulations. The OSHA Regulations define construction work as work for construction, alteration, and/or repair, including painting and decorating. Regulated construction work includes, but is not limited to, the following:

Demolition or salvage of structures where lead or materials containing lead are present;

Removal or encapsulation of materials containing lead;

New construction, alteration, repair, or renovation of structures, substrates, or portions thereof, that contain lead, or materials containing lead;

Installation of products containing lead;

Lead contamination/emergency cleanup;

Transportation, disposal, storage, or containment of lead or materials containing lead on the site or location at which construction activities are performed; and

Maintenance operations associated with the construction activities described in the subsection.

Because it is assumed by the District that all painted surfaces (interior as well as exterior) within the District contain some level of lead, it is imperative that the Design-Builder, its workers and subcontractors fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials (including title 8, California Code of Regulations, section 1532.1).

Design-Builder shall notify the District if any Work may result in the disturbance of lead-containing building materials. Any and all Work that may result in the disturbance of lead-containing building materials shall be coordinated through the District. A signed copy of this Certification shall be on file prior to beginning Work on the Project, along with all current insurance certificates.

3. Renovation, Repair and Painting Rule, Section 402(c)(3) of the Toxic Substances Control Act

The EPA requires lead safe work practices to reduce exposure to lead hazards created by renovation, repair and painting activities that disturb lead-based paint. Pursuant to the Renovation, Repair and Painting Rule (RRP), renovations in homes, childcare facilities, and schools built prior to 1978 must be conducted by certified renovations firms, using renovators with training by a EPA-accredited training provider, and fully and adequately complying with all applicable laws, rules and regulations governing lead-based materials, including those rules and regulations appearing within title 40 of the Code of Federal Regulations as part 745 (40 CFR 745).

The RRP requirements apply to all contractors who disturb lead-based paint in a six-square-foot or greater area indoors or a 20-square-foot or greater area outdoors.

If a DPH-certified inspector or risk assessor determines that a home constructed before 1978 is lead-free, the federal certification is not required for anyone working on that particular building.

4. Design-Builder's Liability

If the Design-Builder fails to comply with any applicable laws, rules, or regulations, and that failure results in a site or worker contamination, the Design-Builder will be held solely responsible for all costs involved in any required corrective actions, and shall defend, indemnify, and hold harmless the District, pursuant to the indemnification provisions of the Contract, for all damages and other claims arising therefrom.

If lead disturbance is anticipated in the Work, only persons with appropriate accreditation, registrations, licenses, and training shall conduct this Work.

It shall be the responsibility of the Design-Builder to properly dispose of any and all waste products, including, but not limited to, paint chips, any collected residue, or any other visual material that may occur from the prepping of any painted surface. It will be the responsibility of the Design-Builder to provide the proper disposal of any hazardous waste by a certified hazardous waste hauler. This company shall be registered with the Department of Transportation (DOT) and shall be able to issue a current manifest number upon transporting any hazardous material from any school site within the District.

The Design-Builder shall provide the District with any sample results prior to beginning Work, during the Work, and after the completion of the Work. The District may request to examine, prior to the commencement of the Work, the lead training records of each employee of the Design-Builder.

THE DESIGN-BUILDER HEREBY ACKNOWLEDGES, UNDER PENALTY OF PERJURY, THAT IT:

- 1.** HAS RECEIVED NOTIFICATION OF POTENTIAL LEAD-BASED MATERIALS ON THE OWNER'S PROPERTY;
- 2.** IS KNOWLEDGEABLE REGARDING AND WILL COMPLY WITH ALL APPLICABLE LAWS, RULES, AND REGULATIONS GOVERNING WORK WITH, AND DISPOSAL, OF LEAD.

THE UNDERSIGNED WARRANTS THAT HE/SHE HAS THE AUTHORITY TO SIGN ON BEHALF OF AND BIND THE DESIGN-BUILDER. THE DISTRICT MAY REQUIRE PROOF OF SUCH AUTHORITY.

Date: _____

Name of Design-Builder: _____

Signature: _____

Print Name: _____

Title: _____

IMPORTED MATERIALS CERTIFICATION

PROJECT/CONTRACT NO.: **Energy Project** between the **Berkeley Unified School District** ("District") and _____ ("Design-Builder") ("Contract" or "Project").

This form shall be executed by all entities that, in any way, provide or deliver and/or supply any soils, aggregate, or related materials ("Fill") to the Project Site and shall be provided to the District at least ten (10) days before delivery. All Fill shall satisfy all requirements of any environmental review of the Project performed pursuant to the statutes and guidelines of the California Environmental Quality Act, section 21000 et seq. of the Public Resources Code ("CEQA"), and all requirements of section 17210 et seq. of the Education Code, including requirements for a Phase I environmental assessment acceptable to the State of California Department of Education and Department of Toxic Substances Control.

Certification of: Delivery Firm/Transporter Supplier Manufacturer
 Wholesaler Broker Retailer
 Distributor Other _____

Type of Entity Corporation General Partnership
 Limited Partnership Limited Liability Company
 Sole Proprietorship Other _____

Name of firm ("Firm"): _____

Mailing address: _____

Addresses of branch office used for this Project: _____

If subsidiary, name and address of parent company: _____

By my signature below, I hereby certify that I am aware of section 25260 of the Health and Safety Code and the sections referenced therein regarding the definition of hazardous material. I further certify on behalf of the Firm that all soils, aggregates, or related materials provided, delivered, and/or supplied or that will be provided, delivered, and/or supplied by this Firm to the Project Site are free of any and all hazardous material as defined in section 25260 of the Health and Safety Code. I further certify that I am authorized to make this certification on behalf of the Firm.

Date: _____

Name of Design-Builder: _____

Signature: _____

Print Name: _____

Title: _____

CRIMINAL BACKGROUND INVESTIGATION
/FINGERPRINTING CERTIFICATION

PROJECT/CONTRACT NO.: _____ between the _____
("District") and _____ ("Contractor"
or "Bidder") ("Contract" or "Project").

The undersigned does hereby certify to the District that I am a representative of the Contractor currently under contract with the District; that I am familiar with the facts herein certified; and that I am authorized and qualified to execute this certificate on behalf of Contractor.

Contractor certifies that it has taken at least one of the following actions (check all that apply):

- Pursuant to Education Code section 45125.2(a), Contractor has installed or will install, prior to commencement of Work, a physical barrier at the Work Site, that will limit contact between Contractor's employees, Subcontractors or suppliers and District pupils at all times; and/or
- Pursuant to Education Code section 45125.2(a), Contractor certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Contractor who the California Department of Justice ("DOJ") has ascertained, or as described below, will ascertain, has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Contractor's and its subcontractors' or suppliers' employees is:

Name: _____

Title: _____

NOTE: If Contractor is a sole proprietor, and elects the above option, Contractor must have the above-named employee's fingerprints prepared and submitted by District for submission to the DOJ, in accordance with Education Code section 45125.1(h). No work shall commence until such determination by DOJ has been made.

- Pursuant to Education Code section 45125.2(a), the District will take appropriate steps to protect the safety of any pupils that may come in contact with Contractor's employees, subcontractors or suppliers so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.2 shall not apply to Contractor under the Contract.
- The Work on the Contract is either (i) at an unoccupied school site and no employee of Contractor and/or subcontractor or supplier of any tier of the Contract shall come in contact with the District pupils or (ii) if Contractor's employees or any subcontractor or supplier of any tier of the Contract interacts with pupils, such interaction shall only take place under the immediate supervision and control of the pupil's parent or guardian or a school employee, so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Contractor under the Contract.

- The Contractor, who is not a sole proprietor, has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Contractor's employees and all of its Subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and the DOJ has determined (A) that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1 and/or (B) that the prohibition does not apply to an employee as provided by Education Code section 45125.1(e)(2) or (3). When the Contractor performs the criminal background check, it shall immediately provide any subsequent arrest and conviction information it receives to the District pursuant to the subsequent arrest service. No work shall commence until the Department of Justice ascertains that Contractor's employees and any subcontractors' employees have not been convicted of a felony as defined in Education Code Section 45122.1.

A complete and accurate list of Contractor's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto as ATTACHMENT "A;" and/or

- The Contractor is a sole proprietor and intends to comply with the fingerprinting requirements of Education Code section 45125.1(h) with respect to all Contractor's employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and hereby agrees to the District's preparation and submission of fingerprints such that the DOJ may determine (A) that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1 and/or (B) that the prohibition does not apply to an employee as provided by Education Code section 45125.1(e)(2) or (3). No work shall commence until the Department of Justice ascertains that Contractor's employees and any subcontractors' employees have not been convicted of a felony as defined in Education Code Section 45122.1.

Contractor's responsibility for background clearance extends to all of its employees, Subcontractors or suppliers, and employees of Subcontractors or suppliers coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Contractor.

Date: _____
Proper Name of Contractor: _____
Signature: _____
Print Name: _____
Title: _____

[CONTINUED ON NEXT PAGE]

ATTACHMENT "A"

List of Employees/Subcontractors

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

If further space is required for the list of employees/subcontractors, attach additional copies of this page.

END OF DOCUMENT

**REGISTERED SUBCONTRACTORS LIST
(Labor Code Section 1771.1)**

PROJECT: _____

Date Submitted (for Updates): _____

Design-Builder acknowledges and agrees that it must clearly set forth below the name and Department of Industrial Relations (DIR) registration number of each subcontractor **for all tiers** who will perform work or labor or render service to Design-Builder or its subcontractors in or about the construction of the Work **at least two (2) weeks before the subcontractor is scheduled to perform work**. This document is to be updated as all tiers of subcontractors are identified.

Design-Builder acknowledges and agrees that, if Design-Builder fails to list as to any subcontractor of any tier who performs any portion of Work, the Agreement is subject to cancellation and the Design-Builder will be subjected to penalty under applicable law.

If further space is required for the list of proposed subcontractors, attach additional copies of page 2 showing the required information, as indicated below.

Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Subcontractor Name: _____

DIR Registration #: _____

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DIR Registration #: _____

Portion of Work: _____

Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Submitted on and by:

Date: _____

Proper Name of Design-Builder: _____

Signature: _____

Print Name: _____

Title: _____