

BILL NO.: 5053

ORDINANCE NO.: _____

Introduced by: City Manager Nathan Mai-Lombardo

AN ORDINANCE AUTHORIZING AN AGREEMENT WITH INFLUENT ENERGY

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BERKELEY, MISSOURI, AS FOLLOWS:

- Section 1.** The City Manager is hereby authorized to enter into and execute an agreement with Influent Energy for the installation of solar panels on various city owned building.
- Section 2.** The agreement is attached and hereby incorporated herein and made a part of this ordinance, as if fully set out herein.
- Section 3.** This Ordinance shall be in full force and effect from and after its date of passage.

1st Reading this _____ day of _____ 2024
2nd Reading this _____ day of _____ 2024
3rd Reading, PASSED and APPROVED, this _____ day of _____ 2024

Babatunde Deinbo, Mayor

ATTEST:

Deanna L. Jones, City Clerk

Approved as to Form:
Donnell Smith, City Attorney

Final Roll Call:				
Councilwoman Verges	Aye	___	Nay	___
Councilwoman Williams	Aye	___	Nay	___
Councilman Hoskins	Aye	___	Nay	___
Councilwoman Anthony	Aye	___	Nay	___
Councilman Hindeleh	Aye	___	Nay	___
Councilwoman-at-Large Crawford-Graham	Aye	___	Nay	___
Mayor Deinbo	Aye	___	Nay	___



INFLUENT ENERGY

City of Berkeley
Request for Proposals
Energy Conservation Project
RFP 24-950

Attn: Nathan Mai-Lombardo

Influent Energy

At Influent we take immense pride in our work! That's why we approach all aspects of our solar projects with utmost diligence. Our comprehensive services include, but are not limited to, conducting thorough feasibility studies, meticulous design and engineering, efficient procurement, general contracting, expert construction, rigorous testing and commissioning and ongoing maintenance and support. With our unwavering commitment to excellence we ensure the success and efficiency of every solar venture we undertake. As a General Contractor, we can make your efficiency transition with HVAC and lighting a breeze, with professional project and construction management done in-house.

As a Missouri **MWBE**, Influent has completed more than 1,000 commercial scale rooftop solar installations, and more than 100 ground-mounted solar projects. In concert with our deep technical background, we offer our partners assistance in determining the best energy strategy to meet their goals, navigating regulatory requirements, and procuring the most appropriate financing structure. Our specialization is working with our partners early in the planning process, offering advice on optimal locations for solar generation, marketing of Renewable Energy Credits (RECs), and ensuring the most value for your energy spend.



The Influent Executive Team



Jessica Oakley
Chief Executive Officer

Jessica oversees all day to day operations of the business, including field operations, accounting, IT, and HR. With a background in mechanical engineering, she brings an understanding of the development and execution process that has helped her complete thousands of successful energy projects over her 13-year career in energy efficiency. Jessica is a Certified Energy Manager and a Certified Demand Side Management Professional. Jessica co-founded Influent Energy with Andy Zellers and is the majority owner of the company.



Andy Zellers
President

Andy has an extensive background in the energy industry, ranging from serving as Chief of Staff at the Missouri Public Service Commission, to representing regulated utilities and other parties before regulatory commissions. With regulatory experience in several states and regions, Andy understands the unique hurdles facilities face in developing and owning cutting-edge generation technologies. Andy is a co-founder of Influent Energy.



Shane Griffin
Chief Operating Officer

Shane has led the construction and management of more than 1,400 commercial solar installations, ranging from smaller 100kW systems to multi-MW distributed systems. In working with commercial, nonprofit, educational, and utility site hosts, he brings a unique skill set to the projects he develops. He is skilled at managing a variety of subcontractors and coordinating with site hosts to deliver a completed project.



**WE ARE PROUD
TO BE A WOMAN
OWNED BUSINESS**

Our History: On Time, On Budget

Entergy, New Orleans LA 5MW Rooftop Solar Program

This ambitious venture involved the implementation of a distributed solar pilot program, a visionary initiative that was formalized through the signing of an agreement in June 2018. The diligent efforts of both Influent and Entergy have culminated in the completion of these groundbreaking projects in 2020.

The project came in under budget and completed 4 months ahead of schedule.



Our History: On Time, On Budget

Richland One Schools, Columbia SC

8.6MW Rooftop Solar Program

In partnership with Schneider Electric, Influent Energy proudly completed a groundbreaking solar project for the Richland One School District in Columbia, South Carolina. This transformative initiative marks a significant milestone in the district's modernization efforts, culminating in a total of 8.7 MW of solar PV now enhancing the rooftops of fifteen schools, driving sustainability and innovation forward.

The project came in under budget is currently under development for Phase 2.



Our History: On Time, On Budget

Belding Area Schools, Belding MI 827.6kW Rooftop Solar Program

Influent Energy was the EPC for the design and installation of an impressive 827.6 kW distributed solar system for Belding Area Schools. This remarkable project involved the installation of five rooftop solar energy systems, strategically positioned across the District's campus in Belding, Michigan.

The project came in at budget and completed 2 months ahead of schedule, even with weather/Covid restraints.



Our History: On Time, On Budget

City of Sierra Vista, Sierra Vista AZ

599kW Solar Program

Influent Energy has completed the strategic placement of a 599 kW solar installations across essential city complexes for City of Sierra Vista municipal properties. The City Hall now includes both a rooftop installation and the carport is a canopy solar installation. The City of Sierra Vista Police Station is equipped with an elevated solar canopy, thoughtfully engineered to accommodate the dimensions of the Command Center's vehicles and equipment. The Sierra Vista Public Library and the Aquatic Center are now adorned with arrays and carports, enhancing their energy efficiency while providing covered parking!



Our History: On Time, On Budget

Additional Notable Projects:

8.7 MW	Richland One Area School District Columbia, South Carolina
6.9 MW	Entergy New Orleans New Orleans, Louisiana
6.5 MW	University of Massachusetts Amherst, Massachusetts
843 kW	Parkway C-2 School District Saint Louis County, Missouri
828 kW	City of Kansas City, MO Kansas City, Missouri
827.6 kW	Belding School District Belding, Michigan
58 kW	KPI Concepts West Burlington, Iowa
559 kW	Saint Joseph School District Saint Joseph, Missouri
576 kW	True Manufacturing Various locations in Missouri
454 kW	Fox C-6 School District Arnold, Missouri
396 kW	Sioux Chief Manufacturing Kansas City, Missouri
395 kW	Saint Charles R-VI School District Saint Charles, Missouri
372 kW	Belton 124 School District Belton, Missouri
325 kW	Pierce City School District Pierce City, Missouri
309 kW	Midwest Wheel Des Moines, Iowa
288 kW	SAIA Trucking facility Charlotte, North Carolina
272 kW	Eldon R-I School District Eldon, Missouri
272 kW	Pattonville R-III School District Pattonville, Missouri
272 kW	Warrensburg R-VI School District Warrensburg, Missouri
222 kW	Mexico 59 School District Mexico, Missouri
222 kW	Ritenour School District Ritenour, Missouri
201 kW	Wentzville R-IV School District Wentzville, Missouri
178 kW	Grain Valley R-V School District Grain Valley, Missouri
152 kW	Smithville R-II School District Smithville, Missouri
152 kW	Valley Park School District Valley Park, Missouri
150 kW	Fort Lupton Readiness Center Fort Lupton Colorado
149 kW	Jefferson County R-VII School District Jefferson County, Missouri
148 kW	Holden R-III School District Holden, Missouri
148 kW	University City School District University City, Missouri
132 kW	Maryville R-II School District Maryville, Missouri
127 kW	Lone Jack C-6 School District Lone Jack, Missouri
125 kW	Kirkwood R-VII School District Kirkwood, Missouri
125 kW	Saint Louis Priory School Saint Louis, Missouri
124 kW	Truman State University Kirksville, Missouri
105 kW	Adrian R-III School District Adrian, Missouri
100 kW	Pembroke Hill School Kansas City, Missouri
79.9 kW	Sol Granite Pueblo, Colorado
57.8 kW	City of Naperville Naperville, Illinois



References

Jack Bay

Fmr CBO, Chavez Huerta, Pueblo Colorado

336 kW-DC Solar Field

(719) 289-8309 jwBay88@Comcast.net

Joshua Waller

Project Development and Execution Executive

Trane Technologies

2,000 kW-DC Rooftop Solar

(518) 424-8178 josh.waller@trane.com

Russ Mykytyn

Chief Strategy Officer, ONPoint EV Solutions

Solar Canopy + EV Charging Stations, ID/CA/OR

(609)751-8029 russ@onpoint-evsolutions.com

Notable Subcontractor Partners:

Green Team Renewables, Install Contractor, Springfield MO

PayneCrest Electrical, Electrical Contractor, St Louis MO

QuesTech Mechanical, HVAC Contractor, St Louis MO



Solar PV Installation

Facility	Solar Size	Solar Budget	Incentives	Annual Savings
Fire Station 1	63kW-DC	\$151,200	\$60,480	\$5,500
City Hall	85kW-DC	\$204,000	\$81,000	\$7,000
Police Station	88kW-DC	\$211,200	\$84,480	\$6,800
Pool House	20kW-DC	\$48,000	\$19,200	\$3,000
New FS2	65kW-DC	\$156,000	\$62,400	\$6,000
New Civic Center	100kW-DC	\$240,000	\$96,000	\$14,500
NEW PW Warehouse	35kW-DC	\$84,000	\$33,600	\$5,100
NEW PW Complex	70kW-DC	\$168,000	\$67,200	\$9,400

System Warranty:

- 30 Power Production
- 15 Year MFG on Panels
- 1 Year Labor
- 20 Year MFG on Inverters

Estimated Annual O/M Costs:
\$3,000



Solar PV Installation - cont



Efficiency Installation

Facility	Est HVAC Tonnage	Est Budget	Est Incentives	Energy Reduction
Fire Station 1	30 Tons	\$200,000	\$15,000	20%
City Hall	50 Tons	\$350,000	\$25,000	25%
Police Station	n/a	n/a	n/a	n/a
Pool House	n/a	n/a	n/a	n/a
New FS2	30 Tons	\$200,000	\$15,000	20%
New Civic Center	100 Tons	\$650,000	\$50,000	25%
NEW PW Warehouse	15 Tons	\$100,000	\$7,500	25%
NEW PW Complex	30 Tons	\$200,000	\$15,000	20%
LIGHTING - ALL		\$400,000	\$200,000	25%
SMART Controls - ALL		\$700,000	\$200,000	20%

Typical Warranty:

- 1 Year Labor
- 1 Year Parts
- 5 Year Compressors
- 15 Year Heat Exchangers



Available Incentives

SOLAR: FEDERAL - Direct Pay

Thanks to the Inflation Reduction Act's direct pay provisions, tax-exempt and governmental entities will be able to receive a payment equal to the full value of tax credits for installing qualifying clean energy projects. Unlike competitive grant and loan programs, in which applicants may not receive an award, direct pay allows entities to get their payment if they meet the requirements. Berkeley's solar projects will likely qualify for 40% of the projects total cost in with direct pay.

HVAC/Lighting: Ameren - BizSavers

Ameren offers its customers Standard and Custom incentive programs for energy efficiency upgrades. The HVAC and Efficiency controls portion of the project will qualify for these incentives. They'll be in several forms: Standard savings will receive rebates on each piece of equipment while Custom incentives are savings calculated based on the deferred energy consumption of the newly installed equipment. Influent Energy and our HVAC partners will drive these incentives for the City's projects.

SOLAR: Ameren - Net Metering

The solar panel installation will be eligible to receive credits for the electricity that you generate. In addition to reducing the amount of electricity delivered to your facilities during a billing period, net metering allows Ameren customers who have installed solar panels to receive credit for any excess power that they generate and send back to the grid, crediting your following bills.

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Financing Options

Missouri PACE Financing

Property Assessed Clean Energy (PACE) is a financing mechanism that allows property owners to pay for energy efficiency improvements or renewable energy systems, as authorized by Missouri state statute. PACE financing is a special assessment repaid on the annual property tax bill. Unlike other financing options, PACE offers secured, fixed-rate, up-front financing for eligible improvements with repayment terms of up to 20 years. Municipal renewable energy projects qualify for PACE Financing. Influent will lead the charge for the City of Berkeley's acquisition of PACE Financing as it has for many clients across the country.

3rd Party-Ownership

Influent Energy has partnered with several nation-wide investment groups that specialize in owning renewable energy systems on public-owned properties. Our partners like Calibrant Energy, Sunwealth Technologies, and Redaptive Energy Partners are all viable options for owning the renewable energy system and the risk associated with it's capital investment.

How Influent Can Help You

Influent will act as the liaison between the City and it's desire to have these projects financed. We will establish the right partnership, apply for grants/loans including PACE, and apply for any available federal and utility incentives or rebates.



Insurance & Bonding

Performance and Payment Bonds

Influent Energy understands bonds are essential for ensuring the successful completion and financial integrity of these projects. These bonds provide a financial guarantee that contractors will fulfill their obligations, protecting project owners from potential losses due to contractor default or non-payment to subcontractors and suppliers. Influent works closely with reputable surety providers to secure bonds promptly and efficiently. We maintain a strong financial standing and a solid track record of successful project completions, which helps us obtain favorable bond terms and reassure our clients of our reliability and commitment to delivering high-quality results.

Insurance Requirements

Influent Energy holds several Certificates of Liability Insurance. Though each project's insurance and liability requirements may be different - we can assure our clients that the necessary limits and coverages are met. Included on the following page is a copy of our current Certificate of Liability Insurance:





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/23/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER The Horton Group 10320 Orland Parkway Orland Park IL 60467	CONTACT NAME: PHONE (A/C No. Ext): 708-845-3000 FAX (A/C No.): E-MAIL ADDRESS: certificates@thehortongroup.com
INSURED Distributed Generation and Storage, LLC dba Influent Energy 1828 Walnut Street 3rd Floor Kansas City MO 64108	INSURER(S) AFFORDING COVERAGE INSURER A: Continental Casualty Company INSURER B: The Continental Insurance Company INSURER C: National Fire Insurance Company of Hartford INSURER D: INSURER E: INSURER F:
	NAIC # 20443 35289 20478

COVERAGES**CERTIFICATE NUMBER:** 1138132669**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC			7018016372	1/17/2024	1/17/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			7018016388	1/17/2024	1/17/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			7018016419	1/17/2024	1/17/2025	EACH OCCURRENCE \$ 9,000,000 AGGREGATE \$ 9,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N	N/A	7018016405	1/17/2024	1/17/2025	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)



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ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

By and Between

DISTRIBUTED GENERATION AND STORAGE, LLC
d/b/a INFLUENT ENERGY

and

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EXHIBITS:

ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

This Engineering, Procurement and Construction Agreement (the “**Agreement**”), is entered into between Distributed Generation and Storage, LLC, a Missouri limited liability company d/b/a Influent Energy (“**Contractor**”), and _____ (“**Owner**”) (each a “**Party**” and collectively, the “**Parties**”), and is effective as of the date of the last signature below (the “**Effective Date**”).

RECITALS

WHEREAS, Owner intends to develop a solar photovoltaic system at the Site (defined hereinafter);

WHEREAS, Contractor designs, engineers, constructs, and installs solar photovoltaic systems; and

WHEREAS, Owner desires Contractor to design, engineer, procure and construct a solar photovoltaic system as further described in Exhibit B (the “**System**”) at the Site, and Contractor desires to engineer, procure and construct such System, in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. SYSTEM DESCRIPTION AND EXHIBITS.

System Information.

Contract Price (which includes any applicable sales tax)	
Name:	
System Size	
System Type	
Site Address (“Site”)	
Site Identification	
Property Owner	
Construction Lender	
Party Responsible for Submitting Interconnection Documents	
Party Responsible for Submitting Rebate Application	
Local Electric Utility	
Rebate	

Contractor Notice Address	1828 Walnut St., 3 rd Floor Kansas City, MO, 64108 Attn: Jessica Oakley e-mail: Jessica.oakley@influentenergy.com
Contractor Invoicing Address	1828 Walnut St., 3 rd Floor Kansas City, MO, 64108 Attn: Jessica Oakley e-mail: Jessica.oakley@influentenergy.com
Contractor Representative	Shane Griffin (913) 624-4399 Shane.griffin@influentenergy.com
Owner Notice Address	To Owner: [NAME OF CUSTOMER] [ADDRESS] Attn: _____ e-mail: _____
Owner Representative	[INSERT NAME]

Exhibits. The terms of the Exhibits attached to this Agreement are hereby incorporated into this Agreement. The Exhibits attached to this Agreement include the following: Exhibit A: Definitions; Exhibit B: Scope of Work; Exhibit C: Certificate of Substantial Completion; Exhibit D: Certificate of Final Completion; and Exhibit E: Contract Documents.

2. **PERFORMANCE OF THE WORK.**

Work. Contractor shall provide all professional design and engineering services, supervision, labor, materials, equipment, tools, machinery, and transportation necessary for the design, engineering, construction and commissioning of the System as more particularly described in Exhibit B (the “**Work**”), and as follows:

(a) Contractor shall perform the Work in accordance with (i) Industry Standards; (ii) Contractor Permits; (iii) Applicable Law; and (iv) any required Additional Permits and the Interconnection Documents.

(b) Contractor shall obtain all Contractor Permits.

(c) Contractor shall use, and require each of its Subcontractors to use qualified and properly trained personnel and Contractor and its Subcontractors shall possess any license(s), registration(s), or other approval(s) required by Applicable Law to perform the Work.

(d) If indicated in Section 1.1, Contractor shall apply for and submit, on behalf of and for the benefit of Owner, any rebates specifically listed in Section 1.1.

(e) If indicated in Section 1.1, Contractor shall apply for and submit, on behalf of and for the benefit of Owner, the Interconnection Documents.

(f) Contractor shall have no responsibility for any Hazardous Materials or any other environmental liabilities relating to the Site, except for such Hazardous Materials that are brought onto the Site by Contractor or its Subcontractors during performance of the Work, which shall be disposed of by Contractor in accordance with Applicable Law.

Owner Obligations. Owner shall support Contractor's performance of the Work, including but not limited to the following obligations:

(a) Owner shall provide assistance to Contractor, upon Contractor's request, in connection with Contractor's efforts to secure Contractor Permits, any Additional Permits if required, or any Interconnection Documents or rebates Contractor is obligated to apply for, as listed in Section 1.1.

(b) Owner shall comply with Applicable Laws.

(c) Owner shall obtain and keep in effect all Owner Permits.

(d) Owner shall promptly work to clear any issues with the local municipality related to the Site that are unrelated to the System but are delaying permit issuance.

(e) Owner shall timely pay all fees and deposits in connection with any rebates, tax credits, incentives or Interconnection Documents related to the System.

(f) Owner shall respond in a timely manner to Contractor's requests for information and approvals in accordance with the Project Schedule.

(g) If indicated in Section 1.1, Owner shall apply for any rebates in connection with the System.

(h) If indicated in Section 1.1, Owner shall apply for, submit and execute the Interconnection Documents.

(i) Owner shall follow all Site safety rules as set out by Contractor.

Changes and Extra Work.

(a) Owner may initiate a change in the Work by submitting to Contractor a written request for a change to this Agreement. As soon as practicable after receiving a request, Contractor shall prepare and forward to Owner in writing any change in the price for the change in the Work and any required adjustment to the Project Schedule or any other term or condition of this Agreement. Except in an emergency endangering life or property, all authorized changes to the Work, the Project Schedule, or to the Contract Price, shall be confirmed in writing by both Parties through a Change Order. No change in the Work, the Project Schedule or the Contract Price shall be effective, nor shall the Contractor be required to perform the associated Work, without a Change Order signed by both Parties.

(b) The provisions and conditions of this Agreement shall apply to the Change Order, unless the Change Order states otherwise.

(c) The Contractor shall be allowed a combined mark-up of 15% for overhead and profit on all costs associated with a Change Order.

(d) In the event Contractor is delayed by more than five (5) Business Days in aggregate in completing any portion of the Work as a result of the causes listed below in this Section, provided such delay is not caused by Contractor's breach of this Agreement or negligence (each an "***Excusable Delay***"), Contractor shall be entitled a Change Order with (i) an adjustment to the Project Schedule that is commensurate to the period of delay and (ii) an adjustment to the Contract Price equal to the reasonable costs incurred by Contractor as a result of such delay. Contractor shall provide written notice to Owner within five (5) Business Days after Contractor becomes aware of an Excusable Delay and shall exercise all reasonable efforts to minimize the delay. Excusable Delays include but are not limited to the following:

(1) Delay caused by the discovery of Unanticipated Conditions at the Site and the remediation thereof;

(2) Delay by a Governmental Authority in issuing any Contractor Permit by more than a week from what is outlined in the Project Schedule, or requiring Contractor to procure an Additional Permit;

(3) Delay by a Local Electric Utility in connection with approval or issuance of the Interconnection Documents by more than one week from what is outlined in the Project Schedule;

(4) Delay or interference with the System or the Work resulting from the acts or omissions of the Property Owner, Owner, or any other party for whom Owner is responsible;

(5) Any changes after the Effective Date to the System or the Work required by any Applicable Law or any Governmental Authority; and

(6) Force Majeure Events.

(7) A delay due to weather that may not rise to the level of Force Majeure, but nonetheless prevents Contractor from performing Work under OSHA regulations, a Site Specific Safety Plan, or local ordinance.

Access and Protective Measures.

(a) Owner shall (i) provide Contractor and its Subcontractors continuous access to the Site between 7:00 am and 6:00 pm on Business Days and Saturdays, unless otherwise stated in Exhibit B; (ii) provide sufficient space for Contractor's temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles; and (iii) obtain written approval from Contractor prior to allowing third parties to access the portion of the Site where the Work is being performed and shall comply with all of Contractor's safety requirements while on Site.

(b) Contractor shall manage the Work and Subcontractors for the purposes of assuring both quality and safety, and prevent accidents or injury to persons involved in the Work. Contractor shall require Subcontractors to abide by Contractor's safety rules.

Unanticipated Conditions. In the event that (a) there are structural conditions that must be corrected or strengthened in order to install the System, (b) Contractor discovers the presence of Hazardous Materials, environmental conditions, pollution or archeological materials at the Site, or (c) there exists other conditions at the Site that Contractor has not documented and included in Exhibit B or Owner has not documented as included in Exhibit E ((a), (b) and (c) collectively referred to as "***Unanticipated Conditions***"), then Contractor shall (i) suspend the affected Work; (ii) give prompt written notice of the Unanticipated Conditions to Owner; and (iii) if applicable, the discovery of such Unanticipated Conditions shall serve as the basis for a Change Order in accordance with Section 2.3(d) above. Contractor shall not be obligated to perform any affected Work until receipt of written notice from Owner that Unanticipated Conditions have been remediated by Owner, or a Change Order has been signed by the Parties for Contractor to remediate. Owner understands and accepts pricing and schedule are contingent on ground conditions presumed suitable for standard ground penetration. Should the results of an initial geotechnical survey result in increased cost and/or time to complete due to unsuitable conditions, Contractor shall be entitled to a Change Order to cover the increased costs and/or time to complete the work.

Insurance.

(a) Contractor shall procure and maintain the following insurance coverage, and provide evidence of such coverage in the form of certificates of insurance:

(1) All-risk property insurance protecting the Work or installation floater coverage on a replacement cost basis providing coverage for the equipment, including panels, parts and materials, with a limit of \$2,000,000 at any one installation site.

(2) Commercial General Liability insurance with a limit of \$1,000,000 per occurrence and \$2,000,000 for the general aggregate. Coverage under this insurance shall include premises-operations, elevators, independent contractors, completed operations, and blanket contractual liability on all written contracts, all including broad form property damage coverage.

(3) Automobile liability insurance covering all automobiles, whether owned or leased, with a \$1,000,000 combined single limit.

(4) Workers compensation insurance, as required by Applicable Law, and Employer's Liability insurance with a \$1,000,000 limit.

(b) Owner shall procure and maintain the following insurance coverage, and provide evidence of such coverage in the form of certificates of insurance:

(1) Commercial General Liability insurance with a limit of \$1,000,000 per occurrence/general aggregate. Coverage under this insurance shall include premises-operations, elevators, independent contractors, completed operations, and blanket contractual liability on all written contracts, all including broad form property damage coverage.

(2) To the extent that Owner conducts activities at the Site, Owner shall purchase and maintain, at its own expense,

(i) Automobile liability insurance covering all automobiles, whether owned or leased, with a \$1,000,000 combined single limit.

(ii) Workers compensation insurance, as required by Applicable Law, and Employer's Liability insurance with a \$1,000,000 limit.

(3) Any insurance as required by the Local Utility or requirements of the applicable rebate program.

(c) Owner and Contractor shall be named as an additional insured under the Parties' liability insurance coverages.

(d) The insurance policy limits set forth herein do not limit the liability of either Party under this Agreement.

(e) Contractor's and Owner's policies shall provide for a waiver of subrogation rights against the other Party and its Affiliates, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such individual or entity insured under each Parties' Commercial General Liability policy.

(f) Contractor shall require all of its Subcontractors to provide similar insurance as appropriate for the Subcontractor's scope of work. Contractor's Subcontractors shall also name Owner as additional insured under the Subcontractor's liability insurance coverages.

Suspension of the Work. Contractor may suspend the Work if Owner fails to make any undisputed payment under this Agreement within ten (10) calendar days after the date on which the payment is due. Contractor shall be entitled to a Change Order with (i) an extension of the Project Schedule for the same length of time as the suspension; and (ii) reimbursement of the additional costs and expenses, if any, reasonably incurred and substantiated by Contractor in protecting, securing or insuring the Work, and in resumption of the Work.

Title; Risk of Loss.

(a) From the Effective Date and until the date of Substantial Completion, Contractor bears the risk of loss and full responsibility for the cost of replacing or repairing any damage to the System and all materials, equipment, supplies and maintenance equipment (including temporary materials, equipment and supplies) in or for use during construction of the System that are in Contractor's care, custody and control.

(b) Owner shall bear the risk of loss and full responsibility in respect of the System from and after the date of Substantial Completion of the System.

(c) Title to the System and all materials, equipment, supplies and maintenance equipment (including temporary materials, equipment and supplies) that are purchased by Contractor for permanent installation in or for use during construction of the System shall pass to Owner upon the date of Final Completion.

Warranty.

(a) Subject to the exclusions set forth below, Contractor warrants to Owner, for a period of 12 months (the “**Workmanship Warranty Term**”), commencing upon the Substantial Completion Date, that the Work will be free from original defects in design, assembly and workmanship; that the Work materials used will be new, unused and undamaged when installed, and are suitable for use under normal operating conditions (collectively, the “**Workmanship Warranty**”).

(b) During the term of the Workmanship Warranty, if any component of the Work fails to satisfy the Workmanship Warranty, Owner shall provide written notice of such failure to Contractor. Upon receipt of written notification, Contractor shall promptly, at Contractor’s expense, either repair or replace any defective component or workmanship or take some other corrective action to cause the Work to conform to the Workmanship Warranty. Owner may assign or transfer the Workmanship Warranty upon written notice to Contractor.

(c) Notwithstanding anything to the contrary contained in this Agreement, (i) Contractor shall obtain and assign to Owner all warranties from the manufacturers of the Major Equipment; (ii) Major Equipment, including the repair and replacement thereof, are excluded from the Workmanship Warranty, except to the extent that Contractor failed to install the equipment in accordance with the manufacture’s requirements and specifications; and (iii) Owner shall look to the manufacturer of such Major Equipment for remedies under the applicable manufacturer’s warranty. During the Workmanship Warranty Term, in the event Owner provides written notice to Contractor containing specific details of the Major Equipment failure, Contractor will make reasonable efforts to contact the applicable manufacturer to initiate Owner’s warranty claim. For the avoidance of doubt Contractor is not liable or responsible for unresponsive manufacturers during Contractor’s efforts to initiate and resolve Owner’s warranty claim.

(d) Workmanship Warranty Exclusions. The Workmanship Warranty expressly excludes failure of the System to perform due to the following: (i) damage, malfunction, or degradation of electrical output caused by (1) failure to properly operate or maintain the System in accordance with its operating manuals or technical specifications; (2) repair or replacement using a part or service not provided or authorized in writing by Contractor or manufacturer; and (3) Owner or third party abuse, accident, alteration, improper use, negligence or vandalism; (ii) casualty loss; (iii) ordinary wear and tear, including shrinking/cracking of grouts and caulking and fading of paints and finishes exposed to sunlight; (iv) damage by animals; and (v) a Force Majeure Event.

(e) THE WARRANTIES CONTAINED HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE. ANY IMPLIED WARRANTIES ARE WAIVED TO THE FULLEST EXTENT PERMISSIBLE UNDER STATE AND FEDERAL LAW. THE WARRANTIES CONTAINED HEREIN EXCLUDE CONSEQUENTIAL AND INCIDENTAL DAMAGES AND ARE LIMITED IN DURATION TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW.

Liens. As of the date of Final Completion, Contractor warrants good title, free and clear of all liens, claims, charges, security interests, and encumbrances whatsoever by Contractor or its Subcontractors, to all materials and equipment, work product and other items that become part of the System to the extent payment has been received from Owner by Contractor.

Subcontractors. Contractor shall at all times be responsible for the acts and omissions of Subcontractors and shall be responsible for performance of all Work. Owner shall not be responsible for the payment of any sums to any Subcontractor and shall not pay any Subcontractor directly for any portion of the Work performed under this Agreement.

3. **PRICE AND PAYMENT.**

Contract Price. As full compensation for the Work and all of Contractor's obligations hereunder Owner shall pay to Contractor the amount listed in Section 1.1 (the "***Contract Price***"). The Contract Price may be increased or decreased by Change Orders and as otherwise stated in this Agreement. The Contract Price shall be paid in accordance with Section 3.2.

Payment.

(a) Owner shall pay to Contractor the milestone payments set forth in Exhibit B. Contractor shall invoice Owner upon completion of each milestone listed in the Milestone Payment Schedule set forth in such Exhibit. All invoices shall be paid by Owner within the number of Days indicated on the Milestone Payment Schedule from the date of receipt of Contractor's invoice.

(b) Contractor shall include with requests for payment unconditional releases of lien rights for itself and for all Subcontractors to the extent of payments previously received and conditional releases of lien rights for the current request for payment. Contractor shall use lien release forms, if any, required by Applicable Law.

(c) For any payment Owner fails to deliver by the due date, Owner shall pay interest from the date that the payment was due until the date that it is paid at the lesser of 12% per annum or the maximum rate permitted by Applicable Law.

Taxes. The Contract Price includes all applicable sales tax. Owner assumes exclusive liability for and shall pay before delinquency all other federal, state or local, use, value added, excise, real estate and other taxes, charges or contributions

imposed on, or with respect to, the ownership of System. Each Party shall hold harmless, indemnify and defend the other Party, together with the other Party's officers, directors, agents and employees, from any liability, penalty, interest and expense by reason of such Party's failure to pay the taxes, charges or contributions for which it is responsible.

Material Escalation. Notwithstanding anything to the contrary contained in this Agreement and the Contract Documents, in the event the \$/watt for Major Equipment to be procured by Contractor increases by 5% or more from the price on the Effective Date to the date Contractor places the purchase order for such Major Equipment with the each supplier ("**Purchase Order Date**"), Contractor shall be entitled to a Change Order increasing the Contract Price by an amount equal to the increase in cost of the Major Equipment. Contractor shall be required to provide substantiating documentation demonstrating the price for such Major Equipment on the Effective Date and the price for such Major Equipment on the Purchase Order Date.

Tariff.

(a) Notwithstanding anything to the contrary contained in this Agreement and the Contract Documents, at any time after the Effective Date, in the event any tariff, duty, tax, quota, minimum price floor or similar charges are imposed, assessed or levied (including but not limited to any tariff, duty, tax, quota, minimum price floor or similar remedies that is imposed, assessed or levied, whether made effective prospectively, or retroactively, or both, on the Major Equipment or the manufacturing, procurement or transportation thereof (a "**Tariff**") that increases the price of Major Equipment from the price of such Major Equipment as of the Effective Date, Contractor shall be entitled to submit a Change Order to Owner increasing the Contract Price by the amount equal to the price increase due to the Tariff. Within ten (10) business days of receipt of Contractor's Change Order, Owner shall, in its sole discretion, (i) approve such Change Order; or (ii) terminate this Agreement upon written notice to Contractor.

(b) In the event Owner terminates this Agreement under this Section 3.5, Contractor shall be paid for all Work performed as of the date of termination in accordance with Section 6.1(c). In the event Owner does not terminate or execute Contractor's Change Order in accordance with this Section 3.5 within ten (10) business days of receipt of Contractor's Change Order request, Contractor may terminate the Agreement upon written notice to Owner and the remedy outlined in this Section 3.5(b) shall apply.

4. COMMENCEMENT & COMPLETION.

Commencement.

(a) Upon the Effective Date, Contractor shall commence performance of the Work and perform such Work in accordance with the Project Schedule in Exhibit B.

Substantial Completion.

(a) The estimated Substantial Completion Date is set forth on Exhibit B and is subject to change in accordance with this Agreement. Contractor shall provide Owner with periodic updates to the Project Schedule.

(b) Substantial Completion of the System shall be deemed to have been achieved upon the completion of the following:

(1) The System is mechanically, electrically and structurally constructed in accordance with the requirements of this Agreement, except for punchlist items;

(2) Contractor shall have delivered a list of punchlist items for Owner's review and Owner shall have seven (7) Business Days to add or alter items on the punchlist. Such punchlist will be deemed approved unless Owner requests changes within ten (10) Business Days from receipt; and;

(3) Contractor has confirmed the functionality of equipment, and completed all quality control inspections and tests.

(c) Upon Substantial Completion, Contractor shall send to Owner a Substantial Completion Certificate, in the form provided in Exhibit C. Within five (5) Business Days after the receipt thereof, Owner shall either execute the Substantial Completion Certificate; or provide written documentation describing in detail why Contractor has not achieved Substantial Completion and in the event Owner fails to comply with either (i) or (ii) within such five (5) Business Day period, the Substantial Completion Certificate shall be deemed accepted by Owner on the date of Owner's receipt thereof.

Final Completion.

(a) The estimated Final Completion Date is set forth on Exhibit B and is subject to change in accordance with this Agreement. Contractor shall provide Owner with periodic updates to the Project Schedule.

(b) Final Completion of the System shall be deemed to have been achieved upon the completion of the following:

(1) System commissioning is completed;

(2) all punch list items have been corrected or waived;

(3) all debris and surplus materials and supplies are removed from the Site;

(4) all manuals, warranties, Record Drawings and other documents expressly required to be delivered by Contractor hereunder have been delivered to Owner;

(5) Contractor has obtained all Contractor Permits and any Additional Permits authorized through a Change Order;

(6) Contractor has delivered any final Lien waivers required; and

(7) For the avoidance of doubt, RECEIPT OF PERMISSION TO OPERATE AND/OR INTERCONNECTION TO THE LOCAL ELECTRIC UTILITY GRID IS NOT A CONDITION OF FINAL COMPLETION. HOWEVER, CONTRACTOR WILL CONTINUE TO WORK WITH LOCAL ELECTRIC UTILITY UNTIL SUCH TIME AS PERMISSION TO OPERATE IS RECEIVED.

(c) Upon Final Completion, Contractor shall send to Owner a Final Completion Certificate, in the form provided in Exhibit D. Within five (5) Business Days after the receipt thereof, Owner shall either execute the Final Completion Certificate; or provide written documentation describing in detail why Contractor has not achieved Final Completion and in the event Owner fails to comply with either (i) or (ii) within such five (5) Business Day period, the Final Completion Certificate shall be deemed accepted by Owner on the date of Owner's receipt thereof.

REPRESENTATIONS & WARRANTIES.

Representations and Warranties of the Parties. Each Party to this Agreement represents and warrants to each other that:

(a) Each is duly formed and validly existing under the laws of the State identified in the first paragraph of this Agreement and has full legal capacity and standing to pursue its corporate purposes (including the capacity to dispose of and encumber all of its assets), full and unrestricted authority to enter into this Agreement, and full power to engage in the business it presently conducts and contemplates conducting, and is and will be duly licensed or qualified and in good standing under the laws of each jurisdiction where the nature of the business transacted by it requires such licensing or qualification and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder.

(b) The execution, delivery and performance by Contractor of this Agreement will not (i) violate or conflict with any covenant, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected, or its organizational documents or (ii) subject the System or any component part thereof to any lien other than as contemplated or permitted by this Agreement

(c) There are no actions, suits, proceedings, patent or license infringements or investigations pending or, to each Party's knowledge, threatened against it before any court or arbitrator that individually or in the aggregate could result in any materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Contractor or in any impairment of its ability to perform its obligations under this Agreement.

(d) The individuals executing and delivering this Agreement on behalf of each Party is duly authorized to do so on behalf of the Party and this Agreement is binding upon each Party in accordance with its terms.

Additional Representations and Warranties of Owner. Owner represents and warrants to Contractor that:

(a) Owner has, and will have, available all the funds that are necessary from time to time to pay Contractor the Contract Price.

(b) Owner is either (i) the Property Owner; or alternatively, (ii) Owner is a holder of a valid leasehold interest or other interest in the Site and/or the improvements thereon and has obtained any consent necessary from the Property Owner for the installation of the System at the Site in accordance with the terms and conditions of this Agreement.

(c) To the best of Owner's knowledge, there are no Hazardous Materials at, on or beneath the Site that prevent or could potentially prevent or delay the Work. In the event Owner becomes aware of any Hazardous Materials at or beneath the Site, Owner shall immediately, notify Contractor in writing of the known Hazardous Materials.

(d) The individual executing and delivering this Agreement on behalf of Owner is duly authorized to do so, on behalf of Owner and this Agreement is binding upon Owner in accordance with its terms.

6. BREACH & TERMINATION; INDEMNITY.

Termination by Owner.

(a) Contractor agrees that Owner shall be entitled to terminate this Agreement pursuant to written notice upon the occurrence of any of the following circumstances:

(1) Any representation or warranty made by Contractor in this Agreement proves to have been false or misleading in any material respect as of the time made, confirmed or furnished (but, if such breach is capable of being cured, only to the extent such breach continues for thirty (30) days following receipt of a notice in writing of such breach from Owner);

(2) Contractor violates in any material respect any of the provisions of this Agreement, which violation remains uncured for thirty (30) Days following Contractor's receipt of written notice thereof from Owner; provided however, that if the nature of the breach requires more than thirty (30) Days to cure, and Contractor is using reasonable commercial efforts to cure, then such time period shall be extended accordingly;

(3) Contractor voluntarily commences bankruptcy, insolvency or similar debtor-relief proceedings, or becomes insolvent or generally does not pay its debts as they become due, or admits in writing its inability to pay its debts, or makes an assignment for the benefit of creditors; or

(4) Insolvency, receivership, reorganization, bankruptcy or a similar proceeding is commenced against Contractor under the bankruptcy laws of the United States or under any insolvency act of any state and such proceeding is not dismissed or stayed within a period of ninety (90) Days thereafter.

(b) Upon termination for any of the foregoing reasons in the above Section 6.1(a), Owner may instruct Contractor to discontinue all or any part of the Work, and

Contractor shall thereupon discontinue such Work and use reasonable commercial efforts to reduce or otherwise mitigate any expense to Owner. Owner shall have the right to complete, or hire others to complete, the Work. Owner shall pay Contractor for any Work performed up to the date of termination. Owner shall be entitled to receive from Contractor, as exclusive remedy for termination under this Section, the amount (if any) by which Owner's cost to complete the Work exceeds the portion of the Contract Price allocable to the Work unfinished by Contractor.

Termination by Contractor. Owner agrees that Contractor shall be entitled to suspend performance of the work hereunder and terminate this Agreement pursuant to written notice upon the occurrence of any of the following circumstances:

(a) Any representation or warranty made by Owner in this Agreement proves to have been false or misleading in any material respect as of the time made, confirmed, or furnished (but, if such breach is capable of being cured, only to the extent such breach continues for thirty (30) days following receipt of a notice in writing of such breach from Contractor);

(b) Owner violates in any material respect any of the provisions of this Agreement (except of payment obligations hereunder), which violation remains uncured for thirty (30) days following Owner's receipt of written notice thereof from Contractor; provided however, that if the nature of the breach requires more than thirty (30) days to cure, and Owner is using reasonable commercial efforts to cure, then such time period shall be extended accordingly;

(c) Owner fails to pay Contractor within ten (10) days of the date when payment is due hereunder;

(d) Owner voluntarily commences bankruptcy, insolvency or similar debtor-relief proceedings, or becomes insolvent or generally does not pay its debts as they become due, or admits in writing its inability to pay its debts, or makes an assignment for the benefit of creditors; or

(e) Insolvency, receivership, reorganization, bankruptcy or a similar proceeding is commenced against Owner and such proceeding is not dismissed or stayed within a period of ninety (90) days thereafter.

(f) Upon the occurrence of any of the foregoing, in addition to all rights and remedies that may be available under Applicable Law, Owner shall, within thirty (30) days of the termination date, pay Contractor for all completed Work and any equipment or materials ordered through the effective date of such termination (plus 15% markup for overhead and profit), demobilization costs and other verifiable out-of-pocket costs, including reasonable and verifiable termination fees of vendors and contractors, to which Contractor is subject pursuant to any agreements with vendors that are executed by Contractor on or before the termination date. In the event Contractor invokes its right to suspend under this Section, the Parties agree that this shall not supersede or cancel any right to terminate under this Section. Contractor shall use commercially reasonable efforts to return or redistribute any materials procured by Contractor.

7. MISCELLANEOUS.

Representatives.

(a) Owner Representative. Owner designates, and Contractor agrees to accept the individual designated, as the Owner Representative in Section 1.1 for all matters relating to Owner's obligations under this Agreement. The actions taken by Owner Representative shall be deemed the acts of Owner and shall be fully binding upon Owner.

(b) Contractor Representative. Contractor designates, and Owner agrees to accept, the individual designated as the Contractor Representative in Section 1.1 for all matters relating to Contractor's performance of the Work. The actions taken by Contractor Representative shall be deemed the acts of Contractor and shall be fully binding upon Contractor.

(c) Notices to Representative. Notwithstanding Section 7.1(a) and Section 7.1(b), all amendments, Change Orders, notices and other communications between Contractor and Owner contemplated herein shall be delivered in writing in accordance with Section 7.6.

Ownership of Plans, Data, Reports and Material. Contractor, and any of its Subcontractors providing professional services under this Agreement, shall retain all copyright, patent and other intellectual property rights in drawings, specifications and other documents delivered as part of the Work (whether in paper or electronic form) furnished by Contractor. Provided that Owner is in compliance with its obligations hereunder, Contractor grants to Owner a non-exclusive, perpetual license to reproduce and use such documents in connection with the Work and for the operation, maintenance or repair of the System. Owner shall not otherwise assign or transfer this license to another Person without Contractor's prior written consent. Contractor and its Subcontractors shall not be liable in the event of any unauthorized reproduction or use of the Record Drawings by Owner or others. No other license in any patents and proprietary information is granted pursuant to this Agreement. Any additional inventions or intellectual property created during construction shall be the property of Contractor.

Governing Law. This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of _____. Any Dispute shall be resolved pursuant to Section 7.5.

Force Majeure. Except for the obligation to make payments when due, which cannot be excused by a Force Majeure Event, neither Party shall be considered in breach of this Agreement nor be liable for any delay or failure to comply with this Agreement if and to the extent that such delay or failure is attributable to the existence of a Force Majeure Event. Contractor shall promptly notify Owner in writing within ten (10) Business Days of becoming aware of the nature of a Force Majeure Event that will delay Contractor's performance of the Work, and the anticipated length of the delay. Contractor shall be entitled to a Change Order with respect to the Project Schedule and, to the extent costs are incurred to maintain the ability to perform the Work once the Force Majeure Event ends, to the Contract Price. Any Force Majeure Event that prevents performance, or is reasonably expected to prevent performance, for more than ninety (90) days shall entitle Contractor or Owner to terminate this Agreement. In the event the Agreement is so

terminated, Owner shall pay Contractor for any Work performed (including any equipment ordered) up to the date of termination.

Dispute Resolution.

(a) Good Faith Negotiations; Mediation. In the event that any question, dispute, difference or claim arises out of or in connection with this Agreement, including any question regarding its existence, validity, performance or termination (a “**Dispute**”), as to which either Party has notified to the other Party, senior management representatives of Contractor and Owner shall meet and diligently attempt in good faith to resolve the Dispute. In the event the Parties have not resolved the Dispute through good faith negotiations within twenty (20) Business Days of the other Party’s receipt of such notice, the Parties shall not proceed to litigation or arbitration until after the Parties have engaged in mediation before a single mediator in _____, under the Construction Industry Mediation Rule (“**Rules**”) of the American Arbitration Association (“**AAA**”). Mediation shall occur within thirty (30) Business Days after the meeting held pursuant to the above. An officer of Contractor and Owner, both having full authority to settle the Dispute, must attend the mediation session. Each Party shall pay one-half of the mediation service’s fees and costs and one-half of the mediator’s fees and costs. Both Parties shall encourage and request attendance of any third parties who may be liable for some or all of a claim, such as subcontractors of any tier.

(b) Arbitration. Provided that the requirements of Section 7.5(a) have been complied with, any and all Disputes of any Party relating to or arising out of this Agreement and any of the Work to be performed hereunder shall be resolved by final and binding arbitration pursuant to the Rules of the AAA; *provided, however*, that under all circumstances and notwithstanding such Rules, only one arbitrator shall be appointed, who shall be an attorney substantially experienced in construction law. Venue of such arbitration shall be _____. Unless otherwise mutually agreed, any arbitration shall be commenced within ninety (90) calendar days from the filing of the demand for arbitration with AAA. Any arbitration award by the arbitrator shall be final and binding on the Parties, and subject to confirmation and reduction to judgment.

(c) Attorney Fees. The prevailing party of any Dispute arising out of this Agreement shall be entitled to recover from the other party all reasonable fees, costs and expenses of enforcing any right of the prevailing party, including reasonable attorney fees and the expenses of arbitration.

(d) Continue Performance During Dispute. Notwithstanding the existence of a Dispute, each Party shall be obligated to fulfill its obligations and continue its performance in accordance with the terms of this Agreement. Neither Party shall make any public statements with respect to any Disputes without the prior consent of the other Party, unless compelled to do so in connection with the Arbitration, or by a Governmental Authority.

Notices and Demands. Any notice, request, demand or other communication required or permitted under this Agreement, shall be deemed to be properly given by the sender and received by the addressee if made in writing and (a) delivered in person, (b) mailed, postage prepaid, either by registered or certified mail, return

receipt requested, (c) sent by reputable overnight express courier, or (d) transmitted by e-mail if receipt of such transmission by e-mail is specifically acknowledged by the recipient (automatic responses not being sufficient for acknowledgment), addressed in each case to the addresses set forth in Section 1.1.

Confidentiality. Except as set forth in this Section, Contractor and Owner shall hold in confidence all information supplied by either Party (the “**Disclosing Party**”) to the other Party (the “**Recipient**”) under the terms of this Agreement that is marked or otherwise indicated to be confidential (“**Confidential Information**”). Each Party shall inform its Affiliates, subcontractors, suppliers, vendors and employees of its obligations under this Section and require such persons to adhere to the provisions hereof. Notwithstanding the foregoing, the Recipient may disclose the following categories of information or any combination thereof: (i) information which was in the public domain prior to receipt thereof by Recipient or which subsequently becomes part of the public domain by publication or otherwise unless by a wrongful act of Recipient; (ii) information that Recipient can show was lawfully in its possession prior to receipt thereof from the Disclosing Party through no breach of any confidentiality obligation; (iii) information received by Recipient from a third party having no obligation of confidentiality with respect thereto; (iv) information at any time developed independently by Recipient providing it is not developed from otherwise confidential information; (v) information disclosed pursuant to and in conformity with the law or a judicial order or in connection with any legal proceedings; or (vi) information required to be disclosed under securities laws applicable to publicly traded companies and their subsidiaries.

Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to affect the original intent of the Parties.

Survival. Except as otherwise stated herein, any rights and obligations of the Parties that arise prior to termination of this Agreement shall survive termination of this Agreement and continue to be governed by its provisions.

Successors and Assigns. This Agreement shall be binding on the Parties and their respective permitted successors, heirs, and assigns.

Amendment and Modification. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each Party hereto.

Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Third Party Beneficiary. This Agreement is for the benefit of Contractor and Owner and there shall be no third-party beneficiaries.

Counterparts. This Agreement may be executed in counterparts, which shall together constitute one and the same agreement. facsimile, email, or portable document format (“PDF”) signatures shall have the same effect as original signatures.

Announcements and Publications. Unless otherwise required by Applicable Law, no Party shall make any public announcements in respect of this Agreement or the Work without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed. Contractor may photograph the System and use those photographs in Contractor’s online and print publications and may list Owner in “Customer” or “Owners” section of Contractor’s website or other printed material upon Final Completion.

(a) Limited Power of Attorney. If Section 1.1 requires Contractor to submit the Interconnection Documents or any rebate application(s), Owner hereby appoints Contractor as its attorney-in-fact for the limited purpose of authorizing Contractor to complete any Interconnection Documents and rebate paperwork that Contractor must complete.

(b) Entire Agreement. This Agreement, together with the Contract Documents and the Exhibits, constitutes the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

(c) Agency. This Agreement is not intended to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or act as or be an agent or representative of, or otherwise bind, the other Party except as expressly allowed by this Agreement.

(d) Priority of Documents. In the event of a conflict between any of the Contract Documents, they shall be given the following order of precedence: (i) Change Orders and duly executed amendments to this Agreement, (ii) the Exhibits; and (iii) the Agreement; and (iv) Record Drawings and specifications that have been prepared by Contractor or any Subcontractor exclusively for the Work.

(e) Assignment. Neither Party shall have the right to assign any of its rights, duties or obligations under this Agreement without the prior written consent of the other Party, which shall not be unreasonably conditioned, withheld or delayed. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the assigning or delegating Party of any of its obligations hereunder.

(f) No Waiver. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No failure to exercise (full or partial), or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof.

(g) Further Assurances. Each of the Parties and its Affiliates shall use commercially reasonable efforts to, upon the request of the other Party, execute and deliver such additional documents and take such other actions and do such other things, as may be necessary or desirable in the opinion of counsel to the requesting Party to carry out the provisions of this Agreement and the Contract Documents.

[Signatures on following page.]

IN WITNESS WHEREOF, the Parties have caused this Engineering, Procurement and Construction Agreement to be executed by their duly authorized representatives.

Exhibit A

DEFINITIONS

Unless otherwise required by the context in which any term appears: (a) capitalized terms used in this Agreement have the meanings listed in this Exhibit A; (b) the singular includes the plural and vice versa; (c) the word “including” indicates examples and does not limit general terms, (d) references to “Sections”, and “Exhibits” are to sections, schedules and exhibits hereof; (e) the words “herein”, “hereof” and “hereunder” refer to the Agreement as a whole and not to any particular section or subsection hereof; and (f) references to the Agreement include all schedules and exhibits as they may be amended, modified, supplemented or replaced from time to time in accordance with the Agreement.

“*AAA*” has the meaning set forth in Section 7.5(a).

“*Additional Permits*” means any other permit, other than Contractor Permits and Owner Permits, waivers, consents, exceptions, entitlements, conditional use permits, variances or other authorizations issued by a Governmental Authority, or required by Applicable Law to construct, install, own, operate and maintain the System or otherwise perform the Work under this Agreement.

“*Affiliate*” means any Person that directly or through intermediaries controls, is controlled by, or is under common control with, a Party. For this purpose “control” means (a) the ownership, directly or indirectly, of 50% or more of the equity interest in a Person or a Party, or (b) the power to direct the management and policies of a Person or Party, whether through ownership of voting securities, by contract or otherwise.

“*Agreement*” has the meaning set forth in the Recitals.

“*Applicable Law*” means any constitutional provision, law, statute, rule, regulation, ordinance, order, decree, judgment, decision, certificate, injunction, registration, license, permit, authorization, guideline, governmental approval, consent, or requirement of a Governmental Authority with jurisdiction over a party, the Site or this Agreement, as construed from time to time by any Governmental Authority.

“*Business Day*” means Mondays to Fridays, except such days on which banks are closed in the location of the Site.

“*Change Order*” means a written document signed by Owner and Contractor authorizing a change to the Work or an adjustment of the Contract Price or Project Schedule.

“*Confidential Information*” has the meaning set forth in Section 7.7.

“*Contract Documents*” means this Agreement, its Exhibit(s), Change Orders, Record Drawings and specifications that have been prepared by Contractor or any Subcontractor exclusively for the Work.

“Contract Price” means the amount payable to Contractor as set forth in Section 1.1, as the same may be modified from time to time by Change Order.

“Contractor” has the meaning set forth in the Recitals.

“Contractor Permits” means the building and electrical permits and any other permits Contractor has listed as a “Contractor Permit” outlined in Exhibit B that are required by Applicable Law for Contractor to perform the Work.

“Contractor Representative” means the individual designated by Contractor in accordance with Section 7.1(b).

“Day” or **“day”** means a calendar day unless “Business Day” is specified.

“Dispute” has the meaning set forth in Section 7.5(a).

“Effective Date” has the meaning set for in the Recitals.

“Excusable Delay” has the meaning set forth in Section 2.3(d).

“Final Completion” means satisfaction or waiver of all of the conditions set forth in Section 4.3.

“Force Majeure Event” means any act or event (to the extent not caused by such Party or its agents or employees) that is unforeseeable or, if foreseeable, unavoidable and outside the control of the Party that invokes it, and which renders a Party unable to comply totally or partially with its obligations under the Agreement. Examples of a Force Majeure Event include but are not limited to: war (whether or not formally declared), hostilities, revolution, terrorism, insurrection against any Governmental Authority, riot or other civil disturbance; acts of nature such as floods, lightning, earthquakes, hailstorms, ice storms, tornados, hurricanes, landslides, volcanic eruptions, fires, winds in excess of thirty (30) miles per hour which prevent the performance of Work for more than three (3) full Business Days, or objects striking the earth from space; sabotage or destruction by a third party (other than one retained by a Party) of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement; regional or national strikes, walkouts, lockouts or other labor actions or disputes; epidemic or pandemic; acts of any Governmental Authority that materially restrict or limit Contractor’s access to the Site or performance of the Work; compliance with any order or request of any Governmental Authority; inability to obtain equipment, materials or qualified labor sufficient to perform the Work despite Contractor’s commercially reasonable efforts to obtain such equipment, materials or qualified.

“Governmental Authority”, or **“Authority Having Jurisdiction,”** (“**AHJ**”) means any national, regional, province, town, city, state or municipal government, whether domestic or foreign, or other administrative, regulatory or judicial body having jurisdiction over the Site or a Party.

“Hazardous Material(s)” means oil or petroleum and petroleum products, asbestos and any asbestos containing materials, radon, polychlorinated biphenyl’s (“**PCBs**”), urea formaldehyde insulation, lead paints and coatings, and all of those chemicals, substances,

materials, controlled substances and waste or combinations thereof that are now or become in the future listed, defined or regulated in any manner by Applicable Law.

“Indemnified Party” has the meaning set forth in Section 6.3(d).

“Indemnifying Party” has the meaning set forth in Section 6.3(d).

“Industry Standards” means those standards of care and diligence normally practiced by a majority of solar engineering, construction and installation firms in performing services similar to the Work in localities where the Work will be performed and in accordance with good engineering design practices and other standards established for such Work.

“Interconnection Documents” means the interconnection application, any supporting documents or attachments required for the interconnection application, and the interconnection agreement between Owner or its Affiliate and the Local Electric Utility regarding electricity produced by the System.

“Local Electric Utility” means the utility identified in Section 1.1 above, or any other party owning or controlling the electric utility transmission or distribution system to which the Site or the System will be interconnected.

“Major Equipment” means any photovoltaic modules, inverters, monitoring system(s), racking, switchgear, electrical panels, and transformers supplied as part of the Work.

“Owner” has the meaning set forth in the Recitals.

“Owner’s Representative” means the individual designated by Owner in accordance with Section 7.1(a).

“Owner Permits” means any permit the Owner has obtained or will obtain as indicated in Exhibit B.

“Party” means, individually, each of the Parties first listed above.

“Permission to Operate” or ***“PTO”*** means the Local Electric Utility’s written authorization to interconnect the System to the Local Electric Utility’s electrical grid.

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

“Project Schedule” means the schedule for the Work set forth on Exhibit B.

“Property Owner” means the owner of the Site and any improvements thereon.

“Purchase Order Date” has the meaning as set forth in Section 3.4.

“Record Drawings” means the drawing package updated by Contractor’s project engineering team based upon information provided by the installation personnel that reflects the

best record of onsite changes made to the permitted plan set during construction. The information in the drawing package may not be verified by the Contractor's engineering team with secondary measurements, and is limited by the information reported by on site personnel.

"Representatives" means the Contractor Representative and the Owner Representative and each may individually be referred to as a "Representative".

"Rules" has the meaning set forth in Section 7.5(a).

"Site" has the meaning set forth in Section 1.1.

"Subcontractor" means any Person, other than Contractor, retained by Contractor to perform any portion of the Work in furtherance of Contractor's obligations under this Agreement.

"Substantial Completion" means satisfaction or waiver of all of the conditions set forth in Section 4.2(b).

"Substantial Completion Date" means the actual date on which the Substantial Completion of the System, as defined in Section 4.2(b), occurs.

"System" has the meaning set forth in the Recitals to this Agreement.

"Unanticipated Conditions" has the meaning set forth in Section 2.5.

"Work" has the meaning set forth in Section 2.1.

Exhibit B
SCOPE OF WORK

The Work consists of the design, engineering, procurement, construction and commissioning of the System as follows:

Procurement. The Work includes procurement of all material and components required to install the complete System including the below listed items, as may be modified by Contractor, as well as mounting hardware, combiner boxes, junction boxes, disconnect switches, conduit, cable, wire, and all necessary associated hardware.

Specified Equipment	Description	Quantity
PV Modules:	Tier 1 500 W + modules	TBD
PV Module Manufacturer Product Warranty Term:	10 years	N/A
PV Module Manufacturer Output Warranty Term:	20 years	N/A
Inverter(s):	TBD	8
Inverter Manufacturer Product Warranty Term:	10 years	N/A
Energy Monitoring System Manufacturer:	TBD	

Engineering. Perform engineering and design services in accordance with all NEC and applicable local code requirements.

Construction. Work shall include furnishing all labor, tools, equipment, apparatus, and facilities and performing all operations and incidentals necessary to install, test, complete, commission, and make fully operational the System, which shall include the following:

- a. Installing temporary safety systems as required.
- b. Layout and installing equipment including PV modules, combiner boxes or inverters, conduit chases, pull boxes, and all necessary associated wire and hardware.
- c. Layout and installing DC disconnect switch, DC/AC inverter, and AC disconnect switch, and associated wiring and grounding systems and all necessary associated hardware as required by the included design.
- d. Connecting inverters to unmodified existing main service 480V 3 phase switchboard via a line-side tap or existing spare breaker.
- e. Providing and installing internet-based monitoring system as required by the applicable code, regulations, and or law.
- f. Installing signage as required by Governmental Authority & Local Electric Utility.
- g. Testing and commissioning of the System including wiring and grounding systems, equipment, controls, and all necessary associated hardware.
- h. Disposing of waste and sanitation facilities.

- i. Site will be left in a neat, orderly, and broom swept clean condition.
- j. Where trenching is required, the area will be reseeded, or pavement and striping will be patched.
- k. All Work shall comply with the safety requirements of NFPA 70E, Standard for Electrical Safety in the Workplace; IEEE, National Electrical Safety Code; All applicable state OSHA and OSHA guidelines and regulations; Local Electric Utility and Owner site safety guidelines.
- l. All soil spoils and debris generated by Contractor will be removed off-site by Contractor.
- m. Coring, drilling, cutting, sealing, flashing, and making watertight all openings and penetrations to install all wire, cable, conduit, equipment, and all necessary associated hardware.

Contractor Permits.

Contractor shall pay for and obtain the following Contractor Permits:

- a. Building Permit
- b. Electrical Permit
- c. Utility Interconnection Application

Commissioning Work. The Work shall include conducting all checks, inspections and testing required to confirm that the System is ready for operation.

Administration and System Documents to be Provided.

- a. Weekly Owner Report
- b. Contractor Permits
- c. Owner's Manual with:
 - 1. Equipment Warranties
 - 2. Record set of Engineering drawings
 - 3. Copies of Permits

Known Site Conditions.

- a. Owner plans new facility construction which may overlap with the Services performed under this Agreement

Assumptions.

- a. All utility-owned electrical equipment serving the Site's electrical distribution system has adequate capacity to handle the System's output. No utility required electrical equipment design, upgrade or replacement is included in design package.
- b. The existing panels have provisions to accept cable connections on the primary side of the main service breaker, or adequate space and capacity for a new breaker

- c. Existing roads and parking lots will be capable of handling all required construction equipment such as drilling rigs, concrete trucks, delivery trucks, cranes, and all other equipment necessary to complete the work.
- d. On-site water will be available for construction with no restrictions and at no charge.
- e. Conductors will be aluminum or copper according to Electrical Engineer of Record's determination.
- f. Standard wage rates apply.
- g. No restrictions on time of material deliveries.
- h. The System will interconnect with the facility at Owner's existing panels with ample current capacity to accept the System.

Owner Obligations.

- a. Owner shall pay the local utility directly for any interconnection fees and or upgrades.
- b. Owner has obtained, or will obtain the following Owner Permits prior to the commencement of construction: (list all Owner Permits, if none, state "none")
- c. Owner to provide Contractor with reasonable area for parking and staging equipment, tools and a small office trailer adjacent to the Site.
- d. Owner to allow construction to proceed without interruption.
- e. Owner shall supply Contractor with a current Title Report with plotted easements, encumbrances, and rights-of-way at the Site. Owner shall be responsible for clearing any easement issues or applying for easement encroachment permits.
- f. Owner shall provide as-built drawings of the electrical room where interconnection is anticipated.
- g. Owner shall support the design, engineering and construction by timely (within 3 days) responding to all requests made by Contractor.
- h. Should Owner employ security at the Site, Owner shall extend those services to the Contractor laydown and work area at the Site.
- i. Owner shall allow Work to progress between the hours of 7 AM and 6 PM, M thru Sat.

Exclusions to the Work.

- a. Painting of conduit, equipment or otherwise.
- b. Upgrades to or installation of a new electrical meter(s) at the Site to which the System is to be integrated.
- c. Planning approvals, renderings, SWPPP, Grading, CEQA, Phase 1 ESA permits, cultural Study, biological study, flood elevation study, municipal meeting attendance.
- d. Relocating any personal property belonging to any party other than Contractor or its subcontractors
- e. Relocation or reconfiguring of any part of currently installed Owner systems.
- f. Should module cleaning be required prior to Final Completion due to natural soiling or soiling caused by factors other than the installation of the System by Contractor, cleaning will be charged at \$0.25 per module.

- g. Lightning protection work of any kind.
- h. Landscaping, including tree removal or trimming
- i. Except for reseeding where trenching is required, planting or reseeding or in any other way re-establishing vegetation is excluded.
- j. Topographical surveying, grading and drainage planning
- k. Supply of back-up generator during System interconnection or otherwise.
- l. Costs associated with unforeseen utility interconnection requirements, including but not limited to utility-owned equipment upgrades or additions, relay protection equipment external to the inverters, System impact studies, or telemetry requirements and interconnection studies.
- m. Circuit breaker or short-circuit coordination study.
- n. Additional Owner-side protection required by the utilities that are provided by the certified inverters.
- o. Repair to damage to existing roads, parking lots or playgrounds resulting from normal construction operations and activities.
- p. Any changes resulting from utilities, right of ways, easements, and/or hazards—underground or above ground—or any undocumented building upgrades are not included.
- q. Installation or connection of smoke and fire detection systems.
- r. Fencing around switchboards, panelboards, transformers and new equipment pads is excluded. 4” diameter bollards are included only in areas where equipment is subject to daily vehicle impact.

Project Schedule.

12. Milestone Payment Schedule.

Roof Warranty Exceptions. None.

Prevailing Wage Requirements. None

Exhibit C
CERTIFICATE OF SUBSTANTIAL COMPLETION

Reference is made to that certain that certain Engineering, Construction and Procurement Agreement dated _____ between Contractor and Owner.

Capitalized terms used but not defined herein shall have the meaning set forth in the Agreement.

- A. Pursuant to Section 4.2 of the Agreement, Contractor certifies to Owner the following:
1. The System is mechanically, electrically and structurally constructed in accordance with the requirements of this Agreement, except for punchlist items;
 2. Contractor shall have delivered a list of punchlist items for Owner's review; and
 3. Contractor has confirmed the functionality of equipment, and completed all quality control inspections and tests.
- B. The Substantial Completion Date is _____.

Exhibit D
CERTIFICATE OF FINAL COMPLETION

Reference is made to that certain that certain Engineering, Construction and Procurement Agreement dated _____ between Contractor and Owner.

Capitalized terms used but not defined herein shall have the meaning set forth in the Agreement.

A. Pursuant to Section 4.3 of the Agreement, Contractor hereby certifies Final Completion has been achieved based on completion of each of the following:

1. System commissioning is completed;
2. all punchlist items have been corrected or waived;
3. all debris and surplus materials and supplies are removed from the Site;
4. all manuals, warranties, Record Drawings and other documents expressly required to be delivered by Contractor hereunder have been delivered to Owner;
5. Contractor has obtained all Contractor Permits;
6. Contractor has delivered any final Lien waivers required; and
7. For the avoidance of doubt, INTERCONNECTION TO THE LOCAL ELECTRIC UTILITY GRID IS NOT A CONDITION OF FINAL COMPLETION

B. The Final Completion Date is _____.

Exhibit E
CONTRACT DOCUMENTS

[*add or list as None*]