

**PV INSTALLATION CONTRACT BETWEEN  
MOUNTAIN VIEW-LOS ALTOS HIGH SCHOOL DISTRICT  
AND GENERAL LIGHTING SERVICE, INC. FOR THE  
MOUNTAIN VIEW HIGH SCHOOL & LOS ALTOS HIGH SCHOOL NEW  
CLASSROOMS PV INSTALLATION PROJECT**

This PV Installation Contract (“Contract”) is made and entered into this 25<sup>th</sup> day of January 2021, by and between the by and between the **MOUNTAIN VIEW-LOS ALTOS HIGH SCHOOL DISTRICT** (the “District”), and **General Lighting Service, Inc.** (the “PV Installation Entity”), for the purpose of constructing the **MOUNTAIN VIEW HIGH SCHOOL AND LOS ALTOS HIGH SCHOOL NEW CLASSROOMS PV INSTALLATION** (the “Project”). The District and the PV Installation Entity are herein collectively referred to as the “Parties.”

**RECITALS**

- A. District desires to contract for construction of the Project, as set forth in this Contract.
- B. District conducted a Request for Proposals process in accordance with *Government Code section 4217.10 et seq.* to solicit qualified PV Installation Entities.
- C. The PV Installation Entity submitted a Proposal for the Project, which was selected as providing the best-value for the Project and is prepared to enter into this Contract.

In consideration of the above recitals and the mutual covenants and conditions set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby set forth their mutual covenants and understandings as follows:

**TERMS**

**1. Incorporation of Documents.**

This Contract includes and hereby incorporates in full by reference the following Contract Documents, including all exhibits, drawings, specifications and documents therein, and attachments and addenda thereto:

- (a) Request for Proposal (“RFP”) and all addenda, attachments and appendices to RFP
- (b) PV Installation Entity Proposal in response to RFP
- (c) Contract
- (d) DSA Approved Construction Documents (Increment 2), and DSA Approved Increment 1 Plans for Reference
- (e) Attachment 1 to this Contract – General Conditions
- (f) Attachment 2 to this Contract – Performance Bond
- (g) Attachment 3 to this Contract – Payment Bond
- (h) Attachment 4 to this Contract – Required Certifications and Forms



- (b) The PV Installation Entity agrees that liquidated damages will apply in the amount of **\$250** for each and every calendar day beyond the GCD that Final Completion of the Project has not been achieved. The liquidated damages shall be recoverable by the District in addition to any amounts owed under subpart (c) below.

**7. The District's Basic Obligation.**

The District agrees to engage and do hereby engage the PV Installation Entity as an independent contractor to furnish all materials and to perform all work described in the Scope of Work for the Project according to the terms and conditions herein contained for the GMP set forth above. Except as otherwise provided in the Contract, the District shall pay to the PV Installation Entity, as full consideration for the satisfactory performance by the PV Installation Entity of the services and obligations required by this Contract, the above referenced compensation in accordance with compensation provisions set forth in the Contract.

**8. District's Representative.**

The District hereby designates **Patrick Maravelias**, as the person to act as its representative for the performance of this Contract ("District's Representative"). The District's Representative shall be authorized to act as liaison between District and the PV Installation Entity in the administration of this Contract and all work on the Project. The District's Representative shall have the power to act on behalf of the District for all purposes under this Contract. District may designate new and/or different individuals to act as District's Representative from time to time upon written notice to the PV Installation Entity.

**9. PV Installation Entity's Representative.**

The PV Installation Entity hereby designates **Christian Cusella**, or his or her designee, to act as its representative for the performance of this Contract ("PV Installation Entity's Representative"). PV Installation Entity's Representative shall have full authority to represent and act on behalf of the PV Installation Entity for all purposes under this Contract. The PV Installation Entity's Representative shall supervise and direct all work on the Project, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the work pursuant to this Contract.

**10. PV Installation Entity's Licensing.**

The PV Installation Entity shall have only appropriately licensed contractors performing work on the Project as required by the Business and Professions Code. The PV Installation Entity (**License No. 466869**) shall act as the licensed contractor for the Project. PV Installation Entity shall perform all services required under the Contract Documents in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform such services in the same discipline in the State of California, and the PV Installation entity shall be fully responsible to the District for any damages and/or delays to the Project as specified in the indemnification provisions of the Contract.

**11. PV Installation Entity's Indemnification.**

As specified by Section 3.33 of the General Conditions, the PV Installation Entity agrees to protect, save, defend and hold harmless, to the greatest extent provided by law, the District, its governing board and each member thereof, their officers, agents and employees from any and all claims, liabilities, reasonable expenses or damages of any nature, including reasonable attorney's fees, for injury or death of any person, or damage to property, or interference with the use of property arising out of the negligent acts, errors or omission, or willful misconduct by the PV Installation Entity, the PV Installation Entity's agents, officers, employees, sub-consultants, or independent consultants hired by the PV Installation Entity to provide services pursuant to this Contract. The only exception to the PV Installation Entity's responsibility to protect, save, defend and hold harmless the District is where a claim, liability, expense or damage occurs due to the sole negligence, willful misconduct or active negligence of the District. This hold harmless provision shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable. Insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the PV Installation Entity. Any proposed changes to this indemnification clause must be clearly marked and submitted with the PV Installation Entity's proposal. Failure to provide the proposed changes will preclude the PV Installation Entity, if selected, from negotiating changes with respect to indemnification. Notwithstanding the foregoing, to the extent PV Installation Entity's Scope of Work is subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the PV Installation Entity.

In claims against any person or entity indemnified under this provision, that are made by an employee of the PV Installation Entity or any Subcontractor, a person indirectly employed by the PV Installation Entity or any Subcontractor, or anyone for whose acts the PV Installation Entity or any Subcontractor may be liable, the indemnification obligation under this provision shall not be limited by any limitation on amount or type of damages, compensation, or benefits payable by or for PV Installation Entity or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts or any other insurance limitations. The indemnification obligations under this provision shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.

Joint and several liability shall apply to the PV Installation Entity. In the event the PV Installation Entity and one or more than one other party is connected with an accident or occurrence covered by this indemnification, then all such parties shall be jointly and severally responsible to each of the Indemnitees for indemnification, and the ultimate responsibility among such indemnifying parties for the loss and expense of any such indemnification shall be resolved without jeopardy to any indemnitee listed herein.

**12. Prevailing Wages.**

The PV Installation Entity shall comply with the prevailing wage provisions of the California Labor Code and the prevailing wage rate determinations of the Department of Industrial Relations. These rates are on file at the District offices and copies will be provided to the PV Installation Entity on request. A copy of these rates shall be posted at the job site. It shall be

mandatory upon the PV Installation Entity and all subcontractors to comply with all Labor Code provisions, which include but are not limited to prevailing wages, employment of apprentices, hours of labor, and debarment of the PV Installation Entity's and subcontractor.

**13. Attorneys' Fees.**

If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Contract, the prevailing party in such action shall be entitled to have and recover from the losing party reasonable attorneys' fees and all other costs of such action.

**14. Successors.**

The parties do for themselves, their heirs, executors, administrators, successors, and assigns agree to the full performance of all of the provisions contained in this Contract. The PV Installation Entity may not either voluntarily or by action of law, assign any obligation assumed by the PV Installation Entity hereunder without the prior written consent of the District.

**15. Notices.**

All notices hereunder and communications regarding interpretation of the terms of the Agreement or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

**PV INSTALLATION ENTITY**

General Lighting Service, Inc.  
306 Mathew Street  
Santa Clara, CA 95050

Attn: Christian Cusella

**DISTRICT**

MOUNTAIN VIEW-LOS ALTOS HIGH SCHOOL DISTRICT  
1299 Bryant Ave, Mountain View, CA 94040  
Attn: Michael Mathiesen, Associate Superintendent, Business Services

Any notice so given shall be considered received by the other party three (3) days after deposit in the U.S. Mail, first class postage prepaid, addressed to the party at the above address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

**16. Attachments.**

All Attachments referenced in this Contract are incorporated into the Contract by this reference.

**17. Recitals.**

The above referenced recitals are true and correct and are incorporated into this Contract by this reference.

**18. Authority of Signatories.**

The persons executing this Contract on behalf of their respective Parties represent and warrant that they have the authority to do so under law and from their respective Parties.

**ON BEHALF OF THE  
PV INSTALLATION ENTITY:**

GENERAL LIGHTING SERVICE, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Federal Tax Identification No.: \_\_\_\_\_

**ON BEHALF OF THE DISTRICT:**

MOUNTAIN VIEW-LOS ALTOS HIGH  
SCHOOL DISTRICT

By: \_\_\_\_\_  
Name: Michael Mathiesen \_\_\_\_\_  
Title: Associate Superintendent, Business Services

**ATTACHMENT 1**  
**GENERAL CONDITIONS**

**GENERAL CONDITIONS  
PV INSTALLATION CONTRACT BETWEEN  
MOUNTAIN VIEW LOS ALTOS HIGH SCHOOL DISTRICT  
AND GENERAL LIGHTING SERVICE, INC. FOR THE  
MOUNTAIN VIEW HIGH SCHOOL AND LOS ALTOS HIGH SCHOOL NEW CLASSROOMS PV  
INSTALLATION CONTRACT**

**ARTICLE 1 GENERAL PROVISIONS**

**1.1 BASIC DEFINITIONS**

1.1.1 ACT OF GOD. The term "Act of God" shall include earthquakes in excess of a magnitude of 3.5 on the Richter Scale, tidal waves, floods, unusually severe weather, epidemic, or other severe natural disaster.

1.1.2 APPLICABLE CODE REQUIREMENTS. The term "Applicable Code Requirements" means all laws, statutes, the most recent building codes, ordinances, rules, regulations, and lawful orders of all public authorities having jurisdiction over the District, the PV Installation Entity, any Subcontractor, the Project, the Project site, or the prosecution of the work on the Project.

1.1.3 APPLICATION FOR PAYMENT. The term "Application For Payment" means the submittal from the PV Installation Entity wherein payment for certain portions of the completed work on the Project is requested in accordance with Article 9.

1.1.4 CALIFORNIA SOLAR INITIATIVE. The term "California Solar Initiative" or "CSI" shall mean the rebate made available through the State of California and administered by the Utility, as defined below, which is paid over time on a performance-basis as the completed and interconnected Solar Photovoltaic System, defined below, generates electricity.

1.1.5 CEQA. The term "CEQA" means the California Environmental Quality Act, Public Resources Code Section 21000 et seq. All CEQA compliance documentation prepared for the Project shall be provided to the PV Installation Entity.

1.1.6 CERTIFICATE FOR PAYMENT. The term "Certificate For Payment" means the form signed by the District's Representative attesting to the PV Installation Entity's right to receive payment for certain completed portions of the work on the Project in accordance with Article 9.

1.1.7 CERTIFICATE OF FINAL COMPLETION. See Paragraph 9.8, Final Completion, of the General Conditions.

1.1.8 CERTIFICATE OF SUBSTANTIAL COMPLETION. See Paragraph 9.6, Substantial Completion, of the General Conditions.

1.1.9 CHANGE ORDER. The term "Change Order" means a Contract Document which authorizes, in accordance with Article 7, one or more of the change(s) stated in Subparagraph 7.2.1 and Subparagraph 7.2.2.

1.1.10 CHANGE ORDER REQUEST. The term "Change Order Request" means a proposal for a Change Order submitted by the PV Installation Entity to the District, either at the request of the District, or at the PV Installation Entity's own initiative.



1.1.11 CLAIM. See Paragraph 4.3, Claims, of the General Conditions.

1.1.12 CONSTRUCTION DOCUMENTS. The term "Construction Documents" shall mean the plans and specifications prepared by the Architect of Record for the Project, approved by the District. The Construction Documents shall set forth in detail all items necessary to complete the construction (other than such details customarily provided by others during construction) of the Project in accordance with the Contract Documents (subject to their completion following commencement of the Construction Phase). All amendments and modifications to the Plans and Specifications must be approved by the District in writing.

1.1.13 CONSTRUCTION DOCUMENTS PHASE. The term "Construction Documents Phase" shall mean the second of three phases of the Scope of Work and will commence with the issuance of the approval of the Schematic Design Phase.

1.1.14 CONSTRUCTION PHASE. The term "Construction Phase" shall mean the third phase of the Scope of Work and will commence upon final approval of the plans and specifications by the Division of the State Architect.

1.1.15 CONSTRUCTION WORK. The term "Construction Work" shall mean that portion of the work on the Project consisting of the provision of labor, materials, furnishings, equipment and services in connection with the construction of the Project as set forth in the Contract Documents.

1.1.16 CONTRACT. The term "Contract" means the written agreement between the PV Installation Entity and the District set forth in the Contract Documents.

1.1.17 CONTRACT DOCUMENTS. The "Contract Documents" consist of the following:

1.1.17.1 Request for Proposal ("RFP") and all addenda, attachments and appendices,

1.1.17.2 PV Installation Entity Proposal in response to RFP

1.1.17.3 Contract

1.1.17.4 General Conditions

1.1.17.5 Performance Bond

1.1.17.6 Payment Bond

1.1.17.7 Required Certifications and Forms

1.1.17.7 DSA Approved Construction Drawings and Specifications

1.1.18 CONTRACT SCHEDULE. The term "Contract Schedule" means the graphical representation of a practical plan to complete the work on the Project within the Guaranteed Completion Date as a part of the Master Project Schedule. The Detailed requirements for the Contract Schedule are stated in Article 3.19.

1.1.19 COST BREAKDOWN. See Paragraph 9.1.1., A Cost Breakdown/Schedule of Values for each phase of work shall be submitted by the PV Installation Entity as required by these General Conditions and are incorporated into the Contract Documents by reference.

1.1.20 CRITERIA DOCUMENTS. The term "Criteria Documents" means, but is not limited to, the portions of the Contract Documents which constitute an outline of design requirements, Scope of Work, Project Program, Performance Specifications and schematic drawings.

1.1.21 DAY. The term "day," shall mean calendar day, unless otherwise specifically provided.

1.1.22 DEFECTIVE WORK. The term "Defective Work" means work that is unsatisfactory, faulty, omitted, incomplete, deficient, or does not conform to the requirements of the Contract Documents, directives of the District's Representative, or the requirements of any inspection, reference standard, test, or approval specified in the Contract Documents.

1.1.23 PV INSTALLATION ENTITY. The term "the PV Installation Entity" means the person or firm identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number.

1.1.24 PV INSTALLATION ENTITY REPRESENTATIVE. The PV Installation Entity Representative shall mean the person or firm identified as the primary contact person and representative of the PV Installation Entity as designated in the Contract.

1.1.25 DESIGN MATERIALS. The term "Design Materials" shall mean any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by, or for, the PV Installation Entity: (1) to the District under the Contract Documents or; (2) developed or prepared by or for the PV Installation Entity specifically to discharge its duties under the Contract Documents.

1.1.26 DESIGN PROFESSIONAL. The term "Design Professional" shall mean that person or firm selected as the Architect of Record that is licensed in the State of California.

1.1.27 DISTRICT. The term "District" shall mean the Mountain View Los Altos High School District

1.1.28 DISTRICT'S REPRESENTATIVE. The term "The District's Representative" means the person or firm identified as the PV Installation Entity's primary contact person as designated in the Contract.

1.1.29 DRAWINGS. The term "Drawings" means the graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the work to be done on the Project, generally including plans, elevations, sections, details, schedules, and diagrams prepared as part of the Design Materials. The Drawings are listed in the List of Drawings.

1.1.30 EQUIPMENT MANUFACTURER. The term "Equipment Manufacturer" shall mean any Separate Contractor that fabricates and/or supplies any of the District's provided equipment which is installed in the Project by the PV Installation Entity.

1.1.31 EXCUSABLE DELAY. The term "Excusable Delay" means a delay that meets the requirements of Articles 7 and 8 of these General Conditions, and may entitle the PV Installation Entity to an adjustment of the Guaranteed Completion Date and/or an adjustment to the Guaranteed Maximum Price, as specified in Articles 7 and 8 herein.

1.1.32 EXTRA WORK. The term "Extra Work" means work beyond or in addition to the work required by the Contract Documents, pursuant to Article 7 of the General Conditions.

1.1.33 FIELD ORDER. The term "Field Order" means a directive as described in Article 7 of the General Conditions.

1.1.34 FINAL COMPLETION. The term "Final Completion" means the point at which the work on the Project has been fully completed in accordance with the Contract Documents as determined by the District's Representative pursuant to Paragraph 9.8, Final Completion and Final Payment, of the General Conditions.

1.1.35 GOVERNMENTAL APPROVALS. Term "Governmental Approvals" means those governmental (including agency) actions required to be obtained by the District and necessary for the completion of the Project.

1.1.36 GUARANTEE TO REPAIR PERIOD. See Paragraph 12.2, Correction of Defective Work and Guarantee To Repair Period, of the General Conditions.

1.1.37 GUARANTEED COMPLETION DATE. The term "Guaranteed Completion Date" also referred to as "GCD" herein, shall mean the date by which the PV Installation Entity guarantees that all work described in the Scope of Work shall be completed, as is set forth in Section 7 of the Contract.

1.1.38 GUARANTEED MAXIMUM PRICE. The term "Guaranteed Maximum Price" also referred to as "GMP" herein, shall mean the guaranteed maximum price the District will pay for the completion of all work described in the Scope of Work as is set forth in Section 4 of the Contract and further described in the Cost Proposal attached to the RFP.

1.1.39 HAZARDOUS MATERIALS. The term "Hazardous Materials" means those items identified in Article 3, Paragraph 3.12 hereto.

1.1.40 INEXCUSABLE DELAY. The term "Inexcusable Delay" means any delay other than an Excusable Delay, as described in Articles 7 and 8 of these General Conditions, that does not entitle the PV Installation Entity to an adjustment of the Guaranteed Maximum Price and does not entitle the PV Installation Entity to an adjustment of the Guaranteed Completion Date.

1.1.41 LIQUIDATED DAMAGES. The term "Liquidated Damages" shall mean the penalty due by the PV Installation Entity for each and every calendar day beyond the GCD that Final Completion of the Project has not been achieved as described in the Contract Section 1.4.

1.1.42 LOSSES. The term "Losses" means any and all losses, costs, liabilities, claims, damages, and expenses.

1.1.43 NOTICE TO PROCEED. The term "Notice to Proceed" shall mean the written notice given by the District to the PV Installation Entity advising that the Site is available to the PV Installation Entity and directing the PV Installation Entity to commence work on the Project.

1.1.44 PERFORMANCE CRITERIA. The term "Performance Criteria" shall refer to the total kilowatt hours per year that the Project is expected to generate pursuant to Section 3.29 herein.

1.1.45 PROJECT. The term "Project" means the design and construction of a solar photovoltaic system at a Mountain View Los Altos High School District site as approved and authorized by the District as set forth herein which may be the whole, or a part, and which may include separate design or construction work performed by the District or by Separate Contractors.

1.1.46 PROPOSAL. The term "Proposal" means the proposal submitted by the PV Installation Entity in response to the Request for Proposal for this Project.

1.1.47 RATE SCHEDULE. The term "rate schedule" means the rates for Extra Work as set forth in an Attachment to the Contract.

1.1.48 REQUEST FOR PROPOSAL. The term "Request for Proposal" or "RFP" herein, means the request for proposal issued by the District for the Project and includes all documents, exhibits, attachments, and addenda thereto.

1.1.49 SCHEMATIC DESIGN PHASE. The term "Schematic Design Phase" shall mean the first of three phases of the Scope of Work.

1.1.50 SCOPE OF WORK. The term "Scope of Work" shall mean all the all labor, materials, and services required to be performed or provided by the PV Installation Entity pursuant to the Contract Documents necessary to design, construct, and complete the Project.

1.1.51 SEPARATE CONTRACTOR. The term "Separate Contractor" means a person, or firm, under separate contract with the District performing other work at the Project site which may affect the work performed under the Contract Documents.

1.1.52 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES. See Paragraph 3.17.2, Shop Drawings, Product Data, and Samples, of the General Conditions.

1.1.53 SOLAR PHOTOVOLTAIC SYSTEM. The term "Solar Photovoltaic System" means the solar panels, racking system, mounting hardware, footers, wiring, inverters, conduits, the public interface kiosks, wiring for the public interface kiosks, the monitoring equipment, metering equipment and any and all materials and equipment required to construct a turnkey, operational solar photovoltaic system, interconnected to the grid on a net-metering basis which meets the requirements of the CSI and the DSA as well as any and all applicable laws and performances in accordance with Paragraph 3.29 and the Contract Documents.

1.1.54 SPECIFICATIONS. The term "Specifications" means that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the work on the Project, and performance of related services.

1.1.55 SUBCONTRACTOR. The term "Subcontractor" means any person or firm that has a contract with the PV Installation Entity or with a Subcontractor of the PV Installation Entity to perform a portion of the work on the Project. Unless otherwise specifically provided, the term Subcontractor includes Subcontractors of all tiers.

1.1.56 SUBSTANTIAL COMPLETION. See Paragraph 9.7, Substantial Completion, of the General Conditions.

1.1.57 SUPERINTENDENT. The term "Superintendent" means the person designated by the PV Installation Entity to represent the PV Installation Entity at the Project site, in accordance with Article 3.

1.1.58 TIER. The term "tier" means the contractual level of a Subcontractor or supplier or consultant with respect to the PV Installation Entity. For example, a first tier Subcontractor is under subcontract with the PV Installation Entity, a second tier Subcontractor is under subcontract with a first tier Subcontractor, and so forth.

1.1.59 UTILITY. The term "Utility" shall mean Pacific Gas & Electric, as the local utility through which the

## **1.2 OWNERSHIP AND USE OF CONSTRUCTION DOCUMENTS**

1.2.1 The Construction Documents, and all copies thereof, furnished to, or provided by, the PV Installation Entity are the property of the District. The District and the PV Installation Entity explicitly agree that all materials and documents developed in the performance of this Contract are the property of the District. The District shall have unlimited rights, for the benefit of the District, in all drawings, designs, specifications, notes and any other documentation and other work developed in the performance of this Contract for the Project, including the right to re-use details of the Design on any other the District work at no additional cost to the District. The PV Installation Entity agrees to, and hereby does, grant to the District a royalty free license to all such data that the PV Installation Entity may cover by copyright and to all designs as to which the PV Installation Entity may assert any right or establish any claim to under the patent or copyright laws. The PV Installation Entity, for a period up to five (5) years from the Date of Completion of the Project, agrees to furnish and to provide access to the originals or copies of all such materials immediately upon the written request of the District. Any use or reuse by District of the Construction Documents on any project other than this Project without employing the services of the PV Installation Entity shall be at District's own risk with respect to third parties. If District use or reuse the Construction Documents on any project other than this Project, they shall remove the PV Installation Entity's architect's seal from the Construction Documents and hold harmless PV Installation Entity and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Construction Documents on such other project. PV Installation Entity shall not be responsible or liable for any revisions to the Construction Documents made by any party other than the PV Installation Entity, a party for which the PV Installation Entity is legally responsible or liable, or anyone approved by the PV Installation Entity.

## **1.3 INTERPRETATION OF DOCUMENTS AND ORDER OF PRECEDENCE**

1.3.1 The intent of the Contract Documents is to include all necessary criteria to establish the scope and quality for completion of the work on the Project by the PV Installation Entity. The Contract Documents are complementary and what is required by one shall be as binding as if required by all. Performance by the PV Installation Entity shall be required to the extent consistent with, and reasonably inferable from, the Contract Documents.

1.3.2 In the case of conflict or inconsistency, the following order of precedence shall apply:

1.3.2.1 Change Orders/Modifications

1.3.2.2 Addenda

1.3.2.3 Contract

1.3.2.4 Construction Drawings

1.3.2.5 General Conditions

1.3.3 The District and the PV Installation Entity acknowledge that the Contract Documents may differ in some respect(s) from the other documents included in the PV Installation Proposal Package upon which the PV Installation Entity based its response(s) to Request for Proposal. Prior to the commencement of construction on the Project, the parties shall confirm, in writing, the final form of the Contract Documents that are to be utilized.

1.3.4 Organization of the Specifications into various subdivisions and the arrangement of the Drawings shall not control the PV Installation Entity in dividing portions of the work necessary for the Project among Subcontractors or in establishing the extent of work to be performed by any trade.

1.3.5 Unless otherwise stated in the Contract Documents, technical words and abbreviations contained in the Contract Documents are used in accordance with commonly understood design professional and construction industry meanings; non-technical words and abbreviations are used in accordance with their commonly understood meanings.

1.3.6 The Contract Documents may omit modifying words such as "all" and "any," and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The use of the word "including," when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters, whether or not non limiting language (such as "without limitation," "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.

1.3.7 Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include corporation, partnership, trust, or other legal entity, whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only for reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.

1.3.8 Each and every provision of law required by law to be inserted in the Contract Documents shall be deemed to be inserted herein, and the Contract Documents 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 Contract shall be amended in writing to make such insertion or correction.

1.3.9 Before commencing any work on the Project, the PV Installation Entity shall check and review the plans and specifications and Contract Documents for such portion for conformance and compliance with all laws, ordinances, codes, rules and regulations of all governmental authorities and public utilities affecting the construction and operation of the Project, including but not limited to fingerprinting of employees, and Division of the State Architect standards, all quasi-governmental and other regulations affecting the construction and operation of the Project, and other special requirements, if any, designated in the Contract. In the event the PV Installation Entity observes any violation of any law, ordinance, code, rule or regulation, or inconsistency with any such restrictions or special requirements of the Contract, the PV Installation Entity shall immediately notify the District's Representative in writing of same and shall cause to be corrected any such violation or inconsistency in the manner provided hereunder. The PV Installation Entity shall be solely liable for any such violation, inconsistency or special requirement, if PV Installation Entity fails to conduct such review or notification to the District.

1.3.10 Before commencing any work on the Project, the PV Installation Entity shall carefully examine all Specifications, Contract, Contract Documents and other information given to the PV Installation

Entity as to Project requirements. The PV Installation Entity shall immediately notify the District's Representative of any perceived or alleged error, inconsistency, ambiguity, or lack of detail or explanation in such documents in writing. Neither the PV Installation Entity nor any Subcontractor shall take advantage of any apparent error or omission which may be found in the Specifications, the Contract, Contract Documents or other information given to PV Installation Entity. If the PV Installation Entity or its Subcontractors, material or equipment suppliers, or any of their officers, agents, and employees performs, permits, or causes the performance of any work under the Contract, which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, the PV Installation Entity shall bear any and all costs arising there from including, without limitation, the cost of correction thereof without increase or adjustment to the Guaranteed Maximum Price or the Guaranteed Completion Date. In no case shall any Subcontractor proceed with work if uncertain without the PV Installation Entity's written direction and/or approval.

## **ARTICLE 2 DISTRICT**

### **2.1 FEE AND PERMIT REQUIREMENTS**

2.1.1 Cost for on-site inspection by a DSA-approved inspector shall be borne by the District. Except as expressly noted in the Contract Documents, the District is not subject to any requirement to obtain or pay for local building permits, inspection fees, plan checking fees, or certain utility fees. Except as otherwise provided in the Contract Documents, the PV Installation Entity will identify, prepare and submit on behalf of the District the applications for the following necessary permits, easements, fees and/or other government approvals in connection with the work on the Project, including but not limited to, interconnection agreements and net-metering applications with the Utility. The District will pay for such permits and fees which the PV Installation Entity shall be responsible for obtaining on the District's behalf

2.1.1.1 DSA plan check and/or approval fees

2.1.1.2 California Department of Education plan check and/or approval fees

2.1.1.3 Electrical connection and service fees

2.1.1.4 Other connection or service fees expressly authorized by the District

2.1.2 The PV Installation Entity will be furnished, free of charge, two copies of the Contract Documents.

### **2.2 ACCESS TO PROJECT SITE**

2.2.1 The District will provide, as reasonably required by the work on the Project, but in no event later than the date designated in the Notice to Proceed, access to the lands and facilities upon which the Construction Work is to be performed, including such access to other lands and facilities designated in the Contract Documents for use by the PV Installation Entity, subject to the hours of work specified in the RFP and as may be otherwise be specified by the District.

2.2.2 As specified in the RFP, the PV Installation Entity and all of its Tier Subcontractors shall comply with the applicable requirements of Education Code Sections 45125.1 and 45125.2 with respect to fingerprinting of employees who may have contact with the District's students. In no event shall any employees of PV Installation Entity and all Tier Subcontractors come into contact with the District's students before complying with the fingerprinting requirements of Education Code sections 45125.1 and 45125.2.

## **2.3 THE DISTRICT'S RIGHT TO STOP WORK ON THE PROJECT**

2.3.1 If the PV Installation Entity fails to correct Defective Work as required by Paragraph 12.2 or fails to perform the Work in accordance with the Contract Documents, the District or the District's Representative may direct the PV Installation Entity to stop work on the Project, or any portion thereof, until the cause for such order has been eliminated by the PV Installation Entity. The PV Installation Entity shall not be entitled to any adjustment of Guaranteed Completion Date or the Guaranteed Maximum Price as a result of any such order. The District and the District's Representative have no duty or responsibility to the PV Installation Entity or any other party to exercise the right to stop work on the Project.

## **2.4 THE DISTRICT'S RIGHT TO CARRY OUT WORK ON THE PROJECT**

2.4.1 If the PV Installation Entity fails to carry out the Scope of Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools, and services, with respect to either the Schematic Design or Construction phases, to maintain the Contract Schedule, or otherwise fails to comply with any material term of the Contract Documents, and fails within two (2) days after receipt of notice from the District to promptly commence and thereafter diligently continue to completion the correction of such failure, the District may, without prejudice to other remedies the District may have, correct such failure at the PV Installation Entity's expense. In such case, the District will be entitled to deduct from payments then or thereafter due the PV Installation Entity the cost of correcting such failure, including compensation for the additional services and expenses of the District's Representative and the District's consultants made necessary thereby. If payments then or thereafter due the PV Installation Entity are not sufficient to cover such amounts, the PV Installation Entity shall pay the additional amount to the District.

## **2.5 THE DISTRICT'S RIGHT TO REPLACE THE DISTRICT'S REPRESENTATIVE**

2.5.1 The District may at any time and from time to time, without prior notice to or approval of the PV Installation Entity, replace the District's Representative with a new the District's Representative. Upon receipt of notice from the District informing the PV Installation Entity of such replacement and identifying the new the District's Representative, the PV Installation Entity shall recognize such person or firm as the District's Representative for all purposes under the Contract Documents.

## **ARTICLE 3 PV INSTALLATION ENTITY**

### **3.1 PV INSTALLATION ENTITY RESPONSIBILITY; INDEPENDENT CONTRACTOR**

3.1.1 The PV Installation Entity shall be responsible to the District for acts and omissions of the PV Installation Entity's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of work on the Project under direct or indirect contract with the PV Installation Entity or any of its Subcontractors. The District retains the PV Installation Entity on an independent contractor basis. The PV Installation Entity is not an employee, agent or representative of the District. The PV Installation Entity represents that it is fully experienced and properly qualified to perform the class of work provided for in this Contract and that it is properly licensed, equipped, organized, and financed to perform work on the Project. The PV Installation Entity shall maintain complete control over its employees and its subcontractors and shall pay all wages, salaries and other amounts due such personnel in connection with their performance as required by law. The PV Installation Entity shall be responsible for all reports and obligations respecting such personnel, including but not limited to, social security taxes, income tax withholdings, unemployment insurance, and workers' compensation insurance.



### **3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY THE PV INSTALLATION ENTITY; SINGLE POINT RESPONSIBILITY OF THE PV INSTALLATION ENTITY**

3.2.1 In addition to the examination and reviews performed, and obligations assumed, incident to making the representations set forth in Article 10 of the Contract, the PV Installation Entity shall carefully study and compare each of the Contract Documents provided by the District with the others and with information furnished by the District, and shall promptly report in writing to the District's Representative any errors, inconsistencies, or omissions in the Contract Documents provided by the District or inconsistencies with Applicable Code Requirements observed by the PV Installation Entity. The PV Installation Entity shall be solely responsible for any errors, inconsistencies or omissions in the Contract Documents if the PV Installation Entity fails to perform such review and examination or fails to report such errors, inconsistencies or omissions to the District in writing.

3.2.2 The PV Installation Entity is responsible for the design and construction of the Project and shall use the highest design and engineering standards of care applicable to projects, buildings or work of similar size, complexity, quality and scope in performing work on the Project. The PV Installation Entity shall be solely responsible for any and all design errors including, but without limitation, errors, inconsistencies or omissions in the Construction Documents. The PV Installation Entity shall take field measurements, verify field conditions, and carefully compare with the Contract Documents such field measurements, conditions, and other information known to the PV Installation Entity before commencing work on the Project. Errors, inconsistencies, or omissions discovered at any time shall be promptly reported in writing to the District's Representative.

3.2.3 If the PV Installation Entity performs any design and/or construction activity which it knows, or should know, involves an error, inconsistency, or omission referred to in Subparagraphs 3.2.1 and 3.2.2, without notifying and obtaining the written consent of the District's Representative, the PV Installation Entity shall be responsible for the resultant Losses, including, without limitation, the costs of correcting Defective Work.

3.2.4 The District does not assume any obligation to employ the PV Installation Entity's services or pay the PV Installation Entity royalties of any type as to future programs that may result from work performed under this Contract.

3.2.5 The PV Installation Entity shall be responsible for all plotting, printing, copying and distribution costs of any and all documents required in connection with work on the Project.

3.2.6 The PV Installation Entity agrees that it has single point responsibility for the construction of this Project, and agrees to utilize the highest standard of excellent engineering and construction practices. The PV Installation Entity agrees that, in light of the high degree of confidence and trust that the District has reposed in the PV Installation Entity, the PV Installation Entity is a fiduciary of the District and, as such, has the Duty to act in the District's best interests at all times throughout the course and performance of this Contract.

### **3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

3.3.1 The PV Installation Entity shall supervise, coordinate, and direct all work on the Project using the PV Installation Entity's best skill and attention. The PV Installation Entity shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, procedures, and the coordination of all portions of work on the Project.

3.3.2 The PV Installation Entity shall be responsible to the District for acts and omissions of the PV Installation Entity, its agents, employees, and Subcontractors, and their respective agents and employees.

3.3.3 The PV Installation Entity shall not be relieved of its obligation to perform all work on the Project in accordance with the Contract Documents either by acts or omissions of the District or the District's Representative in the administration of the Contract, or by tests, inspections, or approvals required, or performed, by persons or firms other than the PV Installation Entity.

3.3.4 The PV Installation Entity shall be responsible for inspection of all portions of work on the Project, including those portions already performed under this Contract, to determine that such portions conform to the requirements of the Contract Documents and are ready to receive subsequent work.

3.3.5 To facilitate communications and the management of the Design process, the PV Installation Entity shall establish a local office for the Duration of the Design process.

3.3.6 The PV Installation Entity is not required to produce the entire Construction Documents package in the local office; however, the PV Installation Entity shall provide the appropriate management and design staff in the local office to provide the District with the current status of, and the capability to properly update, the Design documents.

3.3.7 The PV Installation Entity is required to deliver to the District, if requested, any and all design materials including, but not limited to, calculations, preliminary drawings, construction drawings, shop drawings, electronic media data, tenant improvement documents, sketches, illustrations, specifications, descriptions, models, mock ups, and other information developed, prepared, furnished, or delivered in the prosecution of the Design Work.

3.3.8 The PV Installation Entity shall at all times participate in, implement, and comply with the CEQA documentation prepared for the Project and provided to the PV Installation Entity in order to ensure conformance with the requirements of CEQA as required in the Contract Documents.

3.3.9 The PV Installation Entity is responsible for preparation of the Construction Documents for the entire Project.

3.3.10 The PV Installation Entity is responsible for construction of the entire Project as required by the Contract Documents.

3.3.11 The PV Installation Entity shall at all times maintain good discipline and order among its employees and subcontractors. The PV Installation Entity shall provide competent, fully qualified personnel to perform all work on the Project.

### **3.4 LABOR AND MATERIALS**

3.4.1 Unless otherwise provided in the Contract Documents, the PV Installation Entity shall provide and pay for all professional services, services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Scope of Work on the Project, whether temporary or permanent and whether or not incorporated or to be incorporated in work on the Project.

### **3.5 TRAINING OF DISTRICT EMPLOYEES**

3.5.1 After the initial year of operation, The District anticipates entering into a separate maintenance agreement with an independent contractor under which the maintenance contractor would operate and maintain the Solar Photovoltaic System over the useful life of the Solar Photovoltaic System. However, the

PV Installation Entity, as a material term and condition of the Contract Documents shall provide training and materials to no more than four (4) District employees on the operation and maintenance of the Solar Photovoltaic System within two weeks of Final Completion, to prepare the District employees in the event that the District is required to maintain or otherwise operate the Solar Photovoltaic System. The PV Installation Entity shall provide the District with four (4) bound operations manuals for this purpose.

### **3.6 TAXES**

3.6.1 The PV Installation Entity shall pay all sales, consumer, use, income, payroll and similar taxes for the work or portions thereof provided by the PV Installation Entity.

### **3.7 PERMITS, FEES, AND NOTICES**

3.7.1 Except for the permits and approvals which are to be obtained on behalf of the District or the requirements with respect to which the District is not subject, as provided in Subparagraph 2.1.1, the PV Installation Entity shall secure, and pay for, all other permits, approvals, government fees, licenses, and inspections necessary for the proper execution and performance of work on the Project. . The PV Installation Entity shall deliver to the District all original licenses, permits, and approvals obtained by the PV Installation Entity in connection with work on the Project prior to the final payment or upon termination of the Contract, whichever is earlier.

### **3.8 APPLICABLE CODE REQUIREMENTS**

3.8.1 The PV Installation Entity shall perform all work on the Project in accordance with the following Applicable Code Requirements and all code requirements listed in the Scope of Work:

3.8.1.1 All laws, statutes, the most recent building codes, ordinances, rules, regulations, and lawful orders of all public authorities having jurisdiction over the District, the PV Installation Entity, any Subcontractor, the Project, the Project site, the work on the Project, or the prosecution of the work on the Project.

3.8.1.2 All requirements of any insurance company issuing insurance required hereunder.

3.8.1.3 Applicable sections in the State of California Labor Code.

3.8.1.4 All Applicable Code Requirements relating to nondiscrimination, payment of prevailing wages, payroll records, apprentices, and work day.

3.8.2 All products and components outlined herein must conform to all applicable codes, standards, and rating methodologies, including but not limited to, the following:

3.8.2.1 PV modules must be certified by the California Energy Commission's Incentive Eligible Photovoltaic Modules in Compliance with SB1 Guidelines and listed on the following web site: <http://energy.ca.gov/programs-and-topics/topics/renewable-energy/solar-equipment-list>

3.8.2.2 If PV modules using hazardous materials are to be provided by the PV Installation Entity, then the environmental impact of the hazardous material usage must be discussed, including any special maintenance requirements and proper disposal/recycling of the modules at the end of their useful life. Modules containing hazardous materials must comply with the EPA Landfill Disposal Requirements. Any

additional costs and/or District responsibilities related to PV modules containing hazardous materials must be clearly identified in the proposal.

3.8.2.3 UL certification.

3.8.2.4 National Electrical Code - 2008.

3.8.2.5 Wind uplift requirements per the American Society of Civil Engineers Standard for Minimum Design Loads for Buildings and Other Structures (ASCE 7), and must be able to withstand design wind speeds of at least 85 mph (3-second gusts).

3.8.2.6 All outdoor enclosures should be at minimum rated NEMA 3R.

3.8.2.7 All Occupational Health and Safety Administration (OSHA) directives.

3.8.2.8 All PG&E and California Solar Initiative requirements.

3.8.2.9 All Division of the State Architect requirements.

3.8.2.10 All applicable Building Codes and Fire Codes.

3.8.3 The PV Installation Entity shall comply with and give notices required by all Applicable Code Requirements, including all environmental laws and all notice requirements. The PV Installation Entity shall promptly notify the District's Representative in writing if the PV Installation Entity becomes aware during the performance of work on the Project that the Contract Documents are at variance with Applicable Code Requirements.

3.8.4 If the PV Installation Entity performs work which it knows or should know is contrary to Applicable Code Requirements, without prior notice to the District and the District's Representative, the PV Installation Entity shall be responsible for such work and any resulting damages including, without limitation, the costs of correcting Defective Work.

### **3.9 SUPERINTENDENT**

3.9.1 The PV Installation Entity shall employ a competent Superintendent satisfactory to the District who shall be in attendance at the Project site at all times during the performance of the Construction Work. Superintendent shall represent the PV Installation Entity and communications given to, and received from, Superintendent shall be binding on the PV Installation Entity. Failure to maintain a Superintendent on the Project site at all times work on the Project is in progress shall be considered a material breach of this Contract, entitling the District to terminate the Contract or, alternatively, issue a stop work order until the Superintendent is on the Project site. If, by virtue of issuance of said stop work order, the PV Installation Entity fails to complete the Contract on time, the PV Installation Entity will be assessed Liquidated Damages in accordance with the Contract.

3.9.2 Any changes to the assignment of the Superintendent shall receive prior written approval from the District. The Superintendent may not perform the work of any trade, pick up materials, or perform any work not directly related to the supervision and coordination of the Construction Work at the Project site when work is in progress. In addition, the PV Installation Entity will provide all key personnel identified in the Contract for the time periods stipulated.

### **3.10 PROJECT STAFFING**

3.10.1 The PV Installation Entity 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 on the Project; 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 and fit workers on the job to complete all work on the Project in accordance with all requirements of the Contract.

3.10.2 The District shall have the right, but not the obligation, to require the removal from the Project of the PV Installation Entity's Representative, or any other superintendent, staff member, agent, or employee of any contractor, Subcontractor, material or equipment supplier, or any other entity working on the Project. Removal may be required for any reason designated by the District, including but not limited to, failure or refusal to perform work on the Project in a manner acceptable to the District, uncooperative or incompetent performance on the Project, threatening the adequate or timely completion of the Project, or threatening the safety of persons or property.

### **3.11 TOXIC MATERIALS**

3.11.1 The PV Installation Entity is responsible for unforeseen site conditions and toxic materials, but only to the extent described in the Contract Documents and/or that could be reasonably inferred by the PV Installation Entity based on its experience and expertise on similar projects in urban areas.

### **3.12 HAZARDOUS MATERIALS**

3.12.1 The PV Installation Entity agrees that it is solely responsible for investigating and performing remedial actions on all hazardous materials and other related environmental requirements located on the Project site. For the purposes of this Contract, hazardous materials shall also include, but are not limited to, underground storage tanks. Any hazardous materials that are encountered beyond those described in the Contract Documents or Proposal Requirements, or which reasonably could not have been discovered within the time permitted, may properly be the subject of a Change Order Request. The District agrees that the PV Installation Entity cannot be considered a hazardous materials generator of any such materials in existence on the Site at the time it is given possession of the Site.

3.12.2 "Hazardous materials" means any substance: the presence of which requires investigation or remediation under any federal, state or local law, statute, regulation, ordinance, order, action, policy or common law; which is or becomes defined as a "hazardous waste," "hazardous substance," pollutant or contaminant under any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto, including, without limitations, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. ("CERCLA"), as amended, or the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq. ("RCRA"); which is petroleum, including crude oil or any fraction thereof not otherwise designated as a "hazardous substance" under CERCLA, including without limitation gasoline, diesel fuel or other petroleum hydrocarbons; which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any regulatory agency or instrumentality or the United States; the presence of which on the Site causes or threatens to cause a nuisance upon the Site or to the adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Site; the presence of which on adjacent properties could constitute a trespass by the PV Installation Entity or the District; or as defined in the California Health and Safety Code.

3.12.3 "Underground Storage Tank" shall have the Definition assigned to that term by Section 9001 of RCRA, 42 U.S.C. Section 6991, and also shall include: any tank of one thousand one hundred (1, 100)

gallons or less capacity used for storing motor fuel; any tank used for storing heating oil for consumption on the premises where stored; any septic tank; and any pipes connected to the above items.

3.12.4 "Environmental Requirements" means all applicable laws, statutes, regulations, rules, ordinances, codes, licenses, permits, orders and similar items of all governmental agencies or other instrumentality's of the District, State of California, and United States and all applicable judicial, administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, without limitation: all requirements, including, but not limited to, those pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of hazardous materials into the air, surface water, ground water or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of hazardous materials; and all requirements pertaining to the protection of the health and safety of employees or the public.

### **3.13 COMPLIANCE WITH STATE STORMWATER PERMIT FOR CONSTRUCTION**

3.13.1 The PV Installation Entity shall be required to comply with all conditions of the State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Stormwater Runoff Associated with Construction Activity ("Permit") for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. The PV Installation Entity shall be responsible for complying with the SWPPP and any necessary revision to the SWPPP to address Stormwater impacts. The PV Installation Entity shall comply with all requirements of the State Water Resources Control Board. The PV Installation Entity shall include all costs of compliance with specified requirements in the Guaranteed Maximum Price.

3.13.2 The PV Installation Entity shall be responsible for complying with the provisions of the Permit and the SWPPP. The PV Installation Entity shall provide copies of all reports and monitoring information to the District's Representative.

3.13.3 The PV Installation Entity shall comply with the lawful requirements of any applicable municipality, the County, drainage District, and other local agencies regarding discharges of Stormwater to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal Stormwater management programs.

### **3.14 CONSTRUCTION DOCUMENTS**

#### **3.14.1 Construction Documents**

3.14.1.1 The Construction Documents shall include all information required by the building trades to complete the construction of the Project, other than such details customarily developed by others during construction.

3.14.1.2 However, it is acknowledged by the parties hereto that inherent in a PV Installation concept, bridging or otherwise, the production and review of Construction Documents may be a continuing process with portions thereof completed at different times. The PV Installation Entity will limit the Construction Document packages submitted to the District for review and approval for construction to five (5), unless approved in writing by the District. Contract Schedule shall indicate the times for the District to review the completion of each such portion of the Construction Documents and a reasonable time for review of same.

#### **3.14.2 Shop Drawings, Product Data, Samples, Materials, and Equipment**

3.14.2.1 Shop drawings means drawings, submitted to the PV Installation Entity by subcontractors, manufacturers, supplier or distributors, showing in detail the proposed fabrication and assembly of building elements and the installation (e.g., form, fit, and attachment details) of materials or equipment.

3.14.2.2 The PV Installation Entity shall coordinate all submittals and review them for accuracy, completeness, and compliance with the requirements of the Contract Documents and the PV Installation Entity's Construction Documents and submit them for review using the District's PlanGrid project management system.

3.14.2.3 Materials and equipment incorporated in the work on the Project shall match the approved samples within tolerances appropriate to the items, and as may be described in the Contract Documents.

3.14.2.4 The PV Installation Entity shall submit shop drawings approved by the Design Professional and samples of submittals that relate to finish materials and products.

3.14.2.5 Wherever the name or brand of manufacturer or an article is listed in the Contract Documents, it is to be used in work on the Project as the standard. Any variation in quality must be approved by the District.

### 3.14.3 Geotechnical and Survey

3.14.3.1 The PV Installation Entity shall verify the location and depth (elevation) of all existing utilities and services before performing any excavation work.

3.14.3.2 Any additional tests, borings, etc. necessary to support the Construction Documents shall be the responsibility of the PV Installation Entity.

## 3.15 MONTHLY REPORT

3.15.1 The PV Installation Entity shall prepare and submit to the District, during both the Construction Documents Phase and the Construction Phase, monthly reports on the work accomplished during the prior monthly period. Such reports shall be prepared in a manner and in a format approved by the District. Reports shall be furnished at the time of submission of each monthly application for payment. The monthly report shall also set forth the PV Installation Entity's projected progress for the forthcoming month.

## 3.16 OTHER REPORTS

3.16.1 The PV Installation Entity will cooperate with the District in preparing, or causing to be prepared, all or part of, periodic project reports required by state or federal agencies.

## 3.17 GUARANTEE

3.17.1 The PV Installation Entity unconditionally guarantees all work on the Project will be completed in accordance with the requirements of the Contract Documents, and will remain free of defects in workmanship and materials for a period of one (1) year from the date of Final Completion. The PV Installation Entity shall repair or replace any and all work, together with any adjacent work that may have been damaged or displaced, which was not in accordance with the requirements of the Contract Documents, or that may be defective in its workmanship or material within the guarantee period specified in the Contract Documents, without any expense whatsoever to the District; ordinary wear and tear and abuse excepted.

3.17.2 The PV Installation Entity further agrees, within fourteen (14) days, or as such shorter period as may be designated for emergency repairs, after being notified in writing by the District, of any work not in accordance with the requirements of the Contract Documents or any defects in the work on the Project, that the PV Installation Entity shall commence and execute, with due diligence, all work necessary to fulfill the terms of the guarantee. If the District finds that the PV Installation Entity fails to perform any of the work under the guarantee, the District may elect to have the work completed at the PV Installation Entity's expense and the PV Installation Entity will pay costs of the work upon demand. The District will be entitled to all costs, including reasonable attorneys' fees and consultants' expenses necessarily incurred upon the PV Installation Entity's refusal to pay the above costs.

3.17.3 Notwithstanding the foregoing subparagraph, in the event of an emergency constituting an immediate hazard to health or safety of the District employees, property, or licensees, the District may undertake, at the PV Installation Entity's expense and without prior notice, all work necessary to correct such condition(s) when it is caused by work of the PV Installation Entity not being in accordance with the requirements of the Contract Documents.

### **3.18 WARRANTY**

3.18.1 The PV Installation Entity warrants to the District that all Design Work will be performed in accordance with the highest professional standards and degree of care applicable to those design professionals who specialize in designing and providing services for projects of the type, scope, quality and complexity of the Project utilizing the PV Installation contracting mode. The PV Installation Entity warrants to the District that all labor, materials, equipment and furnishings used in, or incorporated into, the Construction Work will be of good quality, new (unless otherwise required or permitted by the Contract Documents), and all work will be free of liens, claims and security interests of third parties; that the work will be of the highest quality and free from defects and that all work will conform with the requirements of the Contract Documents. If required by the District's Representative, the PV Installation Entity shall furnish satisfactory evidence of compliance with this warranty. Further, the type, quality and quantum of such evidence shall be within the sole discretion of the District's Representative.

3.18.2 PV Installation Entity shall provide minimum warranty equipment coverage as follows:

3.18.2.1 Standard warranty coverage should be at least twenty-five (25) years for any PV panels, at least ten (10) years for all inverters.

3.18.2.2 Upon completion of the Project, PV Installation Entity shall provide District with all warranty documentation and shall assist the District in completing any warranty or submittal forms which are required in order to effectuate coverage of the warranties required herein and all may otherwise be available to the District.

3.18.2.3 All work performed by PV Installation Entity must not render void, violate, or otherwise jeopardize any preexisting District facility or building warranties.

### **3.19 SCHEDULES REQUIRED OF THE PV INSTALLATION ENTITY**

3.19.1 The PV Installation Entity shall plan, develop, supervise, control, and coordinate the performance of the work on the Project so that its progress and the sequence and timing of Work activities achieve completion by the GCD. The PV Installation Entity shall continuously obtain from Subcontractors information



and data about the planning for, and progress of, the work on the Project and the delivery of equipment. The PV Installation Entity shall coordinate and integrate such information and data into updated Contract Schedules, and shall monitor the progress of the work on the Project and the delivery of equipment. The PV Installation Entity shall act as the expeditor of potential and actual delays, interruptions, hindrances, or disruptions for its own forces and those forces of Subcontractors, regardless of tier. The PV Installation Entity shall cooperate with the District's Representative in the development of all contract schedules and updated contract schedules.

3.19.2 Failure of the District's Representative to discover errors or omissions in schedules that it has reviewed, or to inform the PV Installation Entity that the PV Installation Entity, Subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the Contract Schedule shall not relieve the PV Installation Entity from its sole responsibility to perform and complete all work on the Project within the Guaranteed Completion Date and shall not be a cause for an adjustment of the Guaranteed Completion Date or the Guaranteed Maximum Price.

3.19.3 The PV Installation Entity shall perform all work on the Project in accordance with the current accepted Contract Schedule.

### **3.20 AS BUILT DOCUMENTS**

3.20.1 The PV Installation Entity shall maintain one (1) set of As-Built drawings and specifications, which shall be kept up to date during the work of the Contract. All changes which are incorporated into the work on the Project which differ from the Documents as drawn and written and approved shall be noted on the As-Built set. Notations shall reflect the actual materials, equipment and installation methods used for the work on the Project and each revision shall be initialed and dated by Superintendent. Prior to filing of the Notice of Completion, each drawing and the specification cover shall be signed by the PV Installation Entity and dated, attesting to the completeness of the information noted therein, and submitted to the District's Representative for approval. Approved As-Built Documents turned over to the District's Representative shall become part of the Record Documents as required by the Scope of Work.

### **3.21 DOCUMENTS AND SAMPLES AT PROJECT SITE**

3.21.1 The PV Installation Entity shall maintain the following at the Project site:

3.21.1.1 One current copy of the Contract Documents (including Construction Documents), in good order and marked to record current changes and selections made during construction.

3.21.1.2 One copy of the prevailing wage rates applicable to the Project.

3.21.1.3 The current accepted Contract Schedule.

3.21.1.4 Shop Drawings, Product Data, and Samples.

3.21.1.5 One current copy of all documents required by 3.24.1 (As built documents.)

3.21.1.6 All other required submittals.

3.21.2 These shall be available to the District's Representative and shall be delivered to the District's Representative for submittal to the District upon the earlier of Final Completion or termination of the Contract.

## 3.22 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

### 3.22.1 Definitions:

3.22.1.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Project by the PV Installation Entity or a Subcontractor to illustrate some portion of the work on the Project.

3.22.1.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the PV Installation Entity to illustrate or describe materials or equipment for some portion of work on the Project.

3.22.1.3 Samples are physical examples that illustrate materials, equipment, or workmanship and establish standards by which the work on the Project will be judged.

3.22.2 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate, for those portions of work on the Project for which submittals are required, how the PV Installation Entity proposes to conform to the information given and the Design concept expressed in the Contract Documents.

3.22.3 The PV Installation Entity shall review and submit to the District's Representative Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the work on the Project or in the activities of the District or of Separate Contractors. Submittals made by the PV Installation Entity that are not required by the Contract Documents may be returned without action by the District's Representative.

3.22.4 The PV Installation Entity shall perform no portion of the work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been reviewed by the District's Representative and no exceptions have been taken by the District's Representative. Such work shall be in accordance with approved submittals and the Contract Documents. The District shall provide review and response to all such submittals within ten (10) working days.

3.22.5 By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals, the PV Installation Entity represents that it has determined or verified materials and field measurements and conditions related thereto, and that it has checked and coordinated the information contained within such submittals with the requirements of the Contract Documents and Shop Drawings for related work.

3.22.6 If the PV Installation Entity discovers any conflicts, omissions, or errors in Shop Drawings or other submittals, the PV Installation Entity shall notify the District's Representative and receive instruction before proceeding with the affected work. The PV Installation Entity shall be responsible to correct to the satisfaction of the District, any conflicts, omissions, or errors in Shop Drawings or other submittals.

3.22.7 The PV Installation Entity shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the District's Representative's review of Shop Drawings, Product Data, Samples, or similar submittals, unless the PV Installation Entity has specifically informed the District's Representative in writing of such deviation at the time of submittal and the District's Representative has given written approval of the specific deviation. The PV Installation Entity shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the District's Representative's review, acceptance, comment, or approval thereof.

3.22.8 The PV Installation Entity shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the District's Representative on previous submittals.

3.22.9 The District will review first resubmittal of Shop Drawing at its cost. The District reserves the right to reduce the Guaranteed Maximum Price by Change Order for its cost for any subsequent reviews of Shop Drawing resubmittals.

### **3.23 USE OF SITE AND CLEAN UP**

3.23.1 The PV Installation Entity shall confine operations at the Project site to areas permitted by law, ordinances, permits, and the Contract Documents. The PV Installation Entity shall not unreasonably encumber the Project site with materials or equipment.

3.23.2 The PV Installation Entity shall, during performance of work on the Project, keep the Project site and surrounding area free from the accumulation of excess dirt, waste materials, and rubbish caused by the PV Installation Entity. The PV Installation Entity shall remove all excess dirt, waste material, and rubbish caused by the PV Installation Entity; tools; equipment; machinery; and surplus materials from the Project site and surrounding area at the completion of the Project.

3.23.3 Personnel of the PV Installation Entity and Subcontractors shall not occupy, live upon, or otherwise make use of the Project site during any time that work is not being performed at the Project site, except as otherwise provided in the Contract Documents.

### **3.24 CUTTING, FITTING, AND PATCHING**

3.24.1 The PV Installation Entity shall do all cutting, fitting, or patching work required to make all parts of the Project come together properly and to allow the Project to receive or be received by the work of Separate Contractors shown upon, or reasonably implied by, the Contract Documents.

3.24.2 The PV Installation Entity shall not endanger the Project, or adjacent property by cutting, digging, or otherwise. The PV Installation Entity shall not cut or alter the work of any Separate Contractor without the prior consent of The District's Representative.

### **3.25 ACCESS TO WORK**

3.25.1 The District, the District's Representative, their consultants, and other persons authorized by the District will at all times have access to the work on the Project wherever it is in preparation or progress. The PV Installation Entity shall provide safe and proper facilities for such access and for inspection.

### **3.26 ROYALTIES AND PATENTS**

3.26.1 The PV Installation Entity shall pay all royalties and license fees required for the performance of work on the Project unless otherwise noted. The PV Installation Entity shall defend suits or claims resulting from the PV Installation Entity's or any Subcontractor's infringement of patent rights and shall Indemnify the District and the District's Representative from Losses on account thereof.

### **3.27 CONCEALED OR UNKNOWN CONDITIONS**

3.27.1 Except and only to the extent provided otherwise in Article 7 and 8 of the General Conditions, by signing the Contract, the PV Installation Entity agrees:

3.27.2 1. To bear the risk of concealed or unknown conditions, if any, which may be encountered in performing the Contract, as described in these Contract Documents, and/or can reasonably be inferred by the PV Installation Entity based on its experience and expertise; and

3.27.3 2. That the PV Installation Entity's Guaranteed Maximum Price for the Contract was made with full knowledge of this risk.

3.27.4 In agreeing to bear the risk of concealed or unknown conditions, The PV Installation Entity understands that, except and only to the extent provided otherwise in Articles 7 and 8, concealed and/or unknown conditions shall not excuse The PV Installation Entity from its obligation to achieve full completion of the Project within the Guaranteed Completion Date, and shall not entitle the PV Installation Entity to an adjustment of the Guaranteed Maximum Price.

3.27.5 If concealed or unknown conditions are encountered which require, in the opinion of the District's Representative, design details which differ from those details shown in the Criteria Documents and the District's Representative finds that such revised design details will cause an increase or decrease in the cost of, or the time required for performance of the Contract, and if the District agrees with the District's Representative's determinations, the District may terminate this Contract without any liability to the PV Installation Entity, except for work completed at the time of termination or issue a Change Order modifying the Contract Terms to provide for the change in design details and to provide for an adjustment in the Guaranteed Maximum Price and/or Guaranteed Completion Date pursuant to Articles 7 and 8.

3.27.6 If the PV Installation Entity encounters concealed or unknown conditions that differ materially from those anticipated or expected, the PV Installation Entity shall notify the District's Representative within 24 hours in writing of such conditions so that the District's Representative can determine if such conditions require design details which differ from those design details shown in the Criteria Documents. The PV Installation Entity shall be liable to the District for any extra costs incurred as the result of the PV Installation Entity's failure to give such notice.

### **3.28 LIABILITY FOR AND REPAIR OF DAMAGED WORK**

3.28.1 Except as otherwise provided in the Contract Documents, the PV Installation Entity shall be liable for any and all damages and losses to the Project (whether by fire, theft, vandalism, earthquake, flood or otherwise) prior to the District's acceptance of the Project as fully completed.

## **ARTICLE 4 ADMINISTRATION OF THE CONTRACT**

### **4.1 ADMINISTRATION OF THE CONTRACT BY THE DISTRICT'S REPRESENTATIVE**

4.1.1 The District's Representative will have authority to act on behalf of the District only to the extent provided in the Contract Documents.

4.1.2 The District shall designate in the Contract one or more representatives authorized to act on the District's behalf with respect to the Project, together with the scope of his/her respective authority. If the District's Representative(s) changes, the District shall notify the PV Installation Entity in writing as provided in the Contract. Functions for which this Contract Documents provide will be performed by the District may be delegated by the District only by written notice to the PV Installation Entity from the District. The PV Installation Entity shall not be entitled to rely on directions (nor shall it be required to follow the Directions) from anyone outside the scope of that person's authority as set forth in written authorization pursuant to this PV Installation

Contract. Directions and decisions made by the District Representatives of the District shall be binding on the District.

4.1.3 The District's Representative will not have control over, will not be in charge of, and will not be responsible for design or construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work on the Project, since these are solely the PV Installation Entity's responsibility.

4.1.4 Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, the District and the PV Installation Entity shall communicate through the District's Representative. Communications by the PV Installation Entity with the District's consultants and the District's Representative's consultants shall be through the District's Representative. Communications by the District and the District's Representative with Subcontractors will be through the PV Installation Entity. Communications by the PV Installation Entity and Subcontractors with Separate Contractors shall be through the District's Representative. The PV Installation Entity shall not rely on oral or other non-written communications.

4.1.5 Based on the District's Representative's Project site visits, review of Design Work, and evaluations of the PV Installation Entity's Applications For Payment, the District's Representative will recommend amounts, if any, due the PV Installation Entity and will issue Certificates For Payment in such amounts.

4.1.6 The District's Representative will have the authority to reject work on the Project, or any portion thereof, which does not conform to the Contract Documents. The District's Representative will have the authority to stop work on the Project, or any portion thereof. Whenever the District's Representative considers it necessary, or advisable, for implementation of the intent of the Contract Documents, the District's Representative will have the authority to require additional inspection or testing of the work on the Project in accordance with the Contract Documents, whether or not such work is fabricated, installed, or completed. However, no authority of the District's Representative conferred by the Contract Documents nor any decision made in good faith either to exercise, or to not exercise such authority, will give rise to a duty or responsibility of the District or the District's Representative to the PV Installation Entity, or any person or entity claiming under, or through, the PV Installation Entity.

4.1.7 The District's Representative will have the authority to conduct inspections and to determine the Dates of Substantial Completion and Final Completion; will receive for review and approval any records, written warranties, and related documents required by the Contract Documents and assembled by the PV Installation Entity; and will issue a final Certificate For Payment upon the PV Installation Entity's compliance with the requirements of the Contract Documents.

4.1.8 The District's Representative will be, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of performance thereunder by the PV Installation Entity. Should the PV Installation Entity discover any conflicts, omissions, or errors in the Construction Documents or the Contract Documents; have any questions about the interpretation or clarification of the Contract Documents; question whether work is within the scope of the Contract Documents; then, before proceeding with the work affected, the PV Installation Entity shall notify the District's Representative in writing and request interpretation, or clarification. The District's Representative's response to questions and requests for interpretations, clarifications, instructions, or decisions will be made with reasonable promptness. Should the PV Installation Entity proceed with the work affected before receipt of a response from the District's Representative, any portion of the work on the Project which is not done in accordance with the District's Representative's interpretations,

clarifications, instructions, or decisions shall be removed or replaced and the PV Installation Entity shall be responsible for all resultant losses.

## 4.2 THE PV INSTALLATION ENTITY CHANGE ORDER REQUESTS

4.2.1 The PV Installation Entity may request changes to the Guaranteed Maximum Price and/or Guaranteed Completion Date for Extra Work or Excusable Delays to completion of the Project caused by the acts, errors, or omissions of the District, the District's Representative, their agents or employees, or caused by unforeseen conditions if, and only if, the PV Installation Entity follows the procedures specified in this Paragraph. As used in this Paragraph, such acts, errors, or omissions shall include, but not be limited to, the provision of instructions, or interpretations that involve an increase or decrease in Project Scope, Extra Work or delay completion of the Project.

4.2.2 If the PV Installation Entity asserts that the PV Installation Entity is entitled to an adjustment of the Guaranteed Maximum Price and/or Guaranteed Completion Date as the result of an act, error, or omission of the District, the District's Representative, their agents or employees, or as the result of unforeseen conditions, then the PV Installation Entity may submit a Change Order Request in a form acceptable to the District, to the District's Representative.

4.2.3 A Change Order Request must state that it is a Change Order Request, state and justify the reason for the request, and specify the amount of any requested adjustment to the Guaranteed Maximum Price and/or Guaranteed Completion Date. Upon request of the District's Representative, the PV Installation Entity shall submit such additional information as may be requested by the District's Representative for the purpose of evaluating the Change Order Request. Such additional information may include a Cost Proposal meeting the requirements of Article 7 and written documentation demonstrating the PV Installation Entity's entitlement to a time extension under Paragraph 8.4. If the Change Order Request seeks an adjustment of the Guaranteed Maximum Price for an Excusable delay, upon request of the District's Representative, the PV Installation Entity shall submit written documentation demonstrating the PV Installation Entity's entitlement to such an adjustment under Subparagraph 7.3.9.

4.2.4 A condition precedent to obtaining an adjustment of the Guaranteed Maximum Price and/or Guaranteed Completion Date as the result of an act, error, or omission of the District, the District's Representative, their agents or employees, or as the result of an unforeseen condition, is timely submission of a Change Order Request that meets the requirements set forth in Subparagraphs 4.2.2 and 4.2.3. A Change Order Request based upon such acts, errors or omissions will be deemed timely submitted if, and only if, it is submitted within ten (10) days of the date the PV Installation Entity discovers, or reasonably should discover, that an act, error, or omission of the District, the District's Representative, their agents or employees, has occurred that may entitle the PV Installation Entity to an adjustment of the Guaranteed Maximum Price and/or Guaranteed Completion Date (even if the PV Installation Entity has not been damaged, delayed, or incurred extra cost when the PV Installation Entity discovers, or reasonably should discover, the act, error or omission giving rise to the Change Order Request). A Change Order Request based upon an unforeseen condition will be deemed timely submitted if, and only if, it is submitted within ten (10) days of the Date the PV Installation Entity discovers, or reasonably should discover, the existence of an unforeseen condition that may entitle the PV Installation Entity to an adjustment of the Guaranteed Maximum Price and/or Guaranteed Completion Date (even if the PV Installation Entity has not been damaged, delayed, or incurred extra cost when the PV Installation Entity discovers, or reasonably should discover, the unforeseen condition giving rise to the Change Order Request). Work will not proceed until PV Installation Entity receives a signed Work Direct from the District or District's Representative.

4.2.5 If the District's Representative issues a final decision on all or part of a Change Order Request, the PV Installation Entity may contest the decision by filing a timely Claim under the procedures specified in Paragraph 4.3. A final decision is any decision on a Change Order Request which states that it is final.

### 4.3 CLAIMS

4.3.1 The term "Claim" means a written demand or assertion by the PV Installation Entity seeking an adjustment or interpretation of the terms of the Contract Documents, payment of money, extension of time, or other relief with respect to the Contract Documents, including a determination of disputes or matters in question between the District and the PV Installation Entity arising out of or related to the Contract Documents or the performance of work on the Project, and claims alleging an unforeseen condition or an act, error or omission by the District, the District's Representative, their agents or employees. However, the term "Claim" shall not include, and the Claims procedures provided under this Article 4 shall not apply to the following:

4.3.1.1 Claims respecting penalties for forfeitures prescribed by statute or regulation that a government agency is specifically authorized to administer, settle, or determine.

4.3.1.2 Claims respecting personal injury, death, reimbursement, or other compensation arising out of or resulting from liability for personal injury or death.

4.3.1.3 Claims respecting a latent defect, breach of warranty, or guarantee to repair.

4.3.1.4 Claims respecting stop notices.

4.3.2 If a Claim is subject to the procedures specified in Paragraph 4.2, the Claim arises upon the issuance of a written final decision denying in whole or in part the PV Installation Entity's Change Order Request. If a Claim is not subject to the procedures specified in Paragraph 4.2, the Claim arises when the PV Installation Entity discovers, or reasonably should discover, the condition or event giving rise to the Claim (even if the PV Installation Entity has not been damaged, delayed, or incurred extra cost when the PV Installation Entity discovers, or reasonably should discover, the condition or event giving rise to the Claim).

4.3.3 A Claim not subject to the procedures specified in Paragraph 4.2 may be asserted if, and only if, the PV Installation Entity gives a valid written notice of intent to file the Claim within ten (10) calendar days of the Date the Claim arises under Subparagraph 4.3.2. A written notice of intent to file a claim will be deemed valid, if and only, if it identifies the event or condition giving rise to the Claim and states its probable effect, if any, with respect to the PV Installation Entity's entitlement to an adjustment of the Guaranteed Maximum Price and/or the Guaranteed Completion Date.

4.3.4 A Claim must include the following:

4.3.4.1 A statement that it is a Claim and a request for a decision pursuant to Paragraph

4.3.4.2 A detailed description of the act, error, omission, unforeseen condition, event or other condition giving rise to the Claim.

4.3.4.3 If the Claim is subject to the procedures specified in Paragraph 4.2, a statement demonstrating that a Change Order Request was timely submitted as required by Subparagraph 4.2.4. If the Claim is not subject to the procedures specified in Paragraph 4.2, a statement demonstrating that a valid notice of intent to file the Claim was timely submitted as required by Subparagraph 4.3.3.

4.3.4.4 A detailed justification for any remedy or relief sought by the Claim, including to the extent applicable, the following:

4.3.4.4.1 If the Claim involves Extra Work, a detailed cost breakdown of the amounts claimed, including the items specified in Subparagraph 7.3.2. The breakdown must be provided even if the costs claimed have not been incurred when the Claim is submitted. To the extent costs have been incurred when the Claim is submitted, the Claim must include actual cost records (including without limitation, payroll records, material and rental invoices and the like) demonstrating that costs claimed have actually been incurred. To the extent costs have not yet been incurred at the time the Claim is submitted, actual cost records must be submitted on a current basis not less than once a week during any periods costs are incurred. A cost record will be considered current if submitted within 7 days of the Date the cost reflected in the record is incurred. At the request of the District's Representative, claimed extra costs may be subject to further verification procedures (such as having an inspector verify the performance of alleged extra work on a daily basis).

4.3.4.4.2 If the Claim involves an extension of the Guaranteed Completion Date, written documentation demonstrating the PV Installation Entity's entitlement to a time extension under Paragraph 8.4.

4.3.4.4.3 If the Claim involves an adjustment of the Guaranteed Maximum Price for an Excusable delay, written documentation demonstrating the PV Installation Entity's entitlement to such an adjustment under Subparagraph 7.3.9.

#### **4.4 ASSERTION OF CLAIMS**

4.4.1 Claims by the PV Installation Entity shall be first submitted to the District's Representative for decision.

4.4.2 Notwithstanding the making of any Claim or the existence of any dispute regarding any Claim, unless otherwise directed by the District's Representative, the PV Installation Entity shall not cause any delay, cessation, or termination in or of the PV Installation Entity's performance of work on the Project, but shall diligently proceed with performance of the work in accordance with the Contract Documents. The District will continue to make payments in accordance with the Contract Documents.

4.4.3 The PV Installation Entity shall submit a Claim in writing, together with the supporting data specified in Subparagraph 4.3.4, to the District's Representative as soon as possible but not later than thirty (30) days after the Date the claim arises under Subparagraph 4.3.2.

4.4.4 The PV Installation Entity agrees that strict compliance with the requirements of Subparagraphs 4.2.4, 4.3.3, and 4.4.3 is an express condition precedent to the PV Installation Entity's right to arbitrate or litigate a Claim. The PV Installation Entity specifically agrees to assert no Claims in arbitration or litigation unless there has been strict compliance with Subparagraphs 4.2.4, 4.3.3, and 4.4.3.

#### **4.5 DECISION OF THE DISTRICT'S REPRESENTATIVE ON CLAIMS**

4.5.1 The District's Representative will timely review Claims submitted by the PV Installation Entity. If the District's Representative determines that additional supporting data are necessary to fully evaluate a Claim, the District's Representative will request such additional supporting data in writing. Such data shall be furnished no later than ten (10) days after the Date of such request. The District's Representative will render a decision promptly and in any case within thirty (30) days after the later of the receipt of the Claim or the Deadline for furnishing such additional supporting data.



## 4.6 ALTERNATE DISPUTE RESOLUTION OF CLAIMS

4.6.1 In accordance with Public Contract Code Sections 20104 et seq. and other applicable law, public works claims of \$375,000 or less which arise between the PV Installation Entity and the District shall be resolved under the following the statutory procedure unless the District has elected to resolve the dispute pursuant to Public Contract Code Section 10240 et seq.

4.6.2 All Claims: All claims shall be submitted in writing and accompanied by substantiating documentation. Claims must be filed on or before the date of final payment unless other notice requirements are provided in the contract. "Claim" means a separate demand by the claimant for (1) a time extension, (2) payment of money or damages arising from work done by or on behalf of the claimant and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled, or (3) an amount the payment of which is disputed by the District.

4.6.3 Claims Under \$50,000: The District shall respond in writing to the claim within forty-five (45) days of receipt of the claim, or, the District may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the District may have. If additional information is needed thereafter, it shall be provided upon mutual agreement of the District and the claimant. The District's written response shall be submitted fifteen (15) days after receiving the additional documentation, or within the same period of time taken by the claimant to produce the additional information, whichever is greater.

4.6.4 Claims over \$50,000 but less than or equal to \$375,000: The District shall respond in writing within sixty (60) days of receipt, or, may request in writing within thirty (30) days of receipt of the claim, any additional documents supporting the claim or relating to defenses or claims the District may have against the claimant. If additional information is needed thereafter, it shall be provided pursuant to mutual agreement between the District and the claimant. The District's response shall be submitted within thirty (30) days after receipt of the further documents, or within the same period of time taken by the claimant to produce the additional information or documents, whichever is greater. The PV Installation Entity shall make these records and documents available at all reasonable times, without any direct charge.

4.6.5 The PV Installation Entity will submit the claim justification in the following format:

4.6.5.1 Summary of claim merit and price, and Contract clause pursuant to which the claim is made.

4.6.5.2 List of documents relating to claim including, but not limited to:

4.6.5.3 Specifications

4.6.5.4 Drawings

4.6.5.5 Clarifications (Requests for Information)

4.6.5.6 Schedules

4.6.5.7 Chronology of events and correspondence

4.6.5.8 Analysis of claim merit

4.6.5.9 Analysis of claim cost

4.6.5.10 Analysis of time impact analysis in CPM format

4.6.5.11 Cover letter and certification of validity of the claim

4.6.6 If the claimant disputes the District's response, or if the District fails to respond within the statutory time period(s), the claimant may so notify the District within fifteen (15) days of the receipt of the response or the failure to respond, and demand an informal conference to meet and confer for settlement. Upon such demand, the District shall schedule a meet and confer conference within thirty (30) Days.

4.6.7 If following the meet and confer conference, the claim or any portion thereof remains in dispute, the claimant shall file a claim pursuant to Government Code 900 et seq. and Government Code 910 et seq. For purposes of those provisions, the time within which a claim must be filed shall be tolled from the time the claimant submits the written claim until the time the claim is denied, including any time utilized for the meet and confer conference.

4.6.8 Submission of a claim, properly certified, with all required supporting documentation, and written rejection or denial of all or part of the claim by District, is an express condition precedent to any action, proceeding, litigation, suit, general conditions claim, or demand for arbitration by PV Installation Entity.

#### **4.7 WAIVER**

4.7.1 A waiver of, or failure by, the District or the District's Representative to enforce any requirement in this Article 4, including, without limitation, the requirements in Subparagraphs 4.2.4, 4.3.3, 4.4.3, 4.4.4 and 4.5.4 in connection with any Claim shall not constitute a waiver of, and shall not preclude the District or the District's Representative from enforcing such requirements in connection with any other Claims.

4.7.2 The PV Installation Entity agrees and understands that no oral approval, either express or implied, of any Claim shall be binding upon the District unless and until such approval is ratified by execution of a written Change Order.

### **ARTICLE 5 SUBCONTRACTORS**

#### **5.1 SUBCONTRACTUAL RELATIONS**

5.1.1 Any part of the work on the Project performed for the PV Installation Entity by a first tier Subcontractor shall be pursuant to a written subcontract. Each such subcontract shall require the Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to the PV Installation Entity by the terms of the Contract Documents, to assume toward the PV Installation Entity all the obligations and responsibilities which the PV Installation Entity assumes towards the District by the Contract Documents, and to perform such portion of the work on the Project in accordance with the Contract Documents. Each such subcontract shall preserve and protect the rights of the District under the Contract Documents, with respect to the work to be performed by Subcontractor, so that subcontracting thereof will not prejudice such rights. The PV Installation Entity shall cause each such subcontract to expressly include the following requirements:

5.1.1.1 Subcontractor waives all rights that Subcontractor may have against the District for damages caused by fire or other perils covered by builder's risk property insurance carried by PV Installation Entity or the District, except for such rights Subcontractor may have to the proceeds of such insurance held by the District under Article 11.

5.1.1.2 The PV Installation Entity is responsible for reviewing and coordinating the work of and among his subcontractors. This review and coordination includes, but is not limited to, resolution of any inconsistencies, errors or omissions.

5.1.2 Upon the request of the District, the PV Installation Entity shall promptly furnish to the District a true, complete, and executed copy of any subcontract.

5.1.3 Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the District, except when, and only to the extent that, the District elects to accept the assignment of the subcontract with such Subcontractor pursuant to Paragraph 5.3. Contingent Assignment of Subcontracts.

## **ARTICLE 6 CONSTRUCTION BY THE DISTRICT OR BY SEPARATE CONTRACTORS**

### **6.1 THE DISTRICT'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

6.1.1 The District reserve the right to award separate contracts for, or to perform with its own forces, construction or operations related to the work or other construction or operations at or affecting the Project site, including portions of work on the Project which have been deleted by Change Order. The PV Installation Entity shall cooperate with the District's forces and Separate Contractors.

6.1.2 The District will provide coordination of the activities of the District's forces and of each Separate Contractor with the work of the PV Installation Entity. The PV Installation Entity shall participate with the District and Separate Contractors in joint review of construction schedules and Project requirements when directed to do so. The PV Installation Entity shall make necessary revisions to the Contract Schedule after such joint review.

### **6.2 MUTUAL RESPONSIBILITY**

6.2.1 The PV Installation Entity shall afford the District and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities. The PV Installation Entity shall connect, schedule, and coordinate its construction and operations with the construction and operations of the District and Separate Contractors as required by the Contract Documents.

6.2.2 If a portion of the work on the Project is dependent upon the proper execution or results of other construction or operations by the District or Separate Contractors, the PV Installation Entity shall inspect such other design or construction or operations before proceeding with that portion of the work on the Project. The PV Installation Entity shall promptly report to the District's Representative apparent discrepancies or defects which render the other design, construction or operations unsuitable to receive the work on the Project. Unless otherwise directed by the District's Representative, the PV Installation Entity shall not proceed with the portion of the work on the Project affected until apparent discrepancies or defects have been corrected. Failure of the PV Installation Entity to so report within a reasonable time after discovering such discrepancies or defects shall constitute an acknowledgment that the other construction or operations by the District or Separate Contractors is suitable to receive the work on the Project, except as to defects not then reasonably discoverable.

### **6.3 THE DISTRICT'S RIGHT TO CLEAN UP**

6.3.1 If a dispute arises between the PV Installation Entity and Separate Contractors as to the responsibility under their respective contracts for maintaining the Project site and surrounding areas free from

waste materials and rubbish, the District may clean up and allocate the cost between those firms the District deem to be responsible.

## **ARTICLE 7 CHANGES IN THE SCOPE OF WORK**

### **7.1 CHANGES**

7.1.1 The District may, from time to time, order or authorize additions, deletions, and other changes in the Scope of Work by Change Order or Field Order without invalidating the Contract and without notice to sureties. Absence of such notice shall not relieve such sureties of any of their obligations to the District.

7.1.2 The PV Installation Entity may request a Change Order under the procedures specified in Paragraph 4.2.

7.1.3 A Field Order, as defined below, may be issued by the District; and shall be valid with or without the signature of the PV Installation Entity.

7.1.4 The PV Installation Entity shall proceed promptly with any changes in the Scope of Work, unless otherwise provided in the relevant Change Order, District Directed Change Order or Field Order.

### **7.2 DEFINITIONS**

7.2.1 A Change Order becomes a Contract Document when, (i) it is an District Directed Change Order as described in Section 7.2.2; or (ii) after it has been signed by both the District and the PV Installation Entity, and states their agreement upon all of the following:

7.2.1.1 A change in the Scope of Work, if any.

7.2.1.2 The amount of an adjustment of the Guaranteed Maximum Price, billed as Extra Work pursuant to Attachment 2 to the Contract, if any.

7.2.1.3 The amount of an adjustment of the Guaranteed Completion Date, if any.

7.2.2 An District Directed Change Order is a type of Change Order which may be issued by the District and incorporated into the Contract Documents without the PV Installation Entity's signature, where the District determine that it is in the District's best interest to adjust the Guaranteed Maximum Price and/or Guaranteed Completion Date as the District believe necessary, even though no agreement has been reached between the District and the PV Installation Entity.

7.2.3 A Field Order is a preliminary to a Change Order that describes a change in the Scope of the Work, the estimated adjustments of the Guaranteed Maximum Price and/or the Guaranteed Completion Date, if any, and orders a change in the Scope of Work before all of the terms of the change are fully agreed upon by the District and the PV Installation Entity. A Field Order must eventually be memorialized as a Change Order or an District Directed Change Order and incorporated into the Contract Documents.

### **7.3 CHANGE ORDER PROCEDURES**

7.3.1 When requested by the District's Representative, the PV Installation Entity shall provide promptly, but in no event longer than seven (7) days from the date of the request, a Cost Proposal setting forth the PV Installation Entity's proposed adjustments of the Guaranteed Maximum Price and/or the Guaranteed Completion Date, if any, for performing the proposed change in the Scope of Work. Adjustments of the

Guaranteed Maximum Price resulting from Extra Work and/or deductive work shall be determined using one of the methods described in Article 7. Adjustments of the Guaranteed Completion Date shall be subject to the provisions in Article 8.

7.3.2 The term "Cost of Extra Work" as used in this Article shall mean actual costs incurred by the PV Installation Entity and each Subcontractor regardless of tier involved, and shall be limited to the following (to the extent the PV Installation Entity demonstrates that they were actually incurred):

7.3.2.1 Overhead and Profit not to exceed 15% of the Cost of the Extra Work (not more than 10% Overhead and 5% Profit) and straight time wages or salaries for employees employed at the Project site, or at fabrication sites off the Project site, in the direct performance of the Extra Work.

7.3.2.2 Fringe Benefits and Payroll Taxes for employees employed at the Project site, or at fabrication sites off the Project site, in the direct performance of the Extra Work.

7.3.2.3 Overtime wages or salaries, specifically authorized in writing by The District's Representative, for employees employed at the Project site, or at fabrication sites off the Project site, in the direct performance of the Extra Work.

7.3.2.4 Fringe Benefits and Payroll Taxes for overtime Work specifically authorized in writing by the District's Representative, for employees employed at the Project site, or at fabrication sites off the Project site, in the direct performance of the Extra Work.

7.3.2.5 Costs of materials and consumable items which are furnished and incorporated into the Extra Work, as approved by the District's Representative. Such costs shall be charged at the lowest price available to the PV Installation Entity but in no event shall such costs exceed competitive costs obtainable from other subcontractors, suppliers, manufacturers, and distributors in the area of the Project site. All discounts, rebates, and refunds and all returns from sale of surplus materials and consumable items shall accrue to the District and the PV Installation Entity shall make provisions so that they may be obtained.

7.3.2.6 Sales taxes on the costs of materials and consumable items which are incorporated into and used in the performance of the Extra Work pursuant to Subparagraph 7.3.2.5 above.

7.3.2.7 Rental charges for necessary machinery and equipment, whether owned or hired, as authorized in writing by the District's Representative, exclusive of hand tools, used directly in the performance of the Extra Work. Such rental charges shall not exceed the current U.S. Army Corp. of Engineers scheduled charges for the area in which the work is performed. The PV Installation Entity shall attach a copy of said schedule to the Cost Proposal. The charges for any machinery and equipment shall cease when the use thereof is no longer necessary for the Extra Work.

7.3.2.8 Additional costs of royalties and permits due to the performance of the Extra Work.

7.3.2.9 Cost for revisions in the Schematic Design Documents or Construction Documents, when such revisions are inconsistent with approvals or instructions previously given by the District. Revisions made necessary by adjustments in the District's program or project budget such costs to be computed as set forth herein.

7.3.2.10 The cost for Insurance and Bonds shall not exceed 1 % of items 1. through 9. above.

7.3.3 Cost of Extra Work shall not include any of the following:

7.3.3.1 Superintendent(s).

7.3.3.2 Assistant Superintendent(s).

7.3.3.3 Project Engineer(s).

7.3.3.4 Project Manager(s).

7.3.3.5 Scheduler(s).

7.3.3.6 Estimator(s).

7.3.3.7 Incidental Drafting or Detailing.

7.3.3.8 Small tools (Replacement value does not exceed \$300).

7.3.3.9 Office expenses including staff, materials and supplies.

7.3.3.10 On site or off site trailer and storage rental and expenses.

7.3.3.11 Site fencing.

7.3.3.12 Utilities including gas, electric, sewer, water, telephone, facsimile, copier equipment.

7.3.3.13 Data processing personnel and equipment.

7.3.3.14 Federal, state, or local business income and franchise taxes.

7.3.3.15 Overhead and Profit in excess 15% of the Cost of the Extra Work, of the 15% not more than 10% shall consist of Overhead and 5% of Profit.

7.3.3.16 16. Costs and expenses of any kind or item not specifically and expressly included in Article 7.3.2.

7.3.4 Compensation for Extra Work as an adjustment to the Guaranteed Maximum Price, authorized by Change Order shall be computed as specified herein.

7.3.5 As a condition to the PV Installation Entity's right to an adjustment of the Guaranteed Maximum Price, pursuant to Subparagraph 7.3.4, the PV Installation Entity must keep daily detailed and accurate records itemizing each element of cost and shall provide substantiating records and documentation, including time cards and invoices. Such records and documentation shall be submitted to and approved by the District's Representative on a daily basis.

7.3.6 For work to be deleted by Change Order, the reduction of the Guaranteed Maximum Price shall be computed on the basis of one or more of the following:

7.3.6.1 Unit prices stated in the Contract or an Attachment thereto.

7.3.6.2 Unit prices agreed upon by the District and the PV Installation Entity.

7.3.6.3 A lump sum agreed upon by the District and the PV Installation Entity, based upon the actual costs which would have been incurred in performing the Deleted portions of the work on the Project as calculated in accordance with Subparagraphs 7.3.2 and 7.3.3.

7.3.7 If anyone Change Order involves both Extra Work and deleted work in the same portion of the work on the Project, the Guaranteed Maximum Price shall not be increased if the deductive cost exceeds the additive cost. If the additive cost exceeds the deductive cost, an increase in the Guaranteed Maximum Price will be allowed only on the difference between the two amounts.

7.3.8 The Guaranteed Maximum Price will be adjusted for a delay if, and only if, the PV Installation Entity demonstrates that all of the following four conditions are met:

7.3.8.1 Condition Number One: The delay results in an extension of the Guaranteed Completion Date pursuant to Subparagraph 8.4.1.

7.3.8.2 Condition Number Two: The delay is caused solely by one, or more of the following:

7.3.8.2.1 An error or omission in the Contract Documents caused by the District and not as a result of the PV Installation Entity's failure to conform to criteria documents, performance standards, Construction Documents, or Contract Documents; or

7.3.8.2.2 The District's decision to change the Scope of the Work, where such decision is not the result of any default or misconduct of the PV Installation Entity; or

7.3.8.2.3 The District's decision to suspend work on the Project, where such decision is not the result of any default or misconduct of the PV Installation Entity; or

7.3.8.2.4 The failure of the District or the District's Representative to timely perform any contract obligation where the failure to so perform is not the result of any default or misconduct of the PV Installation Entity.

7.3.8.3 Condition Number Three: The delay is not concurrent with a delay that is:

7.3.8.3.1 Critical under Subparagraph 8.4.1.2; and

7.3.8.3.2 Caused by an event not listed in Subparagraph 7.3.8.2.

7.3.8.4 Condition Number Four: The delay is not caused, in whole or in part, by an event not listed in Subparagraph 7.3.8.2 above.

7.3.9 For each day of delay that meets all four conditions prescribed in Subparagraph 7.3.8 the Guaranteed Maximum Price will be adjusted as set forth herein.

7.3.10 Except as provided in Articles 7 and 8, the PV Installation Entity shall have no claim for damage or compensation for any delay, interruption, hindrance, or disruption.

7.3.11 If for any reason one or more of the conditions prescribed in Subparagraph 7.3.4 is held legally unenforceable, the remaining conditions must be met as a condition to obtaining an adjustment of the Guaranteed Completion Date under Subparagraph 7.3.8.

#### **7.4 FIELD ORDERS**

7.4.1 A Field Order as described in Subparagraph 7.2.3 above, may be issued by the District. If requested in writing, the PV Installation Entity shall promptly provide the District's Representative with a Cost Proposal, setting forth the proposed adjustments of the Guaranteed Maximum Price and/or the Guaranteed Completion Date, if any, for performing the change in the Scope of Work. The Field Order will be superseded by a Change Order which shall include the actual adjustments, if any, of the Guaranteed Maximum Price and the Guaranteed Completion Date, as well as the change in the Scope of Work.

7.4.2 A Field Order signed by the PV Installation Entity indicates the agreement of the PV Installation Entity therewith, including the PV Installation Entity's agreement to the proposed adjustments to the Guaranteed Maximum Price and/or the Guaranteed Completion Date stated therein. Such agreement shall be effective immediately and will be incorporated into a Change Order.

7.4.3 Upon receipt of a Field Order, the PV Installation Entity shall promptly proceed with the change in the Scope of Work.

7.4.4 If the PV Installation Entity does not agree to the adjustment of the Guaranteed Maximum Price set forth in a Field Order, the amount shall be determined in accordance with the provisions of Subparagraph 7.3.4 above; and the PV Installation Entity shall comply with the provisions of Subparagraph 7.3.6 regarding records and documentation of actual costs.

#### **7.5 VARIATION IN QUANTITY OF UNIT PRICE WORK**

7.5.1 The District shall have the right to increase or decrease the quantity of any Unit price item for which an estimated quantity is stated in the Contract Documents.

#### **7.6 WAIVER**

7.6.1 A waiver of, or failure by, the District or the District's Representative to enforce any requirement in this Article 7, including, without limitation, the requirements in Subparagraphs 7.3.6, 7.3.8, 7.3.9, 7.3.10, or 7.3.11 in connection with any adjustment of the Guaranteed Maximum Price, will not constitute a waiver of, and will not preclude the District, or the District's Representative, from enforcing, such requirements in connection with any other adjustments of the Guaranteed Maximum Price.

7.6.2 The PV Installation Entity agrees and understands that no oral approval, either express or implied, of any adjustment of the Guaranteed Maximum Price by the District or its agents shall be binding upon the District unless and until such approval is ratified by execution of a written change order.

### **ARTICLE 8 GUARANTEED COMPLETION DATE**

#### **8.1 COMMENCEMENT OF WORK ON THE PROJECT**

8.1.1 The date of commencement of the Scope of Work shall be set forth in the Notice To Proceed. The date of commencement for the Scope of Work shall not be postponed by the failure of the PV



Installation Entity, Subcontractors, or of persons or firms for whom the PV Installation Entity is responsible, to act.

## **8.2 PROGRESS AND COMPLETION**

### **8.2.1 By signing the Contract:**

8.2.1.1 The PV Installation Entity represents to the District that the Guaranteed Completion Date is reasonable for performing the Scope of Work and that the PV Installation Entity is able to perform and complete the Scope Work within the Guaranteed Completion Date.

8.2.1.2 The PV Installation Entity agrees that the District is purchasing the right to have the PV Installation Entity present on the Project for the full duration of the time period necessary to complete the Scope of Work described in the RFP.

8.2.2 The PV Installation Entity shall not, except by agreement or instruction of the District in writing, commence operations on the Project site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the PV Installation Entity. The date of commencement and the Guaranteed Completion Date shall not be changed by the effective date of such insurance.

8.2.3 The PV Installation Entity shall proceed expeditiously with adequate forces and shall achieve full completion of the work by the Guaranteed Completion Date. If the District's Representative determines and notifies the PV Installation Entity that the PV Installation Entity's progress is such that the PV Installation Entity will not achieve full completion of the work by the Guaranteed Completion Date, the PV Installation Entity shall immediately and at no additional cost to the District, take all measures necessary, including working such overtime, additional shifts, Sundays, or holidays as may be required to ensure that the entire Project is completed within the Guaranteed Completion Date. Upon receipt of such notice from the District's representative, the PV Installation Entity shall immediately notify the District's Representative of all measures to be taken to ensure full completion of the work within the Guaranteed Completion Date. The PV Installation Entity shall reimburse the District for any extra costs or expenses (including the reasonable value of any services provided by the District's employees) incurred by the District as the result of such measures.

## **8.3 DELAY**

8.3.1 There are only two kinds of delay, Excusable Delay and Inexcusable Delay. Only Excusable Delay, that meets the requirements specified herein may result in the adjustment of the Guaranteed Completion Date, and/or the Guaranteed Maximum Price and may be compensated as Extra Work as described below. All other delay(s) are Inexcusable, and except and only to the extent provided otherwise in Articles 7 and 8, by signing the Contract, the PV Installation Entity agrees:

8.3.1.1 To bear the risk of Inexcusable Delays to completion of the work on the Project;  
and

8.3.1.2 That the Proposal was made with full knowledge of this risk.

8.3.2 In agreeing to bear the risk of Inexcusable Delays to completion of the work on the Project, the PV Installation Entity understands that, except and only to the extent provided otherwise in Articles 7 and 8, the occurrence of events that result in any delay in completion of the work on the Project shall not excuse the PV Installation Entity from its obligation to achieve full completion of the work on the Project within the Guaranteed

Completion Date, and shall not entitle the PV Installation Entity to an adjustment of the Guaranteed Maximum Price.

#### **8.4 ADJUSTMENT OF THE GUARANTEED COMPLETION DATE FOR EXCUSABLE DELAY**

8.4.1 The Guaranteed Completion Date will be extended for an Excusable Delay, if and only if, the PV Installation Entity demonstrates that all of the following six conditions are met:

8.4.1.1 Condition Number One: When the event causing the delay commences, the PV Installation Entity has complied with all Contract requirements for maintaining, submitting, and updating Contract Schedules.

8.4.1.2 Condition Number Two: The delay is critical. A delay is critical if and only to the extent it delays a work activity that cannot be delayed without delaying completion of the entire Project beyond the contractually specified date for full completion of the work on the Project as stated in the Notice to Proceed, or as amended by Change Order. Under this Subparagraph 8.4.1.2:

8.4.1.2.1 If the Contract Schedule shows completion of the entire Project before the contractually specified date for full completion of the work on the Project, a delay is critical if and only to the extent the delay pushes completion of the entire project to a date that is beyond the contractually specified date for full completion of the Project.

8.4.1.2.2 When two or more delays occur concurrently, and each such concurrent delay by itself without consideration of the other delays would be critical, then all such concurrent delays shall be considered critical. For the purpose of determining whether and to what extent the Guaranteed Completion Date should be adjusted pursuant to Subparagraph 8.4.2, such concurrent critical delays shall be treated as a single delay which commences at the start of the delay that begins first and terminates at the cessation of the delay that ends last.

8.4.1.3 Condition Number Three: The delay is supported by the Contract Schedule (or, if appropriate, the Preliminary Schedule), current at the commencement of the event giving rise to the delay. A delay is supported only to the extent the Contract Schedule (or, if appropriate, the Preliminary Schedule) corroborates that it causes a delay to completion of the entire Project beyond the contractually specified date for full completion because of its effect on the operation referred to in Subparagraph 8.4.1.2. The requirement that a delay be supported will be excused if the event causing the delay commences before approval of the Contract Schedule, provided that the absence of an approved Contract Schedule is not due to the PV Installation Entity's failure to timely submit an acceptable Proposed Contract Schedule.

8.4.1.4 Condition Number Four: Within three (3) days of the date the PV Installation Entity discovers or reasonably should discover an act, error, omission or unforeseen condition causing the delay, (even if the PV Installation Entity has not been delayed when the PV Installation Entity discovers or reasonably should discover the act, error, omission or unforeseen condition giving rise to the delay) the PV Installation Entity submits a timely Change Order Request that meets the requirements of Paragraph 4.2.

8.4.1.5 Condition Number Five: The delay is not caused by:

8.4.1.5.1 A naturally occurring unforeseen site condition not anticipated in the Contract Documents (e.g., unanticipated naturally occurring rock or sand); or

8.4.1.5.2 The financial inability, misconduct or default of the PV Installation Entity, a Subcontractor or supplier; or

8.4.1.5.3 The unavailability of materials or parts, as long as such materials or parts were timely ordered by PV Installation Entity within thirty (30) days of the issuance of the Notice to Proceed; or

8.4.1.5.4 An error or omission in the Contract Documents caused by the PV Installation Entity or the PV Installation Entity's Design Consultants.

8.4.1.6 Condition Number Six: The delay is caused by:

8.4.1.6.1 Fire; or

8.4.1.6.2 Strikes, boycotts, or like obstructive actions by employees or labor organizations; or

8.4.1.6.3 Acts of God, including earthquakes in excess of a magnitude of 3.5 on the Richter Scale, tidal waves, floods, unusually severe weather, epidemic, or other severe natural disaster; or

8.4.1.6.4 A man made (not naturally occurring) unforeseen site condition such as buried utility lines, pipes, and the like; or

8.4.1.6.5 An error or omission in the Contract Documents caused by the District; or

8.4.1.6.6 The District's decision to change the Scope of Work, where such decision is not the result of any default or misconduct of the PV Installation Entity; or

8.4.1.6.7 The District's decision to suspend the work on the Project, where such decision is not the result of any default or misconduct of the PV Installation Entity; or

8.4.1.6.8 The failure of the District or the District's representative to timely perform any Contract obligation unless such failure is due to the PV Installation Entity's default or misconduct.

8.4.2 If and only if a delay meets all six conditions prescribed in Subparagraph 8.4.1, then the Guaranteed Completion Date will be extended by the number of days completion of the entire Project is delayed beyond the Guaranteed Completion Date for full completion of the work on the Project.

8.4.3 If for any reason one or more of the six conditions prescribed in Subparagraph 8.4.1 is held legally unenforceable, then all remaining conditions must be met as a condition to obtaining an extension of the Guaranteed Completion Date under Subparagraph 8.4.2.

## **8.5 COMPENSATION FOR EXTRA WORK DUE TO EXCUSABLE DELAY**

8.5.1 To the maximum extent allowed by law, any adjustment of the Guaranteed Maximum Price as the result of Excusable Delays shall be limited to the amounts specified in Article 7.

8.5.2 By signing the Contract, the parties agree that the District has the right to do any or all of the following, which are reasonable and within the contemplation of the parties:

8.5.2.1 To order changes in the Scope of Work, regardless of the extent and number of changes, including without limitation:

8.5.2.1.1 Changes to correct errors or omissions caused by the District, if any, in the Contract Documents.

8.5.2.1.2 Changes resulting from the District's decision to change the Scope of the Work subsequent to execution of the Contract.

8.5.2.1.3 Changes due to unforeseen conditions.

8.5.2.2 To suspend work on the Project or any part thereof.

8.5.2.3 To delay work on the Project, including without limitation, delays resulting from the failure of the District or the District's Representative to timely perform any Contract obligation and delays for The District's convenience.

## **8.6 WAIVER**

8.6.1 A waiver of, or failure by, the District or the District's Representative to enforce any requirement in this Article 8, including without limitation the requirements in Paragraph 8.4, in connection with any or all past delays shall not constitute a waiver of, and shall not preclude the District or the District's Representative from enforcing, such requirements in connection with any present or future delays.

8.6.2 The PV Installation Entity agrees and understands that no oral approval, either express or implied, of any time extension by the District or its agents shall be binding upon the District unless and until such approval is ratified by execution of a written Change Order.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **9.1 COST BREAKDOWN/SCHEDULE OF VALUES**

9.1.1 Within ten (10) days after issuance of the NTP, the PV Installation Entity shall submit to the District's Representative a detailed Cost Breakdown/Schedule of Values ("Cost Breakdown") of the portion of the Guaranteed Maximum Price applicable to that phase of the work in a form reasonably approvable to the District. Each such Cost Breakdown shall itemize as separate line items the cost of each work activity for the applicable phase and all associated costs, including but not limited to warranties, as built documents, overhead expenses, and the total allowance for profit. Insurance and bonds shall each be listed as separate line items. The total of all line items shall at all times be consistent with the Guaranteed Maximum Price. The Cost Breakdown, when approved by the District's Representative, shall become part of the Contract Documents and shall be the basis for determining the cost of the work performed for the PV Installation Entity's Applications for Payment.

### **9.2 PROGRESS PAYMENT**

9.2.1 The District agrees to pay monthly to the PV Installation Entity, subject to Subparagraph 9.4.2, an amount equal to 95% of the sum of the following:

9.2.1.1 Cost of the Construction Work in permanent place as of the end of the preceding month.

9.2.1.2 Cost of materials not yet incorporated in the Construction Work, subject to Subparagraph 9.3.5.

9.2.1.3 Less amounts previously paid.

9.2.1.4 During the Design Work, the District shall pay the PV Installation Entity monthly a uniform amount prorated, based on the Guaranteed Completion Date and Guaranteed Maximum Price associated with either Schematic Design or Construction Documents Phase.

### 9.3 APPLICATION FOR PAYMENT

9.3.1 On or before the 10th day of the month or such other date as is established by the Contract Documents, the PV Installation Entity shall submit to the District's Representative an itemized Application For Payment, for the cost of the work in permanent place, as approved by the District's Representative, which has been completed in accordance with the Contract Documents as of the last day of the preceding month, less amounts previously paid. The Application For Payment shall be prepared as follows:

9.3.1.1 In a form approved by the District.

9.3.1.2 Itemized in accordance with the Cost Breakdown as applicable.

9.3.1.3 Include such data substantiating the PV Installation Entity's right to payment as the District's Representative may reasonably require, such as invoices, certified payrolls, daily time and material records, and, if securities are deposited in lieu of retention pursuant to Paragraph 9.5, a certification of the market value of all such securities as of a date not earlier than 5 days prior to the date of the Application For Payment as applicable.

9.3.1.4 Itemized retention.

9.3.2 Applications For Payment shall not include requests for payment on account of (1) changes which have not been authorized by Change Orders or (2) amounts the PV Installation Entity does not intend to pay a Subcontractor because of a dispute or other reason.

9.3.3 If required by the District, an Application For Payment shall be accompanied by (1) a summary showing payments that will be made to Subcontractors covered by such application and (2) unconditional waivers and releases of claims and stop notices, in the form contained in the Exhibits, from each Subcontractor listed in the preceding Application For Payment covering sums disbursed pursuant to that preceding Application For Payment.

9.3.4 The PV Installation Entity warrants that, upon submittal of an Application For Payment, all work on the Project, for which Certificates For Payment have been previously issued and payment has been received from the District, shall be free and clear of all claims, stop notices, security interests, and encumbrances in favor of the PV Installation Entity, Subcontractors, or other persons or firms entitled to make claims by reason of having provided labor, materials, or equipment relating to work on the Project.

9.3.5 At the sole discretion of the District, the District's Representative may approve for inclusion in the Application For Payment the cost of materials not yet incorporated in the Construction Work but already delivered and suitably stored either at the Project site or at some other appropriate location acceptable to the District's Representative. In such case, the PV Installation Entity shall furnish evidence satisfactory to the District's Representative (1) of the cost of such materials and (2) that such materials are under the exclusive

control of the PV Installation Entity. Only materials to be incorporated in the work on the Project will be considered for payment. Any payment shall not be construed as acceptance of such materials nor relieve the PV Installation Entity from sole responsibility for the care and protection of such materials; nor relieve the PV Installation Entity from risk of loss to such materials from any cause whatsoever; nor relieve the PV Installation Entity from its obligation to complete the work on the Project in accordance with the Contract; nor act as a waiver of the right of the District to require fulfillment of all terms of the Contract.

#### 9.4 APPROVAL OF CERTIFICATE FOR PAYMENT BY DISTRICT

9.4.1 If the PV Installation Entity has made Application for Payment in accordance with Paragraph 9.3, the District's Representative shall, not later than 7 days after the Date of receipt of the Application For Payment, issue to the District, with a copy to the PV Installation Entity, a Certificate For Payment for such amount as the District's Representative determines to be properly due.

9.4.2 The District may decide to withhold payment in whole, or in part, to the extent reasonably necessary to protect the District if, in the District's opinion, the representations to the District required of the PV Installation Entity pursuant to the Contract Documents cannot be made. Failure by the District to deduct any sums from a progress payment shall not constitute a waiver of the District's right to such sums. The District may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefore, to the payment of any expenses, losses, or damages as determined by the District, incurred by the District for which the PV Installation Entity is liable under the contract. For instance, the District may withhold payment, in whole or in part, to such extent as may be necessary to protect the District from loss because of:

9.4.2.1 Failure to provide requested supporting documents, including those noted in Section;

9.4.2.2 Defective work not timely remedied;

9.4.2.3 Stop Notices. If any Stop 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 District shall retain from payments otherwise due the PV Installation Entity, 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 Notice; provided, however, that the District may release such funds upon receipt of evidence satisfactory to the District to the effect that the PV Installation Entity has resolved such claim, by settlement, Stop Notice Bond or otherwise. All other provisions of state law with respect to stop notices shall also apply;

9.4.2.4 Liquidated damages assessed against the PV Installation Entity;

9.4.2.5 Reasonable doubt that the work on the Project can be completed for the unpaid balance of any Guaranteed Maximum Price or within the Guaranteed Completion Date;

9.4.2.6 Damage to the District, another the PV Installation Entity, or subcontractor, including any sums expended by or on behalf of the District in performing any of the PV Installation Entity's obligations under the Contract which the PV Installation Entity has failed to perform or has performed inadequately;

9.4.2.7 Unsatisfactory prosecution of the work by the PV Installation Entity;

9.4.2.8 Failure to store and properly secure materials;

9.4.2.9 Failure of the PV Installation Entity 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;

9.4.2.10 Failure of the PV Installation Entity to maintain record drawings;

9.4.2.11 Erroneous estimates by the PV Installation Entity of the value of the work on the Project performed, or other false statements in an Application for Payment;

9.4.2.12 Unauthorized deviations from the Contract Documents;

9.4.2.13 Failure of the PV Installation Entity to prosecute the work on the Project in a timely manner in compliance with established progress schedules and completion dates; or

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

9.4.3 Subject to the withholding provisions of Subparagraph 9.4.2, the District will pay the PV Installation Entity the amount set forth in the Certificate For Payment no later than 15 days after the issuance of the Certificate For Payment.

9.4.4 Neither the District nor the District'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.

9.4.5 Neither a Certificate For Payment nor a progress payment made by the District will constitute acceptance of Defective Work.

## **9.5 DEPOSIT OF SECURITIES IN LIEU OF RETENTION AND DEPOSIT OF RETENTION INTO ESCROW**

9.5.1 At the request and expense of the PV Installation Entity, a substitution of securities may be made for any monies retained by the District under Paragraph 9.2 to ensure performance under the Contract Documents. Securities equivalent in value to the retention amount required by the Contract Documents for each Certificate For Payment shall be deposited by the PV Installation Entity with a state or federally chartered bank in the State of California ("Escrow Agent"), which shall hold such securities pursuant to the escrow Contract referred to in Subparagraph 9.5.3 until final payment is due in accordance with Paragraph 9.8. Securities shall be valued as often as conditions of the securities market warrant, but in no case less than once per month. The PV Installation Entity shall deposit additional securities so that the current market value of the total of all deposited securities shall be at least equal to the total required amount of retention.

9.5.2 Alternatively to Subparagraph 9.5.1, and at the request and expense of the PV Installation Entity, the District will deposit retention directly with Escrow Agent. The PV Installation Entity may direct the investment of such deposited retention into interest bearing accounts or securities, and such deposits or securities shall be held by Escrow Agent upon the same terms provided for securities deposited by the PV Installation Entity.

9.5.3 A prerequisite to the substitution of securities in lieu of retention or the Deposit of retention into escrow shall be the execution by the PV Installation Entity, the District, and Escrow Agent of an Escrow

Contract for Deposit of Securities in Lieu of Retention and Deposit of Retention in the form set forth in the Public Contract Code. The terms of such escrow Contract are incorporated into the requirements of this Paragraph 9.5.

## **9.6 SUBSTANTIAL COMPLETION**

9.6.1 When the PV Installation Entity gives notice to the District's Representative that the Construction Work is substantially complete, unless the District's Representative determines that the Construction Work is not sufficiently complete to warrant an inspection to determine Substantial Completion, the District's Representative will inspect the Construction Work, and prepare and give to the PV Installation Entity a comprehensive list of items to be completed or corrected before establishing Substantial Completion. The PV Installation Entity shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the PV Installation Entity to complete all Construction Work in accordance with the Contract Documents. The District's Representative will make an inspection to determine whether the Construction Work is substantially complete. If the District's Representative's inspection discloses any item, whether or not included on the list, which must be completed or corrected before Substantial Completion, the PV Installation Entity shall, before issuance of the Certificate of Substantial Completion, complete or correct such item. The PV Installation Entity shall then submit a request for another inspection by the District's Representative to determine Substantial Completion. Costs for additional inspection by the District's Representative shall be deducted from any monies due and payable to the PV Installation Entity.

9.6.2 When the District's Representative determines that the Construction Work is substantially complete, the PV Installation Entity will prepare and submit a Certificate of Substantial Completion to the District, which, when signed by the District, shall establish the Date of Substantial Completion and the responsibilities of the District and the PV Installation Entity for security, maintenance, utilities, insurance, and damage to the Construction Work. Unless otherwise provided in the Certificate of Substantial Completion, the Guarantee To Repair Period for the work on the Project covered by the Certificate of Substantial Completion, shall commence on the Date of Substantial Completion of the Construction Work except that Substantial Completion shall not commence the Guarantee to Repair Period for any equipment or systems that:

9.6.2.1 Are not fully operational (equipment or systems shall not be considered fully operational if they are intended to provide service to any portion of the building which the District has neither Beneficially Occupied nor accepted as Substantially Complete); or

9.6.2.2 Are not accepted by the District.

9.6.3 The Guarantee To Repair Period for systems which become fully operational and accepted subsequent to Substantial Completion will begin on the Date of their acceptance by the District. The Certificate of Substantial Completion shall be submitted to the District and the PV Installation Entity for their written acceptance.

## **9.7 FINAL COMPLETION AND FINAL PAYMENT**

9.7.1 Upon receipt of notice from the PV Installation Entity that the work on the Project is ready for final inspection, the District's Representative will make such inspection. Final Completion shall be when the District's Representative determines that the work on the Project is fully completed and in accordance with the Contract Documents. The District will file a Notice of Completion within 10 days after Final Completion. After receipt of the final Application For Payment, if the District's Representative determines that Final Completion has occurred, the District's Representative will issue the final Certificate For Payment.



9.7.2 Neither final payment nor any retention shall become due until the PV Installation Entity submits the following items to the District's Representative:

9.7.2.1 The final Application For Payment and all submittals required in accordance with Paragraph 9.3.

9.7.2.2 All guarantees and warranties procured by the PV Installation Entity from Subcontractors, all operating manuals for equipment installed in the Project, interconnection agreement with the Utility, As built documents, and all other submittals required by the Contract Documents.

9.7.2.3 The final payment shall be made, subject to the satisfaction of all other legal conditions to final payment, 35 days after the filing of the Notice of Completion.

9.7.3 Acceptance of final payment by the PV Installation Entity shall constitute a waiver of all claims, except those previously made in writing and identified by the PV Installation Entity as unsettled at the time of the final Application For Payment, and PV Installation Entity shall submit a waiver of all such claims, in a form reasonably acceptable to the District, at the time of final payment.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **10.1 SAFETY PRECAUTIONS AND PROGRAMS**

10.1.1 The PV Installation Entity shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

### **10.2 SAFETY OF PERSONS AND PROPERTY**

10.2.1 The PV Installation Entity shall take adequate precautions for safety of and shall provide adequate protection to prevent damage, injury, or loss to the following:

10.2.1.1 Employees involved in the Construction Work and other persons who may be affected thereby.

10.2.1.2 The Construction Work in place and materials and equipment to be incorporated therein, whether in storage on or off the Project site, under care, custody, or control of the PV Installation Entity or Subcontractors.

10.2.1.3 Other property at the Project site and adjoining property.

10.2.2 The PV Installation Entity shall erect and maintain, as required by existing conditions and performance of the work on the Project, adequate safeguards for safety and protection, including providing adequate lighting and ventilation, posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying District and users of adjacent sites and utilities.

10.2.3 When use or storage of explosives, other hazardous materials, equipment, or unusual methods are necessary for execution of the Construction Work, the PV Installation Entity shall exercise the utmost care and carry on such activities only under the supervision of properly qualified personnel.

10.2.4 The PV Installation Entity shall designate a responsible member of the PV Installation Entity's organization at the Project site whose duty shall be the prevention of accidents. That person shall be the

Superintendent, unless otherwise designated by the PV Installation Entity in writing to the District and the District's Representative.

10.2.5 The PV Installation Entity shall not load or permit any part of the Construction Work or the Project site to be loaded so as to endanger the safety of persons or property.

### 10.3 EMERGENCIES

10.3.1 In an emergency affecting the safety of persons or property, the PV Installation Entity shall act to prevent or minimize damage, injury, or loss. The PV Installation Entity shall promptly notify the District's Representative, which notice may be oral followed by written confirmation, of the occurrence of such an emergency and the PV Installation Entity's action.

## ARTICLE 11 INSURANCE AND BONDS

### 11.1 THE PV INSTALLATION ENTITY'S INSURANCE

#### 11.1.1 Minimum Scope of Insurance.

11.1.1.1 *General Liability:* Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

11.1.1.2 *Automobile Liability:* Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto).

11.1.1.3 *Workers' Compensation and Employers' Liability:* Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

11.1.1.4 *Professional Liability:* Professional Liability Insurance insuring the PV Installation Entity, its officers, directors, stockholders, employees, agents, or partner, and all other persons for whose acts the PV Installation Entity may be liable, against any and all liabilities arising out of or in connection with the negligent acts, errors or omissions of any of the foregoing in connection with the carrying out of their professional responsibilities described in this Contract. Professional Liability Insurance shall remain in full force and effect, and shall be so certified to the District by the insurer, for a period of three (3) years after the termination of this Contract and the completion of all of the PV Installation Entity's services hereunder.

#### 11.1.2 Minimum Limits of Insurance.

11.1.2.1 *General Liability:* General Liability will be provided in the following \$2,000,000 per occurrence for bodily injury, personal injury and property damage, as well as an excess Umbrella Liability policy in the amount of \$2,000,000 covering the above named perils. In either case, if Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project or the general aggregate limit shall be twice the required occurrence limit.

11.1.2.2 *Automobile Liability:* \$2,000,000 per accident for bodily injury and property damage.

11.1.2.3 *Workers' Compensation and Employers' Liability:* Workers' compensation limits as required by the Labor Code of the State of California. Employers Liability limits of \$1,000,000 per accident for bodily injury or disease.

11.1.2.4 *Professional Liability Insurance*: \$1,000,000 per claim.

11.1.2.5 *All Coverages*: Each insurance policy required by this RFP shall be endorsed to state that coverage shall not be canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.

11.1.3 Verification of Coverage. The PV Installation Entity shall provide to District certificates of insurance and endorsements effecting coverage required by this Contract. All insurance is to be placed with insurers with a current A.M. Best's rating no less than A-:VIII, licensed to do business in California, and satisfactory to the District. All insurance required by this Section shall also contain standard separation of insureds provisions and shall not contain any special limitations on the scope of protection afforded to the District, its directors, officials, officers, employees, agents and volunteers. All policies shall contain a provision stating that such policies are primary insurance and that the insurance of District or any named insured shall not be called upon to contribute to any loss. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on industry standard forms (such as an ISO CG 2010 (or insurer's equivalent) signed by the insurer's representative, and a certificate of insurance (Acord form 25-S or equivalent) with additional insured endorsements attached) , and acceptable to the District. All certificates and endorsements must be received and approved by the District within five (5) calendar days of the date of the Letter of Award. The District reserves the right to require complete, certified copies of all required insurance policies, at any time.

11.1.4 Other Insurance. The PV Installation Entity shall provide all other insurance required to be maintained under applicable laws, ordinances, rules, and regulations.

## **11.2 PERFORMANCE BOND AND PAYMENT BOND**

11.2.1 The PV Installation Entity shall furnish bonds covering the faithful performance of the Contract (Performance Bond) and payment of obligations arising thereunder (Payment Bond) on the forms contained in the exhibits to the Contract.

11.2.2 The Payment Bond and Performance Bond shall each be in the amount of the Guaranteed Maximum Price.

11.2.3 The Payment Bond and Performance Bond shall be in effect on the Date the Contract is signed by the District.

11.2.4 The PV Installation Entity shall promptly furnish such additional security as may be required by the District to protect its interests and those interests of persons or firms supplying labor or materials to the Project.

11.2.5 Surety companies used by the PV Installation Entity shall be, on the Date the Contract is signed by the District, listed in the latest published State of California, Department of Insurance list of "Insurers Admitted to Transact Surety Insurance in this State."

11.2.6 The premiums for the Payment Bond and Performance Bond shall be paid by the PV Installation Entity.

11.2.7 The PV Installation Entity maintains and agrees that it has executed Payment and Performance Bonds in the amounts and manner required by the Bid Documents.

11.2.8 No payment will be made to the PV Installation Entity until the PV Installation Entity's Payment Bond and Performance Bond have been approved by the District.

11.2.9 Should, in the District's sole opinion, any bond become insufficient or Surety found to be unsatisfactory, the PV Installation Entity shall renew or replace the effected bond within 10 days of receiving notice from the District.

11.2.10 In the event the Surety or the PV Installation Entity intends to reduce or cancel any required bonds, at least thirty (30) days prior written notice shall be given to the District, and the PV Installation Entity shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Contract until any replacement bonds required by this Section are accepted by the District.

11.2.11 To the extent, if any, that the Guaranteed Maximum Price is increased in accordance with the Contract, the PV Installation Entity shall, upon request of the District, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the District.

11.2.12 To the extent available, the bonds shall further provide that no change or alteration of the Contract (including, without limitation, an increase in the Guaranteed Maximum Price, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the PV Installation Entity will release the surety. If the PV Installation Entity fails to furnish any required bond, the District may terminate the Contract for cause.

## **ARTICLE 12 UNCOVERING AND CORRECTION OF CONSTRUCTION WORK**

### **12.1 UNCOVERING OF WORK ON THE PROJECT**

12.1.1 If a portion of the Construction Work is covered contrary to the District's Representative's request or direction, or contrary to the requirements of the Contract Documents, it must, if required in writing by the District's Representative, be uncovered for the District's Representative's observation and be replaced at the PV Installation Entity's expense without adjustment of the Guaranteed Completion Date or the Guaranteed Maximum Price.

12.1.2 If a portion of the Construction Work has been covered, which is not required by the Contract Documents to be observed or inspected prior to its being covered and which the District's Representative has not specifically requested to observe prior to its being covered, the District's Representative may request to see such Construction Work and it shall be uncovered and replaced by the PV Installation Entity. If such Construction Work is in accordance with the Contract Documents, the costs of uncovering and replacing the Construction Work shall be added to the Guaranteed Maximum Price by Change Order; and if the uncovering and replacing of the Construction Work extends the Guaranteed Completion Date, an appropriate adjustment of the Guaranteed Completion Date shall be made by Change Order. If such Construction Work is not in accordance with the Contract Documents, the PV Installation Entity shall pay such costs and shall not be entitled to an adjustment of the Guaranteed Completion Date or the Guaranteed Maximum Price.

### **12.2 CORRECTION OF DEFECTIVE WORK AND GUARANTEE TO REPAIR PERIOD**

12.2.1 The term "Guarantee To Repair Period" means a period of one (1) year, unless a longer period of time is specified, commencing from the Date of Final Completion.

12.2.2 The PV Installation Entity shall (1) correct Defective Work that becomes apparent during the progress of the work on the Project or during the Guarantee To Repair Period and (2) replace, repair, or restore to the District's satisfaction any other parts of the work on the Project and any other real or personal property which is damaged or destroyed as a result of Defective Work or the correction of Defective Work. The PV Installation Entity shall promptly commence such correction, replacement, repair, or restoration upon notice from the District's Representative or the District, but in no case later than ten (10) days after receipt of such notice; and the PV Installation Entity shall diligently and continuously prosecute such correction to completion. The PV Installation Entity shall bear all costs of such correction, replacement, repair, or restoration, and all Losses resulting from such Defective Work, including additional testing, inspection, and compensation for the District's Representative's services and expenses. The PV Installation Entity shall perform corrective work on the Project at such times that are acceptable to the District and in such a manner as to avoid, to the extent practicable, disruption to the District's activities.

12.2.3 If immediate correction of Defective Work is required for life safety or the protection of property and is performed by the District or Separate Contractors, the PV Installation Entity shall pay to the District all reasonable costs of correcting such Defective Work. The PV Installation Entity shall replace, repair, or restore to the District's satisfaction any other parts of the Construction Work and any other real or personal property which is damaged or destroyed as a result of such Defective Work or the correction of such Defective Work.

12.2.4 The PV Installation Entity shall remove from the Project site portions of the Construction Work and materials which are not in accordance with the Contract Documents and which are neither corrected by the PV Installation Entity nor accepted by the District.

12.2.5 If the PV Installation Entity fails to commence correction of Defective Work within ten (10) days after notice from the District or the District's Representative or fails to diligently prosecute such correction to completion, the District may correct the Defective Work in accordance with Paragraph 2.4; and, in addition, the District may remove the Defective Work and store salvageable materials and equipment at the PV Installation Entity's expense.

12.2.6 If The PV Installation Entity fails to pay the costs of such removal and storage as required by Subparagraphs 12.2.4 and 12.2.5 within ten (10) days after written demand, the District may, without prejudice to other remedies, sell such materials at auction or at private sale, or otherwise dispose of such material. The PV Installation Entity shall be entitled to the proceeds of such sale, if any, in excess of the costs and damages for which the PV Installation Entity is liable to the District, including compensation for the District's Representative's services and expenses. If such proceeds of sale do not cover costs and damages for which the PV Installation Entity is liable to the District, the Guaranteed Maximum Price shall be reduced by such deficiency. If there are no remaining payments due the PV Installation Entity or the remaining payments are insufficient to cover such deficiency, the PV Installation Entity shall promptly pay the Difference to the District.

12.2.7 The PV Installation Entity's obligations under this Article 12 are in addition to and not in limitation of its warranty obligations hereunder or any other obligation of the PV Installation Entity under the Contract Documents. Enforcement of the PV Installation Entity's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies the District may have under the Contract Documents or at law or in equity for Defective Work. Nothing contained in this Article 12 shall be construed to establish a period of limitation with respect to other obligations of the PV Installation Entity under the Contract Documents. Establishment of the Guarantee To Repair Period relates only to the specific obligation of the PV Installation Entity to correct the work on the Project and in no way limits

either the PV Installation Entity's liability for Defective Work or the time within which proceedings may be commenced to enforce the PV Installation Entity's obligations under the Contract Documents.

## **ARTICLE 13 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **13.1 TERMINATION BY THE PV INSTALLATION ENTITY**

13.1.1 Subject to Subparagraph 13.1.2, the PV Installation Entity shall have the right to terminate the Contract only upon the occurrence of one of the following:

13.1.1.1 The work on the Project is stopped for ninety (90) consecutive days, through no act or fault of the PV Installation Entity, any Subcontractor, or any employee or agent of the PV Installation Entity or any Subcontractor, due to an issuance of an order of a court or other public authority having jurisdiction or due to an act of government, such as a declaration of a national emergency making material unavailable.

13.1.1.2 The District fails to perform any material obligation under the Contract Documents and fails to cure such default within thirty (30) days after receipt of notice from the PV Installation Entity stating the nature of such default.

13.1.1.3 Repeated suspensions by the District, other than such suspensions as are agreed to by the PV Installation Entity under Paragraph 13.3, which constitute in the aggregate more than 20% of the Guaranteed Completion Date or ninety (90) days, whichever is larger.

13.1.2 Upon the occurrence of one of the events listed in Subparagraph 13.1.1, the PV Installation Entity may, upon ten (10) days additional notice to the District and the District's Representative, and provided that the condition giving rise to the PV Installation Entity's right to terminate is continuing, terminate the Contract.

13.1.3 Upon termination by the PV Installation Entity, the District will pay to the PV Installation Entity the sum determined by Subparagraph 13.4.4. Such payment will be the sole and exclusive remedy to which the PV Installation Entity is entitled in the event of termination of the Contract by the PV Installation Entity pursuant to Paragraph 13.1; and the PV Installation Entity will be entitled to no other compensation or damages and expressly waives the same.

### **13.2 TERMINATION BY THE DISTRICT FOR CAUSE**

13.2.1 The District will have the right to terminate the Contract for cause at any time after the occurrence of any of the following events:

13.2.1.1 The PV Installation Entity becomes insolvent or files for relief under the bankruptcy laws of the United States.

13.2.1.2 The PV Installation Entity makes a general assignment for the benefit of its creditors or fails to pay its debts as the same become due.

13.2.1.3 A receiver is appointed to take charge of the PV Installation Entity's property.

13.2.1.4 The commencement or completion of any work activity is 14 days or more behind the Date set forth in the Contract Schedule for such work activity, and which results in an Inexcusable Delay.

13.2.1.5 The PV Installation Entity abandons work on the Project.

13.2.2 Upon the occurrence of any of the following events, the District will have the right to terminate the Contract for cause if the PV Installation Entity fails to promptly commence to cure such default and diligently prosecute such cure within five (5) days after notice from the District, or within such longer period of time as is reasonably necessary to complete such cure:

13.2.2.1 The PV Installation Entity persistently or repeatedly refuses or fails to supply skilled supervisory personnel, an adequate number of properly skilled workers, proper materials, or necessary equipment to prosecute the work on the Project in accordance with the Contract Documents.

13.2.2.2 The PV Installation Entity fails to make prompt payment of amounts properly due Subcontractors after receiving payment from the District.

13.2.2.3 The PV Installation Entity disregards Applicable Code Requirements.

13.2.2.4 The PV Installation Entity persistently or materially fails to execute the work on the Project in accordance with the Contract Documents.

13.2.2.5 The PV Installation Entity is in default of any other material obligation under the Contract Documents.

13.2.2.6 The PV Installation Entity persistently or materially fails to comply with applicable safety requirements.

13.2.3 Upon any of the occurrences referred to in Subparagraphs 13.2.1 and 13.2.2, the District may, at its election and by notice to the PV Installation Entity, terminate the Contract and take possession of the Project site and all materials, supplies, equipment, tools, and construction equipment and machinery thereon owned by the PV Installation Entity; accept the assignment of any or all of the subcontracts; and then complete the Project by any method the District may deem expedient. If requested by the District, the PV Installation Entity shall remove any part or all of the PV Installation Entity's materials, supplies, equipment, tools, and construction equipment and machinery from the Project site within seven (7) days of such request; and if the PV Installation Entity fails to do so, the District may remove or store, and after ninety (90) days sell, any of the same at the PV Installation Entity's expense.

13.2.4 If the Contract is terminated by the District as provided in this Paragraph 13.2, the PV Installation Entity shall not be entitled to receive any further payment until the expiration of thirty-five (35) days after Final Completion and acceptance of all work on the Project by the District.

13.2.5 If the unpaid balance of the Guaranteed Maximum Price exceeds the cost of completing the Project, including all additional costs and expenses made necessary thereby, including costs for the District staff time, plus all Losses sustained, including any liquidated damages provided under the Contract Documents, and the lost CSI rebate, if applicable, such excess shall be paid to the PV Installation Entity. If such costs, expenses, Losses, lost CSI rebate, and liquidated damages exceed the unpaid balance of the Guaranteed Maximum Price, the PV Installation Entity shall pay such excess to the District.

13.2.6 No termination or action taken by the District after termination shall prejudice any other rights or remedies of the District provided by law or by the Contract Documents upon such termination; and the District may proceed against the PV Installation Entity to recover all Losses suffered by the District.

### **13.3 SUSPENSION BY THE DISTRICT FOR CONVENIENCE**

13.3.1 The District may, at any time and from time to time, without cause, order the PV Installation Entity, in writing, to suspend, delay, or interrupt the work on the Project in whole or in part for such period of time, up to ninety (90) days, as the District may determine, with such period of suspension to be computed from the Date of delivery of the written order. Such order shall be specifically identified as a "Suspension Order" under this Paragraph 13.3. The work on the Project may be stopped for such further period as the parties may agree. Upon receipt of a Suspension Order, the PV Installation Entity shall, at the District's expense, comply with its terms and take all reasonable steps to minimize costs allocable to the work covered by the Suspension Order during the period of work stoppage. Within ninety (90) days after the issuance of the Suspension Order, or such extension to that period as is agreed upon by the PV Installation Entity and the District, the District shall either cancel the Suspension Order or delete the work covered by such Suspension Order by issuing a Change Order.

13.3.2 If a Suspension Order is canceled or expires, the PV Installation Entity shall continue with the work on the Project. A Change Order will be issued to cover any adjustments of the Guaranteed Maximum Price or the Guaranteed Completion Date necessarily caused by such suspension. Any Claim by the PV Installation Entity for an adjustment of the Guaranteed Maximum Price or the Guaranteed Completion Date shall be made within twenty-one (21) days after the end of the work suspension. The PV Installation Entity agrees that submission of its claim within said twenty-one (21) days is an express condition precedent to its right to Arbitrate or Litigate such a claim.

13.3.3 The provisions of this Paragraph 13.3 shall not apply if a Suspension Order is not issued by the District. A Suspension Order shall not be required to stop the work on the Project as permitted or required under any other provision of the Contract Documents.

### **13.4 TERMINATION BY THE DISTRICT FOR CONVENIENCE**

13.4.1 The District may, at its option, terminate this Contract, in whole or from time to time in part, at any time by giving notice to the PV Installation Entity. Upon such termination, the PV Installation Entity agrees to waive any claims for damages, including loss of anticipated profits, on account thereof; and, as the sole right and remedy of the PV Installation Entity, the District shall pay the PV Installation Entity in accordance with Subparagraph 13.4.4.

13.4.2 Upon receipt of notice of termination under this Paragraph 13.4, the PV Installation Entity shall, unless the notice directs otherwise, do the following:

13.4.2.1 Immediately discontinue the work on the Project to the extent specified in the notice.

13.4.2.2 Place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of such portion of the work on the Project as is not discontinued.

13.4.2.3 Promptly cancel, on the most favorable terms reasonably possible, all subcontracts to the extent they relate to the performance of the Discontinued portion of the work on the Project.

13.4.2.4 Thereafter do only such work as may be necessary to preserve and protect work on the Project already in progress and to protect materials, plants, and equipment on the Project site or in transit thereto.



13.4.3 Upon such termination, the obligations of the Contract shall continue as to portions of the work on the Project already performed and, subject to the PV Installation Entity's obligations under Subparagraph 13.4.2, as to bona fide obligations assumed by the PV Installation Entity prior to the Date of termination.

13.4.4 Upon such termination, the District shall pay to the PV Installation Entity the sum of the following:

13.4.4.1 The amount of the Guaranteed Maximum Price allocable to the portion of the work on the Project properly performed by the PV Installation Entity as of the Date of termination, less sums previously paid to the PV Installation Entity.

13.4.4.2 Plus previously unpaid costs of any items delivered to the Project site which were fabricated for subsequent incorporation in the work on the Project.

13.4.4.3 Plus any proven Losses with respect to materials and equipment directly resulting from such termination.

13.4.4.4 Plus reasonable demobilization costs.

13.4.4.5 Plus reasonable costs of preparing a statement of the aforesaid costs, expenses, and Losses in connection with such termination.

13.4.5 The above payment shall be the sole and exclusive remedy to which the PV Installation Entity is entitled in the event of termination of the Contract by the District pursuant to Paragraph 13.4; and the PV Installation Entity will be entitled to no other compensation or damages and expressly waives same.

## **ARTICLE 14 STATUTORY REQUIREMENTS**

### **14.1 HOURS OF WORK**

14.1.1 The PV Installation Entity and Subcontractors shall furnish sufficient forces to ensure the prosecution of the work on the Project in accordance with the Construction Schedule and in such a manner to allow for the full and adequate completion of the Project within the Guaranteed Completion Date.

14.1.2 Work on the Project shall be performed during allowed working hours, between 7 AM and 6PM Monday through Friday (MVHS), and 7 AM through 7 PM (LAHS), except that in the event of an emergency or when required to complete the work on the Project in accordance with job progress, work may be performed outside of regular working hours with advance written notice to the District if District provides written approval of the work outside regular working hours. Regular working hours shall be per local ordinance and shall not be changed except with consent of the District.

14.1.3 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 PV Installation Entity 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 PV Installation Entity in excess of eight (8) hours per day and forty (40) hours during any one week shall be permitted upon this public work compensation 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.

14.1.4 The PV Installation Entity shall pay to the District a penalty of Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Contract by the PV Installation Entity, 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 PV Installation Entity 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.

14.1.5 If the work done after hours is required by the Contract to be done outside the PV Installation Entity's or the Inspector's regular working hours, the costs of any inspections, if required to be done outside normal working hours, shall be borne by the District.

14.1.6 If the District allows the PV Installation Entity to do work outside regular working hours for the PV Installation Entity's own convenience, the costs of any inspections required outside regular working hours shall be invoiced to the PV Installation Entity by the District and deducted from the next Progress Payment.

14.1.7 If the PV Installation Entity elects to perform work outside the Inspector's regular working hours, costs of any inspections required outside regular working hours shall be invoiced to the PV Installation Entity by the District and deducted from the next Progress Payment.

14.1.8 No work on the Project or other activities by or on behalf of the PV Installation Entity which presents a hazard or unreasonable disruption to the staff or students of any school shall be allowed while school is in session. The determination as to whether work on the Project or some other activity presents a hazard or constitutes an unreasonable disruption to the staff or students of any school shall be made by and pursuant to the sole discretion of the Architect or a representative of the District's Facilities Project Department. All work on the Project or other activities which could present a hazard or unreasonable disruption to the staff or students of a school shall be performed before or after school is in session, on weekends, or on a school holiday. Neither the PV Installation Entity nor its subcontractors or anyone working on behalf of the PV Installation Entity or subcontractors shall be entitled to additional compensation or Guaranteed Completion Date for having to arrange their work schedule so as not to violate the provisions of this Section. The PV Installation Entity, subcontractors and persons working on behalf of the PV Installation Entity and subcontractors shall be expected to arrange such work and other activities in advance so as to avoid creating monetary or time impacts.

## **14.2 WAGE RATES, TRAVEL, AND SUBSISTENCE**

14.2.1 The PV Installation Entity is aware of the requirements of California Labor Code sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Labor Code 1720-1861 regarding the payment of prevailing wages and submission of certified payroll statements will be enforced. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 (with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)). No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractors are allowed according to PCC sec. 22300 to submit securities in lieu of retention. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, the PV Installation Entity agrees to fully comply with such Prevailing Wage

Laws. The PV Installation Entity shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Contract from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at [www.dir.ca.gov/dlsr/](http://www.dir.ca.gov/dlsr/). In the alternative, the PV Installation Entity may view a copy of the prevailing rates of per diem wages at the District's Business Office. The PV Installation Entity shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the PV Installation Entity's principal place of business and at the Project site. The PV Installation Entity shall defend, indemnify and hold the District, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. The PV Installation Entity shall prepare and provide to the District and shall cause each Subcontractor performing any portion of the Work under this Contract to prepare and provide to the District an accurate and certified payroll record, showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Contractor and/or each Subcontractor in connection with the Work.

14.2.2 Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half (1½) times the above specified rate of *per diem* wages, unless otherwise specified. Holidays shall be defined in the Collective Bargaining Contract applicable to each particular craft, classification, or type of worker employed.

14.2.3 The PV Installation Entity shall pay and shall cause to be paid each worker engaged in work on the Project not less than the general prevailing rate of *per diem* wages determined by the Director, regardless of any contractual relationship which may be alleged to exist between the PV Installation Entity or any Subcontractor and such workers.

14.2.4 The PV Installation Entity shall pay and shall cause to be paid to each worker needed to execute the work on the Project travel and subsistence payments, as such travel and subsistence payments are defined in the applicable collective bargaining Contracts filed with the Department of Industrial Relations in accordance with Labor Code § 1773.8.

14.2.5 If during the period this cost proposal is required to remain open, the Director of Industrial Relations determines that there has been a change in any prevailing rate of *per diem* wages in the locality in which this public work is to be performed, such change shall not alter the wage rates in the Notice calling for Bids or the contract subsequently awarded.

14.2.6 Pursuant to Labor Code § 1775, the PV Installation Entity shall as a penalty to the District, forfeit Fifty Dollars (\$50.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing rate of *per diem* wages, determined by the Director, for such craft or classification in which such worker is employed for any public work done under the Contract by the PV Installation Entity or by any Subcontractor under it. The amount of the penalty shall be determined by the Labor Commission and shall be based on consideration of the PV Installation Entity's mistake, inadvertence, or neglect in failing to pay the correct prevailing rate of *per diem* wage, the previous record of the PV Installation Entity in meeting his or her prevailing rate of *per diem* wage obligations, or the PV Installation Entity's willful failure to pay the correct prevailing rate of *per diem* wages. A mistake, inadvertence, or neglect in failing to pay the correct prevailing rate of *per diem* wage is not excusable if the PV Installation Entity had knowledge of it or the obligations under this part. The difference between such prevailing rate of *per diem* wage and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing rate of *per diem* wage shall be paid to each work by the PV Installation Entity.

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

14.2.8 Pursuant to Labor Code § 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Labor Code § 1773.8.

14.2.9 The PV Installation Entity shall post at appropriate conspicuous points on the Site, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned.

14.2.10 The PV Installation Entity, or any subcontractor working under the PV Installation Entity may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Section 1777.1 or Section 1777.7 of the California Labor Code. Any contract on a public works project entered into between the PV Installation Entity and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by the PV Installation Entity on the project shall be returned to the District. The PV Installation Entity shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the project.

### 14.3 APPRENTICES

14.3.1 All apprentices employed by the PV Installation Entity to perform services under the Contract shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is employed, and shall be employed only at the work of the craft or trade to which he or she is registered. Only apprentices, as defined in § 3077 of the Labor Code, who are in training under apprenticeship standards and written apprenticeship Contracts under Chapter 4 (commencing with § 3070) of Division 3, are eligible to be employed under this Contract. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice Contracts under which he or she is training.

14.3.2 When the PV Installation Entity to whom the Contract is awarded by the District, or any Subcontractor under him or her, in performing any of the work on the Project under the Contract or subcontract, employs workers in any apprenticeable craft or trade, the PV Installation Entity and Subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the Site of the Project, for a certificate approving the PV Installation Entity or Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. The joint apprenticeship committee or committees, subsequent to approving the subject the PV Installation Entity or Subcontractor, shall arrange for the dispatch of apprentices to the PV Installation Entity or Subcontractor in order to comply with this section. The PV Installation Entity and every Subcontractor shall submit the contract award information to the applicable joint apprenticeship committee which shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. There shall be an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the crafts or trade in the area of the Site of the public work, to ensure equal employment and

affirmative action and apprenticeship for women and minorities. The PV Installation Entities or Subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen, who shall be employed in the craft or trade on the Project, may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but, except as otherwise provided in this section, in no case shall the ratio be less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman. However, the minimum ratio for the land surveyor classification shall not be less than one (1) apprentice for each five (5) journeymen.

14.3.3 Any ratio shall apply during any day or portion of a day when any journeyman, or the higher standard stipulated by the joint apprenticeship committee, is employed at the job Site and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the land surveyor classification. The PV Installation Entity shall employ apprentices for the number of hours computed as above before the end of the Contract. However, the PV Installation Entity shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the job Site. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a joint apprenticeship committee, may order a minimum ratio of not less than one (1) apprentice for each five (5) journeymen in a craft or trade classification.

14.3.4 The PV Installation Entity or Subcontractor, if he or she is covered by this section upon the issuance of the approval certificate, or if he or she has been previously approved in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the PV Installation Entity that he or she employs apprentices in the craft or trade in the state on all of his or her contracts on an annual average of not less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman, or in the land surveyor classification, one (1) apprentice for each five (5) journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the PV Installation Entity from the 1-to-5 hourly ratio as set forth in this section. This section shall not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor, when the contracts of general contractors or those specialty contractors involve less than Thirty Thousand Dollars (\$30,000) or twenty (20) Days. Any work performed by a journeyman in excess of eight (8) hours per day or forty (40) hours per week, shall not be used to calculate the hourly ratio required by this section.

14.3.4.1 "Apprenticeable craft or trade" as used in this Article means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the PV Installation Entity from the 1-to-5 ratio set forth in this Article when it finds that any one of the following conditions is met:

14.3.4.1.1 Unemployment for the previous three-month period in the area exceeds an average of fifteen percent (15%).

14.3.4.1.2 The number of apprentices in training in such area exceeds a ratio of 1-to-5.

14.3.4.1.3 There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth (1/30) of its journeymen annually through the apprenticeship training, either on a statewide basis or on a local basis.

14.3.4.1.4 Assignment of an apprentice to any work performed under this contract would create a condition which would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

14.3.5 When exemptions are granted to an organization which represents the PV Installation Entity in a specific trade from the 1-to-5 ratio on a local or statewide basis, the PV Installation Entity will not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

**14.4 THIRD-PARTY CLAIMS (Pub. Contract Code § 9201.)**

14.4.1 The District will provide the PV Installation Entity with timely notice of any third party claim relating to the Contract for the Project. The District also retain full authority to compromise or otherwise settle any claim related to the Contract for the Project.

**14.5 ANTI-TRUST CLAIM ASSIGNMENT (Pub. Contract Code §7103.5.)**

14.5.1 The District shall provide the PV Installation Entity with timely notification of the receipt of any third-party claim, relating to the Contract and the District is entitled to recover its reasonable costs incurred in providing such notification.

14.5.2 At final payment, contractor or subcontractor must agree to assign awarding party 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. Sec. 15) or under the Cartwright Act (Chapter 2 commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract.

**ARTICLE 15 MISCELLANEOUS PROVISIONS**

**15.1 GOVERNING LAW**

15.1.1 This Contract shall be governed by the laws of the State of California, venue shall be in the locale of the Project

**15.2 SUCCESSORS AND ASSIGNS**

15.2.1 The District and the PV Installation Entity respectively bind themselves and their successors, permitted assigns, and legal representatives to the other party and to the successors, permitted assigns, and legal representatives of such other party in respect to covenants, Contracts, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract, in whole or in part, without prior written consent of the other party. Notwithstanding any such assignment, each of the original contracting parties shall remain legally responsible for all of its obligations under the Contract.

**15.3 RIGHTS AND REMEDIES**

15.3.1 All the District's rights and remedies under the Contract Documents will be cumulative and in addition to, and not in limitation of, all other rights and remedies of the District under the Contract Documents or otherwise available at law or in equity.

15.3.2 No action or failure to act by the District or the District's Representative will constitute a waiver of a right afforded them under the Contract, nor will such action or failure to act constitute approval of or acquiescence in a condition or breach thereunder, except as may be specifically agreed in writing. No waiver by the District or the District's Representative of any condition, breach or default will constitute a waiver of any other condition, breach or default; nor will any such waiver constitute a continuing waiver.

15.3.3 No provision contained in the Contract Documents shall create or give to third parties any claim or right of action against the District, the District's Representative, or the PV Installation Entity.

#### **15.4 SURVIVAL**

15.4.1 The provisions of the Contract which by their nature survive termination of the Contract or Final Completion, including all warranties, indemnities, payment obligations, and the District's right to audit the PV Installation Entity's books and records, shall remain in full force and effect after Final Completion or any termination of the Contract.

#### **15.5 COMPLETE CONTRACT**

15.5.1 The Contract Documents constitute the full and complete understanding of the parties and supersede any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract may be modified only by a written instrument signed by both parties or as provided in Article 7.

#### **15.6 SEVERABILITY OF PROVISIONS**

15.6.1 If any one or more of the provisions contained in the Contract Documents should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

#### **15.7 THE DISTRICT'S RIGHT TO AUDIT**

15.7.1 The District and entities and agencies designated by the District will have access to and the right to audit and the right to copy at the District's cost all of the PV Installation Entity's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the PV Installation Entity shall preserve all such records and other items for a period of at least three (3) years after Final Completion.

#### **15.8 NOTICES**

15.8.1 Except as otherwise provided, all notices, requests, demands, and other communications to be given under the Contract Documents shall be in writing and shall be transmitted by one of the following methods:

15.8.1.1 Personally delivered.

15.8.1.2 Sent by telecopy where receipt is confirmed.

15.8.1.3 Sent by courier where receipt is confirmed.

15.8.1.4 Sent by registered or certified mail, postage prepaid, return receipt requested.

15.8.2 Such notices and other communications shall be deemed given and received upon actual receipt in the case of all except registered or certified mail; and in the case of registered or certified mail, on the Date shown on the return receipt or the Date delivery during normal business hours was attempted. Such notices and communications shall be given at the respective street addresses set forth in the Contract. Such street addresses may be changed by notice given in accordance with this Paragraph 15.8.

## **15.9 TIME OF THE ESSENCE**

15.9.1 Time limits stated in the Contract Documents are of the essence of the Contract.

## **15.10 STATUTORY LIMITATION**

15.10.1 Commencement of statutory limitation periods and statute of repose periods shall be as follows:

15.10.1.1 As to acts or failures to act occurring prior to Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Final Completion.

15.10.1.2 As to acts or failures to act occurring after the Date of Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the Date of any act or failure to act by the PV Installation Entity pursuant to any applicable warranty, the Date of any correction of work on the Project or failure to correct work by the PV Installation Entity, or the Date of actual commission of any other act or failure to perform any duty or obligation by the PV Installation Entity or the District, whichever occurs last.

15.10.1.3 The time period for the applicable Statute of Repose shall commence to run at Final Completion of the Project.

## **15.11 CORRECTION OF ERRORS AND OMISSIONS**

15.11.1 The PV Installation Entity agrees to correct any error or omission in the Construction Documents or Contract Documents at no additional cost to The District.

## **15.12 INTERPRETATION**

15.12.1 This Contract shall not be construed in favor of or against any party, but shall be construed as if all parties prepared this Contract.



## GENERAL CONDITIONS TABLE OF CONTENTS

	Page
ARTICLE 1	GENERAL PROVISIONS .....1
1.1	BASIC DEFINITIONS .....1
1.2	OWNERSHIP AND USE OF CONSTRUCTION DOCUMENTS 6
1.3	INTERPRETATION OF DOCUMENTS AND ORDER OF PRECEDENCE.....6
ARTICLE 2	DISTRICT.....8
2.1	FEE AND PERMIT REQUIREMENTS .....8
2.2	ACCESS TO PROJECT SITE.....8
2.3	THE DISTRICT’S RIGHT TO STOP WORK ON THE PROJECT.....9
2.4	THE DISTRICT’S RIGHT TO CARRY OUT WORK ON THE PROJECT.....9
2.5	THE DISTRICT’S RIGHT TO REPLACE THE DISTRICT’S REPRESENTATIVE .....9
ARTICLE 3	PV INSTALLATION ENTITY .....9
3.1	PV INSTALLATION ENTITY RESPONSIBILITY; INDEPENDENT CONTRACTOR.....9
3.2	REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY THE PV INSTALLATION ENTITY; SINGLE POINT RESPONSIBILITY OF THE PV INSTALLATION ENTITY .....10
3.3	SUPERVISION AND CONSTRUCTION PROCEDURES .....11
3.4	LABOR AND MATERIALS .....12
3.5	TRAINING OF DISTRICT EMPLOYEES.....12
3.6	TAXES.....12
3.7	PERMITS, FEES, AND NOTICES.....12
3.8	APPLICABLE CODE REQUIREMENTS .....12
3.9	SUPERINTENDENT .....13
3.10	PROJECT STAFFING.....14
3.11	TOXIC MATERIALS .....14
3.12	HAZARDOUS MATERIALS .....14
3.13	COMPLIANCE WITH STATE STORMWATER PERMIT FOR CONSTRUCTION.....15
3.14	CONSTRUCTION DOCUMENTS.....16

**GENERAL CONDITIONS TABLE OF CONTENTS**

(continued)

	<b>Page</b>
3.15 MONTHLY REPORT .....	17
3.16 OTHER REPORTS.....	17
3.17 GUARANTEE .....	17
3.18 WARRANTY .....	18
3.19 SCHEDULES REQUIRED OF THE PV INSTALLATION ENTITY .....	18
3.20 AS BUILT DOCUMENTS.....	19
3.21 DOCUMENTS AND SAMPLES AT PROJECT SITE .....	19
3.22 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES .....	19
3.23 USE OF SITE AND CLEAN UP .....	21
3.24 CUTTING, FITTING, AND PATCHING.....	21
3.25 ACCESS TO WORK.....	21
3.26 ROYALTIES AND PATENTS .....	21
3.27 CONCEALED OR UNKNOWN CONDITIONS .....	21
3.28 LIABILITY FOR AND REPAIR OF DAMAGED WORK .....	22
3.29 SOLAR PHOTOVOLTAIC SYSTEM PERFORMANCE .....	22
ARTICLE 4 ADMINISTRATION OF THE CONTRACT .....	23
4.1 ADMINISTRATION OF THE CONTRACT BY THE DISTRICT’S REPRESENTATIVE.....	23
4.2 THE PV INSTALLATION ENTITY CHANGE ORDER REQUESTS .....	24
4.3 CLAIMS .....	25
4.4 ASSERTION OF CLAIMS .....	26
4.5 DECISION OF THE DISTRICT’S REPRESENTATIVE ON CLAIMS .....	27
4.6 ALTERNATE DISPUTE RESOLUTION OF CLAIMS .....	27
4.7 WAIVER.....	28
ARTICLE 5 SUBCONTRACTORS .....	29
5.1 SUBCONTRACTUAL RELATIONS.....	29
ARTICLE 6 CONSTRUCTION BY THE DISTRICT OR BY SEPARATE CONTRACTORS .....	29
6.1 THE DISTRICT’S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS .....	29
6.2 MUTUAL RESPONSIBILITY .....	30

**GENERAL CONDITIONS TABLE OF CONTENTS**

(continued)

	<b>Page</b>
6.3 THE DISTRICT’S RIGHT TO CLEAN UP .....	30
ARTICLE 7 CHANGES IN THE SCOPE OF WORK.....	30
7.1 CHANGES.....	30
7.2 DEFINITIONS.....	30
7.3 CHANGE ORDER PROCEDURES .....	31
7.4 FIELD ORDERS .....	34
7.5 VARIATION IN QUANTITY OF UNIT PRICE WORK .....	35
7.6 WAIVER.....	35
ARTICLE 8 GUARANTEED COMPLETION DATE.....	35
8.1 COMMENCEMENT OF WORK ON THE PROJECT .....	35
8.2 PROGRESS AND COMPLETION .....	35
8.3 DELAY .....	36
8.4 ADJUSTMENT OF THE GUARANTEED COMPLETION DATE FOR EXCUSABLE DELAY .....	36
8.5 COMPENSATION FOR EXTRA WORK DUE TO EXCUSABLE DELAY .....	38
8.6 WAIVER.....	38
ARTICLE 9 PAYMENTS AND COMPLETION .....	39
9.1 COST BREAKDOWN/SCHEDULE OF VALUES .....	39
9.2 PROGRESS PAYMENT .....	39
9.3 APPLICATION FOR PAYMENT .....	39
9.4 APPROVAL OF CERTIFICATE FOR PAYMENT BY DISTRICT.....	40
9.5 DEPOSIT OF SECURITIES IN LIEU OF RETENTION AND DEPOSIT OF RETENTION INTO ESCROW .....	42
9.6 SUBSTANTIAL COMPLETION .....	42
9.7 FINAL COMPLETION AND FINAL PAYMENT .....	43
ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY .....	43
10.1 SAFETY PRECAUTIONS AND PROGRAMS .....	43
10.2 SAFETY OF PERSONS AND PROPERTY.....	44
10.3 EMERGENCIES.....	44
ARTICLE 11 INSURANCE AND BONDS .....	44
11.1 THE PV INSTALLATION ENTITY'S INSURANCE .....	44

**GENERAL CONDITIONS TABLE OF CONTENTS**

(continued)

	<b>Page</b>
11.2 PERFORMANCE BOND AND PAYMENT BOND .....	46
ARTICLE 12 UNCOVERING AND CORRECTION OF CONSTRUCTION WORK .....	47
12.1 UNCOVERING OF WORK ON THE PROJECT .....	47
12.2 CORRECTION OF DEFECTIVE WORK AND GUARANTEE TO REPAIR PERIOD.....	47
ARTICLE 13 TERMINATION OR SUSPENSION OF THE CONTRACT.	48
13.1 TERMINATION BY THE PV INSTALLATION ENTITY .....	48
13.2 TERMINATION BY THE DISTRICT FOR CAUSE .....	49
13.3 SUSPENSION BY THE DISTRICT FOR CONVENIENCE.....	50
13.4 TERMINATION BY THE DISTRICT FOR CONVENIENCE ...	51
ARTICLE 14 STATUTORY REQUIREMENTS.....	52
14.1 HOURS OF WORK.....	52
14.2 WAGE RATES, TRAVEL, AND SUBSISTENCE .....	53
14.3 APPRENTICES .....	54
14.4 THIRD-PARTY CLAIMS (Pub. Contract Code § 9201.).....	56
14.5 ANTI-TRUST CLAIM ASSIGNMENT (Pub. Contract Code §7103.5.).....	56
ARTICLE 15 MISCELLANEOUS PROVISIONS.....	56
15.1 GOVERNING LAW.....	56
15.2 SUCCESSORS AND ASSIGNS .....	57
15.3 RIGHTS AND REMEDIES .....	57
15.4 SURVIVAL .....	57
15.5 COMPLETE CONTRACT.....	57
15.6 SEVERABILITY OF PROVISIONS .....	57
15.7 THE DISTRICT’S RIGHT TO AUDIT .....	57
15.8 NOTICES.....	58
15.9 TIME OF THE ESSENCE.....	58
15.10 STATUTORY LIMITATION .....	58
15.11 CORRECTION OF ERRORS AND OMISSIONS .....	58
15.12 INTERPRETATION.....	59

**ATTACHMENT 2**  
**PERFORMANCE BOND (100% of Contract Price)**

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

**KNOW ALL PERSONS BY THESE PRESENTS:**

**WHEREAS**, the governing board (“Board”) of the Mountain View Los Altos High School District, (“District”) and \_\_\_\_\_, (“Principal”) have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

\_\_\_\_\_(Project Name)  
\_\_\_\_\_  
 (“Project” or “Contract”)

which Contract dated \_\_\_\_\_, 20\_\_\_\_, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

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

**NOW, THEREFORE**, the Principal and \_\_\_\_\_ (“Surety”) are held and firmly bound unto the Board of the District in the penal sum of:

\_\_\_\_\_ DOLLARS

(\$ \_\_\_\_\_), lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents, to:

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

The condition of the obligation is such that, if the above bounden Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the Contract and any alteration thereof made as therein provided, on his or its part to be kept and performed at the time and in the intent and meaning, including all contractual guarantees and warranties of materials and workmanship, and shall indemnify and save harmless the District, its trustees, officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and virtue.

As a condition precedent to the satisfactory completion of the Contract, the above obligation shall hold good for a period equal to the warranty and/or guarantee period of the Contract, during which time Surety’s obligation shall continue if Contractor shall fail to make full, complete, and satisfactory repair, replace, and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the District’s rights or the Contractor’s or Surety’s obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

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

**Any claims under this bond may be addressed to the Surety at the following address. This cannot be the Contractor's broker for this bond, but must be an employee of the Surety or the Surety's legal counsel:**

\_\_\_\_\_

\_\_\_\_\_

**Attention:** \_\_\_\_\_

**Telephone No.:** (\_\_\_\_) \_\_\_\_-\_\_\_\_\_

**Fax No.:** (\_\_\_\_) \_\_\_\_-\_\_\_\_\_

**E-mail Address:** \_\_\_\_\_

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

**Principal**

**Surety**

\_\_\_\_\_  
(Name of Principal)

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Signature of Person with Authority)

\_\_\_\_\_  
(Signature of Person with Authority)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Name of California Agent of Surety)

\_\_\_\_\_  
(Address of California Agent of Surety)

\_\_\_\_\_  
(Telephone Number of California Agent of Surety)

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

**END OF DOCUMENT**

**ATTACHMENT 3**  
**PAYMENT BOND -- Contractor's Labor & Material Bond (100% of Contract Price)**  
**(Note: Bidders must use this form, NOT a surety company form.)**

**KNOW ALL PERSONS BY THESE PRESENTS:**

**WHEREAS**, the governing board ("Board") of the Mountain View Los Altos High School District, (or "District") and \_\_\_\_\_, ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to

\_\_\_\_\_(Project Name)  
("Project" or "Contract")

which Contract dated \_\_\_\_\_, 20\_\_\_\_, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

**WHEREAS**, pursuant to law and the Contract, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by which the Contract is awarded in an amount equal to 100 percent (100%) of the Contract price, to secure the claims to which reference is made in the Civil Code of California, including section 9100, and the Labor Code of California, including section 1741.

**NOW, THEREFORE**, the Principal and \_\_\_\_\_, ("Surety") are held and firmly bound unto all laborers, material men, and other persons referred to in said statutes in the penal sum of:

\_\_\_\_\_ DOLLARS

(\$ \_\_\_\_\_), lawful money of the United States, being a sum not less than the total amount payable by the terms of Contract, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

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

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under sections 9000 through 9566 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

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

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

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

**Principal**

\_\_\_\_\_  
(Name of Principal)

\_\_\_\_\_  
(Signature of Person with Authority)

\_\_\_\_\_  
(Print Name)

**Surety**

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Signature of Person with Authority)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Name of California Agent of Surety)

\_\_\_\_\_  
(Address of California Agent of Surety)

\_\_\_\_\_  
(Telephone Number of California Agent of Surety)

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

**END OF DOCUMENT**



**ATTACHMENT 4  
REQUIRED CERTIFICATIONS AND FORMS**

- 1. CERTIFICATIONS TO BE COMPLETED BY CONTRACTOR**
- 2. SITE-VISIT CERTIFICATION**
- 3. PREVAILING WAGE AND RELATED LABOR REQUIREMENTS CERTIFICATION**
- 4. IRAN CONTRACTING ACT CERTIFICATION**
- 5. CRIMINAL BACKGROUND INVESTIGATION / FINGERPRINTING CERTIFICATION**
- 6. NOTICE OF AWARD**
- 7. NOTICE TO PROCEED**
- 8. ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION**
- 9. CONDITIONAL RELEASE UPON PROGRESS PAYMENT**
- 10. UNCONDITIONAL RELEASE UPON PROGRESS PAYMENT**
- 11. CONDITIONAL RELEASE UPON FINAL PAYMENT**
- 12. UNCONDITIONAL RELEASE UPON PROGRESS PAYMENT**
- 13. WARRANTY FORM**
- 14. AGREEMENT AND RELEASE OF CLAIMS CERTIFICATION**

**CERTIFICATIONS TO BE COMPLETED BY CONTRACTOR**

**THE UNDERSIGNED MUST CHECK EACH BOX AND EXECUTE THIS FORM AND HEREBY CERTIFIES TO THE GOVERNING BOARD OF THE DISTRICT THAT:**

- He/she is a representative of the Contractor,
- He/she is familiar with the facts herein certified and acknowledged,
- He/she is authorized and qualified to execute this Agreement and these certifications on behalf of Contractor and that by executing this Agreement he/she is certifying the following items.

PROJECT: \_\_\_\_\_

**Labor Code Sections 1860-1861 (Workers' Compensation).** In accordance with Labor Code section 3700, every contractor will be required to secure the payment of compensation to his or her employees. I acknowledge and certify under penalty of perjury that I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

**Government Code Sections 8355-8357 (Drug-Free Workplace).** I acknowledge and certify under penalty of perjury that I will provide a drug-free workplace by doing all of the following:

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

I also acknowledge that this Contract may be subject to suspension of payments under the contract or grant or termination of the contract or grant, or both, and the contractor or grantee thereunder may be subject to debarment, in accordance with the requirements of the above-referenced statute, if the contracting or granting agency determines that any of the following has occurred:

- (1) The contractor or grantee has made a false certification under Section 8355.
- (2) The contractor or grantee violates the certification by failing to carry out the requirements of subdivisions (a) to (c), inclusive, of Section 8355.

I also acknowledge that the Department of General Services shall establish and maintain a list of individuals and organizations whose contracts or grants have been canceled due to failure to comply with the above-referenced statute. This list shall be updated monthly and published each month. No state agency shall award a contract or grant to a person or organization on the published list until that person or organization has complied with the above-referenced statute.

**Tobacco-Free Environment.** Pursuant to, without limitation, 20 U.S.C. section 6083, Labor Code section 6400 et seq., Health & Safety Code section 104350 et seq. and District Board Policies, all District sites, including the Project site, are tobacco-free environments. Smoking and the use of tobacco products by all persons is prohibited on or in District property. District property includes school buildings, school grounds, school owned vehicles and vehicles owned by others while on District property.

I acknowledge and certify under penalty of perjury that I am aware of the District's policy regarding tobacco-free environments at District sites, including the Project site and acknowledge and certify that I will adhere to the requirements of that policy and not permit any of my firm's employees, agents, subcontractors, or my firm's subcontractors' employees or agents to use tobacco and/or smoke on the Project site. The District also prohibits electronic cigarettes, "vaping" or similar product uses on District sites.

**No Hazardous Materials.** I acknowledge and certify under penalty of perjury that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations ("New Hazardous Material"), shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Contractor's work on the Project for District. I have instructed our employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

- (i) Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material. Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the District's determination. The costs of any such tests shall be paid by Contractor if the material is found to be New Hazardous Material.
- (ii) All Work or materials found to be New Hazardous Material or Work or material installed with equipment containing "New Hazardous Material," will be immediately rejected and this Work will be removed at Contractor's expense at no additional cost to the District.

**The Contractor must immediately notify the District within two (2) Business Days, if the Contractor finds and before it disturbs, any material that the Contractor believes may be hazardous waste, as defined in section 25117 of the Health and Safety Code, and requires removal to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law**

I acknowledge and certify under penalty of perjury that this certification provides notice to the Contractor that:

- (1) The Contractor's work may disturb lead-containing building materials.
- (2) The Contractor must notify the District if any work may result in the disturbance of lead-containing building materials.

## **Lead as a Health Hazard**

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

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

Because the Contractor and its employees will be providing services for the District, and because the Contractor's work may disturb lead-containing building materials, **Contractor is hereby notified** of the potential presence of lead-containing materials located within certain buildings utilized by the District. All school buildings built prior to 1993 are presumed to contain some lead-based paint until sampling proves otherwise.

### (i) **Overview of California Law**

Education Code section 32240 et seq. is known as the Lead Safe Schools Protection Act. Under this act, the Department of Health Services ("DHS") is to conduct a sample survey of schools in the State of California for the purpose of developing risk factors to predict lead contamination in public schools. (Ed. Code, § 32241.)

Any school that undertakes any action to abate existing risk factors for lead is required to utilize trained and state-certified contractors, inspectors, and workers. (Ed. Code, § 32243, subd. (b).) Moreover, lead-based paint, lead plumbing, and solders, or other potential sources of lead contamination, shall not be utilized in the construction of any new school facility or the modernization or renovation of any existing school facility. (Ed. Code, § 32244.)

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

The OSHA Regulations apply to all construction work where a contractor's employee may be occupationally exposed to lead. The OSHA Regulations contain specific and detailed requirements imposed on contractors subject to that regulation. The OSHA Regulations define construction work as work for construction, alteration, and/or repair, including painting and decorating. It includes, but is not limited to, the following:

- a. Demolition or salvage of structures where lead or materials containing lead are present;
- b. Removal or encapsulation of materials containing lead;
- c. New construction, alteration, repair, or renovation of structures, substrates, or portions thereof, that contain lead, or materials containing lead;
- d. Installation of products containing lead;
- e. Lead contamination/emergency cleanup;

- f. Transportation, disposal, storage, or containment of lead or materials containing lead on the site or location at which construction activities are performed; and
- g. Maintenance operations associated with the construction activities described in the subsection.

Because it is assumed by the District that all painted surfaces (interior as well as exterior) within the District contain some level of lead, it is imperative that the Contractor, its workers and subcontractors fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials (including title 8, California Code of Regulations, section 1532. 1).

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

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

In 2008, the U.S. Environmental Protection Agency, issued a rule pursuant to the authority of Section 402(c)(3) of the Toxic Substances Control Act, requiring lead safe work practices to reduce exposure to lead hazards created by renovation, repair and painting activities that disturb lead-based paint (Renovation, Repair and Painting Rule). Renovations in homes, childcare facilities, and schools built prior to 1978 must be conducted by certified renovations firms, using renovators with accredited training, and following the work practice requirements to reduce human exposures to lead.

Contractor, its workers and subcontractors must fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials, including those rules and regulations appearing within title 40 of the Code of Federal Regulations as part 745 (40 CFR 745).

The requirements apply to all contractors who disturb lead-based paint in a six-square-foot area or greater indoors or a 20-square-foot area outdoors. If a DPH-certified inspector or risk assessor determines that a home constructed before 1978 is lead-free, the federal certification is not required for anyone working on that particular building.

(iii) **Contractor's Liability**

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

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

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

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

I acknowledge and certify under penalty of perjury, that:

1. I have received notification of potential lead-based materials on the District's property;
2. I am knowledgeable regarding and will comply with all applicable laws, rules, and regulations governing work with, and disposal of, lead.

**Imported Materials.** All soils, aggregate, or related materials ("Fill") that Contractor, a Subcontractor, agent or supplier, in any way, provides or delivers and/or supplies to the Project Site shall be free of any and all hazardous material as defined in section 25260 of the Health and Safety Code, shall satisfy the requirements of any environmental review of the Project performed pursuant to the statutes and guidelines of the California Environmental Quality Act, sections 21000 et seq. of the Public Resources Code ("CEQA"), and shall comply with the requirements of sections 17210 et seq. of the Education Code, including requirements for a Phase I environmental assessment acceptable to the State of California Department of Education and Department of Toxic Substances Control. I acknowledge that, to the furthest extent permitted by California law, the indemnification provisions in the Contract Documents apply to, without limitation, any claim(s) connected with providing, delivering, and/or supplying Fill.

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I acknowledge and certify under penalty of perjury that I am duly authorized to legally bind the Contractor to all provisions and items included in this certification, that the contents of this certification are true, and that this certification is made under the laws of the State of California.

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

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

**END OF DOCUMENT**

**SITE-VISIT CERTIFICATION**

PROJECT: \_\_\_\_\_

Check whichever option applies:

\_\_\_\_\_ I certify that I visited the Site of the proposed Work and became fully acquainted with the conditions relating to construction and labor. I fully understand the facilities, difficulties, and restrictions attending the execution of the Work under contract.

\_\_\_\_\_ I certify that \_\_\_\_\_ (Bidder's representative) visited the Site of the proposed Work and became fully acquainted with the conditions relating to construction and labor. The Bidder's representative fully understood the facilities, difficulties, and restrictions attending the execution of the Work under contract.

Bidder fully relieves and releases the Mountain View Los Altos High School District, its Architect, its Engineer, its Construction Manager, and all of their respective officers, agents, employees, and consultants from any liability for any monetary or other damage(s), related to conditions that could have been identified during my visit and/or the Bidder's representative's visit to the Site.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

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

Proper Name of Bidder: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

**END OF DOCUMENT**

**PREVAILING WAGE AND  
RELATED LABOR REQUIREMENTS CERTIFICATION**

PROJECT/CONTRACT NO.: \_\_\_\_\_ between Mountain View  
Los Altos High School District (the "District" or the "Owner") and \_\_\_\_\_  
\_\_\_\_\_ (the "Contractor" or the "Bidder") (the "Contract" or the "Project").

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours notice, payroll records, and apprentice and trainee employment requirements, for all Work on the Project including, without limitation, the requirement that it and all of its Subcontractors are registered pursuant to Labor Code section 1771, et seq.

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

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

**END OF DOCUMENT**



**IRAN CONTRACTING ACT CERTIFICATION (Public Contract Code § 2204)**

PROJECT/CONTRACT NO.: \_\_\_\_\_ between  
Mountain View Los Altos High School District (the "District" or the "Owner") and \_\_\_\_\_  
\_\_\_\_\_ (the "Contractor" or the "Bidder") (the "Contract" or the "Project").

Pursuant to Public Contract Code (PCC) section 2204, an Iran Contracting Act certification is required for solicitations of goods or services of one million dollars (\$1,000,000) or more.

Bidder shall complete **ONLY ONE** of the following two paragraphs.

1. Bidder's Total Base Bid is less than one million dollars (\$1,000,000).

**OR**

2. Bidder's Total Base Bid is one million dollars (\$1,000,000) or more, but Bidder is **not** on the current list of persons engaged in investment activities in Iran created by the California Department of General Services ("DGS") pursuant to Public Contract Code § 2203(b), and Bidder is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

**OR**

3. Bidder's Total Base Bid is one million dollars (\$1,000,000) or more, but the District has given prior written permission to Bidder to submit a proposal pursuant to PCC 2203(c) or (d). **A copy of the written permission from the District is included with Bid.**

I certify that I am duly authorized to legally bind the Bidder to this certification, that the contents of this certification are true, and that this certification is made under the laws of the State of California.

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

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

**END OF DOCUMENT**

**CRIMINAL BACKGROUND INVESTIGATION / FINGERPRINTING CERTIFICATION**

PROJECT/CONTRACT NO.: \_\_\_\_\_ between Mountain View  
Los Altos High School District (the "District" or the "Owner") and \_\_\_\_\_  
\_\_\_\_\_ (the "Contractor" or the "Bidder") (the "Contract" or the "Project").

The undersigned does hereby certify to the governing board of the District that:

- (1) He/she is a representative of the Contractor,
- (2) He/she is familiar with the facts herein certified,
- (3) He/she is authorized and qualified to execute this certificate on behalf of Contractor; and
- (4) That the information in this Criminal Background Investigation / Fingerprinting Certification is true and correct.

1. **Education Code.** Contractor has taken at least one of the following actions with respect to the Project (check all that apply):

\_\_\_\_\_ The Contractor has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Contractor's employees and all of its subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and the California Department of Justice ("DOJ") has determined (per the DOJ process for Applicant Agencies described more fully on its website, located at: <http://oag.ca.gov/fingerprints/agencies>) that none of those employees have been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of Contractor's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto; and/or

\_\_\_\_\_ Pursuant to Education Code section 45125.2, Contractor has installed or will install, prior to commencement of work , a physical barrier at the Project site, that will limit contact between Contractor's employees and District pupils at all times; and/or

\_\_\_\_\_ Pursuant to Education Code section 45125.2, Contractor certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Contractor who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Contractor's employees and its subcontractors' employees is:

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

**Title:** \_\_\_\_\_

\_\_\_\_\_ The Work on the Contract is at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of Contract shall come in contact with the District pupils.

2. **Megan's Law (Sex Offenders).** I have verified and will continue to verify that the employees of Contractor that will be on the Project site and the employees of the Subcontractor(s) that will be on the Project site are **not** listed on California's "Megan's Law" Website (<http://www.meganslaw.ca.gov/>).

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

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

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

**END OF DOCUMENT**

**NOTICE OF AWARD**

Dated: \_\_\_\_\_, 20\_\_

To: \_\_\_\_\_  
("Contractor")

\_\_\_\_\_  
(Address)

From: Governing Board ("Board") of the Mountain View Los Altos High School District ("District" or "Owner")

Re: \_\_\_\_\_ Project  
("Project" or "Contract")

Contractor was awarded the Contract on \_\_\_\_\_, 20\_\_, by action of the District's Board.

The Contract Price is \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), and includes alternates N/A.

One (1) copy of each of the Contract Documents (except Drawings) accompany the Notice of Award. One (1) set of the Drawings will be delivered separately or otherwise made available. A PDF copy of the drawings and specifications Additional copies are available at cost of reproduction.

Other than PDF copies, electronic drafting (i.e. AutoCAD) files shall be made available to the Contractor only following receipt of the architect's Electronic File Release Form signed by authorized representative of the Contractor attesting to agreement with terms of the release form. As stated in by the Electronic Release Form, the files provided are a working product, may not fully conform to the Contract Documents, and are utilized by the Contractor at Contractor's sole risk.

No "conformed" set of Contract Documents will be made available. The Contractor is responsible for reviewing and incorporating all bid clarification and addendum changes into the Contract Documents used for construction. All sums necessary for performance of this work shall be included in the Bid.

Contractor must comply with the following conditions precedent within **SEVEN (7)** calendar days of the date of this Notice of Award.

Contractor shall execute and submit the following Contract Documents by 5:00 p.m. of the **SEVENTH (7<sup>TH</sup>)** calendar day following the date of the Notice of Award. Failure to properly and timely submit the following Contract Documents entitles District to reject Contractor's bid as non-responsive.

- a. Agreement: Submit three (3) copies, each bearing an original signature. **If Contractor is a corporation, Contractor must attach a certified copy of the corporation's by-laws, or the resolution of the Board of Directors of the corporation, authorizing the signatory to execute the Agreement and the bonds required by the Contract Documents.**
- b. Performance Bond (100%): Fully executed form provided in the Contract Documents. Submit two (2) copies.
- c. Payment Bond (100%) (Contractor's Labor and Material Bond): Fully executed form provided in the Contract Documents. Submit two (2) copies.
- d. Insurance Certificates and Endorsements.
- e. Site-Visit Certification.

- f. Iran Contracting Act Certification.
- g. Certifications to be Completed by Contractor.
- h. Prevailing Wage and Related Labor Requirements Certification.
- i. Criminal Background Investigation/Fingerprinting Certification.

Failure to comply with these conditions within the time specified will entitle District to consider Contractor's proposal abandoned, to annul the Notice of Award, as well as any other rights the District may have against Contractor.

District will return to Contractor one fully signed counterpart of the Agreement.

MOUNTAIN VIEW LOS ALTOS HIGH SCHOOL DISTRICT

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

**END OF DOCUMENT**

**NOTICE TO PROCEED**

Dated: \_\_\_\_\_, 20\_\_\_\_

To: \_\_\_\_\_  
("Contractor")  
\_\_\_\_\_  
(Address)

From: Governing Board ("Board") of Mountain View Los Altos High School District ("District" or "Owner")

Re: \_\_\_\_\_ Project  
("Project" or "Contract")

Contractor is hereby notified that the Contract Time under the Contract will commence to run in accordance with the schedule submitted with the RFP that was approved/modified by the District in agreement with Contractor.

Contractor must submit the following documents by 5:00 p.m. of the **TENTH (10<sup>TH</sup>)** calendar day following the date of this Notice to Proceed:

1. Contractor's supplementary schedule of work in compliance with the Master Schedule.
2. Contractor's preliminary schedule of submittals, including Shop Drawings, Product Data, and Samples submittals.
3. Contractor's preliminary schedule of values for all of the Work.
4. Contractor's preliminary Contractor's Safety Plan specifically adapted for the Project.
5. A complete subcontractors list, including the name, address, telephone number, facsimile number, California State Contractor's License number, classification, and monetary value of all Subcontracts.

Thank you. We look forward to a successful Project.

MOUNTAIN VIEW LOS ALTOS HIGH SCHOOL DISTRICT

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

**END OF DOCUMENT**

**ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION**  
**(Public Contract Code § 22300)**

This Escrow Agreement ("Escrow Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the following:

Mountain View Los Altos High School District ("District" or "Owner"), whose address is 1299 Bryant Avenue, Mountain View, CA 94040, California, and

\_\_\_\_\_, ("Contractor"), whose address is \_\_\_\_\_, and

\_\_\_\_\_ ("Escrow Agent"), a state or federally chartered bank in California, whose address is \_\_\_\_\_.

For the consideration hereinafter set forth, District, Contractor, and Escrow Agent agree as follows:

1. Pursuant to section 22300 of Public Contract Code of the State of California, which is hereby incorporated by reference, Contractor has the following two (2) options:
  - Deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by District pursuant to the Construction Contract No. \_\_\_\_\_ entered into between District and Contractor for the \_\_\_\_\_ Project, in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_) dated, \_\_\_\_\_, 20\_\_\_\_, (the "Contract"); **or**
  - On written request of Contractor, District shall make payments of the retention earnings for the Contract directly to Escrow Agent.

When Contractor deposits the securities as a substitute for Contract earnings, Escrow Agent shall notify District within ten (10) calendar days of the deposit. The market value of the securities at all times from substitution until the termination of the Escrow Agreement shall be at least equal to the cash amount then required to be withheld as retention pursuant to the Contract.

Securities shall be held in name of Mountain View Los Altos High School District, and shall designate Contractor as beneficial owner.

2. District shall make progress payments to Contractor for those funds which otherwise would be withheld from progress payments pursuant to Contract provisions, provided that Escrow Agent holds securities in the form and amount specified above.
3. When District makes payment of retention earned directly to Escrow Agent, Escrow Agent shall hold them for the benefit of Contractor until the time that the escrow created under this Escrow Agreement is terminated. Contractor may direct the investment of the payments into securities. All terms and conditions of this Escrow Agreement and the rights and responsibilities of the Parties shall be equally applicable and binding when District pays Escrow Agent directly.
4. Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account, and all expenses of District. The District will charge Contractor \$1,000 for each of District's deposits to the escrow account. These expenses and payment terms shall be determined by District, Contractor, and Escrow Agent.
5. Interest earned on securities or money market accounts held in escrow and all interest earned on that interest shall be for sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to District.

6. Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from District to Escrow Agent that District consents to withdrawal of amount sought to be withdrawn by Contractor.
7. District shall have the right to draw upon the securities and/or withdraw amounts from the Escrow Account in event of default by Contractor. Upon seven (7) days written notice to Escrow Agent from District of the default, if applicable, Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by District.
8. Upon receipt of written notification from District certifying that the Contract is final and complete, and that Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all monies and securities on deposit and payments of fees and charges.
9. Escrow Agent shall rely on written notifications from District and Contractor pursuant to Paragraphs 5 through 8, inclusive, of this Escrow Agreement and District and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of securities and interest as set forth above.
10. Names of persons who are authorized to give written notice or to receive written notice on behalf of District and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

**On behalf of District:**

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Name

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Address

**On behalf of Contractor:**

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Name

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Address

**On behalf of Escrow Agent:**

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Name

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Address

At the time the Escrow Account is opened, District and Contractor shall deliver to Escrow Agent a fully executed copy of this Escrow Agreement.

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement by their proper officers on the date first set forth above.

**On behalf of District:**

\_\_\_\_\_

**On behalf of Contractor:**

\_\_\_\_\_



Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

**On behalf of Escrow Agent:**

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

**END OF DOCUMENT**

**CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

**NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.**

---

**Identifying Information**

Name of Claimant:

Name of Customer:

Job Location:

Owner:

Through Date:

---

**Conditional Waiver and Release**

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check:

Amount of Check: \$

Check Payable to:

---

**Exceptions**

This document does not affect any of the following:

- (1) Retentions.
  - (2) Extras for which the claimant has not received payment.
  - (3) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:
    - Date(s) of waiver and release: \_\_\_\_\_
    - Amount(s) of unpaid progress payment(s): \$ \_\_\_\_\_
  - (4) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.
- 

**Signature**

Claimant's Signature:

Claimant's Title:

Date of Signature:

---

7/1/12

**UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

**NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.**

---

**Identifying Information**

Name of Claimant:

Name of Customer:

Job Location:

Owner:

Through Date:

---

**Unconditional Waiver and Release**

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has received the following progress payment:

\$ \_\_\_\_\_

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**Exceptions**

This document does not affect any of the following:

- (1) Retentions.
  - (2) Extras for which the claimant has not received payment.
  - (3) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.
- 

---

**Signature**

Claimant's Signature:

Claimant's Title:

Date of Signature:

---

7/1/12

**WARRANTY AND GUARANTEE FORM**

1. \_\_\_\_\_ ("Contractor")

hereby agrees that the \_\_\_\_\_ ("Work" of Contractor)

which Contractor has installed for the Mountain View Los Altos High School District ("District")

for the following project: \_\_\_\_\_ ("Project" or "Contract")

was performed in accordance with the requirements of the Contract Documents and that the Work as installed fulfills the requirements of the Contract Documents.

2. Contractor agrees to repair or replace all of the Work that may prove to be defective in workmanship or material and any other adjacent Work that may be displaced in connection with such replacement within a period of \_\_\_\_\_ **YEAR(S)** from the date of Completion as defined in the Contract, ordinary wear and tear and unusual abuse or neglect excepted. The date of completion is \_\_\_\_\_, 20\_\_.

3. In the event Contractor fails to comply with the above-mentioned conditions within a reasonable period of time, as determined by District, but not later than **SEVEN (7)** calendar days after being notified in writing by District, Contractor authorizes District to proceed to repair or replace the defective Work at the expense of Contractor. Contractor shall pay the costs and charges therefor upon demand.

4. **Representatives to be contacted for service subject to the terms of Contract:**

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE NO.: \_\_\_\_\_

EMAIL: \_\_\_\_\_

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

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

**END OF DOCUMENT**

**FINAL SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

THIS FINAL SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS ("Final Settlement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between:

Mountain View Los Altos High School District ("District") and

\_\_\_\_\_ ("Contractor"), whose place of business is \_\_\_\_\_.

District and Contractor entered into PROJECT/CONTRACT NO.: \_\_\_\_\_

("Contract" or "Project") in the County of \_\_\_\_\_, California.

The Work under the Contract has been completed.

**NOW, THEREFORE, it is mutually agreed between District and Contractor as follows:**

AGREEMENT

**1. Total Payable.** District shall pay Contractor as detailed below:

*(Original Contract Sum*            \$ \_\_\_\_\_ *For information only)*

Modified Contract Sum	\$ _____
– Payment to Date	\$ _____ (subtract)
– Liquidated Damages	\$ _____ (subtract)
– [Other _____]	\$ _____ (subtract)
<hr/>	
<b>= Payment Due Contractor</b>	<b>\$ _____ ("Total Payable")</b>

Subject to the provisions hereof, District shall forthwith pay to Contractor the Total Payable amount, less any amounts represented by any notice to withhold funds on file with District as of the date of such payment.

**2. No Claims or Disputes.** Contractor acknowledges and hereby agrees that there are no unresolved or outstanding Claims or Disputes (as defined in the Contract Documents) against District arising from the performance of work under the Contract, except for the claims described in the "Disputed Claims" section herein and the obligations described in the "Continuing Obligations" section herein. It is the intention of the parties in executing this Final Settlement that this Final Settlement shall be effective as a full, final and general release of all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities of Contractor against District, all its respective agents, employees, inspectors, assignees and transferees except for the claims described in the "Disputed Claims" section herein and the obligations described in the "Continuing Obligations" section herein.

**3. Disputed Claims.** The following claims are disputed (hereinafter, the "Disputed Claims") and are specifically excluded from the operation of this Final Settlement:

Claim No.   Description of Claim   Amount of Claim   Date Claim Submitted

4. **Release.** Consistent with California Public Contract Code section 7100, Contractor hereby agrees that, in consideration of the payment set forth in the "Total Payable" section herein, Contractor hereby releases and forever discharges District, all its agents, employees, inspectors, assignees, and transferees from any and all liability, claims, demands, actions, or causes of action of whatever kind or nature arising out of or in any way concerned with the Work under the Contract.
5. **Continuing Obligations.** Guarantees and warranties for the Work, and any other continuing obligation of Contractor, shall remain in full force and effect as specified in the Contract Documents.
6. **Contract Indemnity.** To the furthest extent permitted by California law, Contractor shall defend, indemnify, and hold harmless the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all losses, liabilities, claims, suits, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of the Contract unless caused wholly by the sole negligence or willful misconduct of the indemnified parties.
7. **Waiver.** Contractor hereby waives the provisions of California Civil Code section 1542 which provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**
8. **Survivability.** The provisions of this Final Settlement are contractual in nature and not mere recitals and shall be considered independent and severable. If any such provision or any part thereof shall be at any time held invalid in whole or in part under any federal, state, county, municipal, or other law, ruling, or regulations, then such provision, or part thereof, shall remain in force and effect to the extent permitted by law, and the remaining provisions of this Final Settlement shall also remain in full force and effect, and shall be enforceable.
9. **Reservation of Rights.** All rights of District shall survive completion of the Work or termination of Contract, and execution of this Release.

\* \* \* CAUTION: THIS IS A RELEASE - READ BEFORE EXECUTING \* \* \*

Accepted and agreed on the date indicated below:

Dated: \_\_\_\_\_, 20\_\_

Dated: \_\_\_\_\_, 20\_\_

**Mountain View Los Altos High School District**

\_\_\_\_\_, **Inc.**

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

**END OF DOCUMENT**

MOUNTAIN VIEW LOS ALTOS HIGH SCHOOL DISTRICT  
PHOTOVOLTAIC COST/PERFORMANCE  
EVALUATION SPREADSHEET

PHOTOVOLTAIC COST/PERFORMANCE EVALUATION SPREADSHEET									
MOUNTAIN VIEW LOS ALTOS HIGH SCHOOL DISTRICT									
Vendor: General Lighting Service			Site: Mountain View High School New Classrooms						
System Data				Notes		Environmental Reductions per year			
PV Module Specified	LG Neon 2 72cell						Nitrous oxides (NOx)	1,126,159	kg
DC watts per panel STC	365		watts			Sulfurous oxides (SOx)		633,464	kg
SF Per Module	21.99		sf			Other particulates		42,231	kg
SF of Panels	2,770		sf			Carbon dioxide (CO2)		71	tons
Number of PV Modules Required	126								
System Rating	45.99		kW						
AC Energy produced per square foot of PV	25.4087		kWh/yr						
AC Energy produced per 100 kW of system	153,044		kWh/yr						
Energy produced by system in Year One	70,385		kWh/yr						
kWh Value of Electricity Produced in Year One	18.0		cents/kWh						
Total Value of Energy Produced Year One	\$12,669								
Annual Energy cost escalation rate	5.00%		per year	Estimated					
Solar Degradation Factor	0.60%		per year	Estimated					
Annual Maintenance Cost	\$ 2,230		year one	Estimated					
Site	System Size in kw		Estimated Project Cost per DC watt of system				Estimated project cost for system size		
Mountain View HS New Classrooms	46		\$5.23		=		\$240,344		
General Fund Benefit									
Year	Solar Electricity Produced in kWh minus annual degradation factor	PG&E rate with annual escalation	Value of PG&E Power	Annual Maint. Cost of System	Major Maintenance	Annual savings	Cummulative savings	CO2 Reduct. in Tons	
YR 1 _2021	70,385	0.180	\$ 12,669	\$ -		\$ 12,669	\$ 12,669	71	
YR 2 _2022	69,963	0.189	\$ 13,223	\$ (2,230)		\$ 10,993	\$ 23,662	71	
YR 3 _2023	69,543	0.198	\$ 13,801	\$ (2,342)		\$ 11,459	\$ 35,122	70	
YR 4 _2024	69,126	0.208	\$ 14,404	\$ (2,459)		\$ 11,945	\$ 47,067	70	
YR 5 _2025	68,711	0.219	\$ 15,033	\$ (2,582)		\$ 12,452	\$ 59,519	69	
YR 6 _2026	68,299	0.230	\$ 15,690	\$ (2,711)		\$ 12,980	\$ 72,498	69	
YR 7 _2027	67,889	0.241	\$ 16,376	\$ (2,846)		\$ 13,530	\$ 86,028	69	
YR 8 _2028	67,481	0.253	\$ 17,092	\$ (2,988)		\$ 14,103	\$ 100,131	68	
YR 9 _2029	67,077	0.266	\$ 17,838	\$ (3,138)		\$ 14,701	\$ 114,832	68	
YR 10 _2030	66,674	0.279	\$ 18,618	\$ (3,295)		\$ 15,323	\$ 130,155	67	
YR 11 _2031	66,274	0.293	\$ 19,432	\$ (3,459)		\$ 15,972	\$ 146,127	67	
YR 12 _2032	65,876	0.308	\$ 20,281	\$ (3,632)		\$ 16,648	\$ 162,776	67	
YR 13 _2033	65,481	0.323	\$ 21,167	\$ (3,814)		\$ 17,353	\$ 180,129	66	
YR 14 _2034	65,088	0.339	\$ 22,092	\$ (4,005)		\$ 18,087	\$ 198,216	66	
YR 15 _2035	64,698	0.356	\$ 23,057	\$ (4,205)	\$ (20,000)	\$ (1,148)	\$ 197,069	65	
YR 16 _2036	64,310	0.374	\$ 24,065	\$ (4,415)		\$ 19,650	\$ 216,718	65	
YR 17 _2037	63,924	0.393	\$ 25,117	\$ (4,636)		\$ 20,481	\$ 237,199	65	
YR 18 _2038	63,540	0.413	\$ 26,214	\$ (4,868)		\$ 21,347	\$ 258,546	64	
YR 19 _2039	63,159	0.433	\$ 27,360	\$ (5,111)		\$ 22,249	\$ 280,794	64	
YR 20 _2040	62,780	0.455	\$ 28,556	\$ (5,367)		\$ 23,189	\$ 303,983	63	
YR 21 _2041	62,403	0.478	\$ 29,803	\$ (5,635)		\$ 24,168	\$ 328,151	63	
YR 22 _2042	62,029	0.501	\$ 31,106	\$ (5,917)		\$ 25,189	\$ 353,340	63	
YR 23 _2043	61,657	0.527	\$ 32,465	\$ (6,213)		\$ 26,252	\$ 379,593	62	
YR 24 _2044	61,287	0.553	\$ 33,884	\$ (6,523)		\$ 27,361	\$ 406,953	62	
YR 25 _2045	60,919	0.581	\$ 35,365	\$ (6,849)		\$ 28,515	\$ 435,468	62	
Totals	1,638,571		\$ 554,708	\$ (99,239)	\$ (20,000)	\$ 435,468	\$ 435,468	1,655	
SUMMARY									
Estimated Project Cost			\$240,344						
Estimated Year One Electricity Cost Savings			\$12,669		Net to general fund if unfinanced				



MOUNTAIN VIEW LOS ALTOS HIGH SCHOOL DISTRICT  
PHOTOVOLTAIC COST/PERFORMANCE  
EVALUATION SPREADSHEET

PHOTOVOLTAIC COST/PERFORMANCE EVALUATION SPREADSHEET								
MOUNTAIN VIEW LOS ALTOS HIGH SCHOOL DISTRICT								
Vendor: General Lighting Service			Site: Los Altos High School New Classrooms					
System Data			Notes		Environmental Reductions per year			
PV Module Specified	LG Neon 2 72cell				Nitrous oxides (NOx)	1,429,489	kg	
DC watts per panel STC	365	watts			Sulfurous oxides (SOx)	804,088	kg	
SF Per Module	21.99	sf			Other particulates	53,606	kg	
SF of Panels	3,364	sf			Carbon dioxide (CO2)	90	tons	
Number of PV Modules Required	153							
System Rating	55.85		kW					
AC Energy produced per square foot of PV	26.5609		kWh/yr					
AC Energy produced per 100 kW of system	159,984		kWh/yr					
Energy produced by system in Year One	89,343		kWh/yr					
kWh Value of Electricity Produced in Year One	18.0		cents/kWh					
Total Value of Energy Produced Year One	\$16,082							
Annual Energy cost escalation rate	5.00%		per year	Estimated				
Solar Degradation Factor	0.60%		per year	Estimated				
Annual Maintenance Cost	\$ 2,230		year one	Estimated				
Site	System Size in kw	Estimated Project Cost per DC watt of system				Estimated project cost for system size		
Los Altos HS New Classrooms	56	\$6.23		=		\$348,082		
General Fund Benefit								
Year	Solar Electricity Produced in kWh minus annual degradation factor	PG&E rate with annual escalation	Value of PG&E Power	Annual Maint. Cost of System	Major Maintenance	Annual savings	Cummulative savings	CO2 Reduct. in Tons
YR 1 _2021	89,343	0.180	\$ 16,082	\$ -		\$ 16,082	\$ 16,082	90
YR 2 _2022	88,807	0.189	\$ 16,785	\$ (2,230)		\$ 14,555	\$ 30,636	90
YR 3 _2023	88,274	0.198	\$ 17,518	\$ (2,342)		\$ 15,177	\$ 45,813	89
YR 4 _2024	87,745	0.208	\$ 18,284	\$ (2,459)		\$ 15,825	\$ 61,638	89
YR 5 _2025	87,218	0.219	\$ 19,083	\$ (2,582)		\$ 16,501	\$ 78,139	88
YR 6 _2026	86,695	0.230	\$ 19,916	\$ (2,711)		\$ 17,206	\$ 95,345	88
YR 7 _2027	86,175	0.241	\$ 20,787	\$ (2,846)		\$ 17,941	\$ 113,285	87
YR 8 _2028	85,658	0.253	\$ 21,695	\$ (2,988)		\$ 18,707	\$ 131,992	87
YR 9 _2029	85,144	0.266	\$ 22,643	\$ (3,138)		\$ 19,505	\$ 151,498	86
YR 10 _2030	84,633	0.279	\$ 23,633	\$ (3,295)		\$ 20,338	\$ 171,836	85
YR 11 _2031	84,125	0.293	\$ 24,666	\$ (3,459)		\$ 21,206	\$ 193,042	85
YR 12 _2032	83,620	0.308	\$ 25,743	\$ (3,632)		\$ 22,111	\$ 215,153	84
YR 13 _2033	83,118	0.323	\$ 26,868	\$ (3,814)		\$ 23,054	\$ 238,207	84
YR 14 _2034	82,620	0.339	\$ 28,043	\$ (4,005)		\$ 24,038	\$ 262,245	83
YR 15 _2035	82,124	0.356	\$ 29,268	\$ (4,205)	\$ (2,000)	\$ 23,063	\$ 285,308	83
YR 16 _2036	81,631	0.374	\$ 30,547	\$ (4,415)		\$ 26,132	\$ 311,439	82
YR 17 _2037	81,141	0.393	\$ 31,882	\$ (4,636)		\$ 27,246	\$ 338,685	82
YR 18 _2038	80,655	0.413	\$ 33,275	\$ (4,868)		\$ 28,407	\$ 367,093	81
YR 19 _2039	80,171	0.433	\$ 34,729	\$ (5,111)		\$ 29,618	\$ 396,711	81
YR 20 _2040	79,690	0.455	\$ 36,247	\$ (5,367)		\$ 30,880	\$ 427,591	80
YR 21 _2041	79,212	0.478	\$ 37,831	\$ (5,635)		\$ 32,196	\$ 459,787	80
YR 22 _2042	78,736	0.501	\$ 39,484	\$ (5,917)		\$ 33,567	\$ 493,354	80
YR 23 _2043	78,264	0.527	\$ 41,210	\$ (6,213)		\$ 34,997	\$ 528,351	79
YR 24 _2044	77,794	0.553	\$ 43,010	\$ (6,523)		\$ 36,487	\$ 564,838	79
YR 25 _2045	77,328	0.581	\$ 44,890	\$ (6,849)		\$ 38,041	\$ 602,879	78
Totals	2,079,919		\$ 704,118	\$ (99,239)	\$ (2,000)	\$ 602,879	\$ 602,879	2,101
SUMMARY								
Project Cost			\$348,082					
Estimated Year One Electricity Cost Savings			\$16,082		Net to general fund if unfinanced			