



# **AGENDA**

## **REGULAR MEETING**

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## **CLAYTON CITY COUNCIL**

\* \* \*

**TUESDAY, October 18, 2022**

**7:00 P.M.**

### **\*\*\* NOTICE \*\*\***

*Members of the public will be able to participate either in-person at  
Hoyer Hall, Clayton Community Library  
6125 Clayton Road, Clayton, CA 94517  
or  
remotely via Zoom.*

**Mayor:** Peter Cloven  
**Vice Mayor:** Holly Tillman

#### **Council Members**

Jim Diaz  
Jeff Wan  
Carl Wolfe

- A complete packet of information containing staff reports and exhibits related to each public item is available for public review on the City's website at [www.claytonca.gov](http://www.claytonca.gov)
- Agendas are posted at: 1) City Hall, 6000 Heritage Trail; 2) Library, 6125 Clayton Road; 3) Ohm's Bulletin Board, 1028 Diablo Street, Clayton; and 4) City Website at [www.claytonca.gov](http://www.claytonca.gov)
- Any writings or documents provided to a majority of the City Council after distribution of the Agenda Packet and regarding any public item on this Agenda is available for review on the City's website at [www.claytonca.gov](http://www.claytonca.gov)
- If you have a physical impairment that requires special accommodations to participate, please call the City Clerk's office at least 72 hours in advance of the meeting at (925) 673-7300.

## Instructions for Virtual City Council Meeting – October 18

Tonight's meeting will be available to the public both in-person and remotely via Zoom. As a courtesy, and technology permitting, members of the public may continue to provide live remote oral comment via the Zoom video conferencing platform. However, the City cannot guarantee that the public's access to teleconferencing technology will be uninterrupted, and technical difficulties may occur from time to time.

To follow or participate in the meeting:

1. **Videoconference:** to follow the meeting on-line, click here to register:

[https://us02web.zoom.us/webinar/register/WN\\_suxMeIgbQNWPgZIqaBNXFw](https://us02web.zoom.us/webinar/register/WN_suxMeIgbQNWPgZIqaBNXFw)

After clicking on the URL, please take a few seconds to submit your first and last name, and e-mail address then click "Register", which will approve your registration and a new URL to join the meeting will appear.

**Phone-in:** Once registered, you will receive an e-mail with instructions to join the meeting telephonically, and then dial Telephone: 877 853 5257 (Toll Free)

2. using the *Webinar ID* and *Password* found in the e-mail.

**E-mail Public Comments:** If preferred, please e-mail public comments to the City Clerk, Ms. Calderon at [janetc@claytonca.gov](mailto:janetc@claytonca.gov) by 5 PM on the day of the City Council meeting. All E-mail Public Comments will be forwarded to the entire City Council.

For those who choose to attend the meeting via videoconferencing or telephone shall have 3 minutes for public comments.

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### Location:

Videoconferencing Meeting (this meeting via teleconferencing is open to the public)

To join this virtual meeting on-line click here:

[https://us02web.zoom.us/webinar/register/WN\\_suxMeIgbQNWPgZIqaBNXFw](https://us02web.zoom.us/webinar/register/WN_suxMeIgbQNWPgZIqaBNXFw)

To join on telephone, you must register in the URL above, which sends an e-mail to your inbox, and then dial (877) 853-5257 using the *Webinar ID* and *Password* found in the e-mail.

# **\* CITY COUNCIL \***

**October 18, 2022**

1. **CALL TO ORDER AND ROLL CALL** – Mayor Cloven.

2. **MEETING PROTOCOL VIDEO**– City Clerk

3. **PLEDGE OF ALLEGIANCE** – led by Mayor Cloven

4. **CONSENT CALENDAR**

*Consent Calendar items are typically routine in nature and are considered for approval by one single motion of the City Council. Members of the Council, Audience, or Staff wishing an item removed from the Consent Calendar for purpose of public comment, question, discussion or alternative action may request so through the Mayor.*

- (a) Approve the minutes of the City Council's regular meeting of October 4, 2022. (City Clerk) ([View here](#))
- (b) Approve the Financial Demands and Obligations of the City. (Finance) ([View here](#))
- (c) Adopt a Resolution of the City Council of the City of Clayton Allowing for Video and Teleconference Meetings as Needed during the COVID-19 State of Emergency Under AB 361. (City Manager) ([View here](#))

5. **RECOGNITIONS AND PRESENTATIONS**

- (a) Certificates of Recognition to public school students for exemplifying the "Do the Right Thing" character trait of "Responsibility" during the month of September 2022. (Mayor Cloven) ([View here](#))

6. **REPORTS**

- (a) City Manager/Staff
- (b) City Council - Reports from Council liaisons to Regional Committees, Commissions and Boards.

**7. PUBLIC COMMENT ON NON - AGENDA ITEMS**

*Members of the public may address the City Council on items within the Council's jurisdiction, (which are not on the agenda) at this time. To assure an orderly meeting and an equal opportunity for everyone, each speaker is limited to 3 minutes, enforced at the Mayor's discretion. In accordance with State Law, no action may take place on any item not appearing on the posted agenda. The Council may respond to statements made or questions asked, or may at its discretion request Staff to report back at a future meeting concerning the matter.*

*Public comment and input on Public Hearing, Action Items and other Agenda Items will be allowed when each item is considered by the City Council.*

**8. PUBLIC HEARINGS – None.**

**9. ACTION ITEMS**

- (a) Adopt a Resolution Authorizing Execution of an Energy Services Contract with Climatec, LLC Regarding a Comprehensive Infrastructure Renewal & General Fund Savings Program. (City Manager) ([View here](#))
- (b) Adopt a Resolution Establishing a Community Financial Sustainability Committee. (City Manager) ([View here](#))

**10. CLOSED SESSION – None.**

**11. COUNCIL ITEMS – limited to Council requests and directives for future meetings.**

**12. ADJOURNMENT - the next scheduled City Council meeting will be November 1, 2022.**

# # # # #

**MINUTES**  
**OF THE**  
**REGULAR MEETING**  
**CLAYTON CITY COUNCIL**  
**TUESDAY, October 4, 2022**

1. **CALL TO ORDER THE CITY COUNCIL** – The meeting was called to order at 7:00 p.m. by Mayor Cloven via a hybrid meeting format live in-person and Zoom videoconference and broadcast from Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton, California. Councilmembers present: Mayor Cloven, Vice Mayor Tillman, and Councilmembers Diaz, Wan, and Wolfe. Councilmembers absent: None. Staff present: City Manager Reina Schwartz, City Attorney Mala Subramanian, and City Clerk/HR Manager Janet Calderon.
2. **MEETING PROTOCOL VIDEO** – City Clerk.
3. **PLEDGE OF ALLEGIANCE** – led by Mayor Cloven.
4. **CONSENT CALENDAR**  
  
**It was moved by Councilmember Diaz, seconded by Councilmember Wan, to approve the Consent Calendar items 4(a) – 4(d), as submitted. (Passed 5-0).**
  - (a) Approved the minutes of the City Council's regular meeting of September 20, 2022. (City Clerk)
  - (b) Approved the Financial Demands and Obligations of the City. (Finance)
  - (c) Adopted Resolution No. 73-2022 of the City Council of the City of Clayton Allowing for Video and Teleconference Meetings as Needed during the COVID-19 State of Emergency Under AB 361. (City Manager)
  - (d) Second Reading and Approval of An Ordinance Levying Special Taxes Within Community Facilities District No. 2022-01 (Public Services). (City Engineer)
5. **RECOGNITIONS AND PRESENTATIONS**
  - (a) Information Only – No Action Requested.
    - National Disability Employment Awareness Month
    - Italian-American Heritage Month

## **6. REPORTS**

- (a) City Manager Reina Schwartz advised the candidate for Police Chief is currently in background, and the City has received a few applications for Finance Director.
- (b) City Council - Reports from Council liaisons to Regional Committees, Commissions and Boards.

Vice Mayor Tillman attended the Clayton Business and Community Association mixer, attended the Elected Woman's luncheon, attended the Skip Ipsen Memorial Bocce Tournament, attended the Anti-Bias Anti-Racism (ABAR) Mt Diablo Unified School District meeting, attended the re-election event for Shanelle Scales-Preston in Pittsburg, volunteered at the Clayton Business and Community Association Oktoberfest, attended the Opportunity Junction Thank You Party, met with the City Manager, met with the Mayor, met with Councilmember Wolfe, spoke with constituents, and gathered records for a Public Records Act request.

Councilmember Jeff Wan campaigned to be re-elected to City Council and called and emailed constituents.

Councilmember Diaz attended the Contra Costa Fire Protection District Fallen Firefighter Memorial, attended the Clayton Business and Community Association mixer, attended the Contra Costa Water District meeting, volunteered at Clayton Business and Community Association Oktoberfest, met with the Police Chief, and met with the City Manager.

Councilmember Wolfe attended the Clayton Business and Community Association mixer, met with the City Manager, met with the Mayor, met with the Vice Mayor, and volunteered at the Clayton Business and Community Association Oktoberfest; thanking Chair Marilyn Schmidt.

Mayor Cloven attended the Clayton Business and Community Association mixer, volunteered at the Clayton Business and Community Association Oktoberfest; thanking Chair Marilyn Schmidt and all the volunteers, and called and emailed constituents.

## **7. PUBLIC COMMENT ON NON - AGENDA ITEMS**

Kim Trupiano introduced herself and provided remarks about her candidacy.

Bridget Billeter introduced herself and provided remarks about her candidacy.

Ed Miller introduced himself and provided remarks about his candidacy.

Jeff Wan introduced himself and provided remarks about his candidacy.

## **8. PUBLIC HEARINGS – None.**

**9. ACTION ITEMS**

- (a) Consider and Provide Direction on Establishing a Community Committee on Financial Sustainability. (City Manager)

City Manager Schwartz presented the report.

Following questions by the City Council, Mayor Cloven opened the public comment.

Kim Trupiano expressed support of this committee.

Frank Gavidia suggested members of this committee have a financial background.

Ann Stanaway suggested the name of the committee be "Financial Oversight Committee".

Mayor Cloven closed public comment.

**It was moved by Councilmember Wan, seconded by Councilmember Wolfe, to Direct Staff to bring this item back including a Resolution with perimeters on the establishment of a Community Committee on Financial Sustainability. (Passed 5-0).**

**10. CLOSED SESSION – None.**

**11. COUNCIL ITEMS**

Vice Mayor Tillman requested a future agenda item to include an update on AB2011 and SB6 and how it could affect Clayton.

Councilmember Wolfe announced upcoming events including the Teddy McDavitt 3<sup>rd</sup> Annual Memorial Bocce Tournament on October 15, 2022 and the Candidate's Forum taking place on Monday, October 10, 2022 in Hoyer Hall.

**12. ADJOURNMENT– on call by Mayor Cloven, the City Council adjourned its meeting at 8:11 p.m.**

The next regularly scheduled meeting of the City Council will be October 18, 2022.

**# # # # #**

Respectfully submitted,

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Janet Calderon, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL

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Peter Cloven, Mayor

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# STAFF REPORT

**TO:** HONORABLE MAYOR AND COUNCILMEMBERS

**FROM:** JENNIFER GIANTVALLEY, ACCOUNTING TECHNICIAN

**DATE:** 10/18/22

**SUBJECT:** FINANCIAL DEMANDS AND OBLIGATIONS OF THE CITY

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**RECOMMENDATION:**

It is recommended the City Council, by minute action, approve the financial demands and obligations of the City for the purchase of services and goods in the ordinary course of operations.

Attached Report	Purpose	Amount
Obligations, Dated 10/18/22	Accounts Payable	\$ 147,405.70
Cal Card Obligations Dated 9/22/22	Accounts Payable	\$ 6,306.29
Payroll Reconciliation Summary	Payroll, Taxes	\$ 103,956.22
	<b>Total Required</b>	<b>\$ 257,668.21</b>

**Attachments:**

1. Obligation report dated 10/18/22 (1 page)
2. Cal Card Obligation report dated 9/22/22 (1 page)
3. Payroll Reconciliation Summary report PPE 10/2/22 (2 pages)

## City of Clayton Obligations for 10/18/22

Vendor name	Invoice date	Invoice number	Invoice description	Amount	Payment method
American Fidelity Assurance Company	10/15/2022	6062023	FSA PPE 10/2/22	\$75.00	Bank draft
Authorize.net	09/30/2022	September22	Online bankcard gateway fee September 2022	\$33.75	Bank draft
CalPERS Retirement	10/15/2022	100222	Retirement PPE 10/2/22	\$16,976.50	Bank draft
Mission Square Retirement	10/15/2022	100222	457 Plan contributions PPE 10/2/22	\$1,263.46	Bank draft
Nationwide	10/15/2022	100222	457 Plan contribution PPE 10/2/22	\$500.00	Bank draft
Paysafe Payment Processing	10/15/2022	September2022	OTC Bankcard fees September 2022	\$195.22	Bank draft
Paysafe Payment Processing	10/15/2022	September2022	Online bankcard fees September 2022	\$174.82	Bank draft
Ace Sierra Tow	10/15/2022	62211	Tow PD veh to City of Antioch corp yard	\$175.00	Check
Advanced Elevator Solutions, Inc	10/15/2022	49884	Elevator Service September 2022	\$128.00	Check
All City Management Services, Inc.	10/15/2022	79891	School crossing guard svcs 9/4/22-9/17/22	\$2,368.44	Check
All City Management Services, Inc.	10/15/2022	80288	School crossing guard svcs 9/18/22-10/1/22	\$2,631.60	Check
Beatriz Palos-Lopez	10/15/2022	92922	Reimbursement for training travel expenses	\$114.62	Check
Cintas Corporation	10/15/2022	4132910625	PW uniforms through 9/29/22	\$64.19	Check
Cintas Corporation	10/15/2022	4133583870	PW uniforms through 10/8/22	\$64.19	Check
Comcast Business	10/15/2022	100522	Internet 10/10/22-11/9/22	\$155.59	Check
Contra Costa County - Office of the Sheriff	10/15/2022	22/23 Clytn	ARIES Maintenance FY 2023	\$8,770.00	Check
Contra Costa County - Office of the Sheriff	10/15/2022	CLPD-2208	Toxicology August 2022	\$400.00	Check
Contra Costa County Animal Svcs Dept	10/15/2022	ASD M7150	Animal services Q2 FY 2023	\$22,451.50	Check
Contra Costa County Tax Collector	10/15/2022	FY23	Property taxes FY 2023	\$7,192.72	Check
Digital Services	10/15/2022	12147	IT services 8/16/22-10/4/22	\$3,110.00	Check
GFOA	10/15/2022	FD FY 23	Dues for Finance Director FY 23	\$190.00	Check
Kennedy & Associates	10/15/2022	22-190	Consultant svcs The Olivia September 2022	\$714.25	Check
MPA	10/15/2022	918-29608	Life/LTD October 2022	\$1,497.08	Check
MSR Mechanical, LLC	10/15/2022	SVC006083	CH HVAC repair 9/14/22	\$3,682.00	Check
MSR Mechanical, LLC	10/15/2022	SVC006120	CH HVAC maint September 2022	\$350.00	Check
NBS Govt. Finance Group	10/15/2022	202209-2180	CFA Arbitrage Rebate Analysis (Final)	\$1,200.00	Check
Pond M Solutions	10/15/2022	7294	Fountain maintenance September 2022	\$650.00	Check
Precision Civil Engineering (PCE)	10/15/2022	27115	21-359 Pre-approved ADU Plans	\$3,685.00	Check
Prestige Printing & Graphics	10/15/2022	80019	PD forms	\$405.63	Check
Professional Convergence Solutions, Inc	10/15/2022	PCS1007221	Repair voicemail @ City Hall	\$160.00	Check
Rural Pig Management, Inc	10/15/2022	CC100122	Pig control October 2022	\$3,000.00	Check
SCA of CA, LLC	10/15/2022	104043CS	Street sweeping September 2022	\$4,500.00	Check
Staples Business Credit	10/15/2022	1644465474	Office supplies	\$189.43	Check
T Mobile	10/15/2022	100322	PD cell phones 10/03/22	\$515.90	Check
Torrey Jarvis	10/15/2022	9/23/22	Mileage reimbursement for training	\$72.00	Check
Turf Star, Inc.	10/15/2022	7249562-00	Equipment Cover	\$136.04	Check
Waraner Brothers Tree Service	10/15/2022	16184	Creek Work, remove all brush and debris	\$48,960.00	Check
Workers.com	10/15/2022	134558	Seasonal workers week end 9/25/22	\$5,312.83	Check
Workers.com	10/15/2022	134619	Seasonal workers week end 10/2/22	\$5,340.94	Check

**\$147,405.70**

## City of Clayton CalCard Obligation - Statement end 9/22/22

Vendor name	Invoice date	Invoice number	Invoice description	Amount	Payment method
US Bank CalCard	09/22/2022	Stmt end 9/22/22	RX BUG RMVR 32 DEGREE WF AUTOZONE #3334	\$17.42	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	Care Touch Lens Wipes for AMZN MKTP US*1F0UC8N81	\$55.69	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	PHILIPS AUTOMOTIVE LIGHTIN AMAZON.COM*1F7F08ND1 AMZN	\$45.46	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	Body cam mount AXON	\$33.01	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	Car Wash 76 - PINE HOLLOW ENTERPRI	\$15.99	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	CHIPOTLE 2741	\$20.54	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	NOODLES & CO 587	\$18.16	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	Irrigation supplies EWING IRRIGATION PRD 04	\$44.92	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	Irrigation supplies OUTDOOR SUPPLY CLAYTON	\$9.61	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	Irrigation supplies EWING IRRIGATION PRD 04	\$419.05	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	Graffiti removal;PURDY 9 1/2-IN MARTHN 3-CT LOWES #02604*	\$173.64	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	Window cleaning supplies OUTDOOR SUPPLY CLAYTON	\$84.45	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	GARDNER BENDER EGB-2 NON-C AMAZON.COM*1F62T3DM2 AMZN	\$39.49	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	Sod cutter rental HERC RENTALS	\$203.99	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	Cleaning suppl., tarps OUTDOOR SUPPLY CLAYTON	\$136.02	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	Irrigation parts EWING IRRIGATION PRD 04	\$119.13	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	IT Svcs MSFT * E0200JTVLT	\$180.00	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	IT svcs MSFT * E0200JU0J3	\$20.81	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	County recorder CONTRA COSTA COUNTY-CFD-2022-01	\$14.50	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	Postage LABEL USPS.COM CLICKNSHIP	\$9.45	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	IT svcs NAMESILO	\$16.98	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	IT svcs AMAZON WEB SERVICES	\$501.25	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	Storage rent CENTRAL SELF STORAG	\$208.00	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	IT svcs ZOOM.US 888-799-9666	\$180.00	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	IT svcs9255229137,PAUL JACOBSON VZWRLLS*APOCC VISW	\$120.24	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	QB 8.5X11 RCOPY 20 92 1RM QUILL CORPORATION	\$230.12	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	Lock CENTRAL SELF STORAG	\$17.56	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	IT svcs Standard Pro Monthly ZOOM.US 888-799-9666	\$14.99	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	Finance Director ad NEOGOV	\$600.00	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	FD ad CSMFO	\$400.00	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	Condolence gift (reimbursed)	\$82.93	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	Car Wash 76 - PINE HOLLOW ENTERPRI	\$15.99	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	Car Wash 76 - PINE HOLLOW ENTERPRI	\$15.99	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	Car Wash 76 - PINE HOLLOW ENTERPRI	\$15.99	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	Car Wash 76 - PINE HOLLOW ENTERPRI	\$15.99	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	Car Wash 76 - PINE HOLLOW ENTERPRI	\$15.99	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	COVID tests CVS/PHARMACY #06526	\$130.37	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	SOUTHWES 5262158529187	\$296.96	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	SOUTHWES 5262158530170	\$141.97	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	4X2 DESK THERMAL TRANSFER ULINE *SHIP SUPPLIES	\$180.32	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	Zebra Standard Black Wax R AMZN MKTP US*RB0J642G3	\$14.17	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	Distilled water for battery SAFEWAY #1195	\$1.59	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	Monthly fee TLO TRANSUNION	\$75.00	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	SOUTHWES 5262163785058	\$202.96	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	SHERATON GARDEN GROVE	\$422.70	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	DIESEL EXHUAST FLD 2 5GL AUTOZONE #3334	\$68.01	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	Interviews for Chief CANESA'S BROOKLYN HERO	\$145.00	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	Interviews for chief PANERA BREAD #606109	\$78.28	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	Interviews for chief PANERA BREAD #606109	\$13.93	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	LUBRICANT,BOTTLED,SHREDD OFFICE DEPOT 1135	\$12.82	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	CLIP,BINDER,SMALL,144PC, OFFICE DEPOT 1135	\$7.40	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	PAPER,COPY PLUS,HAM,CASE OFFICE DEPOT 1135	\$45.16	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	LIQUID PAPER DRYLINE GRIP STAPLS7364649649000001	\$99.79	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	Casio XR-9WE2S 9mm Labelin AMZN MKTP US*1M1MC0FF0	\$69.89	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	Class registration ICMA ONLINE	\$149.00	Bank draft
US Bank CalCard	09/22/2022	Stmt end 9/22/22	Office supplies - Office Depot	\$37.62	Bank draft
			Total	\$6,306.29	

# Payroll Summary

City of Clayton

Check Date: 10/07/2022

Process: 2022100701

Pay Period: 09/19/2022 to 10/02/2022

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## Payroll Totals

Payroll Checks	Check Type	Count	Net Check	Dir Dep Amount	Net Amount	
	Regular	35	0.00	77,722.97	77,722.97	
	Regular	1	110.82	0.00	110.82	
<b>Totals</b>		<b>36</b>	<b>110.82</b>	<b>77,722.97</b>	<b>77,833.79</b>	→ <b>77,833.79</b>

  

Payroll Checks	Check Type	Agency Type	Count	Net Check	Dir Dep Amount	Net Amount	
	Agency	EFSDU	1	0.00	358.15	358.15	
	Agency	Regular	1	0.00	663.50	663.50	
<b>Totals</b>			<b>2</b>	<b>0.00</b>	<b>1,021.65</b>	<b>1,021.65</b>	→ <b>1,021.65</b>

  

<b>Total Net Payroll Liability</b>				<b>110.82</b>	<b>78,744.62</b>	<b>78,855.44</b>	→ <b>78,855.44</b>
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## Tax Liability

CA and Related Taxes	Tax Id	Rate	Frequency	Wage	Cap Wages	EE Amount	ER Amount	
CA SDI - Employee	EXEMPT		Semi-Weekly	111,218.16	111,218.16			
California SITW			Semi-Weekly	109,704.70	109,704.70	5,723.45		
<b>Totals</b>						<b>5,723.45</b>	<b>0.00</b>	→ <b>5,723.45</b>

  

CASUI and Related Taxes	Tax Id	Rate	Frequency	Wage	Cap Wages	EE Amount	ER Amount	
CA Edu & Training		0.001000	Quarterly	111,218.16	2,950.00		2.95	
California SUI		0.020000	Quarterly	111,218.16	2,950.00		59.00	
<b>Totals</b>						<b>0.00</b>	<b>61.95</b>	→ <b>61.95</b>

  

FITW and Related Taxes	Tax Id	Rate	Frequency	Wage	Cap Wages	EE Amount	ER Amount	
Federal Income Tax			Semi-Weekly	109,704.70	109,704.70	15,495.50		
Medicare			Semi-Weekly	111,218.16	111,218.16	1,612.70		
Medicare - Employer			Semi-Weekly	111,218.16	111,218.16		1,612.66	
OASDI			Semi-Weekly	4,794.52	4,794.52	297.26		
OASDI - Employer			Semi-Weekly	4,794.52	4,794.52		297.26	
<b>Totals</b>						<b>17,405.46</b>	<b>1,909.92</b>	→ <b>19,315.38</b>

  

<b>Total Tax Liability</b>						<b>23,128.91</b>	<b>1,971.87</b>	→ <b>25,100.78</b>
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<b>Total Payroll Liability</b>						<b>103,956.22</b>	→ <b>103,956.22</b>
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## Transfers

Type	Date	Source Account	Amount
Dir Dep	10/6/2022		77,722.97
Tax	10/6/2022		25,100.78



Paylocity Corporation  
(888) 873-8205

User: JGiantvalley

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## Payroll Summary

City of Clayton

Check Date: 10/07/2022

Process: 2022100701

Page 2 of 2

Pay Period: 09/19/2022 to 10/02/2022

Trust	10/6/2022	110.82	
Trust Agency	10/6/2022	1,021.65	
<b>Totals Transfers</b>		<b>103,956.22</b>	<b>→ 103,956.22</b>

## Tax Deposits

Required Tax Deposits	Tax	Due On	Amount
( Deposit made by Service Bureau )	California SITW	10/13/2022	5,723.45
( Deposit made by Service Bureau )	Federal Income Tax	10/13/2022	19,315.38
( Deposit made by Service Bureau )	California SUI	1/31/2023	61.95
	<b>Total Tax Deposits</b>		<b>25,100.78</b>



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# AGENDA REPORT

**TO: HONORABLE MAYOR AND COUNCIL MEMBERS**

**FROM: CITY MANAGER**

**DATE: October 18, 2022**

**SUBJECT: Adopt a Resolution of the City Council of the City of Clayton Allowing for Video and Teleconference Meetings as Needed during the COVID-19 State of Emergency Under AB 361**

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## **RECOMMENDATION**

Adopt a Resolution of the City Council allowing for video and teleconference meetings as needed during the COVID-19 state of emergency under AB 361.

## **BACKGROUND**

Last year, the State Legislature passed and Governor Newsom signed AB 361 which continues many of the provisions related to the Brown Act that were in place under Executive Orders, which expired September 30, 2021 that allowed for video and teleconferencing during the state of emergency. Since AB 361 has been signed into law, the City can continue to meet virtually until such time as the Governor declares the State of Emergency due to COVID-19 over and measures to promote social distancing are no longer recommended by the County Health Officer.

On September 20, 2021, February 2, 2022, March 1, 2022, April 15, 2022, June 14, 2022, July 5, 2022, August 9, 2022, September 1, 2022 and October 4, 2022, the Contra Costa County Health Officer issued recommendations for safely holding public meetings and continues to encourage on-line meetings over in-person public meetings if feasible. If in-person meetings occur, the County Health Officer recommends physical distancing of six feet of separation between all attendees to the extent possible. The proposed resolution provides that the City Council and all subsidiary City boards and commissions may choose to hold fully virtual video and teleconference meetings while the state of emergency is still in effect and physical distancing is recommended.

In order to continue to be able to hold video and teleconference meetings as needed for COVID/public-health related reasons, the City Council will need to review and make

findings every thirty days that the state of emergency continues to directly impact the ability of the members to meet safely in person and that state or local officials continue to impose or recommend measures to promote physical distancing.

**FISCAL IMPACT**

None.

**Attachments**

Resolution of the City Council Allowing for Video and Teleconference Meetings during the COVID-19 State of Emergency Under AB 361

Contra Costa County Health Officer - Recommendations for Safely Holding Public Meetings – 10/4/2022

**RESOLUTION NO. ##-2022**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLAYTON  
ALLOWING FOR VIDEO AND TELECONFERENCE MEETINGS DURING THE  
COVID-19 STATE OF EMERGENCY UNDER AB 361**

**WHEREAS**, on March 4, 2020, the Governor of the State of California proclaimed a State of Emergency for COVID-19;

**WHEREAS**, AB 361 was passed by the State Legislature and signed by Governor Newsom and went into effect immediately and allows the City to continue to meet virtually until such time as the Governor declares the State of Emergency due to COVID-19 over and measures to promote physical distancing are no longer recommended;

**WHEREAS**, on September 20, 2021, February 2, 2022, March 1, 2022, April 15, 2022, June 14, 2022, July 5, 2022, August 9, 2022, September 1, 2022 and October 4, 2022, the Contra Costa County Health Officer issued recommendations for safely holding public meetings and encourages on-line meetings if feasible and if in person meetings occur then recommends physical distancing of six feet of separation to the extent possible and masking for all attendees;

**WHEREAS**, in light of this recommendation, the City Council desires for itself and for all other City legislative bodies that are subject to the Brown Act to be able to choose to meet via video and/or teleconference as necessary; and

**WHEREAS**, pursuant to AB 361 the City Council will review the findings required to be made at least every 30 days.

**NOW THEREFORE BE IT RESOLVED** the City Council hereby finds on behalf of itself and all other City legislative bodies: (1) a state of emergency has been proclaimed by the Governor; (2) the state of emergency continues to directly impact the ability of the City's legislative bodies to meet safely in person; and (3) local health officials continue to recommend measures to promote physical distancing.

**BE IT FURTHER RESOLVED** that the City Council and all other City legislative bodies may continue to meet via video and/or teleconference as needed during the COVID-19 emergency.

**PASSED AND ADOPTED** by the Clayton City Council, State of California, on this 18<sup>th</sup> day of October 2022, by the following vote.



AYES:

NOES:

ABSENT:

ABSTAIN:

**THE CITY COUNCIL OF CLAYTON,  
CA**

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Peter Cloven, Mayor

**ATTEST:**

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Janet Calderon, City Clerk



## Recommendations for safely holding public meetings

Each local government agency is authorized to determine whether to hold public meetings in person, on-line (teleconferencing only), or via a combination of methods. The following are recommendations from the Contra Costa County Health Officer to minimize the risk of COVID-19 transmission during a public meeting.

1. Online meetings (i.e. teleconferencing meetings) are encouraged, where practical, as these meetings present the lowest risk of transmission of SARS CoV-2, the virus that causes COVID 19. This is particularly important when community prevalence rates are high. Our current trends as of October 4, 2022 in Covid-19 case rate, test positivity, Covid-19 hospitalizations, and COVID-19 wastewater surveillance are decreasing, but community transmission, as noted in CDC community transmission map, remains high. In addition to this, the predominant variant of COVID-19 being identified continues to be the Omicron variant and it's subvariants the impact of which on the spread of COVID-19 has shown to dramatically increase COVID-19 transmission.
2. If a local agency determines to hold in-person meetings, offering the public the opportunity to attend via a call-in option or an internet-based service option is recommended, when possible, to give those at higher risk of and/or higher concern about COVID-19 an alternative to participating in person.
3. A written safety protocol should be developed and followed. It is recommended that the protocol require social distancing, where feasible – i.e. six feet of separation between attendees; and consider requiring or strongly encouraging face masking of all attendees and encouraging attendees to be up-to-date on their COVID-19 vaccine.
4. Seating arrangements should allow for staff and members of the public to easily maintain at least six-foot distance from one another at all practicable times.
5. Consider holding public meetings outdoors. Increasing scientific consensus is that outdoor airflow reduces the risk of COVID-19 transmission compared to indoor spaces. Hosting events outdoors also may make it easier to space staff and members of the public at least 6 feet apart. If unable to host outdoors, consider ways to [increase ventilation and flow](#) of the indoor space to reduce the risk of COVID-19 while indoors.
6. Current evidence is unclear as to the added benefit of temperature checks in addition to symptom checks. We encourage focus on symptom checks as they may screen out individuals with other Covid-19 symptoms besides fever and help reinforce the message to not go out in public if you are not feeling well.
7. Consider a voluntary attendance sheet with names and contact information to assist in contact tracing of any cases linked to a public meeting.

Revised 10-4-2022

*Sefanit Mekuria*

Sefanit Mekuria, MD, MPH  
Deputy Health Officer, Contra Costa County



**ALINA LOZA**  
for  
"Doing the Right Thing"  
at  
Mt. Diablo Elementary School  
by exemplifying great  
"Responsibility"  
September 2022

**NICHOLAS AYALA**  
for  
"Doing the Right Thing"  
at  
Mt. Diablo Elementary School  
by exemplifying great  
"Responsibility"  
September 2022

**EMMA DEL BIANCO**  
for  
"Doing the Right Thing"  
at  
Diablo View Middle School  
by exemplifying great  
"Responsibility"  
September 2022

**BRUNO SALERNO**  
for  
"Doing the Right Thing"  
at  
Diablo View Middle School  
by exemplifying great  
"Responsibility"  
September 2022



# AGENDA REPORT

**TO:** HONORABLE MAYOR AND COUNCIL MEMBERS

**FROM:** Reina Schwartz, City Manager

**DATE:** October 18, 2022

**SUBJECT:** Adopt a Resolution Authorizing Execution of an Energy Services Contract with Climatec, LLC Regarding a Comprehensive Infrastructure Renewal & General Fund Savings Program

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## **RECOMMENDATION**

Authorize the City Manager to enter into in the energy services agreement and related contract documents ("Energy Services Agreement") with Climatec, LLC ("Contractor") in the amount of \$0 for Phase 1 of the work and to negotiate amendments to the Energy Services Agreement as required to incorporate the Phase 2 scope of work.

Staff recommends approving the agreement with Climatec LLC ("Climatec") to enter into a two-phase program that will help the City address aging infrastructure, support resiliency efforts, mitigate the impact of utility cost escalations, protect against energy market volatility, and aid operational efficiencies while creating budget relief for the General Fund as well as potentially the Street Light fund and the Landscape Maintenance District fund. Approval will enable Climatec to begin expending its engineering resources (at their risk) to co-develop with City staff workable scope and funding plan for potential implementation of this important program.

Phase 1 includes an infrastructure assessment and collaborative development of scope and funding sources with the City for the Key Objectives listed below. After Phase 1 completion, the Council will consider approval of Phase 2 at a future Council meeting, which would amend the agreement being considered to include final scope of work, fixed price and initiate implementation of the program with Climatec.

## **BACKGROUND**

The City of Clayton has deeper infrastructure needs and sustainability goals than the current budget can accommodate. City management and staff have been challenged to source

alternative solutions and funding that will support the City's efforts to proactively renew infrastructure, promote sustainability and provide budgetary relief.

City staff has developed a strategy to partner with Climatec to improve operational efficiency, accelerate priority infrastructure projects, and provide price stability during this time of construction market volatility. Staff and Climatec will focus on the following key objectives as part of the overall program:

- Explore, evaluate, and address water infrastructure issues and conservation goals;
- Provide power resiliency systems such as battery storage, micro-grids, and back-up power solutions;
- Provide dual-purpose Solar Photovoltaic (PV) shade / carport structures;
- Address and standardize aging infrastructure including heating, ventilation and cooling (HVAC), LED lighting, building automation systems (BAS), building envelope (i.e., windows, roofs, etc.), and other critical building systems;
- Improve street safety and lighting efficiency through faster conversion to LED streetlights;
- Electronic Vehicle (EV) charging infrastructure;
- Secure and leverage additional funding including PG&E programs, state, federal (including the new funding legislative initiatives), and private sector funding channels;
- Combat the encroachment of utility and operational costs on the General Fund and other funds affected by energy costs; and
- Reduce the carbon footprint and greenhouse gases (GHG) emissions to satisfy local and state initiatives.

## **DISCUSSION**

The City proposes to enter into an Energy Services Agreement with Climatec (the Contractor), pursuant to which Contractor will perform a comprehensive energy analysis ("Phase 1") and implement certain renewable energy generation and energy management systems ("Phase 2") at various sites owned or controlled by City (collectively, "Project")

California Government Code Section 4217.10 *et seq.* authorizes a public agency to utilize any procurement process to contract for energy services if its governing body determines, at a regularly scheduled public hearing, public notice of which is given at least two weeks in advance, that the anticipated cost to the agency for the energy services project will be less than the anticipated marginal cost to the agency of electrical energy that would have been consumed by the agency in the absence of the energy services contract.

Under Phase 1, the Contractor will perform project development by undertaking a comprehensive energy analysis (CEA) and present it to the City, as well as a recommended energy plan to implement certain energy conservation measures and services ("ECMs") under Phase 2 of the Project.

The CEA will identify potential energy generation and operational savings opportunities at the Project sites; estimate program costs to implement the recommended ECMs; and present an



overall potential energy cost and consumption savings of implementing the ECMs under Phase 2 of the Project. The CEA will include data showing that the anticipated cost to the City for the recommended ECMs will be less than the anticipated cost to the City of electrical or other energy that would have otherwise been consumed by the City.

Upon satisfactory completion of Phase 1, it is anticipated that the City Council will hold a hearing at a regularly scheduled public meeting (noticed at least two weeks prior), and make all findings required by Government Code section 4217.12 for the City to proceed with Phase 2 under this Energy Services Agreement. This includes finding that the anticipated cost to the City for the Project will be less than the anticipated cost to the City of electrical or other energy that would have been consumed by the City in the absence of the Project.

The City's Purchasing Guidelines Policy (Resolution No. 05-2022) allows the City to procure services without engaging in a new competitive procurement process where it is in the best interests of the City to do so. The City Manager has determined, in accordance with the Purchasing Policy, that exemption from a new competitive procurement process for this Project is in the City's best interest since the Contractor's services have been competitively procured by the City of Concord and numerous other public agencies and a new competitive procurement would not produce an advantage to the City. Other agencies that have selected Climatec after a competitive process are shown below representing over \$350 million in program value and infrastructure modernization in recent years.

City of San Leandro	Soquel UESD
City of La Mirada	Konocti USD (2 Phases)
City of Santa Clarita	Hamilton USD
City of Jurupa Valley	New Haven Unified
City of Ontario and Airport	Conejo Valley USD
City of Weed	Bishop USD
San Lorenzo Valley USD	Rowland USD (6 Phases)
Rocklin USD	Alvord USD (4 Phases)
Pollock Pines ESD (2 Phases)	Lakeside Union SD
Reef-Sunset USD (2 Phases)	Arvin USD (3 Phases)
Santa Cruz City Schools (4 Phases)	Saugus USD (3 Phases)
Pajaro Valley USD	Corona-Norco USD (4 Phases)

### **FISCAL IMPACTS**

Completion of the audit, which will include the identification of energy saving projects, funding sources, and utility operational savings of the program, will be at no cost to the City. Ultimately, implementation of projects identified in Phase 1 would result in long-term operational savings for the City. The specifics of those impacts will not be known until Phase 1 is complete.

### **ATTACHMENTS**

Resolution  
Energy Services Agreement with Climatec, LLC

## RESOLUTION NO. ##-2022

### RESOLUTION AWARDING AN ENERGY SERVICES AGREEMENT TO CLIMATEC LLC TO PERFORM A DETAILED COMPREHENSIVE ENERGY ANALYSIS AND RECOMMEND AN ENERGY PLAN TO IMPLEMENT CERTAIN ENERGY CONSERVATION MEASURES AND SERVICES UNDER CALIFORNIA GOVERNMENT CODE SECTION 4217.10 ET SEQ.

#### THE CITY COUNCIL City of Clayton, California

**WHEREAS**, it is the policy of the State of California and the intent of the State Legislature to promote all feasible means of energy conservation and all feasible uses of alternative energy supply sources.

**WHEREAS**, California Government Code Section 4217.10 *et seq.* authorizes a public agency to utilize any procurement process to contract for energy services if its governing body determines, at a regularly scheduled public hearing, public notice of which is given at least two weeks in advance, that the anticipated cost to the agency for the energy services project will be less than the anticipated marginal cost to the agency of electrical energy that would have been consumed by the agency in the absence of the energy services contract.

**WHEREAS**, the City of Clayton ("City") desires to reduce the steadily rising costs of meeting the energy needs at its facilities.

**WHEREAS**, the City proposes to enter into an energy services agreement and related contract documents ("Energy Services Agreement") with Climatec, LLC ("Contractor"), pursuant to which Contractor will perform a comprehensive energy analysis ("Phase 1") and implement certain renewable energy generation and energy management systems ("Phase 2") (collectively, "Project")

**WHEREAS**, under Phase 1 of the Project, Contractor will provide the City with an energy savings assessment showing the benefits of implementing certain energy conservation and alternative energy supply measures through the installation of the Project ("Analysis").

**WHEREAS**, the Analysis shall include data showing that the anticipated cost to the City for the Project will be less than the anticipated cost to the City of electrical or other energy that would have been consumed by the City in the absence of the Project.

**WHEREAS**, Phase 2 of the Project will involve Contractor designing, constructing and installing the energy conservation and alternative energy supply measures identified in the Analysis and agreed to by the City as part of Phase 1 of the Project.

**WHEREAS**, Phase 2 of the Project shall not move forward until the City Council is presented with the Analysis and finds that the anticipated cost to the City for the Project will be less than the anticipated cost to the City of electrical or other energy that would have been consumed by the City in the absence of the Project and holds a hearing in accordance with Government Code section 4217.10 *et seq.*

**WHEREAS**, the City's Purchasing Guidelines Policy (Resolution No. 05-2022) allows the City to procure services without engaging in competitive procurement procedures where it is in the best interests of the City to do so.

**WHEREAS**, the City Manager has certified, in accordance with the City's Purchasing Guidelines Policy, that exemption from the competitive procurement process for this Project is in the City's best interest since the Contractor's services have been competitively procured by the City of Concord and other public agencies and a competitive procurement would not produce an advantage to the City.

**WHEREAS**, the City Council authorizes the City Manager to proceed with Phase 1 of the Project and enter into in the Energy Services Agreement with the Contractor in the amount of \$0 and to negotiate amendments to the Energy Services Agreement as required to incorporate the Phase 2 scope of work.

**WHEREAS**, by the definition provided in the California Environmental Quality Act (CEQA) Guidelines Section 15378, this action does not qualify as a "project" for the purpose of CEQA as this action has no potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

**NOW THEREFORE, BE IT RESOLVED**, the City Council of Clayton does determine the foregoing recitals are true and correct and hereby sets for the following as the official Order of Business of the City Council:

Authorize the City Manager to proceed with Phase 1 of the Project and enter into in the Energy Services Agreement with the Contractor in the amount of \$0 and to negotiate amendments to the Energy Services Agreement as required to incorporate the Phase 2 scope of work.

**PASSED, APPROVED and ADOPTED** by the City Council of Clayton, California at a regular public meeting thereof held on the 18<sup>th</sup> day of October, 2022 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

---

Peter Cloven, Mayor

ATTEST:

---

Janet Calderon, City Clerk

# INSTALLATION AGREEMENT FOR

The City of Clayton, CA

## TERMS AND CONDITIONS

## ATTACHMENTS

**Attachment “A” – Scope of Work\***

A-1 - Non-Solar Scope

A-2 – Solar Scope

**Attachment “B” - Lighting Summary\***

**Attachment “C” – Mechanical Replacement Inventory\***

**Attachment “D” - Technical Appendix\***

**Attachment “E” – General Conditions**

**Attachment “F” – Project Schedule\***

**Attachment “G” – Project Owner Requirements\***

**\*Note:** Attachment content to be determined and added following completion of Phase 1 and City approval to commence with Phase 2.

# INSTALLATION AGREEMENT

This Installation Agreement (“Contract” or “Agreement”) entered into as of October 19, 2022 (“Effective Date”) is made by and between:

**City of Clayton**  
 (“Owner”) with its principal place of business at  
 6000 Heritage Trail, Clayton, CA 94517  
 and

**Climatec LLC**  
 (“Contractor” or “Climatec LLC”)  
 With its principal place of business at  
 2150 Towne Centre Place, Suite 200,  
 Anaheim, CA 92805

## RECITALS

**WHEREAS**, Government Code sections 4217.10, *et seq.*, authorize the Owner, as a public agency, to enter into an energy services agreement wherein Climatec LLC provides conservation services to the Owner from an energy conservation facility on terms that its governing body determines are in the best interest of the Owner;

**WHEREAS**, pursuant to Government Code section 4217.11(d), “conservation services” include electrical, thermal, or other energy savings resulting from conservation measures, which shall be treated as a supply of such energy;

**WHEREAS**, through this Contract, the Owner intends to contract for project development (“Phase 1”) and implementation, including engineering, system design, fabrication and installation, of renewable energy generation and energy management systems (“Phase 2”) that will result in energy savings to the Owner and which shall be a supply of energy to the Owner (collectively, the “Project”) at various sites owned or controlled by Owner (the “Project Sites” or “Sites”, and each individually a “Site”), consistent with the terms of Government Code section 4217.10, *et seq.*;

**WHEREAS**, under Phase 1, the Contractor shall perform project development by undertaking a comprehensive energy analysis and present the Owner with a detailed comprehensive energy analysis report (“CEA Report”) and recommended energy plan to implement certain energy conservation measures and services (“ECMs”) under Phase 2 of the Project. The CEA Report will identify potential energy generation and operational savings opportunities at the Project Sites and estimated program costs to implement the recommended ECMs and present an overall potential energy cost and consumption savings of implementing the ECMs under Phase 2 of the Project. The CEA Report will include data showing that the anticipated cost to the Owner for the recommended ECMs will be less than the anticipated cost to the Owner of electrical or other energy that would have been consumed by the Owner in the absence of the Project;

**WHEREAS**, upon satisfactory completion of Phase 1 by Contractor, the Owner’s governing body may elect to hold a hearing at a regularly scheduled public meeting after having provided two weeks advance notice of such hearing, and make all findings required by Government Code section 4217.12 for the Owner to proceed with Phase 2 under this Agreement;

**WHEREAS**, contingent upon satisfactory completion of Phase 1 by Contractor, presentation of the CEA Report and recommended ECMs to the Owner’s governing body for review and ratification and completion of all applicable requirements under the California Environmental Quality Act (excluding any pre-existing deficiencies), the Contractor shall engineer, design, and construct the ECMs pursuant to this Agreement, including all Attachments and other Contract Documents (as that term is defined in the Definitions), which Contract Documents are incorporated into the Agreement by this reference, under Phase 2;

**NOW, THEREFORE**, in consideration of the covenants hereinafter contained in this Agreement, Owner and

Climatec LLC agree as follows:

## GENERAL TERMS AND CONDITIONS

### Definitions

**“Agreement”** has the meaning set forth in the recitals and shall include the cover page and all Attachments hereto. The Agreement represents the entire and integrated contract between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Agreement shall not be construed to create any kind of contractual relationship other than between the Owner and Contractor.

**“Applicable Law”** shall mean, with respect to any governmental authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, injunction, registration, license, permit, authorization, guideline, governmental approval, act, code, ruling, proclamation, resolution, declaration, requirement or interpretive or advisory opinion or letter of such governmental authority, as construed from time to time by any governmental authority, in each case, applicable to the Work, the Site, the Project, the parties or any other matter in question (as applicable).

**“Assessment”** shall mean all feasibility and configuration assessments conducted by the Contractor to fulfill its obligations under this Agreement.

**Comprehensive Energy Analysis Report or “CEA Report”** shall be the report providing for an assessment of energy generation and operational savings opportunities and curtailable load capabilities developed during Phase 1 of the Project. The CEA Report shall identify an energy plan to implement certain ECMs.

**“Critical Supply Shortage”** shall mean an unusual shortage in materials that is (a) supported by documented proof that Contractor made every effort to obtain such materials from all available sources; (b) such shortage is due to the fact that such materials are not physically available from single or multiple sources or could have been obtained only at exorbitant prices entirely inconsistent with current and standard rates taking into account the quantities involved and the usual industry practices in obtaining such quantities; and (c) such shortages and the difficulties in obtaining alternate sources of materials could not have been known or anticipated by Contractor at the time it submitted its bid or entered the Contract. Market fluctuations in prices of materials, whether or not resulting from a Force Majeure Event, does not constitute a Critical Supply Shortage.

**“Drawings”** The Drawings are graphic and pictorial portions of the Contract Documents prepared for the Project and approved changes thereto, wherever located and whenever issued, showing the design, location, and scope of the Work, generally including plans, elevations, sections, details, schedules, and diagrams as drawn by Contractor or its Subcontractor or consultants.

**“Contract Documents”** shall mean this Agreement and all Drawings, Specifications, surveys, plans, models, reports and designs, addenda thereto (whether or not attached due to their size), the Governmental Approvals, Engineering Documents, Payment Bond, Performance Bond, required insurance certificates, additional insured endorsement and declarations page, list of accepted Subcontractors and Consultants, Non-collusion Declaration, and other documents referred to in the Agreement, and written modifications issued after execution of the Agreement.

**“Energy Conservation Measures” or ECMs”** shall mean those renewable energy generation and energy efficiency improvements identified in the CEA Report.

**“Engineering Documents”** shall mean all documents including Drawings, diagrams, plans, Equipment Documentation, Equipment Warranties, shop drawings, Assessments, addenda, reports calculations, performance models and other models, designs schedules, and other documents prepared or furnished by Contractor pursuant to this Agreement in respect of the design, engineering and construction of the System.

**“Environmental Law”** means all laws related to health, safety, the protection of the environment or regulation or prohibition of the environmental pollution or contamination, including laws relating to land use, emission and pollution, discharges into or pollution of water, and Hazardous Materials.

**“Equipment”** shall mean (a) all materials, supplies, apparatus, machinery, equipment, parts, tools, components, instruments, appliances, spare parts and appurtenances thereto that are required, by the terms of this Agreement, the Contract Documents, and all Legal Requirements to complete the Work and to be incorporated into the Project, and (b) all materials, supplies, apparatus, machinery, equipment, parts, tools, components, instruments, appliances, spare parts and appurtenances thereto described in, required by, reasonably inferable from by the terms of the Agreement, the Contract Documents and all Legal Requirements.

**“Equipment Documentation”** shall mean copies or originals of (i) all operating specifications, warranties and other similar information obtained by Contractor from equipment vendors or Subcontractors or prepared by Contractor or Subcontractors as part of the Work, (ii) a complete inventory list of all Equipment comprising the System, and (iii) all documentation and identification information with respect to all Equipment comprising part of the Project, including reference or serial numbers for all photovoltaic panels, inverters and other equipment listed in the Scope of Work.

**“Equipment Warranties”** shall mean the product warranty from any supplier for the Equipment incorporated into the Project.

**“Estimated Annual Energy Production”** shall mean Contractor’s estimated number of kWh that the Project shall produce in the first year following the Final Completion Date based on performance modeling using industry standard tools and assumptions. The Estimated Annual Energy Production shall not be determined until satisfactory completion of Phase 1 of the Project and shall thereafter be added by written amendment to this Agreement.

**“Force Majeure Event”** shall mean an event that materially affects a party’s performance and is one or more of the following: (1) Acts of God or other natural disasters occurring at the Site; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the Work); (4) pandemics, epidemics or quarantine restrictions; (5) strikes and other organized labor action occurring at the Site and the effects thereof on the Work, only to the extent such strikes and other organized labor action are beyond the control of Contractor and its Subcontractors, of every tier, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (6) a Critical Supply Shortage. For purposes of this section, “orders of governmental authorities,” includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of the City in its capacity as a municipal authority. Notwithstanding the foregoing to the contrary, Force Majeure Events shall not include any of the following:

- (a) mechanical or equipment failures (except to the extent any failure is itself caused by a Force Majeure Event);
- (b) any condition of the Site for which the affected party is responsible under this Agreement, other than (1) the discovery of pre-existing Hazardous Materials at the Site so long as the condition was unknown and should not reasonably have been known as of the Effective Date and (2) any Hazardous Materials released at the Site other than by the Contractor, any Subcontractor or Persons acting on behalf of the Contractor; and
- (c) increases in the cost of performance of a party’s obligations under this Agreement (except to the extent any such increase is itself caused by a Force Majeure Event).

Notwithstanding the foregoing, each of (x) economic hardship of either party or (y) increases in the cost of performance of a party’s obligations, shall not constitute Force Majeure Events under this Agreement.

**“Governmental Approval”** shall mean each and every national, autonomic, regional and local license, approval, authorization, certification, registration, exemption, filing, recording, permit or other approval with or of any governmental authority, including each and every construction or operating permit and any agreement, consent or approval from or with any other person that is required by any Applicable Law or that is otherwise necessary for the performance of the Work.

**Hazardous Material”** shall mean oil or petroleum and petroleum products, asbestos and any asbestos containing materials, radon, polychlorinated biphenyls (“PCBs”), urea formaldehyde insulation, lead paints and coatings, and all of those chemicals, substances, materials, controlled substances, objects, conditions and waste or combinations thereof which are now or become in the future listed, defined or regulated in any manner by any federal, state or Applicable Law.



**“Incentives”** shall mean subsidies, rebates, credits, reductions, allowances or other financial incentives which the Contractor shall apply for on behalf of the Owner. The Incentives shall not be determined until satisfactory completion of Phase 1 of the Project and shall thereafter be added by written amendment to this Agreement.

**“Industry Standards”** shall mean those standards of care and diligence practiced or approved by reasonably prudent contractors of the energy services industry in engineering, designing, constructing, installing and operating energy efficiency and/or renewable energy generation projects with equipment similar to the Project in the United States and in accordance with good engineering and design practices, sound construction procedures, Governmental Approvals, the Contract Documents and other standards established for such Work. Industry Standards are not intended to be limited to optimum practice, methods, equipment specifications or acts to the exclusion of all others, but rather to be a spectrum of reasonable and prudent practices and methods generally accepted within the energy services industry to accomplish the desired results and must take into consideration the conditions specific to any given facility, including to the extent such conditions would require a person to (a) perform its duties in good faith and as a reasonably prudent operator, (b) perform its duties in compliance with the Contract Documents, (c) exercise such care, skill and diligence as a reasonably prudent business company of established reputation engaged in the energy services business would exercise in the conduct of its business and for the advancement or protection of its own interests, (d) perform the duties in accordance with applicable energy efficiency and/or renewable energy generation project standards, (e) use sufficient and properly trained and skilled personnel, and (f) use parts and supplies that meet the specifications set forth in the Contract Documents, in all cases with respect to (a) through (f) herein, taking into account all of the costs, expenses and benefits of operation of the System.

**“Legal Requirement”** means the requirement of any Applicable Law, including any Environmental Law or any Governmental Approval.

**“Phase 1”** shall mean the project development phase of the Project, which shall include development of a CEA Report and recommended energy plan to implement certain ECMs under Phase 2 of the Project.

**“Phase 2”** shall mean the implementation phase of the Project, under which the Contractor shall engineer, design, and construct the ECMs.

**“Project”** shall mean project development (Phase 1) and engineering, design, and total construction of the System and completion of the Work (Phase 2) performed in accordance with the Contract Documents.

**“Project Development Fee”** shall mean the fee for successful performance of Phase 1 of the Project.

**“Project Owner Requirements”** shall mean the specific requirements of the Work required by the Owner and that includes the Site procedures and other elements set forth in Attachment “G”, as may be altered from time to time, with agreement from the Contractor, by the Owner as a ministerial matter. The Project Owner Requirements shall be subject to amendment following satisfactory completion of Phase 1 of the Project and approval of Phase 2 by the Owner.

**“Safety Plan”** shall mean a plan prepared by Contractor that includes the elements required by Owner and otherwise includes all matters relating to safety as required by Applicable Law and the Contract Documents. The Safety Plan shall not be completed until satisfactory completion of Phase 1 of the Project and shall thereafter be added by written amendment to this Agreement.

**“Site”** or **“Sites”** shall have the meaning set forth in the third recital. The Site or Sites shall not be determined until satisfactory completion of Phase 1 of the Project and shall thereafter be added by written amendment to this Agreement.

**“System”** shall mean the comprehensive energy management system, including all energy efficiency and renewable energy generation components of the ECMs, to be installed by Contractor in order to provide a fully integrated and operational Project, at each Site as applicable, in accordance with the Contract Documents and as more specifically described in the Scope of Work.

**“Work”** shall mean (a) complete engineering and design of the System including as-built drawings (b) the procurement, installation, construction and erection, commissioning, start-up and testing, and all other services, including all labor, materials’ storage, services, demolition, Site preparation, equipping, verification, training, manuals and other things and actions in connection therewith, as necessary for the Contractor to fulfill all of its obligations pursuant to this Agreement, the Contract Documents, any Change Orders; and the requirements of the Utility and the Interconnection Agreement, the Governmental

Approvals, and any other Legal Requirement, (c) the provision of Equipment (d) transportation and storage of the Equipment; and (e) all of the foregoing that Contractor performs through any Subcontractor or consultant.

1. **Project Phases and Notice to Proceed** The date of commencement of the Work is the date established in the Notice to Proceed to Phase 1 delivered by the Owner. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for which the Contractor is responsible. The Work on the Project shall be performed in accordance with the following phases (Phase 2 more fully set forth in the Scope of Work, Attachment A):

**Phase 1 - Project Development Phase** - Upon Owner's issuance of a written Notice to Proceed to Phase 1, Contractor shall commence the work necessary to develop and issue a CEA Report and recommended energy plan to implement certain ECMs under Phase 2 of the Project. The CEA Report will identify potential renewable energy generation and operational savings opportunities at the Project Sites and estimated program costs to implement the recommended ECMs and present an overall potential energy cost and consumption savings of implementing the ECMs under Phase 2 of the Project. In the event Contractor fails to provide a CEA Report demonstrating that the anticipated cost to the Owner of the Project under the Agreement will be less than the anticipated marginal cost to the Owner of thermal, electrical, or other energy that would have been consumed by the Owner in the absence of the Project in accordance with Government Code section 4217.10 et seq., the Owner may terminate this Agreement without further obligation and shall not be liable for any of Contractor's costs including the Project Development Fee. No work shall be performed until Owner's issuance of the Notice to Proceed to Phase 1.

**Phase 2 - Design and Implementation Phase** - Upon Owner's issuance of a written Notice to Proceed to Phase 2, Contractor, if needed, shall prepare 60% Engineering Documents, and any inspections required by the date specified for each Site in the Project Schedule. Contractor shall deliver required 60% Engineering Documents to Owner for review and approval, which approval shall not be unreasonably withheld. Owner shall diligently review and respond to each submission by Contractor by the date specified in the Project Schedule. Contractor shall incorporate Owner's comments and requested changes unless Contractor can demonstrate that such requested changes would materially impact the Contract Price, the Project Schedule, or any other material requirement of the Contract Documents in which case Contractor shall submit a Change Order in accordance with Section 6 of the General Conditions. Upon resolution of the provision hereinabove set forth, Contractor shall complete and submit any required 90% Engineering Documents by the date specified in the Project Schedule. The Engineering Documents, upon written approval of the 90% Engineering Documents by Owner and any other approval required by any governmental authority, shall constitute 100% Engineering Documents and serve as the basis for construction. For those ECM's selected in Phase 1 that do not require design or drawings, the Contractor may proceed with implementation immediately after receipt of the Notice to Proceed to Phase 2. No work on Phase 2 shall be performed until Owner's issuance of the Notice to Proceed to Phase 2.

2. **SCOPE OF WORK.**

The Contractor agrees to furnish all project development, engineering, system designs, supervision, labor, equipment and materials, tools, communications, implements, appliances and transportation, to procure all governmental approvals (unknown and reasonably unforeseeable conditions requiring Contractor to obtain special approvals or permits may be subject to change order) , to facilitate completion and execution of any Incentive related documents, the Interconnection Agreement and all related applications, to coordinate with Utility for any and all requirements to allow the Project to be placed in operation, to erect, install, start-up, test and commission the Project, to perform all obligations set forth in the Contract Documents, to perform related activities for the successful completion of the Work and the delivery of the Project in compliance with the Contract Documents and to perform all the Work in a good and workmanlike manner, free from any and all liens and claims from mechanics, material suppliers, Subcontractors, artisans, machinists, teamsters, freight carriers, and laborers required for the Project as defined by the Contract Documents, all in strict compliance with the objectives, descriptions and specifications of Owner, the Contract Documents, Industry Standards, Legal Requirements and quality control and inspections relating thereto and so that the Project (i) meets or exceeds all requirements of Legal Requirements and the Project is installed in accordance with manufacturer's specifications or by methods otherwise approved by the manufacturer; (ii) complies with all requirements of the Utility and the Interconnection Agreement; (iii) meets or exceeds the warranties and guarantees set forth in the Contract Documents; (iv) is safe and adequate for the purpose and conditions specified in the Scope Of Work; (v) its free from defects in materials and workmanship; (vi) is

comprised of equipment which is new (unless otherwise mutually agreed) and of the agreed quality when installed, designed and manufactured and of a grade in accordance with generally accepted national standards for the design, manufacture and quality of such equipment; and (viii) meets or exceeds all requirements for any applicable federal, state or other rebates and Incentives. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures, and coordinating all portions of the Work under the Agreement, unless Contract Documents give other specific instructions concerning these matters.

Contractor is not responsible for any equipment, systems, controls, comfort problems, balancing, duct cleaning, existing deficient conditions, etc. not specifically included in the Scope of Work in the Contract Documents. All construction and associated cleanup shall be performed and scheduled so as to minimize any disruption with any ongoing Owner activities. Contractor requires all existing underground conduits between buildings to be clear of obstruction, of sufficient size to accommodate new wire and cable, and easily accessible. The Owner is responsible for Ethernet drops at each location for energy management system communication.

The Scope of Work is more fully and specifically defined in Attachment A thru Attachment E hereto. The Phase 1 portion of the Scope of Work shall be as set forth in the "Work" definition for Phase 1. The Phase 2 portion of the Scope of Work shall not be determined until satisfactory completion of Phase 1 of the Project and shall thereafter be added to Attachment A thru Attachment E by written amendment to this Agreement. Once this Contract is executed by the Owner and Climatec LLC, neither party may revise the Contract in any way except by mutual agreement in accordance the Contract Documents. This Agreement is based upon the use of straight time labor only unless stated otherwise in this Agreement. Owner agrees to provide Climatec LLC with required field utilities (electricity, toilets, drinking water, etc.), if available, without charge. Climatec LLC agrees to keep the jobsite clean of debris arising out of its own operations including its Subcontractors. Unless specifically noted in the Scope of Work or services undertaken by Climatec LLC under this Agreement, Climatec LLC's obligations under this Agreement expressly exclude any work or service of any nature associated or connected with the abatement, clean up, control, removal or disposal of environment Hazardous Material discovered in or on the Project Site. Any language or provision of the Agreement elsewhere contained which may authorize or empower the Owner to change, modify or alter the Scope of Work or services to be performed by Climatec LLC shall not operate to compel Climatec LLC to perform any work relating to Hazardous Material without Climatec LLC's express written consent.

3. **CONSTRUCTION AGREEMENT.** It is understood and agreed by Owner and Contractor that the terms of this Agreement, including all Attachments, may be subject to amendment, replacement or deletion in their entirety based upon the Phase 2 portion of the Scope of Work approved by Owner. Owner and Contractor agree to negotiate and amend this Agreement in good faith to amend, replace or delete the terms herein as necessary to accommodate the Phase 2 portion of the Scope of Work approved by Owner. Owner and Contractor agree that the terms of this Agreement exclusively applicable to Phase 2 shall not be operative until Owner and Contractor execute a written amendment to this Agreement following satisfactory completion of Phase 1 of the Project, as determined by the Owner in good faith. It is further understood and agreed by Owner and Contractor that this Agreement may be amended by mutual agreement to incorporate and comply with any applicable funding requirements that may become known to the Parties following completion of Phase 1 of the Project. Nothing herein shall be interpreted to create any obligation for Owner to proceed with Phase 2 of the Project.
4. **SOLAR INSTALLATION.** The scope excludes correction of any existing or previous violations of laws, codes or utility requirements and errors and omissions of the Owner or other contractors not communicated to Climatec LLC. Owner will issue, at Contractor's expense, all discretionary permits (permits requiring the discretion of the Owner) required in time to execute the work within the agreed upon schedule. Climatec LLC will provide all non-discretionary, ministerial (permits not requiring thought and discretion of the issuer) permits required for the provision of the solar installation. Customer agrees to promptly execute and return provided Preliminary Interconnection Documentation (initial or preliminary paperwork or documentation required by the utility for interconnection of the System to be executed by the System Owner), Preliminary Rebate Documentation (documentation comprising the initial or preliminary paperwork required by the administrator of the rebate or the rebate to be reserved) (if applicable), and Site Owner Consent Documentation (agreement from the site owner to install system on the real property identified in the proposal) (if applicable). Scope by Contractor will include commercially reasonable efforts to promptly obtain the PTO (Permission to Operate) from Owner's utility. The monitoring equipment provider (to be identified by Contractor in Phase 1 of the Project) will provide monitoring hosting services for the first five (5) years of operation. Owner warrants that they hold title to the Project Sites and

agree to the solar installation on that Site.

Terms applicable to the solar scope are as follows:

- a. **Interconnection Agreement** – means an agreement between the Owner and a particular utility involved for interconnection of the solar output to the electrical grid.
- b. **Interconnection Equipment** – all equipment (including wiring and conduit and metering for net metering) on the Owner side of the main service meter to enable proper interconnection of the solar system to the grid.

**(4.1) Design** – Climatec LLC shall prepare the Engineering Documents (prepared by properly licensed and qualified individuals). The Engineering Documents shall be submitted to Owner for approval. Owner shall provide approvals within five (5) business days from receipt.

**(4.2) Unforeseen Site Conditions** – Within 10 days of discovery, Climatec LLC will notify Owner in writing of (a) subsurface or latent physical conditions at the site differing materially from those described in the Contract Documents.

## 5. **PRICING; INVOICING & PAYMENTS.**

### Phase 1 Payments.

Project Development Fee A fee of \$0 (the “Project Development Fee”) will be invoiced upon Contractor’s completion of all work required in the Phase 1 should the Owner fail to proceed to Phase 2 when the CEA Report demonstrates a viable project, as described in Section 1 of this Agreement. In the event Contractor successfully completes all work required in Phase 1 and Owner elects to proceed with Phase 2 of the Project, the Project Development Fee shall be waived. In the event Contractor fails to complete all work required in Phase 1, the Project Development Fee shall be waived.

Phase 2 Payments. Notwithstanding anything to the contrary, Owner shall not be obligated to pay any amounts hereunder for Phase 2 of the Project until Owner, in its sole and absolute discretion, agrees to implement certain ECMs identified under Phase 1 of the Project and makes all required findings under Government Code section 4217.10 *et seq.*

Contract Price. If the CEA Report demonstrates a viable project, as described in Section 1 of this Agreement, the Contractor will provide a price proposal for the Phase 2 portion of the Scope of Work approved by Owner, including a schedule of values with a complete breakdown of costs. Owner and Contractor agree to negotiate in good faith to achieve a mutually acceptable price to proceed with the Phase 2 portion of the Scope of Work approved by Owner. Owner and Contractor agree that these terms are exclusively applicable to Phase 2 shall not be operative until Owner and Contractor execute a written amendment to this Agreement following satisfactory completion of Phase 1 of the Project, as determined by the Owner in good faith. If Owner elects to proceed to Phase 2 and is satisfied with Contractor’s price proposal, then Owner shall issue a formal contract amendment establishing the Scope of Work for Phase 2 and the contract price (“Contract Price” or “Contract Sum”) Except as otherwise provided in this Agreement, the Contractor shall assume the risk of all costs in excess of the Contract Price in the performance of the Work and to provide a fully completed and successfully operational Project and System, complete in every detail according to the provisions of the Contract Documents and shall not be entitled to additional payments because of such excess costs. Should the Contractor believe that it is entitled to additional compensation, whether money or time, it must request such compensation pursuant to the General Conditions. Nothing herein shall be interpreted to create any obligation for Owner to proceed with Phase 2 of the Project.

Payment shall be made in accordance with the General Conditions.

The Owner shall either retain an amount equal to 5% of each Progress Payment, or, in lieu of said retention, offer to enter into an Escrow Agreement for Security Deposits in Lieu of Retention (“Escrow Agreement”) with Climatec LLC, as set forth in California Public Contract Code section 22300.

6. **INDEPENDENT CONTRACT.** It is agreed between Owner and Climatec LLC that Climatec LLC shall perform the Work as an independent contractor. Climatec LLC may use Subcontractors to perform work hereunder, provided Climatec LLC shall fully pay said Subcontractors and in all instances remain fully responsible for (a) the proper completion of the Project and (b) supervising such Subcontractor's work and for the quality of the work they produce.
7. **MATERIALS.** All materials shall be new, in compliance with all Applicable Laws and codes, and shall be covered by a manufacturer's warranty, if appropriate. Unavailable materials will be addressed as a force majeure event as described in the General Conditions.
8. **COMPLETION.** The work specified in Phase 1 and Phase 2 shall be considered completed upon approval by the Owner in accordance with the Contract Documents, provided that the Owner's approval shall not be unreasonably withheld.

Time is of the essence in this Agreement, and, subject to the terms of the Contract Documents, the date for final completion of Phase 1 shall be 14 weeks from receipt of Notice to Proceed. Phase 1 shall not be subject to liquidated damages.

The nature of the work for Phase 2 is that it consists of multiple Sites, as noted in Attachment "A" (Scope of Work). Once Work on a Site is deemed by Climatec LLC to be complete (that is available for beneficial use by the Owner with the Scope of Work for that Site complete and functioning as required (lacking only minor punch list items), Owner will provide a Letter of Acceptance and Substantial Completion (as defined in the General Conditions) for that Site to Climatec LLC ("Site Substantial Completion"). Final completion will occur once the entire Scope of Work, including punch list items, is complete for all Sites and the Project, and Owner issues a Letter of Acceptance and Completion for the Project ("Final Completion").

The date for Final Completion ("Project Completion Date") and dates for the Substantial completion of each Site ("Site Substantial Completion Date") shall be as set forth in the Final Project Schedule which will be determined during the initial project meeting after contract execution and determination of the final Phase 2 scope of work. Failure to reach the Project Completion Date and Substantial Completion Dates in the manner provided for by the Contract Documents shall subject Contractor to liquidated damages.

The actual occurrence of damages and the actual amount of the damages which the Owner would suffer if the Work were not completed within the Project Completion Date or Site Completion Dates are dependent upon many circumstances and conditions which could prevail in various combinations and it is impracticable and extremely difficult to fix the actual damages. Damages that the Owner would suffer in the event of delay include, but are not limited to, loss of the use of the Project and each individual Site, and the energy savings afforded by the Project and each individual Site, disruption of activities, costs of administration, supervision and the loss suffered by the public.

Accordingly, the parties agree that the following dollar figures shall be the amount of damages which the Owner shall directly incur upon failure of Climatec LLC to achieve Final Completion or Site Completion: Five Hundred dollars (\$ 500.00), for each calendar day by which the Final Completion is delayed beyond the Project Completion Date (the "Project LD Rate") and Five Hundred dollars (\$500.00), for each calendar day by which a Site Substantial Completion is delayed beyond the Site Substantial Completion Date (the "Site LD Rate"). For the avoidance of doubt, if Climatec LLC fails to bring the work to Substantial completion at a Site within the applicable Site Substantial Completion Date, Owner may assess liquidated damages cumulatively, taking into account all Sites at which Work has not reached Substantial completion within the Final Project Schedule dates for that site.

Liquidated Damages may be also be assessed for failure to have the project finally complete by the date of Final Completion in the Final Project Schedule as timely certified by the Owner.

Should circumstances, events, or actions by the Owner or other entity outside of Contractor's control significantly impede the progress of the work, Contractor may request an adjustment to the Project Completion Date or Site Completion Date (collectively, the "Contract Time") in accordance with the General Conditions.



If Climatec LLC becomes liable under this Section, the Owner, in addition to all other remedies provided by law, shall have the right to withhold any and all retained percentages of payments, and to collect the interest thereon, which would otherwise be or become due Climatec LLC until the liability of Climatec LLC under this Section has been finally determined. If the retained percentage is not sufficient to discharge all liabilities of Climatec LLC incurred under this Section, Climatec LLC and its sureties shall continue to remain liable to Climatec LLC for such liabilities until all such liabilities are satisfied in full. If Owner accepts any Work or makes any payment under this Agreement after a default by reason of delays, the payment or payments shall in no respect constitute a waiver or modification of any provisions of the Contract Documents regarding time of completion and liquidated damages.

Amendments to Schedule Terms. It is understood and agreed by Owner and Contractor that the scheduling terms under this Section may be subject to amendment, replacement or deletion in their entirety based upon the Phase 2 portion of the Scope of Work approved by Owner. Owner and Contractor agree to negotiate and amend this Section in good faith to amend, replace or delete the terms herein as necessary to accommodate the Phase 2 portion of the Scope of Work approved by Owner. Owner and Contractor agree that the terms of this Section exclusively applicable to Phase 2 shall not be operative until Owner and Contractor execute a written amendment to this Agreement following satisfactory completion of Phase 1 of the Project, as determined by the Owner in good faith. Nothing herein shall be interpreted to create any obligation for Owner to proceed with Phase 2 of the Project

9. **LIABILITY.** With the exception of third-party claims, neither party shall be liable for any special, indirect, or consequential damages arising in any manner from the equipment, material, or systems furnished or the work performed pursuant to this agreement in excess of insurance coverage limits.
10. **CONFLICTS.** To the extent that any conflict exists between this Contract and the General Conditions (Attachment E), the General Conditions shall govern.
11. **REBATES, UTILITY INCENTIVES, AND GRANTS** This Contract has been priced “net” of all anticipated utility rebates and incentives that are earned through the course of this Project. Therefore, 100% of these rebates and incentives will be the property of Climatec LLC or their designee. The paperwork, inspections and verification required to collect these monies are the sole responsibility of Climatec LLC. The Owner agrees to assist Climatec LLC where required by the jurisdiction in the form of data required for the application and authorizing signatures. In the event the Owner incurs expenses related to the processing of the applications, Climatec LLC shall reimburse these direct costs.
12. **TAX CREDITS, TAX DEDUCTIONS AND 179d QUALIFYING CREDITS** Unless otherwise stated in the Contract, any and all eligible tax credits or incentives that can be earned through the course of this Project from State, Local or Federal agencies for energy efficient design are 100% the property of Climatec LLC or their designee. The paperwork, inspections and verification required to collect these credits are the sole responsibility of Climatec LLC. The Owner agrees to assist Climatec LLC where required by the jurisdiction in the form of data required for the application and authorizing signatures and/or transfers. In the event the Owner incurs expenses related to the processing of the applications, Climatec LLC shall reimburse these direct costs.
13. **COMPLIANCE WITH LAWS.** Climatec LLC shall comply with all applicable federal, state, and local laws and regulations. All licenses and permits required for the prosecution of the Work shall be obtained and paid for by Climatec LLC.
14. **CLIMATEC LLC'S LICENSE AND DIR REGISTRATION.** In order to perform the work required by this Agreement, Climatec LLC shall possess a valid, active General Building Contractor License (B) issued by the State of California, which shall remain valid and active throughout the Project. In addition, Climatec LLC must be registered with DIR as a public works contractor, which shall remain valid and active throughout the Project.
15. **WAGE RATES.** Pursuant to the provisions of Article 2, commencing with Section 1770 of the Labor Code, Owner has ascertained the general prevailing rate of per diem wages in the locality in which this public work is to be performed for each craft, classification, or type of worker needed to execute this Agreement. The general rates of per diem wages are available at Owner's office. In the event that the listed or posted rates are in error, Climatec

LLC is responsible to pay those rates determined by the Director of Industrial Relations to be applicable, and Owner shall not be responsible for any damages arising from the error.

16. **PAYROLL RECORDS.** It is the responsibility of Climatec LLC to comply with the provisions of Labor Code Section 1776 dealing with the maintenance and inspection of employee payroll records.
17. **PREVAILING WAGE.** The Project is subject to prevailing wage monitoring and enforcement by the Department of Industrial Relations (DIR). Climatec LLC and all subcontractors will be subject to the requirements of Subchapter 4.5 of Chapter 8 of Title 8 of the California Code of Regulations. Climatec LLC and all subcontractors will be required to furnish electronic certified payroll records to the DIR on a frequency not less than monthly using the DIR's eCPR system at [http://www.dir.ca.gov/Public-Works/eCPR\\_System-iForm.html](http://www.dir.ca.gov/Public-Works/eCPR_System-iForm.html). Climatec LLC shall comply with all requirements of the Labor Code and attendant regulations pertaining to prevailing wage monitoring and compliance as required by the DIR, including, but not limited to, posting job site notices prescribed by Title 8 CCR § 16451(d). Climatec LLC shall permit Owner, the DIR or their designee to interview Climatec LLC's employees concerning compliance with prevailing wage, apprenticeship, and related matters, whether or not during work hours, and shall require each subcontractor to provide Owner, the DIR or their designee with such access to its employees.
18. **APPRENTICES.** If applicable, Climatec LLC shall comply with the requirements of Labor Code Section 1777.5 dealing with the employment of apprentices.
19. **DISPUTES.** Disputes shall be settled pursuant to the claim procedures in the General Conditions.
20. **CHANGE ORDER (Mid-Performance Amendments).** Climatec LLC and the Owner recognize that changes to the Contract will be in accordance with Article 6 Changes in Work in the General Conditions.
21. **INSURANCE.** Climatec LLC will maintain comprehensive liability and other insurance in amounts not less than those set forth in Article 10 Insurance and Bonds in the General Conditions.
22. **INDEMNITY.** To the fullest extent permitted by law, Climatec LLC shall immediately defend (with counsel mutually acceptable to both parties) of the Owner's choosing, indemnify and hold harmless the Owner, its officials, officers, agents, employees, and representatives, and each of them from and against:
  - a. Any and all claims, demands, causes of action, costs, expenses, injuries, losses or liabilities, in law or in equity, of every kind or nature whatsoever (except as noted in item 9), but not limited to, injury to or death, including wrongful death, of any person, and damages to or destruction of property of any person, arising out of, related to, or in any manner directly or indirectly connected with the Work or this Contract, including claims made by subcontractors for nonpayment, including without limitation the payment of all attorney's fees and other related costs and expenses, however caused, regardless of whether the allegations are false, fraudulent, or groundless, and regardless of any negligence of the Owner or its officers, employees, or authorized volunteers (including passive negligence), except the sole negligence or willful misconduct or active negligence of the Owner or its officials, officers, employees, or authorized volunteers
  - b. Climatec LLC's defense and indemnity obligation herein includes, but is not limited to damages, fines, penalties, attorney's fees and costs arising from claims under the Americans with Disabilities Act (ADA) or other federal or state disability access or discrimination laws arising from Climatec LLC's Work during the course of construction of the improvements or after the Work is complete, as the result of defects or negligence in Climatec LLC's construction of the improvements.
  - c. Any and all actions, proceedings, damages, costs, expenses, fines, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of the violation of any governmental law or regulation, compliance with which is the responsibility of Climatec LLC.
  - d. Any and all losses, expenses, damages (including damages to the Work itself), reasonable attorney's fees, and other costs, including all reasonable costs of defense which any of them may incur with respect to the failure, neglect, or refusal of Climatec LLC to faithfully perform the Work and all of Climatec LLC's obligations under the Agreement. Such costs, expenses, and damages shall include all reasonable costs, including attorney's fees, incurred by the indemnified parties in any lawsuit to which they are a party.

- e. Contractor will indemnify, hold harmless, release and defend Owner from and against any and all claims, demands, causes of action, suits, proceedings, reasonable costs or expenses, liability, judgments, awards, decrees, settlements, or reasonable losses arising from an allegation, charge, assertion or accusation that Contractor and/or Owner has violated California Government Code Section 1090 or any other conflict-of-interest law in the procurement, execution or performance of this Agreement so long as the violation is not a result of an action, unknown by Climatec LLC, by an Owner employee. This indemnification obligation will continue to bind Contractor after the termination or expiration of this Agreement.

Climatec LLC shall immediately defend, at Climatec LLC's own cost, expense and risk, with counsel mutually acceptable to both parties any and all such aforesaid suits, actions or other legal proceedings of every kind (except as noted in item 9) that may be brought or instituted against the Owner, its officials, officers, agents, employees and representatives. Climatec LLC shall pay and satisfy any judgment, award or decree that may be rendered against the Owner, its officials, officers, employees, agents, employees and representatives, in any such suit, action or other legal proceeding. Climatec LLC shall reimburse the Owner, its officials, officers, agents, employees and representatives for any and all reasonable legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code section 2782.

- 23. **OCCUPATIONAL SAFETY AND HEALTH.** The Parties hereto agree to notify each other immediately upon becoming aware of any alleged violation of, the Occupational Safety and Health Act (OSHA) relating in any way to the Project or Project site.
- 24. **ENTIRE AGREEMENT.** This Agreement, upon execution, shall constitute the entire agreement between the parties and supersedes any prior representations or understandings.
- 25. **CHANGES.** No change or modification of any of the terms and conditions stated herein shall be binding upon either Party unless accepted by both Parties in writing.
- 26. **SEVERABILITY.** If one or more of the provisions of this Agreement are held to be unenforceable under laws, such provision(s) shall be excluded from these terms and conditions and the remaining terms and conditions shall be interpreted as if such provision were so excluded and shall be enforced in accordance to their terms and conditions.
- 27. **COUNTERPARTS.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. A signature on a copy of this Agreement received by either party by facsimile or portable document format (PDF) is binding upon the other party as an original. The parties shall treat a photocopy of such facsimile as a duplicate original.
- 28. **ASSIGNMENT.** Climatec LLC retains the right to assign its rights and obligations of this Agreement with written consent of Owner.
- 29. **ACKNOWLEDGMENT.** Both Climatec LLC and the Owner acknowledge having read this Agreement and all contract documents incorporated herein and have executed this Agreement on the date written above.



30. **APPROVAL.** Each party represents that the person that has executed this Agreement on its behalf is authorized to do so.

IN WITNESS WHEREOF, the parties have caused their duly authorized officers to execute this Agreement effective as of the date first above written.

**City of Clayton**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Climatec LLC**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Steve Siverson  
Print Name

\_\_\_\_\_  
President – Climatec Energy Services  
Title

\_\_\_\_\_  
Date

## **Attachment “A”**

### **Phase 1 Work**

Phase 1 Work is defined on page 6 of this Agreement -

Item 1, Phase 1 *Project Development Phase*

## **Phase 2 Work**

**Project Wide Note: All work in the scope of this project will be performed in compliance with California's Title 24 Building and Energy Codes.**

# **Attachment “B”**

## **Lighting Summary**

To be added by written amendment to this Agreement.

# **Attachment “C”**

## **Mechanical Replacement Inventory**

To be added by written amendment to this Agreement.

# **Attachment “D”**

## **Technical Appendix – Phase 2**

To be added by written amendment to this Agreement.

# **Attachment E General Conditions**

## **GENERAL CONDITIONS**

### **ARTICLE 1**

## **GENERAL CONDITIONS**

### **1.1 BASIC DEFINITIONS**

**1.1.1 The Specifications.** The Specifications are that portion of the Contract Documents consisting of the written requirements for material, equipment, construction systems, instructions, quality assurance standards, workmanship, and performance of related services.

**1.1.2 The Project Manual.** The Project Manual is the volume usually assembled for the Work which may include, without limitation, the bidding requirements, sample forms, Agreement, Conditions of the Agreement, and Specifications.

**1.1.3 Punch Lists.** Punch List means a list of minor items on the Project that remains for Contractor to complete or correct.

**1.2 EXECUTION, CORRELATION, AND INTENT.** The Contract Documents are complementary and are intended to include all items required for the proper execution and completion of the Work. Any item of work mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be provided by Contractor as if shown or mentioned in both. Each and every provision of law required by law to be inserted in this Agreement shall be deemed to be inserted herein, and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party the Agreement shall be amended in writing to make such insertion or correction.

**1.3 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS, AND OTHER DOCUMENTS.** The Drawings, Specifications, and other documents prepared on behalf of the Owner are instruments of the services of the Contractor and its consultants and are the property of the Owner. The Contractor may retain one contract record set.

**1.4 ORDER OF PRECEDENCE.** This Agreement and the contract documents referenced and incorporated herein are intended to be complementary, fully cooperative and to agree. However, to the extent that the terms and conditions of any of the Project contract documents conflict, the Contractor shall notify the Owner in writing and the following shall be the order of precedence as between the documents, with the first document taking the highest priority, provided, however, that the order of precedence shall not be so rigidly interpreted as to affect an absurd or costly result:

- i) Amendments to this Agreement
- ii) This Agreement, including all Attachments
- iii) Amendments/Written Changes signed by both parties to Criteria/Scope of Work
- iv) Criteria/Scope of Work
- v) Request for Proposals and all RFP Addenda issued prior to proposal and award dated TBD.
- vi) Contractor's Proposal dated N/A.



#### 1.4.1 General Order of Precedence

i) Special Conditions shall take precedence over General Conditions. In the event of conflict between Technical Specifications and the General Conditions, the General Conditions shall take precedence. In the event of a conflict between the Technical Specifications and the drawings, the higher quality, higher price, and the most stringent requirements shall be deemed to apply and shall govern as to materials, workmanship, and installation procedures.

ii) Work not particularly shown or specified shall be the same as similar parts that are shown or specified.

iii) Standards, Rules and Regulations referred to are recognized printed standards and shall be considered as one and a part of these specifications and within limits specified.

iv) With regard to drawings: a) Figures govern over scaled dimensions; b) Larger details govern over general drawings; c) Addenda/change order drawings govern over contract drawings; d) Contract drawings govern over standard drawings

## ARTICLE 2

### OWNER

2.1 **DEFINITION.** The term "Owner" means the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

2.2 **EXISTING UTILITY LINES; SITE SURVEY; CONTRACTOR RELIANCE.** Notwithstanding Government Code section 4215, and to the fullest extent allowed by law, Contractor shall be responsible to remove, relocate, and protect (reasonably discoverable at the time of site inspection) utilities located on each Project Site at the time of commencement of construction under the Agreement with respect to any such utility facilities that Owner has not identified, whether or not set forth in the Drawings and Specifications. Contractor may be assessed liquidated damages in accordance the Contract Documents for delay in completion of the Project caused by Contractor's failure to timely remove or relocate such utility facilities. This Subsection shall not be construed to preclude assessment against Contractor for any other delays in completion of the work on the Project. Contractor shall be solely responsible to timely notify all public and private utilities serving the affected Project Site before commencing work on the Project Site. Contractor shall notify and receive clearance from any cooperative agency, such as Underground Service Alert, in accordance with Government Code section 4216, et seq. Contractor shall promptly provide a copy of all such notifications to Owner or its designated representative.

When required by the scope of the Project, the Contractor shall furnish, at its expense, a legal description or a land survey of any or all Project Sites, giving, as applicable, grades and lines of streets, alleys, pavements, adjoining property, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the site. Additionally, all surveys to determine locations of construction, grading, and site work shall be provided by the Contractor. Contractor shall provide copies of any and all legal descriptions and surveys conducted on the Project Sites to Owner.

When required by the scope of the Project, Contractor will furnish, at its expense, the services of geotechnical engineers or consultants when reasonably required or as required by local or State codes. Such services with reports and appropriate professional recommendations shall include test boring, test pits, soil bearing values, percolation tests, air and water pollution tests, and ground corrosion and resistivity tests, including necessary operations for determining subsoil, air, and water conditions.

Any test borings and soils reports for the Project that have previously been made have been made for the Owner to indicate the subsurface materials that might be encountered at particular locations on the Project. The Owner has made these documents available to the Contractor and the Contractor has studied the results of such test borings and information that it has as to the subsurface conditions and Site geology as set forth in the test borings and soils reports. The Owner does not assume any responsibility whatsoever with respect to the sufficiency or accuracy of the borings made, or of the logs of the test borings, or of other investigations, or of the soils reports furnished pursuant hereto, or of the interpretations to be made beyond the location or depth of the borings. There is no warranty or guarantee, either express or implied that the conditions indicated by such investigations, borings, logs, soil reports or other information are representative of those existing throughout the site of the Project, or any part thereof, or that unforeseen developments may not occur. At the Owner's request, the Contractor shall make available to the Owner the results of any Site investigation, test borings, analyses, studies or other tests conducted by or in the possession of the Contractor of any of its agents. Nothing herein contained shall be deemed a waiver by the Contractor to pursue any available legal right or remedy it may have at any time against any third party who may have prepared any report and/or test relied upon by the Contractor.

Unless specifically stated in writing by Owners, the Contractor may not rely upon the accuracy of any utility services or site survey information that the Owner may provide.

**2.3 OWNER'S RIGHT TO STOP THE WORK.** If the Contractor fails to correct Work, which is not in accordance with the requirements of the Contract Documents as required by Section 11.2, or persistently fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work or any portion thereof, until the cause for such order has been eliminated.

**2.4 OWNER'S RIGHT TO CARRY OUT THE WORK.** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails (within a seven-day period after receipt of written notice or the time period expressly stated in the written notice from the Owner) to commence and continue correction of such default or neglect with diligence and promptness, the Owner may correct such deficiencies by whatever reasonable method the Owner may deem expedient without prejudice to other remedies the Owner may have, and may withhold for the cost of such correction.

## **ARTICLE 3**

### **THE CONTRACTOR**

**3.1 DEFINITION.** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representatives. To the extent that any portion of the Work is provided with the Contractor's own forces, any reference to Subcontractors shall be equally applicable

to the Contractor. If any of the Work is performed by contractors retained directly by the Owner, Contractor shall be responsible for the coordination and sequencing of the Work of those other contractors so as to avoid any impact on the Final Project Schedule (Attachment "F").

### 3.2 **SUPERVISION AND CONSTRUCTION PROCEDURES.**

3.2.1 **Contractor.** The Contractor shall supervise and direct the Work using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures, and coordinating all portions of the Work under the Agreement, unless Contract Documents give other specific instructions concerning these matters.

3.2.2 **Contractor Responsibility.** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the Work under direct or indirect contract with the Contractor or any of its Subcontractors.

3.2.3 **Obligations not Changed.** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by activities or duties of the Inspector of Record, or by tests, inspections, or approvals (with the exception of Interconnection Permits) required or performed by persons other than the Contractor so long as those tests, inspections or approvals that are required by the owner and performed by an owner directed entity do not require an unreasonable length of time.

3.2.4 **Contractor Responsibility for Readiness for Work.** The Contractor shall be responsible for inspection of Work already performed under the Contract Documents to determine that such portions are in proper condition to receive subsequent work.

3.3 **SUPERINTENDENT.** The Contractor shall provide a competent superintendent and assistants as necessary, all of whom shall be reasonably proficient in speaking, reading and writing English, and, who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The Contractor and each Subcontractor shall: furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Work; organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and keep an adequate force of skilled workers on the job to complete the Work in accordance with all requirements of the Contract Documents. Owner shall have the right, but not the obligation, to require the removal from the Project of any superintendent, staff member, agent, or employee of any Contractor, Subcontractor, material or equipment supplier, etc., for cause.

3.4 **LABOR AND MATERIALS.** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, material, equipment, tools, construction equipment and machinery, , transportation, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

3.5 **WARRANTY.** The Contractor warrants to the Owner that material and equipment furnished under

the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents, per Section 11.2.

**3.6 TAXES.** Contractor will pay all applicable Federal, State, and local taxes on all materials, labor, or services furnished by it, and all taxes arising out of its operations under the Contract Documents. Owner is exempt from Federal Excise Tax, and a Certificate of Exemption shall be provided upon request.

**3.7 PERMITS, FEES AND NOTICES.** The Contractor shall secure and pay for all ministerial permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and are legally required by any authority having jurisdiction over the Project.

**3.8 ALLOWANCES.** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against whom the Contractor makes reasonable and timely objection.

**3.9 CONTRACTOR'S PROJECT SCHEDULES.** Contractor shall provide the Preliminary Project Schedule and the Final Project Schedule, and updates and revisions thereto in electronic format as well as hard copy. The schedules provided by Contractor shall not exceed time limits current under the Contract Documents and shall comply with all of the scheduling as required in the Specifications. Failure of the Contractor to provide proper schedules as required by this Section may, at the sole discretion of Owner, constitute either grounds to withhold, in whole or in part, progress payments to the Contractor, or a breach of contract allowing Owner to terminate the Agreement between Owner and Contractor.

**3.9.1 Preliminary Project Schedule.** Unless specifically stated otherwise in other Contract Documents, a preliminary Project schedule shall be prepared by Contractor in accordance with and attached hereto as additional pages to Attachment "F". Owner shall not be bound by the Preliminary Project Schedule and shall not be responsible for any defects or mistakes in the Preliminary Project Schedule. Contractor is solely responsible for the accuracy, utility and reasonableness of the Preliminary Project Schedule and all subsequent updates or modifications thereto.

**3.9.2 Final Project Schedule.** Unless specifically stated otherwise in other Contract Documents, Contractor shall prepare and submit a final Project schedule, in accordance with and attached hereto as additional pages to Attachment "F" ("Final Project Schedule"), to Owner within 30 days of the Phase 2 Notice to Proceed. The term Final Project Schedule, as used in this Agreement and other Contract Documents, shall include any revisions thereto that the Parties agree upon in writing, which agreed-upon revisions shall be set forth in a revised Final Project Schedule. Any Final Project Schedule shall replace the Preliminary Project Schedule and all prior Final Project Schedules.

**3.9.3 Compliance with Project Timeline.** No schedule shall exceed time limits current under the Contract Documents and shall comply with all of the scheduling as required by the Contract Documents and any scheduling requirements provided by Owner to Contractor, and agreed to by the Contractor, at the beginning of the Project. The schedule shall be in the form of a tabulation, chart, or graph and shall be in sufficient detail to show the chronological relationship of all activities of the Project including, but not limited to, estimated starting and completion dates of various activities, (including early and late dates

and reasonable float for each activity), procurement of materials, the critical path, and scheduling of equipment. Float suppression techniques such as preferential sequencing, special lead/lag logic restraints, extended activity durations, or imposed dates shall be apportioned according to the benefit of the Project.

**3.9.4 Updated Project Schedules.** Contractor shall submit an updated schedule on a monthly basis that includes an accurate as-built schedule and the current as-planned schedule in conformance with the above standards. Contractor shall submit its daily logs for the month with the updated schedule. Float is not for the exclusive use or benefit of either Party but it is a jointly owned expiring Project resource available to both Parties as needed to meet schedule milestones. If any change in Contractor's method of operations will change the Final Project Schedule, Contractor shall submit to Owner a revised Final Project Schedule within seven days of the change.

**3.9.5 Recovery Plan.** If Contractor's actual progress falls behind the scheduled progress, within seven days of a request by Owner, Contractor shall prepare and submit a recovery plan. The recovery plan must include a revised schedule that would recover the lost time and still complete the work on the Project by the Final Project Completion Date. The recovery plan shall also list any additional compensation that Contractor believes it should receive if Owner chooses to order Contractor to implement the recovery plan. If Owner directs Contractor to implement the recovery plan, then Contractor shall do so.

**3.9.6 Failure to Meet Final Project Schedule.** In addition to any remedies that Owner may have, Contractor's failure to provide proper project schedules (with the exception of Interconnection Permits as noted in the contract documents) as required by this Section may, at Owner's sole discretion: (a) constitute grounds to withhold, in whole or in part, progress payments to Contractor, or (b) constitute a breach of the Agreement entitling Owner to actual damages, in addition to any other remedies provided under the Agreement, including, in Owner's discretion, termination of the Agreement pursuant to the terms hereof.

**3.10 DOCUMENTS AND SAMPLES AT THE SITE.** The Contractor shall maintain at the Site for the Owner one applicable copy of Titles 19 and 24 and record copy of the Drawings, Specifications, Addenda, Change Orders, and other Modifications, in good order and marked currently to record changes and selections made during construction. In addition, the Contractor shall maintain at the Site approved Shop Drawings, Product Data, Samples, and similar required submittals.

### **3.11 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES.**

**3.11.1 Shop Drawings.** The term "shop drawings" as used herein means drawings, diagrams, schedules, and other data, which are prepared by Contractor, Subcontractors, manufacturers, suppliers, or distributors illustrating some portion of the Work. Drawings will be provided where required to assure proper fit and assembly. The majority of the work, except for Solar PV, will be replacement of existing equipment only.

**3.11.2 Samples.** The term "samples" as used herein are physical examples furnished by Contractor to illustrate materials, equipment, or quality. All Work shall be in accordance with the approved samples.

**3.11.3 Contractor's Responsibility.** Contractor shall obtain and shall submit to Owner all required shop drawings and samples in accordance with the Final Project Schedule as required in the Specifications with such promptness as to cause no delay in its own Work or in that of any other contractor. Review by Owner

shall not relieve the Contractor or any Subcontractor from its responsibility in preparing and submitting proper shop drawings, product data, and samples in accordance with the Contract Documents. Any submission, which in Owner's opinion is incomplete, contains numerous errors, or has been checked only superficially by Contractor, will be returned un-reviewed by the Owner for resubmission by the Contractor. Contractor shall not commence any portion of the Work requiring a shop drawing or sample submission until the Owner has approved the submission.

**3.11.4 Extent of Review.** In reviewing shop drawings, the Owner will not verify dimensions and field conditions. The Owner will review and approve shop drawings, product data, and samples for aesthetics and for conformance with the design concept of the Work and the information given in the Contract Documents. The Owner's review shall not relieve the Contractor from responsibility for any deviations from the requirements of the Contract Documents unless the Owner has given specific written approval. Contractor and Subcontractors shall be solely responsible for determining any quantities, whether or not shown on the shop drawings.

**3.11.5 Substitution.** Unless the Specifications state that no substitution is permitted, whenever in the Contract Documents any specific brand or trade name is specified such specification shall be deemed to be followed by the words "or equal." The Owner may consider an untimely substitution request if the product specified is no longer commercially available.

**3.12 CLEANING UP.** The Contractor shall keep the Site and surrounding area free from accumulation of waste material or rubbish caused by operations under the Agreement. The Site shall be maintained in a safe, neat, and orderly condition. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so, without prior notice to the Contractor and the cost thereof shall be invoiced to the Contractor and withheld from progress payments and/or retention. Upon completion of the Project, Contractor and Subcontractor shall dismantle temporary structures, if any, and remove from the Site all construction and installation equipment, fences, scaffolding, surplus materials, rubbish, and supplies belonging to Contractor or Subcontractor.

**3.13 ACCESS TO WORK.** The Contractor shall provide the Owner, the Owner's designees, and the Inspector, access to the Work in preparation and progress wherever located.

**3.14 ROYALTIES AND PATENTS.** The Contractor shall pay all royalties and license fees incurred by Contractor in performing the Work of this Agreement. The Contractor shall defend suits or claims of infringement of patent rights and shall hold the Owner harmless and indemnify them from loss on account thereof.

**3.15 INDEMNIFICATION.** The Contractor's obligations to indemnify the Owner are set forth in the Agreement.

**3.16 RESERVED.**

**3.17 LABOR REQUIREMENTS**

**3.17.1 Prevailing Wages.** Pursuant to the provisions of Section 1770 *et seq.* of the Labor Code of the State of California, which are hereby incorporated by reference and made a part hereof, the Director of Industrial Relations has determined the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the work is to be performed, for each



craft, classification or type of worker needed to execute this Agreement. Per Diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, apprenticeship or other training programs, and similar purposes. Copies of the rates are on file at the Owner's principal office. The rate of prevailing wage for any craft, classification or type of workmanship to be employed on this Project is the rate established by the applicable collective bargaining agreement which rate so provided is hereby adopted by reference and shall be effective for the life of this Agreement or until the Director of the Department of Industrial Relations determines that another rate be adopted. It shall be mandatory upon the Contractor and on any subcontractor to pay not less than the said specified rates to all workers employed in the execution of this Agreement.

The Contractor and any subcontractor under the Contractor as a penalty to the Owner shall forfeit not more than Two Hundred Dollars (\$200.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for such work or craft in which such worker is employed. The difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.

The Contractor and each Subcontractor shall keep or cause to be kept an accurate record for work on this Project showing the names, addresses, social security numbers, work classification, straight time and overtime hours worked and occupations of all laborers, workers and mechanics employed by them in connection with the performance of this Agreement or any subcontract thereunder, and showing also the actual per diem wage paid to each of such workers, which records shall be open at all reasonable hours to inspection by the Owner, its officers and agents and to the representatives of the Division of Labor Law Enforcement of the State Department of Industrial Relations.

This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations in accordance with the provisions of Sections 1725.5, 1771.1, 1771.3, 1771.4, 1771.5, and 1771.7 of the Labor Code. This requirement applies regardless of whether the Project will use State funds. Pursuant to Labor Code section 1771.1, a contractor or subcontractor shall not be qualified to bid on, be listed in a proposal (subject to the requirements of Section 4104 of the Public Contract Code), or engage in the performance of any contract for public work, as defined by Division 2, Part 7, Chapter 1 (§§1720 *et seq.*) of the Labor Code, unless currently registered and qualified to perform public work pursuant to Section 1725.5 of the Labor Code. The Contractor shall keep records of such registration by subcontractors of all tiers and shall provide such documentation to Owner upon request. Contractor shall post all required job site notices pursuant to the Labor Code and related regulations. Contractor shall submit records, including those specified in Labor Code section 1776, to the Labor Commissioner as required by Sections 1771.4(a)(3), 1771.4(c)(2), and 1776 of the Labor Code. Owner may withhold \$100 for each calendar day after ten days from Contractor's receipt of a request to produce payroll records (as described in Labor Code §1776(a)) that Contractor fails to produce such records.

**3.17.2 Working Hours.** In accordance with the provisions of Sections 1810 to 1815, inclusive, of the Labor Code of the State of California, which are hereby incorporated and made a part hereof, the time of service of any worker employed by the Contractor or a Subcontractor doing or contracting to do any part of the Work contemplated by this Agreement is limited and restricted to 8 hours during any one calendar day and 40 hours during any one calendar week, provided, that work may be performed by such employee in excess of said 8 hours per day or 40 hours per week provided that compensation for all hours worked in excess of 8 hours per day, and 40 hours per week, is paid at a rate not less than 1½ times the basic rate of pay. The Contractor and every Subcontractor shall keep an accurate record showing the name of and the actual hours worked each calendar day and each calendar week by each worker employed by them in connection with the Work. The Contractor and every Subcontractor shall keep the records open at all reasonable hours to inspection by representatives of the Owner and the Division of Labor Law

Enforcement. The Contractor shall as a penalty to the Owner forfeit \$25.00 for each worker employed in the execution of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day, and 40 hours in any one calendar week, except as herein provided.

**3.17.3 Apprentices.** The Contractor agrees to comply with Chapter 1, Part 7, Division 2, Sections 1777.5 and 1777.6 of the California Labor Code, which are hereby incorporated and made a part hereof. These sections require that contractors and subcontractors employ apprentices in apprenticeable occupations in a ratio of not less than 1 hour of apprentice's work for each 5 hours of work performed by a journeyman (unless an exemption is granted in accordance with Section 1777.5) and that contractors and subcontractors shall not discriminate among otherwise qualified employees as indentured apprentices on any public works solely on the ground of sex, race, religious creed, national origin, ancestry or color. Only apprentices as defined in Labor Code Section 3077, who are in training under apprenticeship standards and who have signed written apprentice agreements, will be employed on public works in apprenticeable occupations. The responsibility for compliance with these provisions is fixed with the Contractor for all apprenticeable occupations.



## ARTICLE 4

### ADMINISTRATION OF THE AGREEMENT

4.1 Reserved.

#### 4.2 ADMINISTRATION OF THE AGREEMENT.

4.2.1 **Owner and Representatives.** The Owner may provide administration of the Agreement as described in the Contract Documents and may designate one or several agents, representatives, or consultants to provide administration.

4.2.2 **Limitations of Construction Responsibility.** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or Owner's agents (as long as those activities or duties have been discussed and factored into the final schedule), representatives and consultants, or by tests, inspections, or approvals (except for Interconnection Permits provided by the electric utility) required or performed by persons other than the Contractor.

4.2.3 **Communications Facilitating Agreement Administration.** Except as otherwise provided in the Contract Documents or when direct communications are warranted by special circumstances, the Owner and the Contractor shall communicate through the Owner's selected representative.

4.2.4 **Rejection of Work.** In addition to the rights, duties, and obligations of the Inspector under this Article, the Owner's selected representative may recommend to the Owner that the Owner reject Work which does not conform to the Contract Documents.

4.3 **INSPECTOR OF RECORD and OWNER'S PROJECT ENGINEER.** One or more project inspectors employed by the Owner will be assigned to the Work in accordance with the requirements of Title 24 of the California Code of Regulations. In addition, the Owner may hire the services of an Owner's Project Engineer. These two (2) parties shall work to assist the Owner with quality control and shall both be provided the access and consideration described herein. Both of these entities shall be allowed to inspect and report as described herein. Except for rights dictated by Title 24 as solely residing with the Inspector of Record, all places where "Inspector" is mentioned shall also consider the Owner's Project Engineer.

The Inspector(s) duties will, at minimum, be as specifically defined in Title 24. All Work shall be under the observation of or with the knowledge of the Inspector. The Inspector shall have free access to any or all parts of the Work at any time. The Contractor shall furnish the Inspector such information as may be necessary to keep the Inspector fully informed regarding progress and manner of work and character of materials. Such observations shall not, in any way, relieve the Contractor from responsibility for full compliance with all terms and conditions of the Agreement, or be construed to lessen to any degree the Contractor's responsibility for providing efficient and capable superintendence. The Inspector is not authorized to make changes in the drawings or specifications. The Inspector shall have the authority to reject work that does not comply with the provisions of the Contract Documents. In addition, the Inspector may stop any Work which poses a probable risk of harm to persons or property. Any costs or expenses of inspection or testing incurred not located in a contiguous county to the Project Site on which the inspection or testing is required shall be paid for by Owner, and Owner shall then invoice to Contractor

and Contractor shall make payment thereof within 30 days after Contractor receives the invoice; if Contractor fails to do so, Owner shall have the right to withhold the amount from any payment due or to be due to Contractor under the Agreement. No work shall be performed by the Contractor solely upon the instructions or comments by the Inspector of Record. The Inspector of Record has no authority to interpret the Contract Documents or order extra work and any extra work performed without the written instruction of the Owner shall be at Contractor's sole cost and expense and there will be no delay damages incurred by Owner for such work.

**4.4 RESPONSIBILITY FOR ADDITIONAL CHARGES INCURRED BY THE OWNER FOR PROFESSIONAL SERVICES.** If at any time prior to the completion of the requirements under the Contract Documents, through no fault of its own, the Owner is required to provide or secure additional professional services for any reason by any act or omission of the Contractor, the Contractor shall be invoiced by the Owner for any actual costs incurred for any such additional services, which costs may, among other remedies, be withheld from the progress payments and/or retention.

#### **4.5 CLAIMS.**

**4.5.1 General.** A Claim is a demand or assertion by Contractor seeking, as a matter of right, adjustment, or interpretation of Agreement terms, payment of money, extension of time, or other relief with respect to the terms of the Agreement. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the Contractor. Contractor may only submit a Claim after having complied with the requirements in Article 6, as applicable, for the same matters. All public works claims between the Contractor and the Owner shall be resolved pursuant to the procedures set forth in Public Contract Code section 9204 consistent with the specific provisions set forth below.

Claims shall be submitted to the Owner and the Owner's designated representative. A timely decision by the Owner shall be provided. Claims must be made by written notice prior to the final progress payment. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered. The failure of the Contractor to make a Claim within the specified time shall constitute an express waiver of any right to assert such Claim, whether affirmatively or defensively. Despite submission or rejection of a Claim, the Contractor shall proceed diligently with performance of the Agreement, and the Owner shall continue to make any undisputed payments in accordance with the Agreement. When any excavation or trenching extends greater than four feet below the surface, Public Contract Code section 7104 shall control.

The Contractor shall make a certification at the time of submission of a Claim. Contractor understands and agrees that any Claim submitted without this certification does not meet the terms of the Contract Documents, that Owner, or Owner's representatives, may reject the Claim on that basis and that unless Contractor properly and timely files the Claim with the certification, Contractor cannot further pursue the Claim in any forum. A condition precedent will not have been satisfied.

#### **4.5.2 Claims for Concealed or Unknown Conditions**

**4.5.2.1 Trenches or Excavations Less Than Four Feet Below the Surface.** If Contractor encounters conditions at the Site which are subsurface or otherwise concealed physical conditions, which differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent

in construction activities of the character provided for in the Contract Documents, then notice by the Contractor shall be given to the Owner promptly before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. The Owner will promptly investigate such conditions, and if they differ materially and cause an increase or decrease in the Contractor's cost of, time required for, or performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum, Contract Time, or both. If the Owner determines that the conditions at the Site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Agreement is justified, the Owner shall so notify the Contractor in writing, stating the reasons. In the event a dispute arises between the Owner and the Contractor regarding whether the conditions materially differ, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract Documents, but shall proceed with all the work to be performed under the Contract Documents. The Contractor 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.

**4.5.2.2 Trenches or Excavations Greater Than Four Feet Below the Surface.** Pursuant to Public Contract Code section 7104, when any excavation or trenching extends greater than four feet below the surface:

4.5.2.2.1 The Contractor shall promptly, and before the following conditions are disturbed, notify the public entity, in writing, of any:

4.5.2.2.1.1 Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law.

4.5.2.2.1.2 Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids.

4.5.2.2.1.3 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.

4.5.2.2.2 The public entity shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor'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.

4.5.2.2.3 In the event that a dispute arises between the public entity and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. The Contractor 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.

**4.5.3 Statutory Claim Procedures** In addition to any other requirements set forth in the Agreement, all Claims shall be filed in accordance with the statutory claim resolution procedures set forth in Public Contract Code sections 9204 and 20104 *et seq.*, the implementation of which is set forth in this Section. The failure to timely submit a notice of delay or notice of change, or to timely request a change in price or

time, or to timely provide any other notice or request required herein shall constitute a waiver of the right to further pursue the claim under the Agreement or at law.

4.5.3.1 Intent Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Section is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Section shall be construed to be consistent with said statutes.

4.5.3.2 Supporting Documentation The Contractor shall submit all claims in the following format:

4.5.3.2.1 Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made

4.5.3.2.2 List of documents relating to claim:

- (1) Specifications
- (2) Drawings
- (3) Clarifications (Requests for Information)
- (4) Schedules
- (5) Other

4.5.3.2.3 Chronology of events and correspondence

4.5.3.2.4 Analysis of claim merit

4.5.3.2.5 Analysis of claim cost

4.5.3.2.6 Time impact analysis in CPM format

4.5.3.3 Owner's Response Upon receipt of a claim pursuant to this Section, Owner shall conduct a reasonable review of the claim and, within a period not to exceed 45 Days, shall provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 Days after the Owner issues its written statement.

4.5.3.3.1 If the Owner needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the Owner's 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 Owner shall have up to three Days following the next duly publicly noticed meeting of the Owner's governing body after the 45-Day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

4.5.3.3.2 Within 30 Days of receipt of a claim, the Owner may request in writing additional documentation supporting the claim or relating to defenses or claims the Owner may have against the

Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of Owner and the Contractor. The Owner's written response to the claim, as further documented, shall be submitted to the Contractor within 30 Days (if the claim is less than \$15,000, within 15 Days) after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

4.5.3.4 Meet and Confer If the Contractor disputes the Owner's written response, or the Owner fails to respond within the time prescribed, the Contractor may so notify the Owner, in writing, either within 15 Days of receipt of the Owner's response or within 15 Days of the Owner's failure to respond within the time prescribed, respectively, and demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the Owner shall schedule a meet and confer conference within 30 Days for settlement of the dispute.

4.5.3.5 Mediation 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 Owner shall provide the Contractor 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 Owner 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 Owner and the Contractor sharing the associated costs equally. The Owner and Contractor shall mutually agree to a mediator within 10 business Days after the disputed portion of the claim has been identified in writing, unless the parties agree to select a mediator at a later time.

4.5.3.5.1 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.

4.5.3.5.2 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.

4.5.3.5.3 Unless otherwise agreed to by the Owner and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

4.5.3.5.4 The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.

4.5.3.6 Procedures After Mediation If following the mediation, the claim or any portion remains in dispute, the Contractor must file a claim pursuant to 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 prior to initiating litigation. 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 Contractor submits his or her written claim pursuant

to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference.

**4.5.3.7 Civil Actions** The following procedures are established for all civil actions filed to resolve claims of \$375,000 or less:

**4.5.3.7.1** Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of this Agreement. 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.

**4.5.3.7.2** 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 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 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. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

**4.5.3.8 Government Code Claims** In addition to any and all Agreement requirements pertaining to notices of and requests for compensation or payment for extra Work, disputed Work, construction claims and/or changed conditions, the Contractor must comply with the claim procedures set forth in Government Code Sections 900, et seq. prior to filing any lawsuit against the Owner. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra Work, disputed Work, construction claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not satisfied, no action against the Owner may be filed. **A Government Code claim must be filed no earlier than the date the Work is completed or the date the Contractor last performs Work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted.**

**4.5.3.9 Non-Waiver** The Owner's failure to respond to a claim from the Contractor within the time periods described in this Section or to otherwise meet the time requirements of this Section shall result in the claim being deemed rejected in its entirety.

## ARTICLE 5

### SUBCONTRACTORS

#### 5.1 DEFINITIONS.

5.1.1 **Subcontractor.** A Subcontractor is a person or entity that has a contract with the Contractor to perform a portion of the Work at the Site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor. To the extent that the term Trade Contractor is utilized in the Contract Documents, it shall have the same meaning as the term "Subcontractor."

5.1.2 **Sub-Subcontractor.** A Sub-subcontractor is a person or entity that has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the Site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.2 **AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK.** Subcontractors shall be selected by Contractor pursuant to the Agreement. Subcontractor substitution shall be handled in accordance with the Agreement. Any substitutions of Subcontractors shall not result in any increase in the Contract Sum or the granting of any extension of time for the completion of the Project.

5.3 **SUBCONTRACTUAL RELATIONS.** By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all obligations and responsibilities, which the Contractor, by the Contract Documents, assumes toward the Owner with the exception of insurance coverage values.

5.4 **CONTINGENT ASSIGNMENT OF SUBCONTRACTS.** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

5.4.1 Assignment is effective only after termination of the Contract with the Contractor by the Owner for cause pursuant to Article 14 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and

5.4.2 Assignment is subject to the prior rights of the surety, if any, obligated under any bond relating to the Contract.



## ARTICLE 6

### CHANGES IN THE WORK

#### 6.1 CHANGES.

**6.1.1 No Changes Without Authorization.** The Owner reserves the right to make such alterations, deviations, additions to, or deletions from the plans and specifications, as may be deemed by the Owner to be necessary or advisable for the proper completion or construction of the Work contemplated, and the right to require Contractor to perform such work. Such changes must be also approved by the Contractor after evaluation of the change against projected energy savings. Changes may require adjustment of the energy savings guarantee. There shall be no change whatsoever in the drawings, specifications, or in the Work without an executed Change Order, Construction Change Directive, or order by the Owner for a minor change in the Work as herein provided. Owner shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the same shall have been authorized by and the cost thereof approved in writing by Change Order or executed Construction Change Directive. No extension of time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Change Order.

**6.1.2 Owner's Authority.** The Owner will have authority to order minor changes in the Work not involving any adjustment in the Contract Sum, an extension of the Contract Time, or a change which is inconsistent with the intent of the Contract Documents. Minor changes will require evaluation of the effects, if any, on projected energy savings by the Contractor and potential modification to the associated savings guarantee. Such changes shall be effected by written Change Order and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.

**6.2 CHANGE ORDERS ("CO").** A CO is a written instrument prepared by the Owner and the Contractor stating their agreement upon all of the following: (A) A change in the Work; (B) the amount of the adjustment in the Contract Sum, if any; and (C) the extent of the adjustment in the Contract Time, if any.

**6.3 CONSTRUCTION CHANGE DIRECTIVES ("CCD").** A CCD is a written order prepared by the Owner, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by CCD, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. A CCD shall be used in the absence of agreement on the terms of a CO. A CCD must be evaluated by the Contractor for any impact on energy savings and subsequent modification of the associated savings guarantee.

**6.4 SUPPLEMENTAL INSTRUCTION ("SI").** A SI is a written instrument prepared by the Owner and submitted to the Contractor. The SI can order changes in the work that does not affect the Contract Sum and/or Time. A SI can be made in an RFI response by issuing a formal SI document or by written letter from the Owner. An SI must be evaluated by the Contractor for any impact on energy savings and subsequent modification of the associated savings guarantee.

**6.5 REQUEST FOR INFORMATION ("RFI").** An RFI is a written request prepared by the Contractor asking the Owner to provide additional information above and beyond that which is available in the



Contract Documents and all reference standards, regarding the Contractor and fulfilling the Contract coordination requirements for which Contractor is obligated to perform. The RFI shall reference all the applicable Contract Documents including specification section, detail, page numbers, drawing numbers, and sheet numbers, etc. The Contractor shall make suggestions and/or interpretations of the issue raised by the RFI. An RFI cannot modify the Contract Cost, Contract Time, or the Contract Documents. Prior to issuing an RFI the Contractor, Subcontractor, material suppliers and the like shall thoroughly review the Contract Documents and refer to all reference standards for the information sought. The Owner and Contractor agree that an adequate time period for the Owner to respond to an RFI is generally fourteen (14) calendar days after the Owner's receipt of an RFI, unless the Owner and Contractor agree otherwise in writing. However, in all cases, the Owner shall take such time, whether more or less than 14 days, as is necessary in the Owner and the Owner's representative's professional judgment to permit adequate review and evaluation of the RFI. The Contractor shall be invoiced by the Owner for any costs incurred for professional services, which shall be withheld from progress payments and/or retention, if an RFI requests an interpretation or decision of a matter where the information sought is equally available to the party making such request. The Contractor shall make efforts to coordinate the work in a timely fashion, so as to alleviate priority RFI's. If the RFI is considered a priority, the Contractor shall state the word "Priority" on the document, and the Contractor shall provide weekly RFI Priority Schedules. The Contractor shall issue and maintain weekly RFI Priority Schedules.

The RFI Priority Schedule shall include a listing of pending requests, including the most current request, and rank the RFI's in order of priority. The Owner shall endeavor to respect the Contractor's requested order of priorities and requested response dates. The Owner's response to the RFI shall be considered a Supplemental Instruction ("SI") in which the Contract Sum and/or Time is not altered. If the RFI response alters the Contract Sum and/or Time, a Construction Change Directive (CCD) may be issued for the changed condition(s). Should the Contractor determine the response to the RFI creates changes in the Contract Sum and/or Time, the Contractor shall submit a change order request (COR) to the Owner for review, along with a Time Extension Request (if required).

**6.6 REQUEST FOR PROPOSAL REGARDING CHANGE ("RFP - Change").** An RFP - Change is a written request prepared by the Owner asking the Contractor to submit to the Owner an estimate of the effect of a proposed change on the Contract Sum and the Contract Time. An RFP - Change shall contain adequate information, including any necessary drawings and specifications, to enable Contractor to provide the cost breakdowns required by Section 6.8. The Contractor shall not be entitled to any Additional Compensation for preparing a response to an RFP - Change, whether ultimately accepted or not.

**6.7 CHANGE ORDER REQUEST ("COR").** A COR is a written request prepared by the Contractor asking the Owner to incorporate a proposed change called for in an RFP - Change or a notice of claim into a CO. A COR shall include breakdowns to validate any change in Contract Sum due to proposed change or claim. A COR shall also include any additional time required to complete the Project. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Final Project Schedule as defined in Section 3.9 and the Specifications.

## **6.8 COST OF CHANGE ORDERS.**

**6.8.1 Scope.** Within ten (10) days or such lesser period of time as may be required by Owner after a request is made for a change that impacts the Contract Sum or the Contract Time, the Contractor shall provide to the Owner in writing an estimate of the effect of the proposed CO upon the Contract Sum and

the actual cost of construction, which shall include a complete itemized cost breakdown of all labor and material showing actual quantities, hours, unit prices, wage rates, required for the change, and the effect upon the Contract Time of such CO. Changes may be made by Owner by an appropriate written CO, or, at the Owner's option, such changes shall be implemented immediately upon the Contractor's receipt of an appropriate written CCD.

**6.8.2 Determination of Cost.** The amount of the increase or decrease in the Contract Sum resulting from a CO, if any, shall be determined in one or more of the following ways as applicable to a specific situation: (A) Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation; (B) unit prices stated in the Contractor's original bid, the Contract Documents, or subsequently agreed upon between the Owner and the Contractor; (C) cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or (D) by cost of material and labor and percentage of overhead and profit. Contractor and Subcontractors may increase their own work by 10% for overhead, bond costs, and insurance premiums and 5% profit. Contractor may increase a Subcontractor's total costs by 10% for overhead, bond costs, insurance premiums and profit. It is expressly understood that the value of such extra work or changes, as determined by any of the aforementioned methods, expressly includes any and all of Contractor's costs and expenses, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Any costs or expenses not included are deemed waived. For purposes of determining the cost, if any, of any change, addition, or omission to the Project, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to Contractor, and Contractor 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 Contractor's cost in determining the actual cost of construction for purposes of any change, addition, or omissions in the Project as provided herein.

**6.8.3 Accounting Records.** With respect to portions of the Work performed by COs and CCDs on a time-and-materials, unit-cost, or similar basis, the Contractor shall keep and maintain cost-accounting records satisfactory to the Owner, which shall be available to the Owner on the same terms as any other books and records the Contractor is required to maintain under the Contract Documents.

**6.8.4 Notice Required.** If the Contractor desires an increase in the Contract Sum, or any extension in the Contract Time for completion, it shall give the Owner written notice thereof within ten (10) days after the occurrence of the event giving rise to the claim, together with detailed estimates of the impact on the Contract Sum and/or the Contract Time. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property, in which case the Contractor shall proceed in accordance with Section 9.4 hereof. No notice shall be considered unless made in accordance with this Subsection; however, the mere presentation of such claim shall not establish the validity of the cause giving rise to such claim, or of the extension of the Contract Time, and/or the increase in the Contract Sum. Contractor shall proceed to execute the Work even though the adjustment has not been agreed upon. Any change in the Contract Sum or extension of the Contract Time resulting from such claim shall be authorized by a CO.

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**6.8.5 Format for Proposed Change Order.** The Parties shall use the following format, as applicable, to communicate proposed additions and deductions to the Contract.

SUBCONTRACTOR WORK (list each if more than one)		ADDITIVE	DEDUCTIVE
<b>1</b>	SUBCONTRACTOR LABOR TOTAL <sup>1</sup>	\$ _____	\$ _____
<b>2</b>	SUBCONTRACTOR MATERIAL TOTAL <sup>1</sup> ,	\$ _____	\$ _____
<b>3</b>	SUBCONTRACTOR EQUIPMENT TOTAL <sup>1</sup> ,	\$ _____	\$ _____
<b>4</b>	<b>SUBTOTAL #1 (LINES 1, 2 &amp; 3)</b>	\$ _____	\$ _____
<b>5</b>	SUBCONTRACTOR'S OVERHEAD AND PROFIT FOR SUBTOTAL #1 (LINE 4) <sup>2</sup>	\$ _____	\$ _____
<b>6</b>	<b>SUBTOTAL #2 (LINES 4 &amp; 5)</b>	\$ _____	\$ _____

CONTRACTOR'S WORK		ADDITIVE	DEDUCTIVE
<b>7</b>	CONTRACTOR LABOR TOTAL <sup>1</sup> ,	\$ _____	\$ _____
<b>8</b>	CONTRACTOR MATERIAL TOTAL <sup>1</sup> ,	\$ _____	\$ _____
<b>9</b>	CONTRACTOR EQUIPMENT TOTAL <sup>1</sup> ,	\$ _____	\$ _____
<b>10</b>	<b>SUBTOTAL #3 (LINES 7, 8 &amp; 9)</b>	\$ _____	\$ _____
<b>11</b>	CONTRACTOR'S OVERHEAD AND PROFIT FOR SUBTOTAL #3 (LINE 10) <sup>5</sup>	\$ _____	\$ _____
<b>13</b>	<b>SUBTOTAL #4 (LINES 10, 11 &amp; 12)</b>	\$ _____	\$ _____

<b>14</b>	<b>SUM OF SUBTOTALS #2 &amp; #4</b>	\$ _____	\$ _____
<b>15</b>	Contractor Markup of Subcontractor <sup>6</sup>		

**16** **NET TOTAL FOR C.O.R.** <sup>4</sup> \$ \_\_\_\_\_

- 1: Attach itemized list(s) indicating hours, rates, material quantity, material costs, unit costs, and taxes.
- 2: This item shall not exceed 15% of line 4 and must be supported by detailed breakdown justification of overhead costs, including insurance and fee associated with the change.
- 3: Contractor's bond costs shall not exceed 1% of the Net Total (line 16).
- 4: Includes all direct and indirect costs, including but not limited to, acceleration, cumulative effect of the change(s), expediting the work, etc.
- 5: This item shall not exceed 15% of line 10 and must be supported by detailed breakdown justification of overhead costs, including insurance and fee associated with the change.
- 6: This item shall not exceed 10% of line 6 and must be supported by detailed breakdown justification of overhead costs, including insurance and fee associated with the change.

## ARTICLE 7

### TIME

#### 7.1 DEFINITIONS.

7.1.1 **Contract Time.** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Completion of the Work.

7.1.2 **Days.** The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

7.2 **NOTICES TO PROCEED.** The date of commencement of the Work is the date established in the Notice to Proceed. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for which the Contractor is responsible. The Work on the Project shall be performed in accordance with the following phases:

7.2.2 **Governmental Approval** Contractor shall seek all such approvals of the Design Documents and the Project as may be required by any governmental entity having jurisdiction over the Project. Contractor shall exercise all reasonable diligence to ensure that all necessary permits and approvals are received by the date stated in Attachment F for Permit Approval. Owner shall not unreasonably withhold its consent to any modifications to the Design Documents that may be requested by any governmental or quasi-governmental agency with jurisdiction over the Project or the work on the Project, excepting any changes that materially affect the tilt, azimuth or number of photovoltaic modules, or other aspects of the original design that may affect the Contract Sum or the Estimated Annual Energy Production or Price and Performance Ratios, or that materially affect the sitting of the Project and its impact on Owner’s operations. See Subsection 2.1.3 for additional requirements.

7.2.3 **Construction Kickoff Meeting.** At least 15 working days prior to work on site, Contractor shall facilitate, or cooperate with Owner in its efforts to facilitate, a kick-off meeting with Owner and any of its representatives and Contractor, and any other relevant this Agreement) entered into by the parties. After securing all necessary permits, Contractor shall commence the construction of the Project in accordance with the final Design Documents and all other Contract Documents. The Construction Phase requires, in part, the Inspector of Record’s written notice of substantial completion and submission of a written request to schedule the Utility Permission to Operate inspection.

7.2.4 **Commissioning.** During the construction of the work on the Project and before the Final Project Completion Date, Contractor shall conduct all commissioning tests. Contractor shall provide notice to Owner of any scheduled test(s) of installed equipment, and Owner or its designees shall have the right to be present at any or all such tests conducted by Contractor, any Subcontractor, or manufacturers of the equipment. Contractor shall be responsible for correcting or adjusting all deficiencies in the equipment operations that Contractor provided and installed that may be observed during equipment commissioning procedures.

7.2.5 **Project Completion and Closeout.** Owner shall acknowledge final inspection and completion of the Project by executing a Letter of Acceptance and Completion in accordance with the Contract Documents and applicable laws.

### 7.3 HOURS OF WORK.

7.3.1 **Sufficient Forces.** Contractors and Subcontractors shall furnish sufficient forces to ensure the prosecution of the Work in accordance with the Final Project Schedule.

7.3.2 **Performance During Working Hours.** Work shall be performed during regular working hours except that in the event of an emergency or when required to complete the Work in accordance with job progress, work may be performed outside of regular working hours with the advance written consent of the Owner.

7.3.3 **Labor Code Application.** As provided in Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any Subcontractor on any subcontract under this Contract, upon the work or upon any part of the work contemplated by this Contract, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provision hereinabove set forth, work performed by employees of Contractors in excess of eight (8) hours per day and forty (40) hours during any one week shall be permitted upon this public work with compensation provided for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay.

Contractor or subcontractor shall pay to the Owner a penalty of Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Contract by the Contractor, or by any Subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one (1) calendar week, in violation of the provisions of Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation for the workers so employed by Contractor is not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

7.4 **PROGRESS AND COMPLETION.** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work. The Contractor shall not knowingly, except by agreement or instruction of the Owner, in writing, commence operations on the Site or elsewhere prior to the effective date of insurance required by Article 10 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance. The Contractor shall proceed expeditiously with adequate forces and shall achieve Completion within the Contract Time.

### 7.5 EXTENSIONS OF TIME - LIQUIDATED DAMAGES.

7.5.1 **Excusable Delay.** The Contractor shall not be charged for liquidated damages, as set forth in the Agreement, because of any delays in completion of the Work due to acts of the Owner or anyone employed by it, Force Majeure Events, or delays of subcontractors due to such causes (collectively "Excusable Delay"). Contractor has the burden of proving that any delay is excusable. If Owner delays the Project for greater than ninety (90) days, Contractor may seek to recover through the change order process reasonable and documented cost inflation on un-billed materials that are yet to be purchased.

7.5.2 **Notice by Contractor Required.** The Contractor shall within ten (10) calendar days of beginning of any such delay (unless Owner grants in writing a further period of time to file such notice prior to the

date of final payment under the Contract) notify the Owner in writing of causes of delay. Owner will then ascertain the facts and extent of the delay and grant an extension of time for completing the Work when, in its judgment, the findings of fact justify such an extension. The Owner's findings of fact thereon shall be final and conclusive on the parties. Extensions of time shall apply only to that portion of the Work affected by the delay and shall not apply to other portions of the Work not so affected. The sole remedy of Contractor for extensions of time under Subsection 7.5.1 shall be an extension of the Contract Time at no cost to the Owner.

**7.5.3 Conditions for Extension of Time.** If the Contractor is delayed at any time in progress of the Work on the critical path by an Excusable Delay or by other causes which the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine. Claims relating to time extensions shall be made in accordance with applicable provisions of Article 6.

**7.5.4 Early Completion.** Regardless of the cause therefore, the Contractor may not maintain any Claim or cause of action against the Owner for damages incurred as a result of its failure or inability to complete its work on the Project in a shorter period than established in the Contract Documents.

**7.5.5 Liquidated Damages.** Failure to complete the Project within the time and in the manner provided for by the Contract Documents shall subject the Contractor to liquidated damages, as described in the Agreement.

**7.6 GOVERNMENT APPROVALS.** Neither party shall be liable for any delays nor damages related to the time required to obtain government approvals, provided request for approvals are made in a timely manner.

**7.7 DELAYS DUE TO PROJECT SITE ACTIVITIES.** Owner shall not be liable for any damages or compensation to Contractor resulting from, arising out of, or related to any delays caused by scheduled activities at Project Sites. Contractor shall request and Owner shall provide a calendar of scheduled activities. Owner and Contractor shall work collaboratively to facilitate special events. Contractor shall integrate these activities into the critical path of the Project Schedule. Owner shall be reasonable in their requests, and Contractor shall reasonably accommodate.

If any part of Contractor's work depends for proper execution or results upon work of any other contractor, the Contractor shall inspect and promptly report to Owner in writing any defects in such work that render it unsuitable for such proper execution and results. Contractor will be held liable for damages to Owner for that work which it failed to inspect or should have inspected. Contractor's failure to inspect and report shall constitute its acceptance of other Contractor's work as fit and proper for reception of its work, except as to defects which may develop in other Contractors' work after execution of Contractor's work.

To ensure proper execution of its subsequent work, Contractor shall measure and inspect work already in place and shall at once report to the Owner in writing any discrepancy between executed work and Contract Documents.

It is the obligation of Contractor to ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by Owner in prosecution of the Project to the end that Contractor may perform its Contract in the light of such other contracts, if any.



Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy of the Project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, Owner shall decide which contractor shall cease work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously. If Owner directs Contractor to cease Work temporarily due to the work of another contractor, Contractor shall be entitled to a change order upon documentation of actual, reasonable costs, but such costs shall not include overhead, profit or general conditions for the period of time during which Work has ceased.

If the Project is split into phases and/or separate contracts, then Contractor has made allowances for any delays or damages which may arise from coordination with contractors for other phases or contracts. If any delays should arise from a contractor working on a different phase or contract, Contractor's sole remedy for damages, including delay damages, shall be against the contractor who caused such damage and not the Owner. Contractor shall provide access to contractors for other phases or contracts as necessary to prevent delays and damages to contractors working on other phases or contracts.

## ARTICLE 8

### PAYMENTS AND COMPLETION

8.1 **CONTRACT SUM.** The Contract Sum is stated in the Agreement, or as amended and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

8.2 **COST BREAKDOWN.** On forms approved by the Owner within ten (10) days of the mailing, emailing or delivery of the Notice to Proceed, the Contractor shall furnish a schedule of values and a list of all subcontractors and suppliers. The Owner shall review all submissions received in a timely manner. All submissions must be approved by the Owner before becoming the basis of any payment.

8.3 **APPLICATIONS FOR PAYMENT.** Contractor shall submit to the Owner an itemized Application for Payment for Work completed in accordance with the Payment Schedule in Subsection 8.6.1. As the Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from Owner, to assure that there will be no delays, payment by the Owner for stored material shall be made only in unusual circumstances where the Owner specifically approves the payment in writing. The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. Because Contractor must order, obtain, and store materials and equipment sufficiently in advance of its work at no additional cost or advance payment from Owner to assure that there will be no delays on the Project, Owner shall pay for stored materials only in unusual circumstances where Owner specifically approves such payment in writing. If payments are to be made for materials and equipment that are not incorporated in the Work on the Project but delivered and suitably stored at a Project Site or at some other location agreed upon in writing by Owner, the payments shall be conditioned upon submission by Contractor, Subcontractor, or vendor of bills of sale and such other documents satisfactory to Owner to establish Owner's title to such materials or equipment free of all liens and encumbrances, and otherwise protect Owner's interest, including, without limitation, provision of applicable insurance and transportation to the Project Site. All

stored items shall be inventoried, specified by identification numbers (if applicable), released to Owner by the sureties and Subcontractors, and, if stored off the Project Site, stored only in a bonded warehouse.

**8.4 REVIEW OF PROGRESS PAYMENT.** The Owner will, within seven (7) days after receipt of the Contractor's Application for Payment, either approve such payment or notify the Contractor in writing of the Owner's reasons for withholding approval in whole or in part. The review of the Contractor's Application for Payment by the Owner is based on the Owner's observations at the Site and the data comprising the Application for Payment whether the Work has progressed to the point indicated and whether, to the best of the Owner's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents.

**8.5 DECISIONS TO WITHHOLD PAYMENT.** The Owner may decide to withhold payment in whole, or in part, to the extent reasonably necessary to protect the Owner. In addition, the Owner may withhold payment, in whole, or in part, to such extent as may be necessary to protect the Owner from loss because of any acts or omissions by Contractor, including but not necessarily limited to the following:

8.5.1 Failure to provide requested supporting documents;

8.5.2 Defective work not timely remedied;

8.5.3 Stop Payment Notices. If any Stop Payment Notice or other lien is filed on the Project for labor, materials, supplies, equipment or any other thing of value claimed to have been furnished to or incorporated into the work on the Project, or for other alleged contribution thereto, the Owner shall retain from payments otherwise due the Contractor, in addition to other amounts properly withheld under this Section or under other provisions of the Contract, an amount equal to 125 percent (125%) of the amount claimed under such Stop Payment Notice; provided, however, that the Owner may release such funds upon receipt of evidence satisfactory to the Owner to the effect that the Contractor has resolved such claim, by settlement, Stop Payment Notice Release Bond or otherwise. All other provisions of state law with respect to Stop Payment Notices shall also apply;

8.5.4 Liquidated damages assessed against the Contractor and not promptly paid;

8.5.5 Commercially reasonable doubt, after consultation with the Contractor, that the work on the Project can be completed for the unpaid balance of any Price or within the Completion Date;

8.5.6 Damage to the Owner, another contractor, or subcontractor, including any sums expended by or on behalf of the Owner in performing any of the Contractor's obligations under the Contract which the Contractor has failed to perform or has performed inadequately;

8.5.7 Unsatisfactory prosecution of the work by the Contractor;

8.5.8 Failure to store and properly secure materials;

8.5.9 Failure of the Contractor to submit on a timely basis, proper and sufficient documentation required by the Contract, including, without limitation, monthly progress schedules, shop drawings, submittal schedules, schedule of values, product data and samples, proposed product lists, executed change orders, and verified reports;

8.5.10 Failure of the Contractor to maintain record drawings;



8.5.11 Erroneous estimates by the Contractor of the value of the work on the Project performed, or other false statements in an Application for Payment;

8.5.12 Unauthorized deviations from the Contract Documents;

8.5.13 Failure of the Contractor to prosecute the work on the Project in a timely manner in compliance with established progress schedules and completion dates; or

8.5.14 Forfeiture of funds pursuant to California Labor Code Section 1727. The Owner shall retain and transfer those funds pursuant to California Labor Code Section 1730.

Subject to the withholding provisions of this Section of the Contract Documents, the Owner will pay the Contractor the amounts set forth below in Section 8.6.

Neither the Owner nor the Owner's Representative will have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law. No payments or approvals/processing of Applications for Payment made by the Owner will constitute acceptance of Defective Work.

## **8.6 PROGRESS PAYMENTS.**

**8.6.1 Payment Schedule.** Progress payments shall be made in accordance with Public Contract Code section 20104.50. Owner shall pay the Contract Sum to Contractor on a per Project Site basis in accordance with the standard AIA procedures for progress payments.

**8.6.2 Payments and Information to Subcontractors.** No later than 7 days after Contractor receives payment from Owner, pursuant to Business and Professions Code section 7108.5, Contractor shall pay to each Subcontractor, out of the amount paid to Contractor on account of such Subcontractor's portion of the work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to Contractor on account of such Subcontractor's portion of the work. Contractor shall, by appropriate subcontract with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner. Owner has no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by law. Owner will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by Contractor, and action taken thereon by Owner, on account of portions of the work done by such Subcontractor.

**8.6.3 Waivers and Releases.** Within 15 days after receipt of each progress payment and the Final Payment, Contractor shall provide (and shall cause its suppliers and Subcontractors, and their subcontractors to provide) to Owner an unconditional lien waiver and release (related to progress payment or Final Payment as applicable) in a form substantially similar to the forms attached hereto as Attachment N.

**8.7 COMPLETION OF THE WORK.** Upon receipt of the Contractor's request for final inspection, the Owner will make an inspection to determine whether the Work, or designated portion thereof, is complete. If the Owner's inspection discloses any item which is not completed in accordance with the requirements of the Contract Documents, the Contractor shall, before Owner's issuance of the Letter of Acceptance and Completion, diligently complete or correct such item. The absence of the Interconnection

Permit issued by the electric utility shall not delay final completion of the remainder of the project.

**8.8 PARTIAL OCCUPANCY OR USE.** Owner may occupy or use any completed or partially completed portion of the Work at any stage without accepting that work and without waiving rights to claim damages as to that work. The Owner and the Contractor shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents.

**8.9 LETTER OF ACCEPTANCE AND COMPLETION, AND FINAL PAYMENT.** If the Owner's representatives find the Work fully performed under the Contract Documents, they shall so notify Contractor, who shall then submit to the Owner its final application for progress payment. After the Owner's representatives find the Work fully performed the Owner may record a Notice of Completion with the County Recorder in accordance with Civil Code section 9204 and shall issue a Letter of Acceptance and Completion. Contractor shall, upon receipt of final progress payment from Owner, pay the amounts due Subcontractors. Owner shall pay the retainage pursuant to Public Contract Code section 7107. Any application for final progress payment shall be accompanied by the same details required for regular progress payments. Acceptance of final progress payment shall constitute a waiver of Claims except for those previously identified in writing and identified by that payee as unsettled at the time of final payment.

**8.10 SUBSTITUTION OF SECURITIES.** In accordance with section 22300 of the Public Contract Code, the Owner will permit the substitution of securities for any monies withheld by the Owner to ensure performance under the Contract. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the Owner, or with a state or federally chartered bank as the escrow agent, who shall then pay such monies to the Contractor. Upon completion of the Contract, the securities shall be returned to the Contractor. Securities eligible for investment under this section shall include those listed in Government Code section 16430, bank or savings and loan certificates of deposit, interest-bearing, demand-deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the Owner. The Contractor shall be the beneficial Owner of any securities substituted for monies withheld and shall receive any interest thereon. Any escrow agreement used shall be substantially similar to the form set forth in Public Contract Code section 22300.

## ARTICLE 9

### PROTECTION OF PERSONS AND PROPERTY

**9.1 SAFETY PRECAUTIONS AND PROGRAMS.** The Contractor shall have responsibility for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. Subcontractors have the responsibility for participating in, and enforcing, the safety and loss prevention programs established by the Contractor for the Project, which will cover all Work performed by the Contractor and its Subcontractors. Subcontractors shall promptly report in writing and by phone to the Contractor all accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or off the Site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. The Contractor will provide and maintain at the Site first-aid supplies for minor injuries.

**9.2 SAFETY OF PERSONS AND PROPERTY.** The Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to: (A) Employees on the Work and other persons who may be affected thereby; (B) the Work, material, and equipment to be incorporated therein, whether in storage on or off the Site, under the care, custody, or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and (C) other property at the Site or adjacent thereto such as trees, shrubs, lawns, walks, pavement, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction. The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury, or loss.

The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent Sites and utilities.

When use or storage of explosives, other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Contractor shall notify the Owner any time that explosives or hazardous materials are expected to be stored on Site. Location of storage shall be coordinated with the Owner and local fire authorities.

**9.3 PROTECTION OF WORK AND PROPERTY.** The Contractor and Subcontractors shall continuously protect the Work, the Owner's property, and the property of others, from damage, injury, or loss arising in connection with operations under the Contract Documents. The Contractor and Subcontractors shall make good any such damage, injury, or loss, except such as may be solely due to, or caused by, agents or employees of the Owner.

The Contractor and the Subcontractors shall use only those ingress and egress routes designated by the Owner, observe the boundaries of the Site designated by the Owner, park only in those areas designated by the Owner, which areas may be on or off the Site, and comply with any parking control program established by the Owner such as furnishing license plate information and placing identifying stickers on vehicles.

9.4 **EMERGENCIES.** In an emergency affecting the safety of persons or property, the Contractor shall take any action necessary, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 7. The Contractor shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work, which caused death, personal injury, or property damage, giving full details, and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner.

9.5 **HAZARDOUS MATERIALS.** In the event the Contractor encounters or suspects the presence on the Site material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), or any other material defined as being hazardous by section 25249.5 of the California Health and Safety Code, which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner in writing, whether or not such material was generated by the Contractor or the Owner.

## ARTICLE 10

### INSURANCE AND BONDS

#### 10.1. CONTRACTOR'S LIABILITY INSURANCE

10.1.1 Required Coverage At all times commencing no later than commencement of the Work and to remain in effect for the entire term of this Agreement including any extensions of time, Contractor shall, at its expense, obtain and maintain, and shall cause its Subcontractors to obtain and maintain, with insurers of recognized responsibility authorized to do business in the California as admitted carriers having a rating not lower than "A" as rated by A.M. Best Company, Inc. or other independent rating companies, the following insurance which shall include the minimum coverages and limits set forth below:

10.1.1.1 *Commercial General Liability Insurance* Commercial general liability insurance on an "occurrence" basis arising out of claims for bodily injury (including death) and property damage, as will protect the Contractor, which may arise out of or result from the Contractor's operations under the Agreement and for which the Contractor legally liable, whether such operations are by the Contractor, by a Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall protect the Contractor and Owner against loss from liability imposed for damages (1) on account of bodily or personal injuries, including death, disease and sickness, accidentally suffered or alleged to have been suffered by any person or persons that may be caused directly or indirectly by the performance of this Agreement, and (2) on account of injury to or destruction of property, including the resultant loss of use of the Project or other Owner facilities or equipment, resulting from acts of commission or omission by the Contractor, or otherwise resulting directly or indirectly from the Contractor's operations in the performance of this Agreement. This insurance shall be subject to the approval of Owner, and Owner's approval shall not be unreasonably withheld and shall be in amounts not less than Two Million Dollars (\$2,000,000) general aggregate, Two Million Dollars (\$2,000,000) personal and advertising injury aggregate, with a per occurrence limit of One Million Dollars (\$1,000,000) (total limits required may be satisfied with an excess or umbrella policy). The comprehensive or commercial general liability policy shall also include a severability of interest clause and cross liability if the policy has multiple insureds. The aggregate limit shall apply on a "per project" basis.

The policy shall stipulate that the insurance afforded the additional insureds shall apply as primary insurance and that any other insurance carried by Owner or other Persons identified in this Agreement will be excess only and will not contribute with this insurance;

10.1.1.2 *Automobile Liability.* Automobile liability insurance, for Contractor's liability arising out of claims for bodily injury and property damage covering all owned (if any), non-owned, leased, hired or borrowed automobiles of Contractor, including loading and unloading, with a minimum limit of not less than One Million Dollars (\$1,000,000) per accident for combined bodily injury and property damage and containing appropriate no-fault insurance provisions or other endorsements in accordance with Applicable Law;

10.1.1.3 *Worker's Compensation Insurance* All engineers, experts, Consultants and Subcontractors the Contractor intends to employ shall have taken out workers' compensation insurance with an insurance carrier satisfactory to the Owner for all persons whom they may employ in carrying out the work contemplated under this Agreement in accordance with the Workers' Compensation Laws of the State of California. If the Contractor employs any engineer, expert, Consultant or Subcontractor which it did not intend to employ prior to commencement of services, it must furnish such proof of workers' compensation insurance to the Owner immediately upon employment. If the Contractor is self-insured, the Contractor shall furnish a Certificate of Permission to Self-Insure and a Certificate of Self-Insurance satisfactory to the Owner.

10.1.1.4 *Employer's Liability Insurance* All engineers, experts, Consultants and Subcontractors the Contractor intends to employ shall have taken out employer's liability insurance with an insurance carrier reasonably satisfactory to the Owner. During the course of Contractor's services, if Contractor ever intends to employ additional or different Engineers, experts, Consultants or Subcontractors, before so employing them Contractor shall furnish such reasonably satisfactory proof of insurance to the Owner. If the Contractor is self-insured, the Contractor shall furnish a Certificate of Permission to Self-Insure and a Certificate of Self-Insurance reasonably satisfactory to the Owner.

10.1.1.5 *Errors and Omissions Insurance* Errors and omissions insurance on a claims made basis with limits of at least One Million Dollars (\$1,000,000) with a deductible or self-insured retention in an amount not to exceed the sum of One Hundred Thousand Dollars (\$100,000), and Contractor will maintain such coverage for a period of five (5) years following the Final Completion Date.

10.1.1.6 *Other Insurance* Contractor shall provide all other insurance required to be maintained under Applicable Laws, ordinances, rules, and regulations. Such insurance shall be subject to the approval of Owner, and Owner's approval shall not be unreasonably withheld.

10.1.2 Consultants If not covered by Contractor's coverage, each of Contractor's Consultants shall carry coverage and limits proportionate to each such Consultant's scope of work, and Contractor shall include such provisions in its contracts with them. If any policy carried by any of the Consultants offers 50% or less of the limits required of the Contractor hereunder for an analogous policy, the Contractor shall notify the Owner of the proposed coverage to be carried by such Consultant, and the Owner shall have the right in its reasonable discretion to approve or reject the proposed coverage in each such case.

10.1.3 Occupancy Owner may partially or fully occupy and/or use the Project before acceptance of the entire Project by the Owner. All of Contractor's required insurance must allow such occupancy and/or use without prior consent from insurer.

10.1.4 Additional Insured; Primary and Non-Contributory; Waiver of Subrogation The Contractor shall name the Owner and the Owner's designated representative as additional insureds on Contractor's

commercial general liability (using ISO CG 20 10 and CG 20 37 or exact equivalents), automobile liability, and excess/umbrella policies. The additional insured endorsement(s) included on all such insurance policies shall state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability shall not be reduced by the existence of such other insurance. The coverage provided the additional insureds on Contractor's commercial general liability, automobile liability, and excess/umbrella policies shall apply on a primary and non-contributory basis. The Contractor's commercial general liability, automobile liability, excess/umbrella, and workers' compensation/employer's liability policies shall be endorsed to include a waiver of subrogation in favor of Owner and the Owner's designated representatives. Any excess/umbrella policies provided by Contractor shall include a follow form endorsement or schedule of underlying coverage showing that such policies sit in excess of and shall follow the form of the underlying policies set forth herein, which Contractor intends the excess/umbrella policy to supplement.

10.1.5 Proof of Carriage of Insurance The Contractor shall not commence Work nor shall it allow any Subcontractor or Consultant to commence Work under this Agreement until all required insurance certificates, additional insured endorsements and declarations pages have been obtained for the period covered by this Agreement and delivered in duplicate to the Owner for approval, and such approval shall not be unreasonably withheld.

10.1.6 Notice of Cancellation or Non-Renewal The Contractor shall provide or shall obligate its insurance carriers or brokers/representatives to provide for thirty (30) Days written notice to the Owner of cancellation.

10.1.7 Project Schedule Changes At the time of making application for any extension of time pursuant to the Contract Documents, Contractor shall submit evidence that insurance policies will be in effect during the requested additional period of time.

10.1.8 Compliance If the Contractor fails to maintain such insurance or fails to cure any defects in coverage required herein within five (5) Days of receiving written notice of the defect(s), the Owner may, but shall not be required to, take out such insurance to cover any damages accrued for which the Owner might be held liable on account of the Contractor's failure to pay such damages, and deduct and retain the amount of the premiums from any sums due the Contractor under this Agreement.

10.1.9 No Limitation of Liability; Subcontractors and Consultant Obligations Nothing contained in this Agreement shall be construed as limiting, in any way, the extent to which the Contractor may be held responsible for the payment of damages resulting from the Contractor's operations. Each of Contractor's Consultants and Subcontractors shall comply with all insurance obligations under this Section, and Contractor shall include such provisions in its contracts with them

**10.2 PERFORMANCE AND PAYMENT BONDS.** Unless otherwise specified in the Contract Documents, prior to commencing Phase 2, the Contractor shall apply for and furnish Owner separate payment (Attachment E1) and performance (Attachment E2) bonds on the form attached hereto as Attachments F1 and F2 for the Work which shall cover 100% faithful performance of and payment of all obligations arising under the Contract Documents and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for the Work. Only bonds executed by admitted Surety insurers as defined in Code of Civil Procedure section 995.120 shall be accepted. The surety insurers must, unless otherwise agreed to by Owner in writing, at the time of issuance of the bonds, have a rating not lower than "A" as rated by A.M. Best Company, Inc. or other independent rating companies. Owner reserves the right to approve or reject the surety insurers selected by Contractor and to require Contractor to obtain bonds from surety insurers satisfactory to the Owner.



## ARTICLE 11

### UNCOVERING AND CORRECTION OF WORK

**11.1 UNCOVERING OF WORK.** If a portion of the Work is covered contrary to the Inspector's request, the Owner's request, or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Inspector or the Owner, be uncovered for the Inspector's or the Owner's observation and be replaced at the Contractor's expense without change in the Contract Sum or Time.

**11.2 CORRECTION OF WORK; WORKMANSHIP WARRANTY.**

**11.2.1 Warranty and System Warranty Period.** Contractor warrants and guarantees to Owner that, for the duration of the period commencing on the acceptance by the Owner's governing body of the Work (see Section 8.9) or a designated portion thereof, or by terms of an applicable special warranty required by the Contract Documents, and continuing thereafter for one (1) year ("System Warranty Period"), all work on the Project will be substantially free from defects in design, workmanship, materials and equipment, and shall be in accordance with the requirements of the Contract Documents. These warranties do not extend to any equipment which has been repaired by others without the approval of Contractor, abused, altered (without the approval of Contractor), or misused by the City or which has not been properly and reasonably maintained by the City. Work on the Project not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective by Owner. Owner shall provide written notice of any warranty item to Contractor before expiration of the System Warranty Period, and if written notice is provided within the System Warranty Period, Contractor's obligation to correct the warranty item to conform to the requirements of the Contract Documents will continue until the correction is made and completed. Contractor shall ensure that no act or omission of Contractor limits or voids any existing warranty on existing Owner equipment or system and shall take reasonable steps to ensure any such existing warranties are preserved in full. Manufacturer warranties which may extend beyond the Contractor warranty, will be transferred to the Owner at project completion.

**11.2.2 Notice and Corrective Work.**

**11.2.2.1** During the System Warranty Period, if any of the work on the Project is found to be not in accordance with the Contract Documents or otherwise defective, Owner shall provide Contractor with written notice thereof.

**11.2.2.2.** With two business days of Contractor's receipt of Owner's notice, Contractor shall provide Owner with a written response, acknowledging receipt of the notice and providing Owner with an action plan to remedy the defect or stating the grounds for denial of the warranty work request. Within two business days of Owner's receipt of Contractor's written response, Owner shall provide Contractor with any objections or responses thereto. If the Parties are unable to agree regarding Owner's warranty work request or a plan of action for the corrective work, the Parties shall proceed in accordance with their dispute resolution options under the Contract Documents and at law. The System Warranty Period shall be extended with respect to Contractor's corrective work performed pursuant to this provision by one year, starting on the date that the corrective work is completed in accordance with the plan of action and approved by Owner.

11.2.2.3 Unless the Parties agree in writing otherwise, Contractor shall perform and complete all corrective work stated in the plan of action no later than 10 days following the date of the plan of action. An expiration of the System Warranty Period during the performance of the correct work shall not release Contractor from its obligation to correct the work so long as Owner provided written notice of the warranty work within the System Warranty Period.

11.2.2.4 These corrective requirements on Contractor shall apply regardless of whether the nonconforming work was observed before or after Completion and whether or not fabricated, installed, or completed. The Contractor shall bear costs of correcting the rejected Work, including additional testing, inspections, and compensation for the Inspector's or the costs and expenses for professional services borne by Owner's made necessary thereby.

11.2.2.5 The Contractor shall remove from the Project Sites portions of the Work which are not in accordance with the requirements of the Contract Documents and are not corrected by the Contractor or accepted by the Owner. If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 2.4. The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Contractor's correction or removal of the nonconforming Work. Nothing in this Section shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents.

11.3 **MANUFACTURER WARRANTIES.** Contractor shall, for the protection of Owner, use commercially reasonable efforts to obtain from all vendors and Subcontractors from which Contractor procures machinery, equipment or materials or services, warranties and guarantees with respect to such machinery, equipment, materials or services, which shall be made available to Owner to the full extent of the terms thereof. At all times during performance of work under the Contract Documents Contractor shall perform the work in a manner consistent with all such warranties and shall not perform any actions that may violate or void such warranties. .

## ARTICLE 12

### MISCELLANEOUS PROVISIONS

12.1 **GOVERNING LAW.** The Agreement shall be governed by the law of the place where the Project is located. Venue shall be where the Project is located.

12.2 **SUCCESSORS AND ASSIGNS.** The Owner and the Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Agreement shall assign the Agreement as a whole or in part without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Agreement.

12.3 **RIGHTS AND REMEDIES; NO WAIVER.** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties,



obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by the Inspector or the Owner shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

**12.4 TESTS AND INSPECTIONS.** Tests, inspections, and approvals of portions of the Work required by the Contract Documents will comply with Title 24, and with all other laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction.

**12.4.1 Independent Testing Laboratory.** When required by the scope of the Project, Owner will select an independent testing laboratory to conduct all required tests and inspections, and, except as specifically provided otherwise in the Contract Documents, pay for all associated costs. Selection of the materials required to be tested shall be made by the laboratory or Owner and not by Contractor.

**12.4.2 Advance Notice to Inspector.** Contractor shall notify the Owner and Inspector a sufficient time but no shorter than two (2) working days in advance of its readiness for required observation or inspection so that the Owner and Inspector may arrange for same. Contractor shall notify the Owner and Inspector a sufficient time in advance of the manufacture of material to be supplied under the Contract Documents that must, by terms of the Contract Documents, be tested in order that the Owner and Inspector may arrange for the testing of the material at the source of supply.

**12.4.3 Testing Off-Site.** Any material shipped by Contractor from the source of supply, prior to having satisfactorily passed such testing and inspection or prior to the receipt of notice from the Inspector that such testing and inspection will not be required, shall not be incorporated in the Project.

**12.4.4 Additional Testing or Inspection, and Costs Related Thereto.**

**12.4.4.1** If the Inspector, Owner, or public authority having jurisdiction over the Project determines that any portion of the work on the Project require additional testing, inspection, or approval, the Inspector will, upon Owner's written authorization, arrange for such additional testing, inspection, or approval. Owner shall bear such costs except in paragraph 12.4.4.2, below.

**12.4.4.2** If the testing or inspection of work on the Project reveal that the work does not comply with the Contract Documents, Contractor shall bear all costs arising from such failure, including those of re-testing, re-inspection, approval, or re-approval, including, but not limited to, compensation for services and expenses of the Inspector, testing laboratory, and any other professionals or entities retained by Owner. Any such costs shall be paid for by Owner, and Owner shall then invoice to Contractor and Contractor shall make payment thereof within 30 days after Contractor receives the invoice; if Contractor fails to do so, Owner shall have the right to withhold the amount from any payment due or to be due to Contractor under the Agreement.

**12.4.5 Costs for Premature Test.** If Contractor requests any test or inspection for any portion of the Project and that portion is not ready for the inspection, Owner shall have the right to invoice Contractor for all costs and expenses relating to the testing or inspection, including, but not limited to, compensation for services and expenses of the Inspector, testing laboratory, and any other professionals or entities retained by Owner. Any such costs shall be paid for by Owner, and Owner shall then invoice to Contractor and Contractor shall make payment thereof within 30 days after Contractor receives the invoice; if

Contractor fails to do so, Owner shall have the right to withhold the amount from any payment due or to be due to Contractor under the Contract.

**12.4.6 Tests and Inspections Not to Delay Work.** Tests and inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the work on the Project.

**12.5 TRENCH EXCAVATION.** Pursuant to Labor Code section 6705, if the Contract Sum exceeds \$25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, the Contractor shall, in advance of excavation, submit to the Owner or a registered civil or structural engineer employed by the Owner a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the Shoring System Standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer, but in no case shall such plan be less effective than that required by the Construction Safety Orders. Pursuant to Labor Code section 6705, nothing in this Article shall impose tort liability upon the Owner or any of its employees.

**12.6 DEBARMENT.** Pursuant to Public Contract Code section 6109, no contractor or subcontractor may perform work on a public works project if ineligible to perform work on the project pursuant to sections 1777.1 or 1777.7 of the Labor Code.

**12.7 ASSIGNMENT OF ANTITRUST CLAIMS.** Pursuant to Government Code section 4552, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or Subcontractor offers and agrees to assign to the Owner all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act, (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 [commencing with § 16700] of Part 2 of Division 7 of the Bus. & Prof. Code), arising from the purchase of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties.

**12.8 AUDIT.** Contractor's Agreement books, records, and files shall be subject to audit and examination under Government Code section 8546.7 and any amendments thereto.

**12.9 STORM WATER DISCHARGE COMPLIANCE.** As applicable, the Contractor shall be required to comply with the State Water Resources Control Board (State Water Board) National Pollutant Discharge Elimination System ("NPDES"), General Permit No. CAS000004 as it may be amended. Contractor shall comply with the lawful requirements of the Owner and all applicable municipalities and local agencies regarding trash and discharges to separate storm drain systems or watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs. Contractor shall fully familiarize itself with the Permit. Failure to comply with the Permit is a violation of federal and state law. Contractor hereby agrees to indemnify and hold harmless the Owner, its officials, officers, agents, employees and authorized volunteers from and against any and all Notices of Violation ("NOV"), claims, demands, losses or liabilities of any kind or nature which the Owner, its officials, officers, agents, employees and authorized volunteers may sustain or incur for Contractor's noncompliance with the Permit, except for liability resulting from the sole established negligence or willful misconduct of the Owner, its officials, officers, agents, employees or authorized volunteers.

## ARTICLE 13

### TERMINATION OR SUSPENSION OF THE AGREEMENT

**13.1 TERMINATION BY THE OWNER FOR CAUSE.** The Owner may terminate the Agreement if the Contractor: (A) refuses or fails to supply enough properly skilled workers or proper materials; (B) fails to make payment to Subcontractors for materials or labor in accordance with Public Contract Code section 10262 or Business and Professions Code section 7108.5, as applicable; (C) disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction; or (D) otherwise is in substantial breach of a provision of the Contract Documents.

When any of the above reasons exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, written notice of seven (7) days, terminate the Contract and may, subject to any prior rights of the surety, (A) take possession of the site and of all material, equipment, tools, and construction equipment and machinery thereon owned by the Contractor, (B) accept assignment of subcontracts, and (C) complete the Work by whatever reasonable method the Owner may deem expedient.

If the unpaid balance of the Contract Sum exceeds costs of completing the Work, including compensation for professional services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This payment obligation shall survive completion of the Agreement.

**13.2 SUSPENSION OR TERMINATION BY THE OWNER FOR CONVENIENCE.** The Owner may, without cause, order the Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the Owner may determine. An adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance caused by suspension, delay, or interruption. No adjustment shall be made to the extent (A) that performance is, was, or would have been so suspended, delayed, or interrupted by another cause for which the Contractor is responsible; or (B) that an equitable adjustment is made or denied under another provision of this Agreement. Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

The Owner may, at any time, terminate the Agreement for the Owner's convenience and without cause upon ten (10) days written notice. Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall (1) cease operations as directed by the Owner in the notice; (2) take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and (3) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders. In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work performed prior to the date of effective date of termination.

**13.3 TERMINATION BY CONTRACTOR.** Contractor may not terminate for convenience. Contractor may only terminate for cause if the Work is stopped by others for a period of one hundred eighty (180) consecutive days through no act or fault of the Contractor, a Subcontractor of any tier, their agents or employees, or any other persons performing portions of the Work for whom the Contractor is contractually responsible, and the Work was stopped by others for one of the following reasons: (A)

Issuance of an order of a court or other public authority having jurisdiction which requires Owner to stop all Work; or (B) an act of government, such as a declaration of national emergency, making material unavailable which requires Owner to stop all Work. If such grounds exist, the Contractor may serve written notice of such belief on Owner and demand a meet-and-confer conference to negotiate a resolution in good faith within twenty (20) days of receipt of such notice. If such conference does not lead to resolution and Contractor believes the grounds for termination still exist, Contractor may terminate the contract and recover from the Owner payment for Work executed and for reasonable verified costs with respect to materials, equipment, tools, construction equipment, and machinery, including reasonable overhead, profit, and damages for the Work executed, but excluding overhead (field and home office) and profit for (i) Work not performed and (ii) the period of time that the Work was stopped.

#### **13.4 NOT A WAIVER**

Any suspension or termination by Owner for convenience or cause under this Article 13 shall not act as a waiver of any claims by Owner against Contractor or others for damages based on breach of contract, negligence or other grounds.

#### **13.5 EARLY TERMINATION**

Notwithstanding any provision herein to the contrary, if for any fiscal year of this Contract the governing body of the Owner fails to appropriate or allocate funds for future periodic payments under the Contract after exercising reasonable efforts to do so, the Owner may upon thirty (30) days' notice, order work on the Project to cease. The Owner will remain obligated to pay for the work already performed but shall not be obligated to pay the balance remaining unpaid beyond the fiscal period for which funds have been appropriated or allocated and for which the work has not been done.

**ATTACHMENT E1  
TO ENERGY SERVICES AGREEMENT**

**PAYMENT BOND**

**PAYMENT BOND**

**KNOW ALL MEN BY THESE PRESENTS that**

WHEREAS, the \_\_\_\_\_ (hereinafter designated as the "Owner"), by action taken or a resolution passed \_\_\_\_\_, 20\_\_\_\_ has awarded to \_\_\_\_\_ hereinafter designated as the "Principal," a contract for the work described as follows: \_\_\_\_\_ (the "Project"); and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and \_\_\_\_\_ as Surety, are held and firmly bound unto the Owner in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) lawful money of the United States of America, 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.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions 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 amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the Owner in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or Owner and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil

Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed unoriginal thereof, have been duly executed by the Principal and Surety above named, on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

(Corporate Seal of Principal,  
if corporation)

\_\_\_\_\_  
Principal (Property Name of Contractor)

By \_\_\_\_\_  
(Signature of Contractor)

(Seal of Surety)

\_\_\_\_\_  
Surety

By \_\_\_\_\_  
Attorney in Fact

(Attached Attorney-In-Fact  
Certificate and Required  
Acknowledgements)

\*Note: Appropriate Notarial Acknowledgments of Execution by Contractor and surety and a power of  
Attorney  
MUST BE ATTACHED

**ATTACHMENT E2**  
**TO ENERGY SERVICES AGREEMENT**  
**PERFORMANCE BOND**



## **PERFORMANCE BOND**

### **KNOW ALL PERSONS BY THESE PRESENTS:**

THAT WHEREAS, \_\_\_\_\_ (hereinafter referred to as "Owner") has awarded to \_\_\_\_\_, (hereinafter referred to as the "Contractor") \_\_\_\_\_ an agreement for \_\_\_\_\_ (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated \_\_\_\_\_, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, \_\_\_\_\_, the undersigned Contractor and \_\_\_\_\_ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the Owner in the sum of \_\_\_\_\_ DOLLARS, (\$ \_\_\_\_\_), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, 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 Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless the Owner, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above performance obligation shall hold good for a period of one (1) year after the acceptance of the work by Owner, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the Owner from loss or damage resulting from or caused by defective materials or faulty workmanship the above obligation in penal sum thereof shall remain in full force and effect. However, anything in this paragraph to the contrary notwithstanding, the obligations of Surety hereunder shall continue so long as any obligation of Contractor remains under the Contract or at law. Nothing herein shall limit the Owner's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by Owner in enforcing such obligation.

Whenever Contractor shall be, and is declared by the Owner to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the Owner's option:

- (1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
- (2) Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the Owner, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the Owner under the Contract and any modification thereto, less any amount previously paid by the Owner to the Contractor and any other set offs pursuant to the Contract Documents.
- (3) Permit the Owner to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the Owner under the Contract and any modification thereto, less any amount previously paid by the Owner to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the Owner may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the Owner, when declaring the Contractor in default, notifies Surety of the Owner's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations 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 Documents or to the Project.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
CONTRACTOR/PRINCIPAL

\_\_\_\_\_  
Name

By \_\_\_\_\_

SURETY:

By: \_\_\_\_\_  
Attorney-In-Fact

The rate of premium on this bond is \_\_\_\_\_ per thousand. The total amount of premium charges, \$ \_\_\_\_\_.  
(The above must be filled in by corporate attorney.)

**THIS IS A REQUIRED FORM**

Any claims under this bond may be addressed to:

(Name and Address of Surety) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(Name and Address of Agent or Representative for service of process in California, if different from above) \_\_\_\_\_  
\_\_\_\_\_

(Telephone number of Surety and Agent or Representative for service of process in California) \_\_\_\_\_  
\_\_\_\_\_

**ATTACHMENT E3  
TO ENERGY SERVICES AGREEMENT**

**SUBCONTRACTOR LISTING FORM**

In compliance with the Subletting and Subcontracting Fair Practices Act of the Public Contract Code of the State of California, the contractor shall set forth below: (a) the name and the location of the place of business, (b) the DIR registration number and (c) the contractor's license class and number, and (d) the portion of the work which will be done by each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work in an amount in excess of one-half of one percent (1/2%) of the Contractor's Total Price. Contractor shall be required to complete and provide this form to the Owner at least 15 working days prior to start of on-site work. Where subcontractors are not yet selected, "TBD" will be denoted under name. Upon selection, the information required will be provided to the Owner.

If no subcontractor is specified, for a portion of the work, or if more than one subcontractor is specified for the same portion of Work, to be performed under the Contract in excess of one-half of one percent (1/2%) of the Contractor's Total Price, then the Contractor shall be deemed to have agreed that it is fully qualified to perform that Work, and that it shall perform that portion itself.

Portion of Work	Subcontractor	Location of Business	License Class and Number	DIR Registration Number
	TO BE COMPLETED PRIOR TO COMMENCEMENT OF WORK AT THE SITES			



Signature \_\_\_\_\_

Name and Title \_\_\_\_\_

Dated \_\_\_\_\_

# ATTACHMENT “F”

## Project Schedule

### Phase 1:

Fourteen (14) weeks from Notice to Proceed.

### Phase 2:

To be added by written amendment to this Agreement executed by Owner and Contractor.

## ATTACHMENT "G"

### Project Owner Requirements

The Project Owner Requirements identified herein may be altered by Owner from time to time by mutual agreement between the parties. Contractor shall not unreasonably withhold its approval to alter the Project Owner Requirements.

#### Phase 1:

Heating and Cooling study on all facilities

City Irrigation systems and water conservation measures

All sustainability options for all city facilities

#### Phase 2:

To be added by written amendment to this Agreement executed by Owner and Contractor.



END



# AGENDA REPORT

**TO:** HONORABLE MAYOR AND COUNCIL MEMBERS

**FROM:** Reina J. Schwartz, City Manager

**DATE:** October 18, 2022

**SUBJECT:** Adopt a Resolution Establishing a Community Financial Sustainability Committee

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## **RECOMMENDATION**

It is recommended that the City Council adopt a resolution establishing a Community Financial Sustainability Committee.

## **BACKGROUND**

At the August 16, 2022 City Council meeting, Mayor Cloven requested that staff bring back to the Council for discussion consideration of creating a community committee on financial sustainability to increase engagement and information around City financial matters. At the October 4, 2022 City Council meeting, the Council directed that a resolution be brought back to the Council establishing a community financial sustainability committee.

## **DISCUSSION**

In the Spring of 2022, the City Council discussed the City's long-term financial picture and considered whether or not to place a tax measure on the November 2022 ballot. As part of those discussions, the City engaged a research firm to conduct a survey of the community regarding financial and quality of life issues. The results of the survey indicated that the community was generally not aware of the fiscal challenges facing the City and was not at that time supportive of a potential tax measure. The finding regarding the level of information the community has regarding the City's fiscal condition was significant and points to the potential benefit of having a community financial sustainability committee.

The Resolution before the City Council this evening would establish a Community Financial Sustainability Committee with the following characteristics:

1. **Membership:** The Committee shall include five Clayton residents as voting members, appointed by the City Council. All members shall possess a background in finance, accounting auditing or related field. Membership shall include at a minimum:
  - a. One member with experience in governmental accounting
  - b. One member with experience in governmental finance and/or budgeting
  - c. One member with experience in auditing

2. **Appointment Process:** The Council Budget & Audit Standing Committee will be responsible for screening applications and interviewing candidates for the Committee. The Budget & Audit Committee will make recommendations on appointment to the full City Council. Appointment will be by a majority of the full City Council.
3. **Term of Service:** The term of service for each member shall generally be two years. The initial term of some members may be less or more than two years so that the expiration dates are staggered.
4. **Compensation:** Members of the Committee will receive no compensation for their service.
5. **Meetings:** All meetings of the Committee are open to the public. The Committee shall determine the meeting schedule provided that the Committee holds at least four meetings per year. The Committee shall comply with state law regarding the noticing and conduct of public meetings.
6. **Quorum:** Three members of the Committee constitute a quorum. A majority vote of a quorum is required for the Committee to take any action, including approval of a recommendation to the City Council.
7. **Mission Statement:** The Committee shall act in an advisory capacity to the City Manager and City Council and shall make recommendations on the annual budget and financial matters related to the City's operation but shall not have any direct spending or operational authority.
8. **Duties of the Committee:**
  - a. Review the City's proposed annual budget and provide recommendations to the City Manager, Budget & Audit Subcommittee and the City Council.
  - b. At the request of the City Council, have a representative attend other meetings such as the City Council's annual goal-setting meeting.
  - c. Select at least one and no more than two Committee members to attend City Council Budget & Audit Subcommittee meetings to represent the Community Committee.
  - d. Make recommendations to the Budget & Audit Subcommittee and City Council on financial matters related to City operations including but not limited to:
    - i. Each year, to the extent that the City's external audit identifies available General Fund surplus in the prior budget year, make recommendations regarding potential uses or reservations of those funds;
    - ii. On a semi-annual basis (typically during the annual budget process and mid-year budget process), review the City's current financial circumstances and capital needs to make recommendations regarding expenditures and revenues.
  - e. Identify areas for additional evaluation for financial savings or revenue generation.
  - f. Communicate with the community on City financial matters.

Attached to this report is also a proposed Committee Application form which would be the first screening tool in selection of the Committee members.

### **FISCAL IMPACTS**

There could be a range of potential costs associated with a community financial sustainability committee. Staff support to the Committee will not have a hard financial cost, but will absorb staff time leaving it unavailable for other priorities. If the Committee wished to produce any communication materials, there could be printing or other production costs. For example, printing for an 11"x17" newsletter could be \$1.75 to \$3.00 per copy. Digital distribution would not incur the same costs. Ultimately the most significant cost related to the Committee would be any staff time in support of their work.

### **Attachments:**

Resolution

Proposed Committee Application

## **RESOLUTION NO. ##-2022**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLAYTON ESTABLISHING A COMMUNITY FINANCIAL SUSTAINABILITY COMMITTEE**

#### **THE CITY COUNCIL City of Clayton, California**

**WHEREAS**, the City of Clayton like many other municipalities faces financial pressures;

**WHEREAS**, polling completed in the Spring of 2022 indicates that the Clayton community is very satisfied with the quality of life in Clayton;

**WHEREAS**, the Clayton community is generally not aware of the financial challenges facing the City; and

**WHEREAS**, increased engagement with the community around financial matters will benefit the City and the community.

#### **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CLAYTON, CALIFORNIA:**

- 1. Membership:** The Committee shall include five Clayton residents as voting members, appointed by the City Council. All members shall possess a background in finance, accounting auditing or related field. Membership shall include at a minimum:
  - a. One member with experience in governmental accounting
  - b. One member with experience in governmental finance and/or budgeting
  - c. One member with experience in auditing
- 2. Appointment Process:** The Council Budget & Audit Standing Committee will be responsible for screening applications and interviewing candidates for the Committee. The Budget & Audit Committee will make recommendations on appointment to the full City Council. Appointment will be by a majority of the full City Council.
- 3. Term of Service:** The term of service for each member shall generally be two years. The initial term of some members may be less or more than two years so that the expiration dates are staggered.
- 4. Compensation:** Members of the Committee will receive no compensation for their service.
- 5. Meetings:** All meetings of the Committee are open to the public. The Committee shall determine the meeting schedule provided that the Committee holds at least four meetings per year. The Committee shall comply with state law regarding the noticing and conduct of public meetings.

**6. Quorum:** Three members of the Committee constitute a quorum. A majority vote of a quorum is required for the Committee to take any action, including approval of a recommendation to the City Council.

**7. Mission Statement:** The Committee shall act in an advisory capacity to the City Manager and City Council and shall make recommendations on the annual budget and financial matters related to the City's operation but shall not have any direct spending or operational authority.

**8. Duties of the Committee:**

- a. Review the City's proposed annual budget and provide recommendations to the City Manager, Budget & Audit Subcommittee and the City Council.
- b. At the request of the City Council, have a representative attend other meetings such as the City Council's annual goal-setting meeting.
- c. Select at least one and no more than two Committee members to attend City Council Budget & Audit Subcommittee meetings to represent the Community Committee.
- d. Make recommendations to the Budget & Audit Subcommittee and City Council on financial matters related to City operations including but not limited to:
  - i. Each year, to the extent that the City's external audit identifies available General Fund surplus in the prior budget year, make recommendations regarding potential uses or reservations of those funds;
  - ii. On a semi-annual basis (typically during the annual budget process and mid-year budget process), review the City's current financial circumstances and capital needs to make recommendations regarding expenditures and revenues.
- e. Identify areas for additional evaluation for financial savings or revenue generation.
- f. Communicate with the community on City financial matters.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Clayton, California, at a regular public meeting thereof held on the 18<sup>th</sup> day of October 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

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Peter Cloven, Mayor

ATTEST:

---

Janet Calderon, City Clerk



**CITY OF CLAYTON**

**COMMUNITY FINANCIAL SUSTAINABILITY COMMITTEE APPLICATION**

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Home address: \_\_\_\_\_ Contact phone: \_\_\_\_\_

Length of residence in Clayton: \_\_\_\_\_

Email address: \_\_\_\_\_

Present employer: \_\_\_\_\_

Occupation: \_\_\_\_\_

Education and special training. Specifically identify your background and experience in governmental finance and accounting, auditing, financial management:

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Please provide an example of how you have addressed a complex financial challenge in your work. Please provide as many specifics as possible, particularly to actions or decisions for which you were personally responsible.

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Since this is a new Committee, what do you think are the three most important goals for the Committee to achieve in its first year?

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Please describe what you believe the top financial challenge is facing the City of Clayton. What research have you done in reaching this conclusion?

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List three references with phone numbers:

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Please attach a resume or other summary of your relevant financial experience.

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Signature

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Date