



**Mayers Memorial
Hospital District**
Always Caring. Always Here.

DESIGN BUILD AGREEMENT
Solar Project

This Design Build Contract ("Contract") is made as of October 12, 2023 ("Effective Date") by and between Mayers Memorial Hospital District, a public entity, located at 43563 Hwy 299 East Fall River Mills, CA 96028 and Veregy Pacific, LLC ("Design Builder"), a corporation with a principal place of business located at 3090- Bristol Street Suite 400 Costa Mesa CA 92626 for design, construction, and commissioning ("Work") of the Solar Project ("Project") in accordance with the Contract Documents. The following Exhibits are incorporated into this Contract by reference.

Exhibit 1	Definitions
Exhibit 2	Supplemental Conditions
Exhibit 3	Plans, Specifications, and Project Documents
Exhibit 3A	Project Documents
Exhibit 3B	Construction Documents
Exhibit 4	Compensation
Exhibit 4A	<i>Not Used</i>
Exhibit 4B	Staffing, Billing Rates, and Key Personnel
Exhibit 4C	Schedule of Values
Exhibit 5	Project Execution
Exhibit 5A	Project Schedule
Exhibit 5B	Design Build Team
Exhibit 6	Insurance and Bonding
Exhibit 6A	Design Builder's Insurance Requirements
Exhibit 6B	Payment and Performance Bond
Exhibit 6C	District's Insurance Requirements
Exhibit 7	Site Description

By executing this Contract, each of the signatories represents that he or she has the authority to bind the Party on whose behalf his or her execution is made.

<p>Mayers Memorial Hospital District 43563 Hwy 299 East Fall River Mills, CA 96028</p> <p>By: _____ [Name], [Title]</p> <p>Email: _____</p>	<p>Veregy Pacific LLC 3090 Bristol S. Suite 400 Costa Mesa CA 92626</p> <p>By: _____ Clayton Boop, VP West Region cboop@veregy.com</p> <p>Email: <u>cc: thale@veregy.com</u> CA License No.: <u>1023083</u></p>
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THE PARTIES AGREE TO THE FOLLOWING TERMS AND CONDITIONS.

BUSINESS TERMS SHEET

Personnel	
District's Authorized Representative	Ryan Harris RHarris@mayersmemorial.com
District's Program Manager	John Morris JOMorris@mayersmemorial.com
Design Builder's Representative	Scott Conner Veregy Pacific, LLC 602.452.8734] SConner@Veregy.com
Design Professional of Record	[Name] [Entity] [Phone] [Email]
Design Builder's Project Manager	[Name] [Entity] [Phone] [Email]
Design Builder's Superintendent	[Name] [Entity] [Phone] [Email]
Other Personnel	See, Tab 1, Project Manual
Compensation	
Contract Price	\$2,358,730
Base contract lump sum	\$2,358,730
Fencing Option	\$142,125
Erosion Control Allowance (Exhibit 2, §20.6)	Not to exceed \$15,000.00
Change Order Mark-Up	
Design Builder's Overhead and Profit	15%
Average Daily Rate	\$_____/work day for extended general conditions due to adjustments in Contract Time
General Requirements	Actual cost for extended general requirements due to adjustments in Contract Time
Subcontractor Adjustments	____% overhead and profit on subcontracted self-performed Work. ____% profit on top of tier-subcontracted work. Tier-subcontractor overhead and profit also cannot exceed ____%.

Schedule	
Substantial Completion Date ("Contract Time")	11/30/24
Final Completion Date	12/31/24
Adverse Weather Days Included in Schedule	10 calendar days per 12 month period
Liquidated Damages	
0-15 days past Contract Time	\$0/day (grace period)
16- days past Contract Time	\$1000/day
Design Builder's Minimum Insurance Limits	
Workers Compensation/Employers' Liability	Statutory Limits Employers' Liability \$1,000,000 each accident
Commercial General Liability	\$2,000,000 per occurrence \$10,000,000 in aggregate \$1,000,000 personal/advertising injury \$10,000,000 products/completed operations coverage
Contractor Professional Liability	\$1,000,000 per claim \$2,000,000 in aggregate
Contractor Pollution Liability	\$1,000,000 per claim \$2,000,000 in aggregate
Automobile Liability	\$2,000,000 each accident
Excess Liability	\$10,000,000
Valuable Papers	\$500,000
Tools and Equipment	Fair Market Value
Design Professional of Record's Minimum Insurance Limits	
Workers' Compensation Employers' Liability	Statutory Limits Employers' Liability \$1,000,000 each accident
Commercial General Liability	\$1,000,000 each occurrence \$2,000,000 aggregate \$3,000,000 excess liability
Automobile Liability)	\$2,000,000 each accident
Professional Liability	\$1,000,000 per claim \$5,000,000 in aggregate
Valuable Papers	\$500,000
Additional Insureds	District and its officers, board members, directors, employees, special inspectors, and the Program Manager

PROJECT MANUAL

The following forms and information will be included in the Project Manual and posted to the Project's web based portal or ftp site. Certain forms may be developed by the Project Team Members after execution of the Contract. All content is subject to approval by District's Program Manager before incorporation into the Project Manual. Design Builder and its Design Professionals, Subcontractors, suppliers, and equipment vendors will adhere to the Project protocol and procedures while performing their respective portions of the Work. The most current approved Project Manual is incorporated into this Contract by reference as though set forth in full.

Tab 1	Project Roster
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2B	California Lien Waivers and Releases
2C	Consent of Surety
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2E	Submittal Form
2F	Daily Construction Report Form
2G	Construction Change Directive Form
2H	Change Order Forms
2I	Certificate of Substantial Completion
Tab 3	Site Logistics Plan
Tab 4	Design Builder's Safety Program
Tab 5	Traffic Control Plan
Tab 6	Quality Control Plan
Tab 7	Environmental Control Plan
Tab 8	Storm Water Pollution Prevention Plan



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1. GENERAL

1.1 Defined Terms. Defined terms and titles of Exhibits are capitalized throughout the Contract and Exhibits. The definitions for this Contract are set forth in alphabetical order in Exhibit 1. Mayers Memorial Hospital District ("District") and Design Builder will be individually referred to as a Party and may be collectively referred to as the Parties.

1.2 Project Description. The Project is located on the District's Fall River Campus, 43563 Highway 299E, Fall River Mills, CA 96028. The Work includes design and construction of a solar grid on the Fall River Campus.

1.3 Enabling Statute. The Project will be delivered using a design-build delivery method to deliver an energy service contract pursuant to California Government Code section 4217.10-4217.18.

1.4 Licensing. Design Builder must be a California state licensed general contractor. Design Professionals must all possess the appropriate California state design licenses for their particular discipline. Subcontractors must all possess the appropriate California state specialty license for their particular trade. Nothing in this Contract will require a Design Build Team Member, or any of their respective Design Professionals or Subcontractors, to perform any portion of the Work outside of their respective licenses or contrary to Applicable Law.

1.5 Standard of Care. Design Builder will perform the Work using its best skill and attention and in a timely, workman-like manner consistent with the degree of care and skill customarily exercised by prudent licensed general contractors performing design and construction services for projects of similar size, scope, quality, and complexity within the State of California. Design Services will be performed by licensed Design Professionals or Design Build Subcontractors who will be tied to the standard of care set forth in Section 6.8.1(b).

1.6 Financing. District is self-funding this Project through its own capital.

2. PROJECT TEAM AND RELATIONSHIP OF PARTIES

2.1 Project Team. The Project Team includes District, its Authorized Representative, Program Manager, and Separate Contractors and Separate Consultants, the Design Build Team Members set forth in Exhibit 5B, and each of their respective Design Professionals and Subcontractors, inclusive of tiers.

2.2 District. District is the owner of the Project. District's representative is the Program Manager identified in the Business Terms Sheet and the Project Roster (Project Manual, **Tab 1**). District's role and responsibilities are described in Article 4.

2.3 Program Manager. The Program Manager is identified in the Business Terms Sheet and the Project Roster (Project Manual, **Tab 1**). The Program Manager is generally responsible for facilitation and administration of campus wide projects on behalf of District. The Program Manager will also be the Design Builder's day-to-day contact and is responsible for facilitating and administering the design and construction process throughout the Project. The



Program Manager will help coordinate other related work that is not included in Design Builder's Work, and will provide the services further described in Article 5. The Program Manager does not have the authority to bind District or authorize changes in the Work or schedule that impact the Contract Price and/or Contract Time.

2.4 Design Build Team. The Design Builder will lead the Design Build Team and is solely responsible to District for the sufficiency, quality, adequacy, and completeness of the Work in accordance with the Contract Documents; provided, however, that the Design Build Team shall not be responsible for the sufficiency, quality, adequacy or completeness of any work performed by the District's separate contractors. All Design Services will be performed by licensed Design Professionals or through Design Build Subcontractors. The Design Build Team is set forth in Exhibit 5B.

2.5 Collaboration. Design Builder and its Design Professionals, Subcontractors, suppliers, and equipment vendors will perform their respective portions of the Work using integrated processes and tools in accordance with the Contract Documents.

2.6 Communications. All communications with District will be through the Program Manager. However, the Authorized Representative must be copied on all written communications to the Program Manager. Design Builder may communicate directly with other Project Team Members in furthering the best interests of the Project but the Program Manager must be kept apprised and copied on all written communications with other Project Team Members. Design Builder does not however have to copy Program Manager on correspondence between Design Builder and the Design Build Team unless such communications are about potential cost or schedule impacts.

2.7 Relationship of the Parties. Design Builder's relationship with District is that of an independent contractor whose involvement in the Project is to act solely in the capacity of a California state licensed general contractor performing design-build services and not as an agent, fiduciary, partner, member of, subsidiary of, or otherwise affiliated with District.

2.8 Good Faith and Fair Dealing. Each Party will collaborate with the other Party and other Project Team Members in delivering and facilitating the Work and furthering the best interests of the Project throughout the design, construction, and commissioning process. Design Builder will: (i) use its best skill and judgment in providing the services and construction described herein; (ii) furnish effective and efficient design, construction management, administration, and supervision; (iii) furnish at all times an adequate supply of competent management personnel and skilled labor, and an adequate supply of materials and equipment, provided that said labor and materials are reasonably available; and (iv) perform the Work in an efficient manner.

2.9 Responsibility. Design Builder acknowledges and agrees that it is solely responsible to District for the sufficiency, quality, adequacy and completeness of the Work, and that Design Builder is responsible for any acts, errors, or omissions of the Design Builder's principals, employees, agents, and/or any other parties either directly or indirectly in privity of contract with Design Builder including, but not limited to, Design Professionals, Subcontractors, suppliers, equipment vendors, and their agents and employees, and other persons performing any portion of the Work on behalf of Design Builder.



3. CONTRACT DOCUMENTS

3.1 Defined. The Contract Documents are defined in Exhibit 1. The Construction Documents and portions of the Building Information Model (if applicable) prepared by Design Professionals or Design Build Subcontractors are Contract Documents. The portions of the Building Information Model ("BIM") prepared by the Design Builder or its Subcontractors to illustrate means and methods for constructing, fabricating, or installing portions of the Construction Work are Submittals, which are not Contract Documents or Construction Documents. The Contract Documents are intended to be complementary and what is required by one will be construed as being required by all.

3.2 Inconsistencies. If there are conflicting requirements within or between the various Contract Documents, the Design Builder's Representative as well as representatives from the necessary Design Professionals and Design Build Subcontractors will meet with the Program Manager and Authorized Representative to determine which requirements will better achieve the criteria set forth in the Project Documents (Exhibit 3A). If the group cannot reach an agreement by consensus, the order of precedence set forth in Sections 3.2.1 through 3.2.13 will apply. If a conflict exists between the terms set forth in the Contract Documents or any Applicable Law, the Applicable Law will control. Varying degrees of stringency among the Contract Document terms and conditions and Applicable Law are not deemed conflicts, and the most stringent requirement will govern.

- 3.2.1 Most recent executed Change Order and Amendment
- 3.2.2 Contract
- 3.2.3 Supplemental Conditions
- 3.2.4 Specifications
- 3.2.5 Drawings
- 3.2.6 Building Information Model (if applicable)
- 3.2.7 Project Documents
- 3.2.8 Written numbers over figures, unless obviously incorrect
- 3.2.9 Figured dimensions over scaled dimensions
- 3.2.10 Specific details over standard or typical details
- 3.2.11 Large-scale Drawings over small-scale Drawings
- 3.2.12 Other Exhibits to the Contract
- 3.2.13 Project Manual

3.3 Acknowledgment. Design Builder acknowledges it has carefully examined and understands this Contract and the other Contract Documents; has investigated the nature, locality, and visually observable features of the Project site and the conditions and difficulties under which the Work is to be performed; and enters into this Contract on the basis of its own examination, investigation, and evaluation of all such matters; provided, however, Design Builder shall have a right to rely on the accuracy, completeness and sufficiency of any documents, tests, plans or information provided by District or its Separate Consultants. Design Builder will immediately report any error, inconsistency, or omission it may discover to the Program Manager. If Design Builder observes that any of the Contract Documents are at variance with any Applicable Law in any respect, or are internally inconsistent, it will promptly notify the Program Manager. If Design Builder performs any Work without having adequately reviewed the Contract Documents, knowing the Contract Documents to be contrary to Applicable Law, or knowing the Contract Documents to be internally inconsistent, and without providing written notice to the Program Manager, it will assume full responsibility and bear all costs attributable to the violation.

4. DISTRICT'S OBLIGATIONS

4.1 District's Authorized Representative. District's Authorized Representative is set forth in the Business Terms Sheet. District's Authorized Representative is authorized to approve changes in the Work that impact the Contract Price and/or affect the Contract Time established in the Project Schedule up to an amount of \$100,000 per occurrence. Any request exceeding a cumulative amount of \$100,000 will require board of directors approval and must be timely submitted to the Program Manager by the Design Builder in order to allow proper consideration during the board's regularly scheduled meetings. District's Authorized Representative will render decisions in a timely manner pertaining to documents submitted by the Design Builder and recommended by the Program Manager in order to avoid unreasonable delay in the progress of the Work. The TBD amounts will be amended into the Contract before execution.

4.2 Project Documents. District provided the Project Documents set forth in Exhibit 3A, as the basis for development of the Construction Documents. Design Builder may rely on the information provided in the Project Documents but has performed its own independent visual site inspection in accordance with Section 3.3.

4.3 Surveying. District provided a utility survey and topographical map as part of the Project Documents, for reference only. Surveying for structure layout is part of Design Builder's Work per Article 12 of the Supplemental Conditions (Exhibit 2).

4.4 Permits and Fees. District will pay the fees for the Shasta County general building permit, required governmental approvals, including from the California Department of Health Care Access and Information, easements, assessments and fees required for the development, construction, use or occupancy of the Project.

4.5 Third Party Testing and Inspections. District will be responsible for hiring and paying for all third party testing and inspections. However, Design Builder will make arrangements for third party testing and inspection per Article 5 of the Supplemental Conditions (Exhibit 2). Design Builder is responsible for all other inspections and reports required by



Applicable Law or by the Contract Documents, and the costs of these inspections or reports are included in the Contract Price.

4.6 Stop Payment Notice. District is the entity that Subcontractors and Design Professionals may serve a stop payment notice for non-payment in accordance with California law governing public work projects.

4.7 Separate Consultants and Separate Contractors. District reserves the right to perform work or services related to the Project with District's own forces, and to award separate contracts in connection with the Project that are not part of the Design Builder's Work. Design Builder will notify District if any such independent action will interfere with the Design Builder's ability to perform the Work under this Contract. When performing separate work or services, District agrees that its Separate Consultants and Separate Contractors will be subject to similar obligations as the Design Builder with respect to insurance, indemnification, safety, protection, inspections, and non-conforming work or services. District will remain responsible to the Design Builder for any delays to the Contract Time or cost impacts resulting from work or services performed by Separate Consultants or Separate Contractors. Any cost and/or time impacts will be addressed through the Change Order process set forth in Article 11.

5. PROGRAM MANAGER'S ROLE

5.1 Services. The Program Manager's role is to assist and advise District and its Authorized Representative during completion of the Construction Documents in accordance with the requirements in the Project Documents, assist District with procurement of the Design Builder and other necessary Separate Consultants and Separate Contractors, and to help District oversee, facilitate, and manage the design and construction process during all phases of the Project, including commissioning. Program Manager is responsible for coordination between Separate Consultants and Separate Contractors and the Design Builder.

5.2 On-Site Presence and Weekly Meetings. During the design phase, the Program Manager will be on-site for weekly Project meetings. During the construction phase, Program Manager will be on-site no less than Mondays, Wednesdays, and Fridays of each week. Program Manager will facilitate weekly Project meetings with the Design Build Team to ensure open, clear, and direct communications and to help address any issues that may arise during design or construction. The Project meetings are the venue for the Design Build Team to identify and discuss potential risks, critical issues and actions to be taken, and to review overall progress of the Work and schedule, as well as any discuss any outstanding Submittals or Change Orders.

5.3 Design Review. During the design phase, Program Manager will review the Drawings and Specifications in its capacity as a licensed general contractor to help ensure that the Construction Documents are being developed in conformance with the design intent and criteria described in the Project Documents. Program Manager may also review and comment on any value engineering proposals or cost estimates. Notwithstanding the above, Design Builder remains solely responsible for designing and construction the Project in conformance with the Contract Documents.



5.4 Approvals, Clarifications, Changes, and Claims. The Program Manager will evaluate requests for approvals and clarifications, Claims, Construction Change Directives, and Change Order Requests from Design Builder, and make recommendations to District. Program Manager will assist District in resolving Change Order disputes and other Claims (that do not involve Program Manager), including documentation of the rationale for resolution.

5.5 Payment Application Review. Program Manager will review applications for progress payment and final payment from Design Builder, and make recommendations to District regarding payment.

5.6 Schedule Review. Program Manager will monitor Design Builder's progress against the Design Builder's current work plans and Project Schedule, review and analyze all delay and impact requests and make recommendations to District regarding same, collaborate with the Design Builder regarding recovery plans if required, and meet with the Project Team to determine when critical decisions are needed from District or others to maintain the Project Schedule.

5.7 Quality Monitoring. Program Manager may periodically participate in inspections, track inspection reports, and direct Design Builder in resolving compliance issues. Program Manager will monitor and verify correction of non-conforming Work on behalf of District as further discussed in Exhibit 2. However, Program Manager is not required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Construction Work, and Program Manager will not have control over, charge or, or responsibility for, Design Builder's construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work as these are solely the Design Builder's responsibilities under the Contract Documents.

5.8 Completion and Close-Out. Program Manager determine whether the Work is substantially complete and will track punch-list activity, participate in start-up and commissioning, collect all required close-out documentation and record documents (including but not limited to collecting and reviewing as-built Drawings submitted by Design Builder).

6. DESIGN BUILDER'S OBLIGATIONS

6.1 Work. Design Builder will perform all necessary design, construction, and commissioning required for the Project, and will provide all services, labor, materials, equipment, tools, and appurtenances necessary to complete the Work in accordance with the Contract Documents. Design Builder's obligations for Design Services are more specifically described in Article 7 and Design Builder's obligations for performance of the Construction Work are described in Article 8 and Exhibit 2.

6.2 Legal Compliance. Design Builder represents that it is aware of regulations and laws applicable to its operations and the performance of the Work. At its sole cost and expense, Design Builder will give all notices required by, and comply with, all Applicable Law related to the Work, including those relating to safety, Hazardous Materials, and equal employment opportunities. Design Builder will pay all local, state, and federal taxes, and all employee benefits, insurance, and contributions for Social Security and Unemployment which are measured by wages, salaries, or other remunerations paid to Design Builder's employees.



6.3 Staffing Plan and Key Personnel. The staffing plan and key personnel for Design Build Team Members will be included in Exhibit 4B. Unless otherwise requested by District or Program Manager, key personnel may not be removed from, or added to, the Project without prior written consent of the District's Authorized Representative except in the instance of death, disability, or departure of person from employment, or other relationship with the Design Build Team. If a replacement is necessary, the proposed key personnel will have substantially equivalent or better qualifications than the former key personnel, and all candidates are subject to final approval by District, which said approval shall not be unreasonably withheld or delayed. District reserves the right to remove any Design Build Team Member personnel who is considered incompetent, uncooperative, rude, or disruptive to the overall harmony of the Project Team.

6.4 Permits, Fees, and Approvals. Design Builder will assist the Program Manager with verification that District has applied for and paid applicable fees and assessments, and Design Builder will file all documents, required for the approvals by Governmental Authorities for design and construction of the Project, including any required Project completion filings. Design Builder will secure and provide copies to the Program Manager of all permits and approvals required by Governmental Authorities for execution and inspection of the Construction Work. The cost and fees associated with the general building permit(s) and third party inspection will be paid by the District per Sections 4.4 and 4.5. All Subcontractor required specialty permits will be procured and paid for by the Design Builder and its Subcontractors and are included in the Contract Price.

6.5 Taxes and Fees. Design Builder will pay all sales, consumer, use, gross receipts, and other similar taxes legally enacted at the time of commencement of the Construction Work, and such taxes and fees are included in the Contract Price.

6.6 Consultants and Laboratories. Design Builder will make recommendations to the Program Manager regarding selecting, retaining, and coordinating any additional professional services, special consultants, and testing laboratories required for the Project.

6.7 Subcontract Bidding Process. Design Builder represents that it has complied with the bidding requirements set forth in Public Contract Code sections 22166 (a) and will comply with the bidding requirements of Public Contract Code section 4100, et seq., for procuring any subcontracts where Subcontractors are not listed by Design Builder in exhibit 5B. In addition, the Design Builder will: (i) develop bidders' interest in the Project and endeavor to have at least 3 bids for all trades; (ii) establish bidding schedules in accordance with the procurement requirements set forth in the Project Schedule (Exhibit 5A); (iii) develop Subcontractor scopes of work, and package and issue bidding documents to pre-qualified, interested bidders; (iv) evaluate bidder prequalification and bids to determine the best subcontractor suited for the Project in accordance with Public Contract Code section 22166 (b) (3); and (v) enter written subcontract with the most responsive, responsible bidder based on the bid criteria and pursuant to this Sections 6.7 and 6.8. Design Builder may not knowingly subcontract with a Subcontractor or supplier that prepared portions of the Project Documents (Exhibit 3A).

6.8 Design Professionals and Subcontractors. All agreements between Design Builder and its Design Professionals and Subcontractors will be in writing and must bind each



Design Professional and Subcontractor to the Design Builder by the terms and conditions of the Contract Documents and require that each Design Professional and Subcontractor assume toward the Design Builder all obligations and responsibilities that the Design Builder assumes toward the District under the Contract Documents. Each Design Professional agreement and subcontract will preserve and protect the rights of the District and Design Builder under the Contract Documents with respect to the portion of the Work performed by the party so that subcontracting portions of the Work does not prejudice the District's rights or remedies.

6.8.1 At a minimum, Design Builder will pass through the provisions set forth in subsections (a) through (l) to its Design Professionals and Subcontractors, as applicable.

(a) License. All Design Professionals and Design Build Subcontractors performing Design Services will be properly licensed for their respective portion of the Design Services, and all Subcontractors performing portions of the Construction Work will be properly licensed for their respective trade.

(b) Standard of Care. Design Professionals and Design Build Subcontractors will timely perform their portions of the Design Services using the degree of care ordinarily used by other competent licensed architects and engineers designing projects of similar size, scope, quality and complexity within the State of California. Design Professionals and Design Build Subcontractors will sign and affix their respective professional seal on their respective portions of the Construction Documents to the extent required by Governmental Authorities. Subcontractors will timely perform its respective portion of the Construction Work using its best skill and attention in a workman-like manner consistent with the degree of care customarily exercised by prudent licensed specialty contractors performing similar trade work on projects of similar size, scope, and complexity within the State of California.

(c) Third Party Beneficiary. District will be a third party beneficiary with respect to the portion of Design Services provided by a Design Professional or with respect to a portion of the Work provided by a Design Build Subcontractor.

(d) Liability and Indemnity. To the fullest extent permitted by law, each design agreement must include similar defense and indemnification obligations to Design Builder, District, and the Indemnitees identified in Section 13.2 arising or resulting from its negligent acts or omissions, recklessness, or willful misconduct of the Design Professional, its tier-consultants, or anyone directly or indirectly employed by any of them for whose acts Design Professional may be liable. Each subcontract must include the same defense and indemnification obligations as set forth in Section 13.2 that Design Builder is providing to District. Subcontractor defense and indemnification obligations must include Design Builder, District and other Indemnitees identified in Section 13.2. Design Builder will be liable for all fines or penalties due as a result of a Design Build Subcontractor's failure to comply with public works requirements under the Public Contract and Labor Codes.

(e) Insurance. Design Builder will cause, through written design agreement, Design Professionals insurance as required by the Business Terms Sheet and Exhibit 6A. Subcontractors must carry the same types of coverages as those provided by Design Builder and included in Exhibit 6A at appropriate limits for their specific trade.



(f) Subcontracts must include a warranty provision similar to the one set forth in Article 15.

(g) Ownership of Documents. The provisions in Article 16 must be included.

(h) Claims and Disputes. The dispute resolution procedures set forth in Article 17 must be included.

(i) Assignment. Each design agreement and subcontract must include an assignment provision. The assignment provision will allow for assignment of the design agreement or subcontract (as applicable) to the District if Design Builder is terminated, and provided that the District accepts assignment by written notification to the Design Professional or Subcontractor (as applicable) and Design Builder.

(j) Miscellaneous Provisions. The miscellaneous provisions set forth in Sections 19.1, 19.2, and 19.7.

(k) Conflicting Terms. All conflicts arising out of any design agreement will be resolved in accordance with the order of precedence set forth in Section 3.2, and this Contract (inclusive of Exhibits) will take precedence over any conflicting terms and provisions in the design agreement other than terms and conditions regarding scope of service and amount of compensation.

(l) Exhibits. The following Exhibits must be included in each design agreement and subcontract: Exhibit 1 through Exhibit 3, relevant portions of Exhibit 4B, Exhibit 5, Exhibit 7.

7. DESIGN PHASE

7.1 Completion of Design. Design Builder will timely prepare 100% Design Development Documents and Construction Documents per Article 7.

7.1.1 Constructability Reviews. Design Builder and its Subcontractors will provide constructability reviews during completion of the 100% Design Development Documents and the Construction Documents to provide clarity, consistency, constructability, and coordination among the various design disciplines' Drawings and the Subcontractors. Constructability Reviews will occur at 50%, 100% and Approved for Construction stages of design development, wherein Design Professionals and other necessary Project Team Members will review and respond in writing to each constructability review comment, either by recommending changes in the design or explaining why such action is unnecessary.

7.1.2 Cost Evaluation. The Design Builder and its Subcontractors will provide estimating services as often as reasonably necessary to support decisions regarding scope, functionality, and design and to help ensure that the Project design is being developed within the Contract Price. Cost evaluations will occur at 50%, 100% and Approved for Construction stages of design development. Consistent cost evaluation will assist the Design Build Team, Program Manager, and District in making decisions to the extent there are design alternatives.



Design Builder's opinions of probable construction cost are to be made on the basis of Design Builder's experience and qualifications and represent Design Builder's best judgment as an experienced and qualified contractor generally familiar with the construction industry. However, because Design Builder has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Design Builder cannot and does not guarantee that proposals, bids or actual construction cost will not vary from opinions of probable construction cost prepared by Design Builder.

7.1.3 Life Cycle Analysis. The Design Build Team will provide a 15 year life cycle analysis for mechanical and electrical equipment using the Federal Energy Management Program's Building Life Cycle Cost Program Model BLCC 5.3-16 as applicable. The analysis will include projected initial cost of the system, projected yearly operational and maintenance costs, projected life expectancy, estimated replacement cost, and anticipated levels of performance.

7.2 Design Development Documents. Design Builder will cause its Design Professionals to prepare 100% Design Development Documents based on the Project Documents set forth in Exhibit 3A. The Design Development Documents must include detailed Drawings and Specifications necessary to fix and describe the size and character of the entire Project as to design, structural, mechanical, and electrical systems, materials, and such other elements as may be appropriate to allow the Program Manager to initiate scope compliance review(s).

7.2.1 Reconciliation. Before completing the 100% Design Development Documents, Design Builder will cause its Design Professionals to evaluate the programmatic requirements and note any discrepancies between the Project requirements reflected in the Project Documents, and the 100% Design Development Documents, and request approval and direction from District and the Program Manager. Design Builder will also prepare a cost estimate per Section 7.1.2 confirming that the design is still estimated to be within the Contract Price and will note any anticipated slippage in the Project Schedule (Exhibit 5A) before the Design Build Team can proceed to Construction Documents. To the extent that there has been a slippage in the Project Schedule, the Design Builder will prepare and submit a detailed recovery plan as required by Section 10.6 as part of the reconciliation, provided that the slippage was due to delay caused by Design Builder.

7.2.2 Design Review. Design Builder will cause its Design Professionals to prepare the necessary documentation for back-check and code compliance from necessary Governmental Authorities, and to attend all meetings as required to obtain District, and Governmental Authority approval.

7.2.3 Approval Process. The Design Builder will submit and present the following materials for review and approval by the Program Manager and District: (i) detailed floor plans; (ii) site plan with larger Project site context; (iii) structure sections and elevations; (iv) detailed Specifications. The Design Development Documents submittal will either incorporate changes and corrections required by Governmental Authority under Section 7.2.2, or be accompanied by a written statement from the Design Build Team as to why such changes were not incorporated. District shall review the Design Development Documents within ten (10)



business days of receipt of the same and District shall either approve within that time period or notify Design Builder in writing of any requested modifications. District may timely reject the Design Build Team's explanation if the documents do not comply with the requirements set forth in the Project Documents, and the Governmental Authority may reject the Design Build Team's explanation and require that changes or corrections to the Design Development Documents as previously requested be made based on code compliance or back-check review comments.

7.3 Construction Documents. Upon approval of the 100% Design Development Documents, Design Builder will cause its Design Professionals to prepare Drawings and Specifications to be issued for permit. The Construction Documents will consist of Drawings and Specifications setting forth in detail all necessary requirements for proper construction of the Project, as well as any subsequent approved revisions, and taking into account applicable building codes. The Construction Documents will describe the quality, configuration, size, and relationships of all materials, equipment, and components to be incorporated into the Project, and will be the Drawings and Specifications submitted to all necessary Governmental Authorities for approval and permit. Design Builder will not submit the Construction Documents for permit until receipt of approval by District and the Program Manager, which shall be provided by District within ten (10) business days of receipt of the Construction Documents.

7.3.1 Submission of Signed and Stamped Drawings and Specifications. In order to obtain necessary permits and to comply with professional registration statutes, 2D Drawings, calculations and Specifications must be generated, reviewed, sealed, and submitted to reviewing Governmental Authorities, District, and the Program Manager. The responsible member of the Design Build Team will sign and stamp their respective Drawings, Specifications, and calculations. By signing and sealing the Drawings and Specifications, each Design Professional and Design Build Subcontractor agrees that its portion of the Design Services are complete, coordinated, accurate, and contain directions that will enable the Design Builder and its Subcontractors to construct the Project.

7.3.2 Permits and Approval. Design Builder will submit the Drawings and Specifications, a summary of the calculations, and detailed calculations for the structural, electrical, and other specialized systems to all necessary Governmental Authorities for approval and permit. The applicable Governmental Authorities will be final interpreter of all code requirements, and all such decisions will be final. The Construction Documents will not be considered 100% complete until Governmental Authorities' approval has been received. Upon approval, the Design Builder will provide a copy of the permitted Drawings and Specifications for the Project to the Program Manager, and will maintain the original permitted Drawings and Specifications at the Project site. A list of the Drawings and Specifications included in the Construction Documents will be amended into this Contract as Exhibit 3B.

7.3.3 Substitutions. Once Construction Documents are approved, no substitutions will be accepted on the Project unless Design Builder demonstrates: (i) the specified materials or equipment have been discontinued or are unavailable to meet the Project Schedule; or (ii) there is a cost savings to District. Substitutions that are included in the Work but not approved will be deemed non-conforming Construction Work and subject to correction under Section 5.5 of the Supplemental Conditions (Exhibit 2).



8. CONSTRUCTION PHASE

8.1 Construction Work. Design Builder is solely responsible for all construction means, methods, techniques, sequences, and procedures and for safety precautions and programs in connection with the Construction Work. Those portions of the Construction Work that Design Builder does not customarily perform with its own personnel will be performed by a Subcontractor under written subcontract pursuant to Section 6.8.

8.2 Existing Site Conditions Survey. Before commencement of the Construction Work, Design Builder will walk the site with Program Manager and make a video recording of all existing site conditions including, but not limited to, sidewalk, roadway, utilities, landscaping, hardscaping, signage, etc. and provide video record to Program Manager. This video recording will serve as a record of existing condition before commencement of the Construction Work and provide evidence of damage to any existing site conditions that require restoration. The Contract Price has been based on normal site conditions, without allowance for any additional work that might be caused by unanticipated site conditions. If conditions are encountered at the site that are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than twenty-one (21) days after first observance of the conditions, and, if appropriate, an equitable adjustment to the Contract Price and Contract Time shall be made by a Change Order.

8.3 Supervision. Design Builder will supervise and direct the Construction Work using its best skill and judgment. Design Builder will be solely responsible for all design, fabrication, shipment, delivery and coordination of all portions of the Work under the Construction Documents and all Construction Work will be performed in accordance with the Contract Documents. The Design Builder will provide a qualified superintendent at the Project site to properly supervise all of Design Builder's employees, Subcontractors and their agents and employees, and other persons performing Construction Work and to ensure that the Construction Work is carried out in accordance with the Contract Documents. Design Builder's superintendent is key personnel and may not be changed without District written consent.

8.4 Discipline. Design Builder will enforce strict discipline and order at all times among Design Builder's employees, Design Professionals and Subcontractors and will not employ or contract with any unfit or unskilled person(s) or entities on this Project. Any person in the employ of the Design Builder or any of its Design Professionals or Subcontractors whom Program Manager or District believes may be incompetent or unfit will be dismissed from the Project and will not be re-employed on this Project.

8.5 Coordination. All Construction Work will be coordinated and performed in accordance with the Contract Documents. The Supplemental Conditions (Exhibit 2) include additional information and requirements for field operations. Before starting each portion of the Construction Work, the Design Builder will: (i) review and compare the various Construction Documents relative to that portion of the Construction Work as well as other information



furnished by District, Program Manager, Design Professionals and Subcontractors that may affect proper installation of the Construction Work; (ii) field measure existing conditions related to that portion of the Construction Work; and (iii) observe any conditions at the site directly affecting that portion of the Construction Work.

8.5.1 Field Measurements. Design Builder will take field measurements to ensure proper matching and fitting of new construction with construction performed by District Separate Contractors and existing conditions at the Project site. All dimensions from as-built drawings are for reference only.

8.5.2 Submittals. All Submittals will be properly and timely submitted in accordance with Article 3 of the Supplemental Conditions (Exhibit 2).

8.6 Site Logistics. Design Builder, in collaboration with the Program Manager will review the proposed Site Logistics Plan, make adjustments as may be required, submit revisions (if any) to the Program Manager for approval. The approved Site Logistics Plan will identify areas of the Project site that will be used for trailers, deliveries, staging, ingress, egress, etc. The approved Site Logistics Plan, as updated, will be incorporated into the Project Manual as **Tab 3** Adjustment to the proposed Site Logistics Plan will not be grounds for an adjustment in the Contract Price unless the adjustments are required by District and result in increased cost to perform the Work.

8.7 Structure Layout. Design Builder is responsible for layout of the structure, and will employ a licensed surveyor to locate and provide all line and grade staking (including staking north/south and east/west gridlines) and will establish benchmarks for horizontal and vertical control per Section 13.1 of Exhibit 2.

8.8 Materials and Equipment. Storage of equipment and materials will be coordinated through the Program Manager and in accordance with the most current, approved Site Logistics Plan. Design Builder will maintain, or cause its Subcontractors to maintain, all storage areas and will keep storage areas clean, safe, and secure.

8.8.1 Long Lead Items. The Design Builder will collaborate with the other Project Team Members to establish a program to expedite ordering and delivery of materials and equipment in a timely manner and consistent with the Project Schedule.

8.8.2 Shipment and Deliveries. Before shipment, delivery, and installation of materials and equipment, Design Builder will verify the stage of completion of the applicable Construction Work with the Program Manager to determine the availability of facilities for access, delivery, transportation, and storage, and to correlate these observations with the requirements of the Contract Documents. All shipments and deliveries will be scheduled and coordinated in accordance with the most current, approved Site Logistics Plan and Project Schedule.

8.8.3 Risk of Loss. All Construction Work stored at the Project site, or work related to the preparation or delivery of materials or equipment to the Project site, is performed exclusively at the risk of the Design Builder and will remain at the risk of the Design Builder until Final Completion. Materials and equipment stored offsite must be securely stored in a third



party bonded or insured warehouse, and must be segregated and labeled "Property of Mayers Memorial Hospital District" and include the Project name, number, and address. To the extent such storage is not covered under the builder's risk policy, Design Builder will procure insurance covering the stored materials and District, Design Builder and its Subcontractors will be named as an additional insured under all such policies.

8.9 Maintenance. Design Builder will provide all maintenance and repairs for systems and equipment at its own costs and expense until the Substantial Completion Date; provided, however, Design Builder shall only be responsible for repairing damage to the Work caused by Design Builder or its subcontractors. Any repairs performed by Design Builder for damage caused by others shall result in an increase in the Contract Price.

8.10 Cutting and Patching. Design Builder and its Subcontractors will be responsible for all cutting, fitting, or patching required to complete the Construction Work or to make its parts fit together properly. Design Builder and its Subcontractors will not damage or endanger any portion of the Construction Work, or fully or partially completed Construction Work, by cutting, patching, or otherwise altering the construction. Design Builder and its Subcontractors will not cut or otherwise alter the construction by Separate Contractors except with the prior written consent of the Program Manager. Separate Contractors will not cut or otherwise alter the construction of Design Builder except with the prior written consent of Design Builder.

8.11 Testing and Inspections. Testing and inspections will be completed in accordance with Article 5 of the Supplemental Conditions (Exhibit 2).

8.12 Substantial Completion. Program Manager will issue a certificate of Substantial Completion (Project Manual, Tab 2I) per Section 5.7 of the Supplemental Conditions (Exhibit 2) to be signed by District and Design Builder documenting the date when the Project or portion of the Project achieved Substantial Completion. Upon issuance of the certificate of Substantial Completion, Design Builder and its Subcontractors will diligently complete the remaining Construction Work within 60 days in accordance with the Contract Documents.

8.13 Commissioning. Design Builder will schedule and oversee the final testing and start-up of utilities, operational systems, and equipment, and assist District with commissioning in conjunction with Program Manager and any District's facility and maintenance personnel, and required Subcontractors. All inspections and testing will be conducted by special inspectors or by other Governmental Authorities (as applicable). During commissioning and before Final Completion, Design Builder, Program Manager, and District will oversee Subcontractor operation, adjustment, and balancing of all equipment, and training of District's employees in the correct operation and maintenance of equipment.

8.14 Final Inspection and Acceptance. Final inspections and acceptance will be in accordance with Section 5.8 of the Supplemental Conditions (Exhibit 2).

8.15 Maintenance of Records. Design Builder will maintain one record copy of the Project Documents (Exhibit 3), the approved Design Development Documents, the Construction Documents, all permits, and all addenda, approved Submittals, Change Orders and other modifications, and RFIs in good order and marked correctly to record changes and selections



made to the Construction Documents during design and construction. Design Builder will maintain records, in duplicate, of principal structure layout lines, elevations of the bottom of footings, and key site elevations certified by a qualified surveyor or professional engineer. All the aforementioned records will be available in the Design Builder's jobsite office and will be delivered to the Program Manager at the Final Completion along with any other required close-out documentation required by the Contract Documents.

8.16 Close-Out. Before Final Completion, Design Builder will transmit to the Program Manager an electronic copy and 1 hard copy of all required as-built Drawings, the record model (if BIM was utilized), operation and maintenance manuals, references, warranties, etc., as required by the Contract Documents. As Built changes to the Construction Documents will be reflected in the final "As Built" revision of the CAD files and the record BIM (if applicable). Such files and the BIM (if applicable) will be turned over to District.

9. COMPENSATION AND PAYMENT

9.1 Contract Price. District will pay Design Builder the Contract Price set forth in the Business Terms Sheet for performance of the Work in accordance with the Contract Documents. The Contract Price includes all costs necessary for proper performance of the Work and is only subject to adjustment through approved Change Order per Article 11.

9.1.1 Fencing Option. Design Builder's Contract Price includes a line item for a Fencing Option. The Fencing Option may be exercised by the District at its sole discretion. If exercised, the Design Builder will furnish all labor, materials and equipment to construct a fence for the lump sum price provided in the Business Terms Sheet.

9.1.2 Erosion Control Allowance. Design Builder's Contract Price includes an allowance in an amount not to exceed \$15,000 for erosion control work required under Section 20.6 of the Supplemental Conditions in Exhibit 2.

9.2 Payment Applications. Design Builder will prepare and submit certified payment applications for Work performed based on the application for payment form set forth in Tab 2A of the Project Manual. The application for payment will include a Schedule of Values per Exhibit 4C, along with certified payroll records. The period covered by each payment application will be one calendar month. The payment will be based on the percentage of Work performed through the payment application date.

9.3 Progress Payments. Payment applications will be submitted by the 25th day of the month for review by Program Manager and will be evaluated per Section 9.3.1. Design Builder will meet with Program Manager to resolve any disagreements with respect to amounts requested in the payment application. Upon review and approval, Program Manager will make a recommendation to District for payment. Owner will make monthly progress payments on all undisputed Work within 30 calendar days' receipt of Design Builder's submitted application for payment, but in no case will the District make payment before all certified payroll records are submitted to the Department of Industrial Relations. Payment of approved amounts will be made directly to Design Builder.



9.3.1 Evaluation. Before submitting the certified application for payment to District, Program Manager will review and make recommendations for payment based on the supporting documentation provided by Design Builder per Section 9.3.5, and Program Manager's observations and evaluation of the Work. Based on that review, Program Manager will forward the certified application for payment to District for approval with a recommendation that District pay all undisputed items. An approval of an application for payment is subject to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents before Final Completion and to specific qualifications expressed by the Program Manager or District. Program Manager and District are entitled to rely on the accuracy and completeness of the information furnished by the Design Builder and approval will not be deemed to represent that a detailed examination, audit, or arithmetic verification of the documentation submitted with the Design Builder's application for payment has been made or that exhaustive or continuous on-site inspections have been made to verify that the Work is in accordance with the Contract Documents. A recommendation for payment by Program Manager or payment by District does not represent that Program Manager or District has ascertained how or for what purpose the Design Builder has used money previously paid.

9.3.2 Retention. Pursuant to Public Contract Code section 22300, Design Builder may elect, in lieu of having progress payments retained by District, to deposit in escrow with District, or with a bank acceptable to District, securities eligible for investment under Government Code Section 16430, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by Design Builder and District. Design Builder must inform District of its election to submit securities in lieu of a retention within 30 days of the Effective Date of the Design Build Contract. If Design Builder elects to submit securities in lieu of having progress payments retained by District, Design Builder will, at the request of any Subcontractor performing more than 5% of Design Builder's total Contract Price, make the same option available to the Subcontractor.

9.3.3 Change Orders. Applications for payment may include requests for payment on account of changes in the Work that have been properly authorized.

9.3.4 Deposits, Stored Materials, and Equipment. Payment applications may include required deposits for release of fabrication of long lead items (including release of shop drawings), and materials and equipment delivered and suitably stored on-site for subsequent incorporation into the Construction Work or, suitably stored off-site per Section 8.7.3 and upon verification by Program Manager that stored materials are secured at the off-site location. Design Builder will not make advanced payments to Subcontractors or suppliers for stored materials and equipment without the District and Program Manager's prior approval.

9.3.5 Supporting Documents. Each payment application will be accompanied by a monthly progress report per Section 1.10 of the Supplemental Conditions (Exhibit 2) and sufficient documentation supporting the cost for Work included in the application for payment including, without limitation: (i) proof of compliance with skilled labor and trained workforce requirements and certified payroll compliance; and (ii) executed conditional waiver and release forms complying with California state law covering all Work performed during the billing period by Design Builder, and its Design Professionals, Subcontractors, suppliers, and equipment vendors (Project Manual, Tab 2B); and (iv) certification and unconditional waivers and releases

evidencing that Design Builder has paid all Design Professionals, Subcontractors, suppliers, and equipment vendors prior amounts due and owing from amounts previously received from District and has no knowledge of any recorded stop payment notices with respect to the Work performed, and that all Design Professionals, Subcontractors, suppliers, and equipment vendors will be paid with the proceeds for Work covered under the certified payment application.

9.3.6 No Waiver. Payment by District will not constitute approval or acceptance of any Work or amount included in the payment application.

9.4 Right to Withhold. The Program Manager may refuse to recommend payment, and the District may refuse to approve a payment application or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or any part of a prior payment application to the extent the Program Manager or District determines is necessary to protect the public agency from loss due to one or more of the conditions listed in Sections 9.4.1 through 9.4.12. When and to the extent the reason for withholding payment no longer applies, the withheld amount will be paid without interest. Prior to withholding any amount, the District shall notify Design Builder in writing that amounts are being withheld and the reason for the withholding. Additionally, the District shall not withhold an amount more than is reasonably necessary to cure any default.

9.4.1 Deficient Design Services or nonconforming Construction Work not remedied.

9.4.2 Third-party Claims filed against District or the Project or reasonable evidence indicating probable filing of Claims, unless security acceptable to District is provided.

9.4.3 Failure of Design Builder to provide supporting documentation as required under Section 9.3.5, or to make timely payments to Design Professionals, Subcontractors, suppliers, and equipment vendors for Design Services, labor, materials, or equipment.

9.4.4 Damage to District or its Separate Consultants or Separate Contractors if the Design Builder, or any of its Design Professionals, Subcontractors, suppliers, or equipment vendors are potentially liable.

9.4.5 Failure of the Work to progress in accordance with the Project Schedule and reasonable doubt (in District's sole discretion) that the Work can be completed within the Contract Time and/or for the remaining balance of the Contract Price (taking into account any Liquidated Damages under Section 10.8 that would be due and owing from Design Builder as a result of delay).

9.4.6 Failure to comply with scheduling requirements set forth in Article 10 or provide the District and the Program Manager with timely monthly progress reports as required under Section 1.10 of the Supplemental Conditions (Exhibit 2).

9.4.7 Failure of the Design Builder to maintain the BIM (if applicable) or update as-built documentation.

9.4.8 Failure of the Design Builder to maintain the Project Schedule or furnish Project Schedule files as required under Section 10.3.

9.4.9 Disputed amounts included in the application for payment or insufficient documentation, erroneous estimates for value of the Work performed, or other incorrect statements in a payment application.

9.4.10 Failure to keep the site premises clean and safe to the satisfaction of the Program Manager of District.

9.4.11 Failure to carry out the Work in accordance with any term or condition in the Contract Documents.

9.4.12 Failure to provide the complete monthly reports required by Public Contract Code 2602 (regarding skilled and trained workforce).

9.5 No Right to Stop Work. If Design Builder disputes any determination with respect to any payment application, Design Builder must nevertheless expeditiously continue to prosecute the Work, provided that undisputed amounts are timely paid. Design Builder may submit unresolved payment disputes for determination under Article 17.

9.6 Payments to Design Professionals, Subcontractors and Suppliers. Design Builder will make payment to its Design Professionals, Subcontractors and suppliers within 7 business days' receipt of a progress payment from District. Final payment will be made within 10 days of receipt of payment from District. District is not obligated to pay, or to see that payment is made to Design Builder's Design Professionals, Subcontractors and suppliers, except as may otherwise be required by Applicable Law. District reserves the right, in its sole discretion, to issue joint checks to Design Professionals, Subcontractors, suppliers or equipment vendors and Design Builder will cooperate with District; provided, however, District shall only exercise this right if it has grounds to believe Design Builder has defaulted on Design Builder's payment obligations to said party.

9.7 Warranty of Title. Design Builder warrants that title to all Work, materials, and equipment covered by a payment application, whether incorporated into the Project or not, will pass to District at the time of payment, free and clear of all stop payment notices, Claims,

security interests or encumbrances in favor of Design Builder, its Design Professionals, Subcontractors, suppliers, equipment vendors, and other persons and entities entitled to make a Claim by reason of having provided Design Services, or labor, materials, or equipment relating to the Construction Work. If Design Builder has received payment for the Work at issue, Design Builder will defend, indemnify, and hold District harmless pursuant to Section 13.2.

9.8 Final Payment. Upon Final Completion of the Work, Design Builder will submit a final payment application. As a condition precedent to final payment, Design Builder must provide: (i) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which District or its property might be responsible or encumbered, have been paid or otherwise satisfied; (ii) completion of all punch-list items; (iii) a certificate evidencing that insurance required by the Contract Documents to remain in force after final



payment is currently in effect and a written statement that the Design Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Construction Documents; (iv) consent of surety; (v) delivery and approval by Program Manager of all as-built Drawings, manufacturer's warranties, Product Data, and maintenance and operations manuals, and other close-out deliverable as required by the Contract Documents; and (vi) final conditional waivers and releases of stop payment notice rights. Upon Final Completion of the Project, final payment of all undisputed amounts will be paid no later than 30 calendar days after Final Completion of the Project. All disputed amounts will be subject to the dispute resolution process set forth in Article 17.

9.9 Waiver of Claims. Acceptance of final payment by the Design Builder constitutes a waiver of Claims for payment by Design Builder and its Design Professionals, Subcontractors, and suppliers except for those previously made in writing and submitted per Article 17.

9.10 Audit Rights. In accordance with Government Code Section 8546.7, records of both District and the Design Builder are subject to examination and audit by the State Auditor General for a period of 3 years after final payment. Upon written notice, Design Builder will produce all Project records required by the State Auditor General. Additionally, upon written request of District, Change Order Work performed on a time and material basis is subject to audit and Design Builder and its Design Professionals and Subcontractors will provide all Project records as may be required by District to substantiate costs included in such Change Orders.

10. SCHEDULING

10.1 Contract Time. The Contract Time is the time allotted in the Project Schedule (Exhibit 5A), and the Business Terms Sheet to achieve Substantial Completion of the Work. The Contract Time will only be extended for a permitted delay per Section 10.5, and the Contract Price will be adjusted in accordance with the Change Order process under Article 11.

10.2 Commencement and Prosecution of the Work. Design Services and preconstruction services to be performed under the Contract Documents will commence upon execution of this Contract. Construction will commence upon a written notice to proceed issued by Program Manager to the Design Builder. Design Builder will diligently prosecute and complete the Work pursuant to the Project Schedule and within the Contract Time.

10.3 Project Schedule. Design Builder's approved critical path method Project Schedule is set forth in Exhibit 5A. The Project Schedule set forth in Exhibit 5A will serve as the baseline schedule. The Project Schedule coordinates and integrates all Design Services with milestone dates for completion of the 100% Design Development Documents, and Construction Documents, submittal deadlines, procurement of long lead items and subcontracts, permit, commencement of Construction Work, as well as commissioning, punch-list, Substantial Completion, Final Completion, as well as any other milestone dates. The Project Schedule will be broken down by phase, activity and duration and will be used to identify the sequence of activities and to track time and manpower for those activities in order to plan, organize, execute, and monitor the Work. The Project Schedule will be Design Builder's master schedule and will be used to record and report actual performance and progress, and to outline how the Design



Builder plans to integrate design and construction in order to ensure accurate and timely completion of all Work. The Project Schedule must include sufficient time for design review and approval of Submittals as required under Article 3 of the Supplemental Conditions (Exhibit 2), and should include the number of Adverse Weather days per year as defined in Exhibit 1. The Project will own all Float and unused Adverse Weather days in the Project Schedule. All coding included in the Project Schedule must be transferrable and readable by the Program Manager, and code structure will enable a sort by activity code in the form of a summary schedule. Design Builder will provide Schedule updates with its monthly progress report per Section 1.10.2 of the Supplemental Conditions (Exhibit 2). Upon request by District or the Program Manager, Design Builder will produce electronic copies of its Project Schedule (inclusive of updates).

10.4 Work Plans. Design Builder in collaboration with the Design Build Team and Program Manager will establish work plans that include upcoming performance requirements. The work plan schedules will document all Work performed during the prior week's period and project Work to be performed during the upcoming week(s) (3-week periods). The work plans are to be used as a working tool to reflect commitments made in look ahead meetings, evaluate any upcoming constraints or schedule slippages, identify workable backlog, and collaborate on methods for labor efficiency. Work flow will be scheduled to optimize the flow of Work through the Project and reduce bottlenecks and activities that will not advance the Contract Time or other milestone dates that are included in the Project Schedule.

10.5 Permitted Delays. If the Design Builder is delayed in the commencement, prosecution or completion of the Work by the acts or omissions of District, its Separate Consultants or Separate Contractors or for one of the conditions set forth in Sections 11.2.1 through 11.2.10 (an "Excusable Delay"), and, as a direct result of the Excusable Delay, the Substantial Completion Date is extended, then the Contract Time shall be extended for the same period of time as the Excusable Delay. If the Contract Time is extended, the Contract Price and Contract Time will be adjusted per Article 11. However, no adjustments to Contract Time or Contract Price will be allowed unless written notice was provided to District and the Program Manager within 5 business days of commencement of the delay. The notice must briefly describe the circumstance and provide a rough estimate of the delay time per Section 11.3. Before any adjustments in Contract Time or Contract Price, Design Builder must demonstrate the duration of the delay through fragnet analysis after taking into account any concurrent delays, and show that the delay could not have been reasonably anticipated or avoided and that commercially available means were taken to mitigate or minimize the consequences of the delay. Delays will be measured from the effective Project Schedule in place at the time of delay. Delays of non-critical path Work will not be a basis for an extension of Contract Time or any additional compensation.

10.6 Schedule Slippage. Design Builder will notify the Program Manager in writing with a copy to District's Authorized Representative within 3 business days of any delay in the Project Schedule as a result of its Work and must submit a detailed recovery plan to Program Manager for evaluation and District's approval. The detailed recovery plan must be submitted within 2 business days of the notice (so within 5 business days from date of delay). All costs associated with the recovery will be the responsibility of the Design Builder unless the Design Builder is entitled to an extension of time under Section 10.5.



10.7 Acceleration. District may direct the Design Builder and its Subcontractors and Design Professionals to work overtime. If Design Builder and its Subcontractors and Design Professionals are not in default as a result of the failure of the Work to progress at the rate required in the Project Schedule, their respective subcontracts and/or agreements, or any of the other Contract Documents, District will pay the Design Builder for additional costs through executed Change Order.

10.8 Liquidated Damages. The Parties acknowledge and agree that if Design Builder fails to achieve Substantial Completion of the Project within the Contract Time, District will suffer damages that are both extremely difficult and impracticable to ascertain. Therefore, District and Design Builder agree that, in the event Design Builder fails to achieve Substantial Completion of the Project within the Contract Time and if as a result of that delay the Substantial Completion Date is extended, Design Builder will pay to District as liquidated damages, and not as a penalty, the applicable amount set forth in the Business Terms Sheet until such time that Substantial Completion of the Project is achieved. Payment of the Liquidated Damages represents a reasonable estimate of fair compensation for the losses that reasonably may be anticipated. The Parties acknowledge and agree that this liquidated damages provision will be District's only remedy for delay damages caused by Design Builder's failure to achieve Substantial Completion of the Project within the Contract Time. However, nothing contained in this Section 10.8 will preclude Owner from recovery for actual damages caused by reasons other than Design Builder's failure to timely achieve Substantial Completion of the Project within the Contract Time, actual losses incurred due to breach of contract, defective or non-conforming Construction Work, injury to persons or property, or third party claims. Design Builder acknowledges and agrees that the Liquidated Damages amount is a reasonable amount for Owner's consequential damages due to delay under the circumstances and existing as of the Effective Date of this Contract.

11. CHANGES

11.1 General. Changes in the Work will only be authorized by a minor change in the Work per Section 11.12, a Construction Change Directive ("CCD") issued per Section 11.11, or executed Change Order, and must be performed under the applicable conditions of the Contract Documents. A Change Order is a mutually agreed written order adjusting the Contract Price, Contract Time, or both. In order to be properly executed, Change Orders must be signed by District and Design Builder. An executed Change Order fully and completely resolves any Claim by Design Builder, its Design Professionals, Subcontractors, suppliers, and equipment vendors for additional compensation or time arising from or related to the subject of the Change Order. Timely submission of a Change Order Request ("COR") per this Article 11 is a condition precedent to Design Builder's and any of its Design Professionals', Subcontractors', suppliers', and equipment vendors' ability to recover for a changed condition.

11.2 Conditions for Change. Change Orders are limited to the following circumstances:

11.2.1 District Elected Change.

11.2.2 District Caused Delay.



11.2.3 Government Authority Caused Delay or Change

11.2.4 Adverse Weather.

11.2.5 Force Majeure.

11.2.6 Unforeseen and Differing Site Conditions.

11.2.7 Suspension of the Work by District under Section 18.1.

11.2.8 Acceleration of the Project Schedule per Section 10.7.

11.2.9 Post Permit Change.

11.2.10 A CCD per Section 11.11.

11.2.11 Reconciliation of allowance items per Section 11.13.

11.2.12 Unavailability or delay in availability of materials or equipment, after Design Builder makes all reasonable efforts to find alternative sources for those materials or equipment.

11.2.13 Any other event or occurrence which the parties agree could not have been reasonably anticipated or mitigated.

11.3 Change Order Requests ("CORs"). Design Builder will submit a rough order of magnitude of the change to Program Manager within 5 business days' receipt of the scope of a COR or discovery of facts or circumstances giving rise to a COR. Design Builder will submit a complete cost proposal, including any change in Contract Time under Section 10.5, within an additional 5 business days unless a longer period of time is needed due to design revisions arising from a District Elected Change or for other reasons agreed to by the Design Builder and Program Manager in writing. All CORs must be presented to the Program Manager with a copy to District's Authorized Representative.

11.4 Review. The Program Manager will review the COR with District's Authorized Representative within 10 business days of receipt and may request additional information and back up from the Design Builder or make recommendations to District for approval or denial. If District denies the COR, it will provide Design Builder with a written explanation. If the COR is neither accepted nor denied within the 10 business day period, it will be deemed denied by District unless written notice is provided to the Design Builder that the time for review is being extended. If written notice is provided, the notice will expressly state the date by which the review will be completed. All decisions rendered by District will be final and binding unless a formal Claim is timely noticed per the dispute resolution procedures in Article 17.

11.5 Contract Time. Design Builder will only be entitled to an extension of time and additional compensation for general conditions and general requirements if the Contract Time is extended due to a permitted delay under Section 10.5 and after evaluation of the fragnet analysis as required under Section 10.5. Calculation for additional general conditions as



defined in Section 12.3 will be calculated by multiplying the Average Daily Rate set forth in the Business Terms Sheet by the total number of additional work days of extension granted by District. General requirements as defined in Section 12.7 will be calculated based on the actual cost incurred for the total number of days granted by District. Design Builder does not reserve a right to assert any delays in the Contract Time, cumulative impact costs, extended job site costs, extended overhead, constructive acceleration, and/or actual acceleration beyond what is allowable under Section 10.5 and timely claimed in a COR.

11.6 Pricing Methods. Allowable Costs for Change Orders are set forth in Article 12. Methods used for determining adjustments to the Contract Price include: (i) mutual acceptance of a lump sum amount properly itemized for labor, services, materials, equipment, and mark-up for insurance, bond, overhead and profit supported by sufficient substantiating data (such as receipts, purchase orders, contracts, time reports, and other documentation reasonably required by the Program Manager or District) to permit evaluation of the Allowable Costs; or (ii) time and material with a mutually accepted not-to-exceed amount for additional Work based on the applicable billing rates for additional Design Services set forth in Exhibit 4B, as well as applicable Design Builder field labor rates for self-performed portions of the Work multiplied by the actual time spent, plus the actual cost for materials, equipment, and other Allowable Costs as defined in Article 12, plus overhead and profit. If Work is performed on a time and material basis, Design Builder will keep and present an itemized accounting for the Allowable Costs based on detailed invoices for Design Services and daily time tickets executed by the Program Manager for Construction Work, material and equipment invoices, and other supporting data (such as receipts, purchase orders, contracts, time reports, and other documentation reasonably required by the Program Manager or District) substantiating the amount of the Change Order. All Work will be broken down by Design Services (if any), direct Construction Work for labor, materials, and equipment, as well as indirect costs for general conditions and general requirements (if allowed under Section 11.5), insurance and bonding, and overhead and profit.

11.7 Subcontractor Adjustments. Subcontractor adjustments for Change Orders are limited to the Allowable Costs defined under Article 12 multiplied by overhead and profit as determined by subcontract. Design Professionals overhead and profit is included in their respective billing rates set forth in Exhibit 4B. All Subcontractor field labor rates for straight time, over time, and double time must specifically be set forth in their respective subcontract. Under no circumstances will Subcontractor overhead and profit on changes exceed 15% for self-performed portions of the Work plus 5% if Subcontractor has tiers (combined overhead and profit cannot exceed 20%).

11.8 Insurance and Bond. Mark up for Design Builder's insurance and payment and performance bond will be based on the percentages set forth in the Business Terms Sheet multiplied by the cost of the Construction Work as defined Article 12. Insurance and bond mark-up are not taken on top of additional Design Services included in a Change Order.

11.9 Overhead and Profit. Design Builder's mark-up for overhead and profit is set forth in the Business Terms Sheet. Mark-up for overhead and profit is multiplied by the cumulative sum of the Allowable Costs as defined in Article 12.



11.10 Deductive Change Orders. The amount of credit for deductive Change Orders will be the net decrease in the cost of the Work based on the Allowable Costs as defined in Article 12 plus Design Builder's overhead and profit. The amount of credit will be determined based on one of the pricing methods set forth in Section 11.6. When both additions and credits covering related Work are involved in a proposed change, the Change Order will be determined based on the net increase or decrease.

11.11 Construction Change Directives ("CCD"). A CCD may or may not constitute a changed condition as defined under Section 11.2, and may be issued by the Program Manager when Work must proceed before the COR can be either submitted or approved. The CCD must indicate whether the Program Manager believes the condition constitutes a change. If the Program Manager believes that the CCD constitutes a changed condition, the CCD must either include an estimated lump sum amount for the change or an estimate for the Allowable Costs associated with changed condition with a not-to-exceed amount, and an estimate for the number days of adjustment to the Contract Time (if applicable), subject to the conditions set forth in Section 10.5. CCDs must be signed by the Program Manager, District's Authorized Representative, and Design Builder in order to be valid. The Design Builder cannot exceed the not-to-exceed estimated adjustment for cost or the estimated number of days' extension of time without providing written notice to the Program Manager requesting further approval from District, or submission of COR per Section 11.3. If a CCD states that it does not constitute a changed condition and Design Builder disagrees, the Design Builder must notify the Program Manager and submit a COR per Section 11.3. Regardless of whether a CCD is issued, failure to provide a COR as required by Section 11.3 constitutes a waiver of Claim.

11.12 Minor Changes in the Work. The Program Manager may order minor changes in the Work provided such changes do not impact the Contract Price or Contract Time and are consistent with the Construction Documents. Minor changes will be implemented through a CCD per Section 11.11.

11.13 Allowances. Allowances will be reconciled through written Change Order upon procurement of the portion of the Construction Work identified as an allowance in the Schedule of Values (Exhibit 4C). If the cost of the Work exceeds the amount carried in the allowance item, an additive Change Order will be issued increasing the Contract Price per the agreed lump sum amount. If the cost of the Work is less than the amount carried in the allowance item, a deductive Change Order will be issued in accordance with Section 11.10, decreasing the Contract Price, and 100% of all unused funds will accrue to District.

11.14 Continued Performance. No Work will be allowed to lag pending the adjustment through Change Order, but will be promptly executed as directed, even if a dispute arises. Disputes regarding Change Orders will be resolved in accordance with Article 17. Failure to promptly execute Work as directed by District or the Program Manager will constitute a material breach of contract.

11.15 Omitted Work. If Design Builder omits Work that is included in the Contract Documents, District will have the right to withhold payment in an amount which, in the Program Manager's or District's opinion, is equal to the value of Work that was omitted and applicable profit until the Work is performed.



11.16 Surety. All changes, additions, or omissions in the Work ordered through a CCD or Change Order are part of the Work and will be performed and furnished in accordance with all of the terms and provisions of the Contract Documents. Design Builder will keep its surety informed of all modifications to this Contract. The obligations of Design Builder's surety are not to be reduced, waived, or adversely affected by the issuance of Change Orders even if the Design Builder fails to inform the surety of the Change Order(s), and District will not be required to obtain consent of the surety.

12. ALLOWABLE COSTS FOR CHANGE ORDERS

12.1 Allowable Costs. The cost for Change Order Work includes the Allowable Costs set forth in this Article 12 plus Change Order adjustments for overhead and profit per the Business Terms Sheet without any duplicative charge for items that fit into more than one category, and subject to the audit provisions set forth in Section 9.10. These same provisions will also apply to subcontract change orders and additional Design Services. For the purpose of Change Orders, "direct costs" includes additional Design Services and the cost of all subcontracted work or self-performed Construction Work but does not include Design Builder's general conditions, general requirements, insurance, bond, overhead or profit.

12.2 Design Professionals. Additional Design Services will be billed in accordance with the billable rates set forth in Exhibit 4B unless Design Professionals' additional cost is provided on a lump sum basis. Billing rates include any and all costs necessary for performance of Design Services provided by Design Professionals including basic wages, payroll taxes, and employer benefit payments for health and welfare (net of employee contribution withholding), pensions, vacations/holidays, supplemental dues, training, 401K benefits, and other benefits or payments required by law, and include the Design Professionals' overhead and profit. The billable rates can not include annual bonuses or salary adjustments that include annual bonuses. Billing rates are subject to audit at District's discretion. Additional Design Services are subject to the terms and conditions set forth in Article 11.

12.3 General Conditions. General conditions include Design Builder's employee costs for preconstruction services, project management, superintending, project engineering, safety, accounting, planning and scheduling, purchasing, estimating, and BIM modeler(s) (if applicable) who are specifically assigned to the Project, but only for that portion of employee time required for performance of the Work. Design Builder's staffing plan is set forth in Exhibit 4B. The staffing plan must include all Design Builder employees performing Work on the Project, their position, the percentage of time assigned to the Project, and indicate whether the person is key personnel. Design Builder has provided an Average Daily Rate that is inclusive of Design Builder's general condition costs, which will be used for extensions in Contract Time as may be permitted under Articles 10 and subject to the terms and conditions in Article 11. Design Builder's Average Daily Rate is set forth in Business Terms Sheet. Additional general conditions are not allowed unless there is an extension in Contract Time per Section 11.5.

12.4 Field Labor Costs. Additional wages of construction workers directly employed by the Design Builder or its Subcontractors performing Construction Work at the site or at off-site workshops. Labor rates will be inclusive of basic hourly wages, payroll taxes, and employer benefit payments for health and welfare, pensions, vacations/holidays, supplemental dues, and training, plus any other benefits or payments required by Applicable Law or applicable collective



bargaining agreements. The labor costs associated with foremen and lead-men are included in field labor. All field labor is subject to the skill and trained workforce requirements. To the extent field labor is union labor, field labor rates will be paid in accordance with local union agreements. If Design Builder is self-performing Work, any Change Order Work performed on a time and material basis will be per the billable rates included in Exhibit 4B.

12.5 Subcontractor Costs. All labor, materials, equipment, and appurtenances necessary for performance of the additional portion of the Work pursuant to the terms and conditions of the subcontract and subject to the limitations on Subcontractor mark-up set forth in the Business Terms Sheet.

12.6 Cost of Materials and Equipment Incorporated Into the Work. Costs, including transportation and storage, of all materials and equipment incorporated or to be incorporated into the construction Work by Change Order, including materials and equipment suitably stored off-site at a mutually acceptable location.

12.7 General Requirements. Design Builder's general requirements include costs incurred for temporary facilities that are due to an extension in Contract Time under Section 11.5. Additional general requirement costs are limited to additional costs incurred for rental of jobsite trailers, rental of furniture, and office equipment (other than equipment and devices included in overhead per Section 12.9), installation of security and fencing and related maintenance, temporary protection, barricades (if rented), traffic control personnel, temporary utilities and sanitary facilities, construction equipment rental charges, dust control, rented storage trailers, temporary stairs, personnel/material hoist, reclamation costs, landscaping, paving and the cost of Design Builder's field labor employees (e.g. carpenters and laborers) that are maintaining the site but not self-performing Work. Field labor employees will be charged at the billable rates set forth in Exhibit 4B.

12.8 Miscellaneous Costs. Design Builder's miscellaneous costs must be incurred as a result of the Change Order. Miscellaneous costs are limited to: (i) fees of laboratories for tests required by the Change Order; (ii) cost for reproducing or printing Project documents; (iii) sales, use, gross receipts, or similar taxes imposed by a Governmental Authority; (iv) additional fees and assessments for plan check, permits, licenses and inspections, and laboratory tests required by the Change Order and that are not paid directly by District; and (v) royalties and license fees paid for the use of a particular process or product required by the Change Order.

12.9 Overhead and Profit. Design Builder's amount for overhead and profit is set forth in the Business Terms Sheet. Overhead includes full compensation for any home office personnel who are not directly assigned to the Project and included in the general conditions, as well as all overhead expenses such as rent or mortgage and utilities for home office; costs related to blueprinting, computers, software, applications, systems, data processing, and support, laptops, devices, servers, printers, copiers, plotters, cell phones, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site, digital cameras, technology fees, electronic mail, and computer time; small tools, equipment, and consumables used by Design Builder or its Subcontractors with a value less than \$1,500; and all costs of business and/or operating permits, licenses, fees and taxes, required by any Governmental Authorities or labor agreements to enable the Design Builder to be qualified to do business and perform the Work.



13. LIABILITY, DEFENSE, AND INDEMNIFICATION

13.1 Negligent Design. Design Builder is liable for all damages to the extent proximately caused by design errors and omissions that do not meet the standard of care and will be liable to the same extent for any bodily injury or physical property damage caused by the defect(s). Design Builder and its Design Professionals will correct deficiencies in the design development or Construction Documents without charge to District. If corrections in the Construction Documents are performed after the Construction Work is completed, the statute of limitations for causes of action arising out of negligent Design Services will recommence upon completion of the corrective Design Services but only for that portion of the Work required to correct the negligent design errors or omissions. Correction for deficient Design Services will not limit any other legal remedies that may be available to District to recover damages arising out of, or resulting from deficient Design Services.

13.2 Indemnification. To the fullest extent permitted by law, Design Builder will defend (with counsel acceptable to District), indemnify and hold the District and its officers, board members, agents, directors, partners, members, employees, affiliates, parents and subsidiaries, and the Program Manager ("Indemnitees") harmless from and against any and all Claims, demands, causes of action, damages, costs, expenses (including legal, expert witness, and consulting fees and costs), losses or liabilities, in law or equity, arising out of, or resulting from, negligent acts or omissions in the performance of the Work by the Design Builder, its employees, Design Professionals, Subcontractors, suppliers, equipment vendors, or anyone for whom any of them may be liable. The indemnification obligations set forth in this Section will not be limited in any way by the amount or type of damages, compensation, or benefits payable by or for Design Builder under the workers' compensation acts, disability benefit acts, or other employee benefit acts. Design Builder's indemnification and defense obligations will survive termination of the Contract and include, but are not limited to, the following types of Claims:

13.2.1 Personal Injury and Property Damage. Personal injury, including bodily injury, sickness or disease, or death to any persons, employees, or agents of Indemnitees or any third parties and/or damage to tangible property of anyone (other than the Construction Work itself and including loss of use) caused or alleged to be caused by strict liability or any actual or alleged negligent act or omission of the Design Builder, its Design Professionals, Subcontractors, or suppliers, equipment vendors, or anyone directly or indirectly employed by any of them for whose acts Design Builder may be liable except to the extent that the personal injury or property damage is caused by the negligence or willful misconduct of any of the Indemnitees.

13.2.2 Breach of Contract. Breach of any material term or condition of the Contract Documents that causes damage, cost, or expense to District.

13.2.3 Violations of the Law. Penalties, fees, and costs imposed on account of the violation of any Applicable Law and caused by the act or omission of the Design Builder, its Design Professionals, Subcontractors, suppliers, equipment vendors, or anyone directly or indirectly employed by any of them for whose acts they may be liable.

13.2.4 Safety. Bodily injury, sickness, disease, death, injury, or tangible property damage (other than to the Construction Work itself) caused, in whole or in part, from actual or



alleged failure to train, initiate, maintain, or supervise safety precautions and programs in connection with the Construction Work.

13.2.5 Infringement of Intellectual Property. Infringement of any intellectual property right including patents, copyrights, or license, which may be brought against Indemnitees as a result of the Work.

13.2.6 Stop Payment Notice. Stop payment notice Claims for Work performed on the Project, including incidental or consequential damages suffered by District as a result of the Claim, and provided District has paid Design Builder for the portion of the Work at issue.

13.2.7 Insurance. Failure of Design Builder or its Design Professionals, Subcontractors, or equipment vendors to comply with the insurance provisions under this Contract and Exhibit 6A.

13.2.8 Hazardous Materials. Claims, liability, or damages arising out of, or resulting from, Design Builder's or its Design Professionals', Subcontractors', suppliers', or equipment vendors' negligent acts or omissions that cause or permit any Hazardous Materials to be generated, released, disposed, discharged, exacerbated (if pre-existing condition), provided that Design Builder has brought said Hazardous Materials onto, or stored the same at, the Project site or used in the Work unless specified, and only if there is not a reasonable substitute for the specified material.

13.3 Duty to Defend. Design Builder will immediately upon tender defend all Claims (with counsel acceptable to District) as defined in Section 13.2 at its own cost and expense and satisfy any judgment or decree that may be rendered against any Indemnitee arising out of a Claim, and reimburse Indemnitee(s) for any and all attorney's, expert witness, and consulting fees and expenses incurred in connection with the Claim or in enforcing the indemnity and defense granted by Sections 13.2 and 13.3.

13.4 Stop Payment Notice Free Obligation. If any of Design Builder's Design Professionals, Subcontractors, supplier, or equipment vendors serves, or maintains any action on or respecting, a Claim of stop payment notice relating to the Work, and provided that Design Builder has been paid all undisputed amounts owed, the Design Builder will immediately procure, furnish, and record appropriate statutory release bonds that extinguish or expunge the stop payment notice provided that District has paid the Design Builder for that portion of the Work. If Design Builder does not timely pay its Design Professionals, Subcontractors, suppliers, or equipment vendors as required, then District may notify Design Builder's surety, settle or bond over those Claims, or take other actions necessary to prevent a default under any other agreement affecting the Project, and District will withhold payment to Design Builder or demand reimbursement for any substantiated amounts that were necessary to satisfy Design Builder's obligation to satisfy, discharge, or defend against the Claim. Nothing contained in this Section requires the Design Builder to provide release bonds for any valid stop payment notice or other Claim due to District's non-payment or a valid dispute between District and Design Builder.

13.5 Enforcement. Nothing contained in this Article 13 will be construed to impose any obligation in conflict with current California state law. In the event of a conflict with Civil



Code section 2782, et seq., as may be amended, this Contract will be modified to allow indemnification and defense by Design Builder to the greatest extent permitted by law.

13.6 District's Indemnification. District will defend, indemnify and hold the Design Builder, and its respective employees, Design Professionals, Subcontractors, and equipment vendors harmless from any claims or liability, including future exposure claims made by third parties, arising out of, or resulting from pre-existing Hazardous Materials or Hazardous Materials brought onto the site by District's Separate Contractors, Separate Consultants, or anyone directly or indirectly employed by any of them but only to the extent that liability did not arise from any negligent acts, errors, or omissions of, or Work performed by, Design Builder, its employees, Design Professionals, Subcontractors, suppliers, or equipment vendors, or anyone directly or indirectly employed by any of them for whom Design Builder may be liable. District represents and warrants that, except as otherwise disclosed in the Contract Documents, in the areas where Design Builder will undertake Work or provide services, there are no: (a) materials or substances classified as toxic or hazardous either (i) on or within the walls, floors, ceilings or other structural components, or (ii) otherwise located in the work area, including asbestos or presumed asbestos-containing materials, formaldehyde, containers or pipelines containing petroleum products or hazardous substances, etc.; (b) situations subject to special precautions or equipment required by federal, state or local health or safety regulations; or (c) unsafe working conditions. District shall immediately notify Design Builder of any changes or updates that occur during the course of the Work. If any such undisclosed materials, situations or conditions, are discovered by Design Builder and provide an unsafe condition for the performance of the Work or services, the discovery of the material, situation or condition shall constitute a Differing Site Condition which entitles Design Builder to a Change Order. In addition, Design Builder shall have the right to cease or not commence the Work until the area has been made safe by the District at the District's expense. When the Hazardous Material has been remediated or removed, Work in the affected area shall resume upon written direction from the District.

13.7 Consequential Damages. In no event shall either party be liable for any special, incidental, indirect, speculative, remote, or consequential damages arising from, relating to, or connected with the work, equipment, materials, or any goods or services provided hereunder. Each Party waives claims against the other Party for consequential damages arising out of or relating to this Agreement.

14. INSURANCE AND BONDING

14.1 Design Builder's Required Insurance. Design Builder will carry the insurance required in Exhibit 6A. Design Builder will require through written agreement that its Design Professionals carry insurance per the Business Terms Sheet and in accordance with Exhibit 6A, and that Subcontractors carry similar types of insurance coverage as Design Builder at appropriate limits for their portion of the Work, as submitted and approved by the Program Manager. Proof of appropriate insurance, including endorsements of additional insureds for all separate policies, except for workers compensation and professional liability policies, must be submitted to the Program Manager before commencement of the Work. Design Builder and its Design Professionals and Subcontractors will provide additional insured as required under Exhibit 6A.



14.2 District Required Insurance. District will carry the insurance required in Exhibit 6C.

14.3 Payment and Performance Bond. Design Builder will execute and furnish to District a payment and performance bond for one hundred percent (100%) of the cost of the Construction Work (minus the cost of preconstruction services) before commencement of construction. The bonds will be in accordance with the forms set forth in Exhibit 6B, and will be amended into this Contract. The surety providing the payment and performance bonds must be an admitted surety insurer, as defined in Code of Civil Procedure section 995.120, authorized to do business in the State of California, and named on the current list of "Surety Companies Acceptable on Federal Bonds" as published by the Treasury Department Circular Number 570. Failure to provide the required payment and performance bonds will constitute a default under the Contract. The cost of the bonds will be included in the Contract Price. All changes, additions, or omissions in the construction portions of the Work ordered through a Change Order under Article 11 are part of the Construction Work and will be performed and furnished in strict accordance with all of the terms and provisions of the executed Change Order and other Contract Documents. Design Builder will keep its surety informed of all modifications to this Contract. The obligations of Design Builder's surety are not to be reduced, waived, or adversely affected by the issuance of Change Orders even if Design Builder fails to inform the surety of the Change Order(s), and District will not be required to obtain consent of the surety on behalf of Design Builder. Bonds must remain in place until all disputes are resolved between the Parties and through the Design Builder's warranty period, whichever is later.

14.4 Payment of Subcontractors and Suppliers. Without limiting the responsibilities of Design Builder and its surety under the terms of this Contract, Design Builder and its surety agree to promptly pay all lawful claims of Subcontractors, materialmen, laborers, persons, firms or corporations for labor or services performed or materials, supplies, machinery equipment, rentals, fuels, oils, tools, appliances, insurance and other items furnished, used, or consumed in connection with the prosecution of the Construction Work including Change Orders, and, provided that District has paid Design Builder all amounts due hereunder, will indemnify and hold harmless District from and against all liability loss, damage and expense, including interest, costs, attorneys' fees, and expert witness fees, which the District and Program Manager may sustain by reason of Design Builder's or its surety's failure to do so.

15. WARRANTY

15.1 Design Builder's Warranty. Design Builder warrants that the Construction Work will be:

1. Of good quality, new and free from defects in design, material, and workmanship;
2. Performed in a workmanlike manner and conforming to all professional engineering principles generally accepted as standards of the industry in the State of California; and
3. Conforming to the Construction Documents, applicable building codes, and Applicable Law.



For a period of 2 years commencing from the Substantial Completion Date, and for longer periods specified in the Contract Documents for certain equipment manufacturers or suppliers, Design Builder will repair or replace at its own expense any and all deficient or defective Construction Work together with any other work that is damaged during repair or replacement. Design Builder shall perform all required corrective work, and shall be responsible for the cost of labor, materials, equipment, transport, installation and retesting required for the corrective work. Moreover, in the event that corrective work is required under the Design Builder's Warranty, a 2-year warranty shall apply to the corrected work covering any discrepancies and defects in the corrected work that are discovered after the corrected work is accepted. If the District's operations or use are impaired by the nonconforming Construction Work or its correction, Design Builder and its Subcontractors will use off-hours labor and timesaving procedures as District may request.

The warranty excludes improper or insufficient maintenance, improper operation, abuse, modifications made to the Work by a party other than Design Builder, normal wear and tear, and normal usage. Design Builder will procure Subcontractors' and manufacturers' express warranties required under the Contract Documents on the District's behalf and will transmit the warranties to District through the Program Manager before Final Completion of the Work and Project close-out. Establishment of the 2 year express warranty period for correction of Construction Work relates only to the Design Builder and its Subcontractors' specific obligation to correct defective or non-conforming Construction Work, and has no relationship to statute of limitations periods for legal claims arising from the Contract Documents. THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND DESIGN BUILDER HEREBY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES, WHETHER WRITTEN OR ORAL, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, EXCEPT AS EXPRESSLY WARRANTED HEREIN.

15.2 Subcontractor Warranties. The Design-Builder shall obtain warranties from all Subcontractors and Design-Build Team members providing design services, labor, equipment, materials, supplies and maintenance equipment that would be given in normal commercial practice; require all such warranties to be executed in writing for the benefit of the District and enforce all warranties for the benefit of the District, if so directed by the District. In no case shall such Subcontractor warranties decrease the warranty provisions specified in the Contract Documents. All such Subcontractor warranties from Design-Build Team members shall run directly to and be enforceable by the Design-Builder and/or the District, any assignee of the District, and their respective successors and assigns. The Design-Builder hereby assigns to the District all of the Design-Builder's rights and interest in all warranties that are received by the Design-Builder from any Subcontractor or Design-Build Team members. All such warranties shall survive Final Completion, acceptance, final payment, and termination of the Agreement if the stated warranty period extends beyond the Final Completion, acceptance, final payment, and termination of these Contract Documents Agreement.

15.3 Manufacturer's Warranties. The Design-Builder shall obtain manufacturers' warranties for all materials and equipment procured and installed on the Project and assign all such warranties to the District prior to Final Completion. Manufacturer Minimum Warranty Periods shall be:

1. Modules: Module power output guaranteed at minimum 83.1 percent at 25 years.
2. Inverters: 10 years Monitoring & Data Acquisition System: 5 years
3. Canopies and Racking Systems: 25 years

Design Builder shall ensure that all components are installed per the Manufacturer's requirements such that warranties are maintained. Design Builder shall notify the District of any issues with the design or installation that could impact equipment warranties and seek District approval prior to installation.

16. OWNERSHIP OF DOCUMENTS

16.1 Design Development Documents and Construction Documents. The Design Development Documents and Construction Documents are being developed and furnished for use solely with respect to this Project. As such, provided that District has complied with the payment provisions set forth in Article 9, District will own and have all rights, title, and interests under Applicable Law in the Project's overall design, including the Design Development Documents, and Construction Documents ("Design Documents"). The Design Builder, Design Professionals and Design Build Subcontractors will not own or claim a copyright in the Design Documents prepared for the Project, and may not use such documents on other projects outside the scope of the Work without written consent of District. Design Builder, Design Professionals, and Design Build Subcontractors may each retain a record set of each of the approved Design Documents for the purpose of defense of any subsequent Claims or disputes involving the Project.

16.2 Building Information Model. If BIM is utilized on the Project, the BIM and subsidiary models used for design and construction are the property of District. Design Builder and its other Design Build Team Members agree to provide the Program Manager, as a deliverable before Final Completion, the record BIM and any other BIM files that Program Manager deems necessary. Despite the above, design elements that were created by any Design Build Team Member, before execution of this Contract, as extensions to commercially available BIM software will remain the property of the respective party that created the extension, regardless of whether it was used in the BIM for Work performed under this Contract, and District will hold a perpetual, non-exclusive, royalty-free license to those design elements for purposes of designing, constructing, renovating, operating, and maintaining the Project for which the BIM was created.

16.3 Licensing. The Design Build Team Members are each granted a limited, non-exclusive, royalty-free license to use and reproduce applicable portions of the Design Documents and other documents prepared for use in the performance of the Work. District grants the Design Builder, Design Professionals, and Design Build Subcontractors a non-exclusive, royalty-free, perpetual license for use or display of the Model or 2-D information solely for educational purposes.

16.4 Copies. All copies made under the license will bear the statutory copyright notice of District shown on the Construction Documents as well as any other Design Documents prepared by the Design Builder, Design Professionals, and Design Build Subcontractors.



Submittal or distribution to meet official regulatory requirements or for other purposes in connection with a Project will not be construed as publication in derogation of the District's copyright or other reserved rights and interests.

16.5 Exception. Nothing contained in Article 16 limits the ownership, rights, title, and interest of the Design Builder, Design Professionals, or Design Build Subcontractors to their respective general design details, layouts, and general concepts that each of them uses or has used on multiple projects, or to use new standard design details that were developed during design under this Contract on other projects.

16.6 Termination. Termination of the Design Builder or other member of the Design Build Team does not affect the rights of the District under this Article 16. If Design Builder is terminated before the Design Services are completed, District will either: (i) take assignment of the Design Professionals and Design Build Subcontractors; or (ii) hire another design professional of record who will over-stamp the Design Documents and become the architect or engineer of record. To the extent either should occur, all parties involved in the assignment or transition of the design will cooperate with District.

17. CLAIMS AND DISPUTES

17.1 Disputes. Disputes, Claims, or other matters in question between the Design Builder and District arising out of the Contract Documents, including breach of contract, will be subject to Public Contract Code sections 9204 and 20104-20104.6. Compliance with all Change Order procedures is a condition precedent to filing a Public Contract Code Claim pursuant to this Article 17. Notice of Claim must be made within 10 business days, as well as any statutory requirements. Any Claim submitted by Design Builder will be in writing and include the documents necessary to substantiate the Claim. All Claims must be submitted by certified mail to District's Authorized Representative with return receipt requested, with a copy to Program Manager. Failure to timely or properly submit a Claim per this Article 17 will be deemed a waiver of all rights to do so.

17.2 Required Documentation. Design Builder's reasonable documentation in support of the Claim must, at a minimum include: (i) a clear, concise recital of the basis of the Claim asserted, including a designation of the provisions of the Contract Documents upon which the Claim is based; a statement as to the amount of time and/or compensation sought pursuant to the Claim; (ii) a statement regarding whether the Claim arises from an ongoing occurrence, and if so a description of the specific Work activities affected by the Claim; (iii) a fragnet analysis as required under Article 10 if Design Builder is requesting a time extension in the Contract Time; (iv) full and complete cost records supporting the amount of any Claim for additional compensation; (v) a notarized certification by the Design Builder and each Design Professional and Subcontractor included in the Claim as follows: "Under the penalty of law for perjury or falsification and with specific reference to the California False Claims Act, Government Code Section 12650 et seq., the undersigned hereby certifies that the information contained herein is a true, accurate, and complete statement of all features relating to the Claim asserted." Failure by the Design Builder and its Design Professionals and Subcontractors included in the Claim to provide sufficient documentation will result in denial of the Claim. District reserves the right to request additional documentation, or clarification of the documentation provided.



17.3 District's Response. Upon receipt of a Claim, District will conduct a reasonable review and provide a written statement to the Design Builder identifying what portion of the Claim is disputed and what portion is undisputed within 45 days of receipt of the Claim. District and Design Builder may, by mutual agreement, extend the 45 day time period. For any undisputed portion of a Claim, District will make payment within 60 days of District issuance of the written statement. Failure of District to respond to a Claim from Design Builder within the time periods described in this Section will result in the Claim being deemed rejected in its entirety.

17.4 Dispute District's Response. If Design Builder disputes District's response, or if District fails to respond within the time prescribed, Design Builder may demand an informal conference to meet and confer for settlement of the issues in dispute within 30 days of the District's response or failure to respond. Within 10 business days following the meet and confer conference, District will provide a written statement identifying the portion of the Claim that remains in dispute. Any payment due on an undisputed portion of the Claim will be made within 60 days of the meet and confer conference. In the event that the meet and confer conference is unsuccessful, the matter will be submitted to nonbinding mediation within 60 days unless the Parties mutually agree to a later date.

17.4.1 Failure of the District to respond to a Claim within the time periods described above will result in the Claim being deemed rejected in its entirety.

17.5 Mediation. Unless the Parties mutually agree to waive mediation and proceed straight to litigation, the Parties will mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing. If the Parties cannot agree upon a mediator, each Party will select a mediator and those mediators will select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party participating in the mediation will share in the fees and costs in connection with the mediation.

17.6 Litigation. If mediation is unsuccessful, Design Builder must file a government claim pursuant to Government Code section 910 et seq. in order to initiate a civil action.

17.7 Joinder. Design Builder acknowledges that the Project is being constructed under a design-build project delivery method where the Design Builder is under direct contract with District. The Parties consent to the joinder of other necessary Project Team Members in any dispute resolution procedure, if Claims for or against the Design Builder or District arise from the same, substantially the same, or interrelated facts, issues, or incidents relating to the Project, or where separate dispute resolution processes create a risk of inconsistent awards or results.

18. TERMINATION AND SUSPENSION

18.1 Suspension. The Project may be suspended upon written notice from District. The written notice of suspension will set forth the reason for suspension and the effective date of suspension. If the Project is suspended by District and not due to any fault of the Design Builder or any of its Design Professionals, Subcontractors, suppliers, or equipment vendors, the Design Builder will be compensated per the compensation and payment terms set forth in Article 9 for all Work properly performed through the effective date of the suspension. If



Construction Work has commenced by the effective date of suspension and the suspension requires demobilization of the Design Builder, the Design Builder will also be entitled to an additional 10 work days to cease all operations and secure the Project site. The Design Builder will be compensated for its general conditions per the Average Daily Rate set forth in the Business Terms Sheet, and for actual general requirements costs incurred for the additional 10 work days. If the Project is resumed, and provided that the suspension was not caused or due to any fault or neglect of the Design Builder or any of its Design Professionals, Subcontractors, suppliers, or equipment vendors, then Design Builder's compensation will be equitably adjusted through Change Order under Article 11 and the Contract Time will be equitably adjusted for the additional time required to achieve Substantial Completion of the Work. If the Project has ceased for more than 120 consecutive calendar days or if all Construction Work has ceased for a period of 60 consecutive calendar days, Design Builder may terminate the Contract under Section 18.4.

18.2 District's Termination for Convenience. District may terminate this Contract for convenience upon 10 business days' written notice. The notice will state the extent and effective date of termination. Design Builder will be entitled to receive payment for all Work properly performed as of the effective date of termination based on the compensation and payment provisions set forth in Article 9 and for all materials and equipment purchased for use in the Work and delivered into the District's possession but not yet installed. If Construction Work has commenced as of the effective date of termination, Design Builder will also be entitled to an additional 10 work days of general conditions and general requirements to cease all operations and secure the site. General conditions will be billed per the Average Daily Rate set forth in the Business Terms Sheet and general requirements will be bill for actual costs incurred. The additional general conditions and general requirements will not apply if the District already suspended the Work under Section 18.1 and the Design Builder already received compensation for demobilization and securing the site. Design Builder expressly waives any Claims for consequential damages, including anticipated lost profits and unabsorbed overhead. Any dispute over the amount to be paid upon termination will be resolved in accordance with the dispute resolution procedures set forth in Article 17.

18.3 District's Termination for Cause. District may terminate this Contract upon not less than 10 calendar days' written notice if Design Builder is in breach of any term or provision of the Contract Documents and Design Builder does not commence curing its breach within the same 10 calendar day time frame. The notice will set forth the reason for termination and the effective date of termination. If District terminates this Contract for cause, Design Builder will not be entitled to any further payments until after Final Completion of the Work. Nothing stated in this Section will prevent District from pursuing and recovering any damages allowed by Applicable Law from Design Builder arising out of a breach of the Contract Documents. If a court deems that termination of the Design Builder was wrongful or otherwise improper, the termination will be deemed a termination for convenience under Section 18.2.

18.4 Design Builder's Termination for Cause. Design Builder may terminate this Contract upon 15 days' written notice and an additional 15 days' opportunity to commence curing, if District fails to make payment to the Design Builder in accordance with Article 9, and cannot provide evidence substantiating that financial arrangements have been made to make payment, or if the Project is suspended for more than 120 consecutive calendar days, or if all Construction Work has ceased for a period of 60 consecutive calendar days. Design Builder will



be compensated for all Work properly performed through the effective date of termination in accordance with the compensation and payment provisions set forth in Article 9. If the Contract is being terminated due to failure to make payment and provided that the Construction Work has commenced before the effective date of termination, Design Builder will also be entitled to additional general conditions and general requirements for 10 work days to cease all operations, demobilize, and secure the site. General conditions will be charged at the Average Daily Rate set forth in the Business Terms Sheet, and general requirements will be paid based on actual costs incurred by Design Builder.

19. MISCELLANEOUS PROVISIONS

19.1 Confidentiality. Each Party will keep information provided by the other Party or made available to said Party during performance of the Work confidential to the extent allowed under applicable law, and will not disclose confidential information to persons or entities other than as legally required and as necessary to perform the Work.

19.2 Governing Law. This Contract will be governed and construed under the laws of the State of California without giving effect to any choice of law or rule of conflict that would cause the application of the laws of any other jurisdiction. Each of the Parties agrees that the exclusive venue for any dispute resolution proceeding or action will be in Shasta County, California.

19.3 Assignment. District and Design Builder respectively bind themselves, their partners, successors, assignees, and legal representatives to the other Party to this Contract. Design Builder may not assign this Contract. Upon notice, District may assign this Contract to any lender in obtaining Project financing, and Design Builder and its Design Professionals, Subcontractors, suppliers, and equipment vendors will cooperate with District and execute required assignment and subordination agreements.

19.4 Notices. Any notice required to be given by this Contract will be in writing and deemed effective upon: (i) the date of personal delivery if received by the addressee before 5:00 p.m. local time on a business day; (ii) 3 business days after being sent via registered or certified mail with a return receipt requested; or (iii) 1 business day after being sent by overnight commercial courier providing next-business-day delivery. Note that notice of Claims must be sent via certified mail return receipt requested. Notices will be addressed to the following respective parties with a copy to Program Manager:

District

John Morris
Program Manager
43563 Hwy 299 East
Fall River Mills, CA 96028
JOMorris@mayersmemorial.com

Design Builder

Scott Conner
3090 Bristol St. Suite 400
Costa Mesa CA 92626
Email: SConner@Veregy.com

19.5 Interpretation and Severability. This Contract's terms and conditions will be interpreted according to their plain meaning, and not strictly for or against either District or



Design Builder. Any contrary rule of construction or interpretation will be of no force or effect with respect to this Contract. If a court of competent jurisdiction finds any term or provision of this Contract to be void or unenforceable for any reason, the term or provision will be amended to comply with Applicable Law. If a term or condition is severed, the remainder of the Contract will remain in full force and effect to the maximum extent permitted by law and consistent with District's and Design Builder's overall intent.

19.6 Third Party Beneficiaries. The Parties acknowledge and agree that the obligations of the Design Builder are solely for the benefit of District and are not intended in any respect to benefit any third parties. District, however, is a third party beneficiary to all Design Professional agreements and subcontracts. There are no other third party beneficiaries to this Contract.

19.7 Time is of the Essence. Time is of the essence with respect to each and every provision of the Contract Documents and any subsequent Change Orders.

19.8 Rights and Remedies. All 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 Parties under the Contract Documents or otherwise available at law or in equity.

19.9 Survival. The following provisions will survive termination of this Contract or completion of the Work: Sections 1.4, 1.5, 10.8, Articles 9, and 13 through 19.

19.10 Waiver. Unless otherwise indicated in this Contract, District's and Design Builder's action or failure to act will not waive any right or duty it has under the Contract, and such action or failure to act will not be an approval of or acquiescence in a breach of the Contract unless specifically agreed to in writing by the Party.

19.11 Counterparts. This Contract may be executed in counterparts, each of which will be deemed an original. When proving this Contract, it will only be necessary to produce or account for the counterpart signed by the Party against whom enforcement is sought. Electronic copies or photocopies of this Contract showing the true signatures may be used for all purposes as originals.

19.12 Interest. Payments due and unpaid under this Contract that do not constitute a Claim will bear interest from the date payment is due at the rate prescribed by Applicable Law.

19.13 Attorneys' Fees. If District or Design Builder commences an action or dispute resolution process in accordance with the terms and provisions of this Contract against the other Party for Claims arising out of or in connection with the Contract Documents, the prevailing Party will be entitled to recover all reasonable attorneys' fees and costs (including charges and expenses related to the suit, expert witness, and consultants' fees) as may be determined by a court with competent jurisdiction.

19.14 Electronic Signature. The Parties agree that an electronic signature is an acceptable form of signature for written communications between the Parties and will have the same force and effect as the use of a manual signature provided that the digital signature is: (i) unique to the person using it; (ii) capable of verification; (iii) under the sole control of the person



using it; and (iv) linked to the data in such a manner that if the data are changed, the digital signature will be invalidated.

19.15 Legal Citations. Legal citations to statutory requirements are included in the Contract for convenience and an omission of any statutory requirement will not relieve the Design Builder from compliance with Applicable Law.

19.16 Entire Contract. The Contract Documents form the entire contract between the District and Design Builder and supersede all prior oral and other written negotiations, representations, or agreements between the District and Design Builder with respect to the Work performed for this Project.



Exhibit 1

DEFINITIONS



**Design Build Agreement
Exhibit 1- Definitions**

1. **"Adverse Weather"** means the number of days included in the Business Terms Sheet and Project Schedule (Exhibit 5A) for high winds or rain per year, which will be cumulative based on the duration of the Project. In order to qualify as an Adverse Weather day, the construction crews' ability to perform Construction Work on the Project must be prevented or substantially impeded for more than half of a normal work day and the Design Builder's inability to perform the scheduled Construction Work must result in an actual delay to the Contract Time.
2. **"Allowable Costs"** includes the reimbursable cost categories for Change Orders as more specifically defined in Article 12 of the Contract.
3. **"Amendment"** is a document executed by the signatories on page 1 of the Contract amending the terms and/or conditions of the Contract but not adjustments in Contract Price or Contract Time.
4. **"Applicable Law"** includes all local, state, and federal laws, rules, regulations, ordinances, building code or other codes, statutes, or regulations, or lawful orders of Governmental Authorities that are relevant to proper and safe performance of the Work.
5. **"Average Daily Rate"** is the stipulated dollar value stated in the Business Terms Sheet to compensate Design Builder for general conditions for permitted delays per Article 10 of the Contract.
6. **"Building Information Model" ("BIM" or "Model")** is a parametric, computable representation of the Project design developed by the Design Build Team, and it includes construction details. As used in this Contract, references to Building Information Model or BIM include the primary design model or models and all linked, related, affiliated, or subsidiary models developed for design, detailing, fabrication, or construction of the Project. The portions of the BIM prepared by Design Professionals or a Design Build Subcontractors are Construction Documents. The portions of the BIM prepared by the Design Builder or its Subcontractors (other than Design Build Subcontractors) to illustrate means and methods for constructing, fabricating, or installing portions of the Construction Work are Submittals, which are not Contract Documents or Construction Documents.
7. **"Business Terms Sheet"** is located in the Contract behind page 1. The Business Terms Sheet summarizes key representatives and personnel responsible for execution of the Project, key milestone dates, and key financial terms of the Contract.
8. **"Change Order Request" or "COR"** is a written request for a Change Order, which sets forth the nature of the change, the reason for the change, and the effect, if any, on the Contract Price, Contract Time, or both.
9. **"Change Order"** is a mutually agreed and executed written order adjusting the Contract Price, Contract Time, or both due to changes in the Work.



10. **"Claim"** is a written demand or assertion by the District or Design Builder seeking equitable or monetary relief or an adjustment or interpretation of the terms of the Contract Documents, an extension of Contract Time, or other relief with respect to the Contract Documents, including a determination of disputes or matters in question between the District and Design Builder, which may include other Project Team Members through joinder, arising out of, or related to, the Contract Documents, performance of the Work, third party claims, as well as any claims included in Design Builder's defense and indemnification obligations set forth in the Contract or elsewhere in the Contract Documents.

11. **"Construction Change Directive" or "CCD"** is an order prepared by, or at the request of, the Program Manager directing Design Builder to perform a minor change to the Construction Work, or for performance of changes to the Construction Work before an agreement on pricing or adjustments to Contract Time (if any) is reached.

12. **"Construction Documents"** means the 2D Drawings and Specifications developed by the Design Builder, its Design Professionals and Design Build Subcontractors, that are approved and permitted for construction by Governmental Authorities (inclusive of all subsequent, approved modifications) (Exhibit 3B), together with those parts of the BIM (if applicable) described as Construction Documents in the definition of Building Information Model above. These documents are complementary and what is required by one is required by all.

13. **"Construction Work"** means all labor, materials, equipment, and appurtenances provided by the Design Builder and its Subcontractors necessary for preconstruction services and constructing the Project in accordance with the Contract Documents.

14. **"Contract" or "Design Build Contract"** means the executed agreement between the District and Design Builder inclusive of all Exhibits to the Contract.

15. **"Contract Documents"** include the Contract (inclusive of all Exhibits included in the Table of Exhibits), the Building Information Model (if applicable), and all other documents issued by Design Professionals or Design Build Subcontractors for construction of the Project, as well as any subsequent Amendments, or Change Orders. To the extent BIM is utilized on the Project, the primary design model and subsequent models developed for design and construction are Contract Documents. The Contract Documents include Submittals prepared by Design Build Subcontractors and those Submittals incorporated into BIM.

16. **"Contract Price"** is the total lump sum price the District will pay for Design Builder's performance of the Work as defined by the Contract Documents, subject only to adjustment through subsequently approved Change Orders.

17. **"Contract Time"** is the time allotted in the baseline Project Schedule (Exhibit 5A) and the Business Terms Sheet for Substantial Completion of Work.

18. **"Daily Construction Reports"** means the daily log kept by the Design Builder that describes the weather, each Subcontractor's portion of the Construction Work as well as Design Builder's field labor on the site, the number of workers per trade, identification of equipment, Construction Work accomplished, problems encountered, and other similar relevant data such as accidents, service connections or disconnections, Construction Work stoppage, delays,



material and labor shortages, and any applicable orders or requests from Governmental Authorities. The Daily Construction Report Form is included in Tab 2F of the Project Manual.

19. **"Design Builder"** is the California state licensed general contractor identified in the Business Terms Sheet that executed the Contract and is solely responsible to the District for performance of the Work.

20. **"Design Build Subcontractors"** are Subcontractors that contract to perform portions of the Design Services and Construction Work related to a specific trade or discipline.

21. **"Design Build Team"** is Design Builder and its Design Professionals, Subcontractors, suppliers of all tiers, and equipment vendors. A member of the Design Build Team may be referred to individually as a **"Design Build Team Member"** or collectively as **"Design Build Team Members."**

22. **"Design Development Documents"** refers to the 100% design development documents that will be created by the Design Builder through a collaborative effort with the Project Team Members and in accordance with the Project Documents. The Design Development Documents will include, but are not limited to, Specifications and civil, landscape, architectural, structural, mechanical, and electrical design Drawings.

23. **"Design Professional"** includes all architects and engineers under direct contract with Design Builder including the Design Professional of Record, and any other architects or engineers performing a portion of the Design Services, and their respective tier-consultants.

24. **"Design Professional of Record"** is the Design Professional retained by the Design Builder as the lead designer that is responsible for overall management of the various Design Services. The Design Professional of Record is identified in the Business Terms Sheet. Notwithstanding, each Design Professionals is responsible for stamping their own respective design and are the architect or engineer of record with respect to their portion of the Design Services.

25. **"Design Services"** includes all required design necessary to meet the criteria set forth in the Bridging Documents, taking into consideration all information provided in the other Project Documents (Exhibit 3A).

26. **"Drawings"** means the 2-dimensional graphic illustrating the design, how the solar installation is situated on the site, and the location, building elevations, plan views, dimensions, and details for the Construction Work.

27. **"Effective Date"** is the date that the Design Builder and District entered into the Contract, which is set forth on page 1 of the Contract.

28. **"Final Completion"** occurs after Substantial Completion for the entire Project has occurred and when Design Builder has completed all Work in accordance with the Contract Documents; all final Punch List items have been completed and accepted by the District; the Project has been commissioned; all close-out documentation required under the Contract Documents has been transmitted to the Program Manager; the District's personnel have received the required training sessions regarding operation of the building and all systems; and a certificate of occupancy has been issued required Governmental Authorities.



29. **"Float"** is the amount of time that a non-critical Work activity can be delayed or extended without delaying a critical path activity or the Contract Time.
30. **"Force Majeure Event"** means an Act of God as defined under Public Contract Code section 7105, natural disasters, named storms, civil disobedience, an act of terror, industry wide labor strikes that cannot be resolved through a dual gate, or unavoidable casualties beyond the Design Builder's control, and that are not due to any act or omission of the Design Builder or its Design Professionals or Subcontractors, that necessarily extends the Contract Time and provided the Project is completely shut down for more than 1 business day.
31. **"Governmental Authority"** or **"Governmental Authorities"** means any and all federal, state, county, or municipal boards, departments, courts, offices, or agencies that have jurisdiction over the Project.
32. **"Governmental Authority Caused Delay"** is an action, restraint, or order by a Governmental Authority that materially impedes performance of the Work for more than 1 business day, and is beyond the control of the Design Builder and not due to any act, error or omission of Design Builder, its Design Professionals, Subcontractors, suppliers or their respective employees, or anyone for whom Design Builder may be liable. Pandemic is covered under Government Authority Caused Delay to the extent that the Government Authority issues an order shutting down all activity at the Project site.
33. **"Hazardous Material"** means any substance, product, waste, or other material of any nature that is or becomes listed, regulated or addressed under one or more of the following environmental laws: (1) CERCLA, (2) Hazardous Materials Transportation Act, (3) RCRA, (4) the Clean Water Act, (5) the Toxic Substance Control Act, (6) HSAA, (7) the California Porter-Cologne Water Quality Control Act, (8) the California Hazardous Waste Management Act, (9) the California Safe Drinking Water Act, (10) the California Waste Management Act, and (11) any other federal or state law or local ordinance concerning hazardous, toxic, or dangerous substances, wastes, or materials.
34. **"Indemnitees"** includes the District and its officers, board members, agents, directors, partners, members, employees, affiliates, parents and subsidiaries, and the Program Manager.
35. **"Lean Project Delivery Methods"** are defined by the Lean Construction Institute and include, but are not limited to, the concepts in Article 17 of Exhibit 2.
36. **"Liquidated Damages"** are damages for unexcused delays that will be assessed by the District if the Design Builder fails to achieve Substantial Completion of the Work within the Contract Time.
37. **"Monthly Progress Reports"** means the reports written by the Design Builder and submitted to the Program Manager per Section 1.10 of Exhibit 2 to provide an overall status of the Project's progress, and any concerns or impacts.
38. **"Party"** means the District or Design Builder. **"Parties"** means both the District and Design Builder.
39. **"Post Permit Change"** include changes that occur in the Construction Documents at the request of a Governmental Authority after approval of the Construction Documents and issuance of the building permit by the applicable Governmental Authorities; and provided that



the change was unknown to Design Builder, or any of its Design Professionals, or Subcontractors at the time of permit and not due to a code violation, a lack of coordination of the Work, or errors or omissions in the Design Services.

40. **"Product Data"** includes illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Design Builder or its Subcontractors illustrating materials or equipment for some portion of the Construction Work.

41. **"Program Manager"** is John Morris.

42. **"Project"** means the Mayers Memorial Hospital District Solar Project.

43. **"Project Documents"** includes the Bridging Documents, Geotechnical Report, Soils Classification Report, Utility Survey and Topographical Map, As-Builts to Existing Structure, Initial Study and Draft Mitigated Negative Declaration, Storm Water Control Plan, Domestic and Fire Water Flow Pressures, and Elevator Report. The Project Documents are set forth in Exhibit 3A. The Project scope includes all elements and information explicitly included in the Project Documents.

44. **"Project Schedule"** is the approved Project Schedule incorporated into the Contract as Exhibit 5A indicating Design Builder's planning, sequencing, phasing, and timing of the Work (including Adverse Weather), and establishing milestone dates for Substantial Completion and Final Completion of the Work. Throughout the design and construction process, the term Project Schedule refers to the most current, approved schedule updated by the Design Builder for performance of all Work within the Contract Time.

45. **"Project Team"** includes the District, its Program Manager, and Separate Contractors and Separate Consultants, the criteria architect, the Design Build Team Members and each of their respective Subcontractors and Design Professionals, inclusive of tiers. A member of the Project Team may be referred to individually as a **"Project Team Member"** or collectively as **"Project Team Members."**

46. **"Punch List"** is a list prepared by the Design Builder and its Design Professional of Record and engineers of record in conjunction with the Program Manager when Design Builder considers a portion of the Construction Work substantially complete, that includes all items that are incomplete or unsatisfactorily finished, and a schedule for their completion.

47. **"Request for Information" or "RFI"** means written requests prepared by the Design Builder or Subcontractors requesting clarification about design or raising coordination issues that impact design, cost, or schedule. The Request for Information Form is set forth in Tab 2D of the Project Manual.

48. **"Mayers Memorial Healthcare District" or "District"** is the public agency that is the owner of the Project.

49. **"Separate Consultant"** is a person, or firm, under separate contract with the District that is performing other services related to the Project.

50. **"Separate Contractor"** is a person, or firm, under separate contract with the District that is performing other work related to the Project.



51. **"Shop Drawings"** means Drawings, diagrams, and other data specially prepared by the Design Builder, or its Subcontractors, manufacturers, suppliers, or distributors to demonstrate the way that the party proposes to perform its portion of the Construction Work in accordance with the design illustrated in the Construction Documents.
52. **"Specifications"** are the written requirements for materials, equipment, systems, standards, execution, and workmanship for the Construction Work, and performance of related services. The Specifications are included in the Contract Documents.
53. **"Subcontractor"** includes all specialty contractors under direct contract with Design Builder for performance of a portion of the Construction Work and all tier-subcontractors. The term Subcontractor includes Design Build Subcontractors.
54. **"Submittals"** includes Shop Drawings, Product Data, samples, and similar documentation required by the Specifications or other Construction Documents.
55. **"Substantial Completion Date"** is the date when the entire Project has achieved Substantial Completion.
56. **"Substantial Completion"** means the entire Project is complete, other than minor punch list items, and the applicable areas have received a temporary certificate of occupancy from Governmental Authority allowing the District to legally occupy the phase or Project for its intended use. Substantial Completion does not include final punch-list, training of the District's personnel, or transmission of close-out documentation.
57. **"District Caused Delay"** is a delay caused solely by the negligent acts or omissions of the District, its Program Manager, Separate Contractors, or Separate Consultants that materially impacts Design Builder's ability to timely perform its obligations under the Contract Documents.
58. **"District Elected Changes"** are changes in the Work directed by the District that impact the Contract Price based on alternative approaches to design and construction, or changes directed by the District that impact the Work as well as the Contract Price, Contract Time, or both and are not: (i) reasonably inferable from the Project Documents (Exhibit 3A); (ii) caused by a Post Permit Change; or (iii) required as a result of design errors and omissions.
59. **"District's Authorized Representative"** is the person identified in the Business Terms Sheet who has the authority to act on behalf of the District.
60. **"Unforeseen and Differing Site Conditions"** means discovery of unknown, unforeseen or differing site conditions as defined in Public Contract Code section 7104.
61. **"Work"** includes all required Design Services, Construction Work, and commissioning necessary for proper completion of the Project in accordance with the Contract Documents.



Exhibit 2

SUPPLEMENTAL CONDITIONS



**Mayers Memorial
Hospital District**
Always Caring. Always Here.

**DESIGN BUILD CONTRACT
EXHIBIT 2 - SUPPLEMENTAL CONDITIONS**



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1. PROJECT MANAGEMENT CONTROL SYSTEMS

1.1 General. Design Builder will collaborate with Program Manager and the District to develop project management control systems. At a minimum, project management control systems must include the management tools set forth in Sections 1.3 through 1.8.

1.2 Risk Registry. Design Builder is responsible for and will collaborate with other Project Team Members to identify risks that could jeopardize the Project success. These risks will be documented in a risk registry that identifies the risks in priority order and documents the strategies to avoid, mitigate, and monitor these risks. The risk registry will be regularly reviewed and updated by Design Build Team, and reviewed monthly with the Program Manager. The Program Manager and Design Build Team will also review the effectiveness of the risk management strategies and will modify or implement new strategies to reduce or eliminate Project risks.

1.3 Daily Construction Reports. Design Builder will keep a daily log containing a record of weather, each Subcontractor's portion of the Construction Work accomplished on the site, the number of workers per trade, identification of equipment, problems encountered, and other similar relevant data. Design Builder will submit Daily Construction Reports on Project Manual form 2F Daily Construction Report Form. Daily Construction Reports will be submitted to the Program Manager on a weekly basis for all Construction Work performed on a Project during the prior week, and Design Builder will keep 1 copy of all Daily Construction Reports at the site office.

1.4 Submittal Log. Design Builder will keep a Submittal log containing a record of all Submittals, the date submitted, the date returned to the Design Builder and Subcontractor and whether the Submittal was approved or requires resubmission. Design Builder will keep a jobsite copy of all Submittals and all Submittals, as well as the Submittal log, will be posted electronically on a web portal established for the Project.

1.5 Change Order Log. Design Builder will keep a Change Order log recording all Change Order Requests and executed Change Orders by number and description and documenting the date the Change Order Request was submitted, date reviewed, and whether the Change Order Request is pending, approved or rejected, as well as the date that the Change Order was either approved and executed or rejected. Design Builder will keep a jobsite copy of all Change Order Requests and executed Change Orders. The Change Order log will be posted electronically on a web portal established for the Project.

1.6 Construction Change Directive ("CCD") Log. Design Builder will keep a CCD log recording all CCDs by number and description and documenting the date the CCD was issued, date executed by Design Builder, and what (if any) COR was submitted by Design Builder. Design Builder will keep a jobsite copy of all CCDs. The CCD log will be posted electronically on a web portal established for the Project.

1.7 Request for Information Log. Design Builder will keep a log of all Requests For Information or clarification ("RFIs"). The log will set forth the RFI number, the date the RFI was submitted, and the date it was returned to the field for implementation. Design Builder will keep a jobsite copy of all RFIs and all RFIs, as well as the RFI log, will be posted electronically on a web portal established for the Project.



1.8 Testing and Inspection Logs. Design Builder will maintain an on-site inspection log that is accessible by Program Manager, the District and any Governmental Authority. The log will document all tests and inspections performed at the site during construction of the Project. The record of tests will include the following information:

1.8.1 Request for Inspection.

1.8.2 Date test or inspection was conducted.

1.8.3 Identity of testing agency or special inspector.

1.8.4 Description of the Construction Work tested or inspected.

1.8.5 Identification of any Drawings or applicable details, Specification, or other Construction Documents or Submittals that were used during testing and inspection.

1.8.6 Date that the test or inspection was concluded and the date that the results were transmitted to Program Manager.

1.9 Weekly Meetings. Design Builder will hold weekly Project meetings with Program Manager, weekly safety meetings, and weekly Subcontractor coordination meetings to discuss design, preconstruction, jobsite procedures and safety, progress and scheduling, Change Orders, and to resolve any pending design or construction issues. Design Builder will be responsible for taking and publishing meeting minutes, documenting progress, resolutions, action items, and outstanding items. Meeting minutes will be transmitted to Program Manager for review and approval, and posted electronically on a web portal established for the Project.

1.10 Monthly Progress Reports. Design Builder will record the progress of the Work by submitting written Monthly Progress Reports to the District, Program Manager, which at a minimum will indicate: (i) overview; (ii) status of procurement; (iii) status of Submittals, Change Orders, RFIs; (iv) percentages of Work completed, (v) status of delivery of major Project equipment and components and an explanation of any impacts, if delayed, (vi) updated Project Schedule per Section 1.10.2, (vii) a list of critical activities to be performed during the next month, (viii) an explanation of any delays to critical path or milestones set forth in the Project Schedule, (ix) recovery plans per Section 10.6 of the Contract, (x) concerns or issues raised by Project Team Members or any Governmental Authority; (xi) updated monthly budget review pursuant to Section 1.10.1; and (xii) copies of select progress photos as required by Section 19.3. Additionally all logs required by Sections 1.4 through 1.8 must be updated and posted to the Project's web based system before submission of the monthly progress report.

1.10.1 Budget Report and Monthly Budget Review. Design Builder will establish a budget based on the Lump Sum Price Breakdown With Qualifications and Assumptions (Exhibit 4A), and will monitor the percentage of Work complete and the balance of Work remaining throughout the design and construction process. The budget will break down activities by the same line items included in the Schedule of Values (Exhibit 4C) but will include Change Orders, remaining contingency, and estimates for incomplete tasks by way of comparison between the monthly budget and the original Contract Price. (Exhibit 4A). On a monthly basis, Design Builder will go over the monthly budget with the Program Manager.



1.10.2 Schedule Update. Design Builder will update the Project Schedule based on actual percentage of Work completed and extensions of time that may have been granted through approved Change Order. The Project Schedule will be used for projection of milestones. The P6 file of the Project Schedule existing on the last day of each month must be electronically transmitted to the Program Manager within 3 working days after the end of month. However, all Work will be performed in accordance with the work plans as described in Section 10.4 of the Contract. Design Builder must keep track and document that as-build progress into the Project Schedule.

2. REQUESTS FOR INFORMATION

2.1 Process. The Project Team Members will create an efficient RFI process where the Design Build Team targets to resolve 95% of RFIs on the first review. If the RFI efficiency falls below 90% resolution on the first review, then the Program Manager will meet with the Design Build Team to review and implement corrective measures to improve the process to the expected target of 90%.

2.1.1 During Design/Preconstruction Stage. To the greatest extent possible, questions, conflicts and issues regarding coordination and constructability should be resolved through collaboration with the appropriate Project Team Members during the design and preconstruction stage. Resolutions reached during the design and preconstruction stage will be included in the Construction Documents without the need for a formal RFI. If critical issues cannot be resolved through informal collaboration, Project Team Members will add those item to the risk registry for future resolution.

2.1.2 After Construction Work Commences. To the extent that information or clarification is needed after the Construction Work has commenced, the party seeking clarification will first attempt to resolve the matter informally through collaboration with the Design Build Team Member who is the most appropriate responder. If the requesting and responding parties are able to resolve the issue, they will generate an RFI documenting the solution. If the requesting and responding parties are unable to resolve the issue through their initial informal collaboration, the party seeking the information will indicate when the issue needs to be resolved to avoid delaying the Construction Work and the appropriate responding party will reliably commit to answering the RFI to avoid delaying the Construction Work. All written requests must be dated, indicate what specific information is required and when a response must be received to avoid delaying the Construction Work. If possible the RFI should include a proposed solution. Program Manager and Design Builder must be copied on all written RFI's. The responding party will resolve all questions, discrepancies, ambiguities, and other clarifications regarding the requirements of the Construction Documents in accordance with the Contract Documents. All responses must be distributed to the requesting party with a copy to the Design Professional of Record, Design Builder, and Program Manager. If the RFI response impacts cost or schedule, Design Builder will timely submit a COR in accordance with Article 11 of the Contract.

3. SUBMITTALS

3.1 Submittal Process. The Design Build Team will create an efficient Submittal process where they target 95% approval of all Submittals on the first review. If the Submittal efficiency falls below 90% approval on the first review, then Program Manager will meet with the



Design Build Team to review and implement corrected measures to improve the process to the expected target of 95%.

3.2 Submittals. Subcontractors will timely submit all Submittals required by the Contract Documents to the Design Builder for coordination and review before Design Builder submits to the Design Professional who is responsible for that specific design discipline, and in accordance with the most current, approved Submittal schedule avoiding delays in the Work or in the activities of other Project Team Members performing work or services. The Design Builder will notify the Program Manager when each Submittal is posted for review per Section 3.2.1. Each Submittal will be prepared by the responsible Subcontractor or supplier in accordance with the Contract Documents to demonstrate the construction means and methods proposed for installation of a building system or component in a coordinated manner with other contiguous work and consistent with the design expressed in the Construction Documents. Design Builder will not submit any Shop Drawing that is merely a tracing or copy of any of the Construction Documents. To the extent Design Builder is self-performing any Work that requires a Submittal, the Design Builder will also comply with the requirements in this Section 3.2.

3.2.1 Electronic Submission and Archiving. The Design Builder will coordinate with the Program Manager to establish a web based system to track and archive Submittals and Submittal reviews, which will be available to the Project Team Members and their respective Separate Consultants, Separate Contractors, Subcontractors, Design Professionals, and suppliers performing work on the Project. If that particular trade or discipline is being modeled, Submittals will be delivered in an electronic format capable of being read and integrated into the BIM. By transmitting a Submittal, the Design Builder and submitter respectively represent that each has reviewed the submission for accuracy and compliance with all Contract Documents, coordinated the information contained within the Submittal with the existing field conditions and requirements of the Work and other contiguous work, and that all original engineering, if required, has been performed by a qualified professional engineer or architect appropriately licensed in accordance with Applicable Law.

3.2.2 Submittal Scheduling. Design Builder will provide a Submittal schedule that complies with the milestones set forth in the Project Schedule and indicates when Submittals will be issued and when approval must be received to allow for proper procurement of materials and equipment and to avoid delays in the Work. Submittal review will be in accordance with the most current approved Submittal schedule or within such time as is sufficient to permit adequate review but should not ordinarily exceed 15 calendar days. At the Design Builder's option, the Submittal schedule may be integrated into the Project Schedule.

3.2.3 Design Review. The Design Professional of Record as well as other appropriate Design Professionals will review the Submittals for conformance with the Construction Documents or Project Documents (for design build work), and approve or take other appropriate action. The District reserves the right to have peer review of Submittals. Design Builder will remain responsible for all Design Services regardless of the approval process, and approval of a Submittal by the District does not relieve the Design Builder or submitter from any of its contractual obligations, and will not constitute approval of any safety precautions or construction means, methods, techniques, sequences, or procedures. Approval of a specific item does not constitute approval of an assembly of which the item is a component. Any Submittals that are not required by the Contract Documents may be returned by the



appropriate Design Professional without action. If any Submittal is returned without approval, the rejecting party will discuss with the submitting party the reason for rejection and describe the necessary modifications. Design Builder will require its Subcontractor or supplier to make the necessary corrections and furnish corrected resubmissions to the Design Professional of Record and other appropriate Design Professionals within 1 week or less, for approval. No Construction Work will be performed for which the Contract Documents require a Submittal until the respective Submittal has been approved. All approved Submittals must be posted on the Project's portal, and available in the Design Builder's Project office.

3.3 Design Build Subcontractors. Submittals prepared by Design Build Subcontractors must be prepared by, or under the responsible charge of, a professional engineer or architect registered or licensed in accordance with Applicable Law who will sign and seal all design build Submittals indicating that the Design Professional is the engineer or architect of record. Submittals will be in accordance with the provisions set forth in this Article 3. Design Build Subcontractors will remain liable and responsible for all design build Submittals. The Design Professional of Records and other Design Professionals will review design build Submittals to confirm that the Submittals are in general conformance with the design criteria expressed in the Project Documents and the Construction Documents, and to coordinate the design build Submittals with the design prepared by other Design Professionals.

4. WORK RESTRICTIONS

4.1 Work Hours. All Construction Work will be performed between 7:00 a.m. and 5:00 p.m. Monday through Friday. Design Builder will provide Program Manager with written notice for any Construction Work that will need to be performed on weekends, after hours, or legal holidays. All weekend, after hour, or legal holiday Construction Work requires Program Manager's written approval before commencement.

4.2 Noise. No Construction Work that generates noise will be permitted outside of the above hours of operation without the permission of the Program Manager. Requests for approval for Construction Work authorization for hours outside of the allowed times will be submitted to the Program Manager with a copy to the Program Manager and the District at least 5 days in advance of the proposed activities. This request will include a schedule of what dates activities will be occurring outside the hours of operation, clearly indicate the hours of Construction Work requested, the type of Construction Work to be completed, the potential noise generating activities including equipment associated with this Construction Work, and the contact information for onsite staff to be contacted if the noise becomes disturbing during noise sensitive hours. Design Builder will also comply with any applicable local ordinance or permit conditions regulating noise levels and perform the Construction Work in compliance with those provisions, which may be more restrictive.

4.3 Environmental Control Plan. Before commencing Construction Work, the Design Builder will prepare and submit an environmental control plan to the Program Manager and the District that, at a minimum, identifies sources and mitigation measures for dust, air pollution, odors, and issues specified in the Mitigated Negative Declaration (Exhibit 3A).

4.4 Smoking. Smoking and chewing tobacco are prohibited.



4.5 Staging and Storage. Material will be stored only in the areas indicated on the Site Logistics Plan (Tab 3, Project Manual). Staging and storage of materials and equipment within the Project site will be limited to those materials and equipment reasonable required for Construction Work to be performed based on crew size and lean production as determined by Design Builder's superintendent in collaboration with the Program Manager. All material will be on pallets or carts with wheels for easy mobility. Pallets and generic cardboard boxes will be labeled with the responsible Subcontractor's name. Any material or equipment found in excess of immediate needs and that is deemed as interfering with the progress of other trades will be required to be removed at the Subcontractor's sole expense.

4.6 Parking. All construction trade parking will be in parking spaces designated on the Site Logistics Plan (Tab 3, Project Manual). Parking will not be allowed on the surrounding surface streets or residential neighborhood.

5. TESTING AND INSPECTIONS

5.1 Notice and Preparation for Inspections. Tests, inspections, and approvals of portions of the Construction Work required by the Contract Documents, Applicable Law, or Governmental Authorities will be coordinated by the Design Builder. When portions of the Construction Work are ready for inspection, the Subcontractors will notify the Design Builder and the Design Builder will make arrangements for tests, inspections, and approvals with an independent testing laboratory or entity acceptable to Program Manager, and Governmental Authorities (as applicable). The Design Builder will coordinate all inspections with the Program Manager and must provide the Program Manager with not less than 3 business days' notice of when and where tests and inspections are to be made so that the appropriate parties may be present for the procedures. Upon completion of inspection, Design Builder will create list describing any deficiencies and distribute to all affected Subcontractors before closing any concealed spaces.

5.2 Cost of Inspections. District will pay for testing and inspection. However, the Design Builder and its Subcontractors will bear all costs associated with re-inspection if the Construction Work was not ready for inspection or failed inspection.

5.3 Covered Work Before Inspection. If a portion of the Construction Work is covered before inspection by the proper authorities, it will be uncovered for inspection and examination by the Design Builder, Program Manager, and proper authorities and be replaced at the Design Builder's and the responsible Subcontractor's sole expense and without change in the Contract Price or Contract Time.

5.4 Additional Testing. If the Program Manager or Governmental Authorities require additional testing, Design Builder in coordination with the appropriate Subcontractor will make the necessary arrangements and provide notice to the Program Manager of when and where the additional testing will occur. Notice will be in accordance with Section 5.1. The Design Builder and its Subcontractor(s) will bear all costs associated with additional testing if the additional testing reveals that portion of the Construction Work failed to comply with the Contract Documents.

5.5 Non-Conforming Construction Work. Within 2 business days' notice from the District or Program Manager, Design Builder will commence correcting Construction Work that



is rejected by the Program Manager, or proper inspection authority for failing to conform to the requirements of the Contract Documents, including Construction Work that is destroyed or damaged (whether completed or partially completed) by the Design Builder's or its Subcontractors' correction or removal of the non-conforming Construction Work, and whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Design Builder and the responsible Subcontractor(s) will bear all costs associated with correction of non-conforming Construction Work. If the non-conforming Construction Work is not promptly corrected, repaired or replaced, the District may correct the non-conforming Construction Work through Separate Contractors and will back-charge the Design Builder for all costs associated with the repair or replacement. Failure to recognize non-conforming Construction Work before Final Completion does not waive Claims by the District for correction of non-conforming Construction Work.

5.6 Certifications. All required certifications for testing, inspections, and approval will be procured by the Design Builder and maintained in the files for the Project until Final Completion. Upon Final Completion, all certifications will be transmitted to the Program Manager along with other close-out documentation as required per the Contract Documents.

5.7 Inspection and Certificate of Substantial Completion. When the Design Builder believes that the Project has achieved Substantial Completion, Design Builder will notify the Program Manager who will review the Construction Work with the Design Professional of Record, the District, and appropriate Governmental Authorities. If the applicable Governmental Authorities approve occupancy of the Project, and the Program Manager, and the District find that only minor punch-list items remain to be completed, Program Manager will issue a certificate of Substantial Completion documenting the date of Substantial Completion of that Work. The certificate will be submitted to the District and Design Builder for their written acceptance of responsibilities assigned to them in the certificate. The certificate will include a list of any items that must be completed, repaired, or replaced ("Punch List") before Final Completion and include an estimated cost for completing such Construction Work and determine projected time for when each item on the list will be completed. Failure to include an item on the Punch List will not relieve the Design Builder or its Subcontractors from properly completing all Construction Work in accordance with the Contract Documents. The Design Builder will coordinate all Punch List work among its Subcontractors for timely completion. The District may withhold 150% of the estimated cost of each Punch List item from Design Builder until the repair or replacement is complete. The certificate of Substantial Completion establishes the date when responsibility for security, maintenance, heat, utilities, insurance, and damage to the Construction Work transfers back to the District. Warranty commences upon Substantial Completion per Article 15 of the Contract unless specifically noted otherwise in the certificate of Substantial Completion.

5.8 Final Inspection and Acceptance. When the Design Builder has completed the required Operations and Maintenance Training and believes Final Completion has occurred, Design Builder will notify the Program Manager, Program Manager, and applicable Governmental Authorities who will review the entire Project and prepare a final Punch List of any items that require completion, repair, or replacement. Any final Punch List will be corrected under the warranty provisions in Article 15 of the Contract. Correction of all final Punch List items to the District's, Program Manager's, and Program Manager's satisfaction is a condition precedent to Final Completion and final payment.



6. WORKERS' COMPENSATION

6.1 Workers Compensation. Design Builder and its Design Professionals and Subcontractors are required to secure the payment of compensation of its employees in accordance with Labor Code section 3700. Before commencing the Work, Design Builder and its Design Professionals, and Subcontractors will sign and file a certification with the Program Manager under Labor Code section 1861 stating the following:

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 any work or services performed under the Contract or any subcontracts or consulting agreements.

7. LABOR COMPLIANCE

7.1 Contractor Registration Requirement. Pursuant to California Labor Code Section 1771.1(a), a contractor or subcontractor will not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded. (See <http://www.dir.ca.gov/Public-Works/PublicWorks.html> to register.) Design Builder represents that it and its Subcontractors were registered at the time the Contract was awarded, will keep the registrations current, and will notify Subcontractors of all tiers of their respective obligations to register and comply with the requirements set forth in the above referenced statute.

7.2 Notices. Pursuant to Labor Code 1771.4(a)(2), Design Builder will post job site notices as prescribed by regulation. (See 8 Calif. Code Reg. §16451(d) for the notice that previously was required.)

7.3 Prohibition Against Contracting with Debarred Subcontractors

Design-Builder is prohibited from performing work on a public works project with a subcontractor who is ineligible to perform work on the public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.

7.4 Prompt Payment to Subcontractors.

Design-Builder shall pay any Subcontractors approved by the District for Work that has been satisfactorily performed no later than seven (7) days from the date of Design-Builder's receipt of progress payments by the District. Within thirty (30) days of receipt of retention by Design-Builder and satisfactory completion of all Work required of the Subcontractor, Design-Builder shall release any retention payments withheld to the Subcontractor. In the event Design-Builder does not make progress payments or release retention to the Subcontractors in accordance with the time periods in this section, Design-Builder will be subject to a charge of two percent (2%) per month on the untimely or improperly withheld payment. The District may require



Design-Builder to provide documentation satisfactory to the District of Design-Builder's compliance with this requirement as a condition of final payment and release of contract retentions, if any.

8. CERTIFIED PAYROLL RECORDS

8.1 Certified Payroll. This Project is subject to compliance monitoring and enforcement by the DIR pursuant to Labor Code section 1771.4. Pursuant to Labor Code section 1776, the Design Builder and each Subcontractor will maintain weekly certified payroll records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee performing labor in connection with the Construction Work. Design Builder and its Subcontractors will certify under penalty of perjury that records maintained and submitted by Design Builder and its Subcontractors are true and accurate and that the employer has complied with the requirements of Labor Code sections 1771, 1811, and 1815 for any Construction Work performed on the Project. The weekly payroll records will be certified and submitted by the Design Builder and its Subcontractors (as applicable) under penalty of perjury. The payroll records will be certified and submitted to the Program Manager by the Design Builder on a monthly basis with its application for payment or at other times that may be designated by the Program Manager. The Design Builder will also provide the following:

8.1.1 A certified copy of the employee's payroll records will be made available for inspection or furnished to the employee or his or her authorized representative on request.

8.1.2 A certified copy of all payroll records described will be made available for inspection or furnished upon request of the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards, or the Department of Industrial Relations ("DIR").

8.1.3 The certified payroll records will be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR or will contain the same information as the forms provided by the DLSE.

8.1.4 Per Labor Code 1771.4(3)(B), all certified payroll records must be submitted electronically through the DIR's Electronic Certified Payroll Reporting (eCPR) system, unless an exemption is established by the DIR. Design Builder may require Subcontractor to submit certified payroll records to Design Builder before submission via eCPR (in any form specified by Design Builder).

8.1.5 Any copy of records made available for inspection and furnished upon request to the public will be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the Design Builder or any Subcontractor will not be marked or obliterated.

8.1.6 In the event of noncompliance with the requirements of this Section, the Design-Builder shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects such Design-Builder must comply with this Section. Should noncompliance still be evident after such 10-day period, the Design-Builder shall, as a penalty the State or District, forfeit one hundred Dollars (\$100) for each calendar day, or portion thereof,



for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due. The penalties specified in subdivision (g) of Labor Code Section 1776 for noncompliance with the provisions of said Section 1776 may be deducted from any monies due or which may become due to the Design-Builder.

8.1.7 The Design-Builder and each Subcontractor shall preserve their payroll records for a period of three (3) years from the date of completion of the Contract.

9. PREVAILING WAGE RATES

9.1 Prevailing Wage. This Project is subject to California State prevailing wages. Design Builder and its Subcontractors will comply with any applicable California prevailing wage laws. Design Builder acknowledges and agrees that it has performed its own investigation as to the applicability of California prevailing wage laws commencing with Labor Code section 1720 et seq. Design Builder agrees that the Contract Price includes full compensation for all labor in compliance with California Labor Code and that no additional compensation will be owed to Design Builder in the event that Design Builder is required to pay higher wages or incur additional costs that Design Builder contends it did not anticipate.

9.1.1 Design Builder is aware of the requirements of 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. Because this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and because the total compensation is \$1,000 or more, the Design Builder agrees to fully comply with the Prevailing Wage Laws. The Design Builder will obtain a copy of the prevailing rates of per diem wages at the commencement of the Construction Work from the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov/dlsr/. Design Builder will make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform Construction Work on the Project available to interested parties upon request, and will post copies at the Design Builder's principal place of business and at the Project site.

9.1.2 Under Labor Code section 1775, Design Builder and each Subcontractor will forfeit as a penalty to the District not more than \$200 for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate for any Construction Work performed by Design Builder, or by any Subcontractor, in violation of the provisions of the Labor Code. The difference between the stipulated prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the stipulated prevailing wage rate, will be paid to each worker by the Design Builder or Subcontractor.

9.1.3 Design Builder will include a copy of the provisions of Labor Code Sections 1771, 1776, 1777.5, 1813 and 1815 in each subcontract. Design Builder will monitor the payment of the specified general prevailing rate of per diem wages by the Subcontractor to the employees by periodic review of the certified payroll records of the Subcontractor. Upon becoming aware of the failure of the Subcontractor to pay its workers the specified prevailing wage rate, Design Builder will diligently take corrective action to halt or rectify the failure



including, but not limited to, retaining sufficient funds due the Subcontractor for Construction Work performed on the Project. Before making final payment to the Subcontractor for any portion of the Construction Work, Design Builder will obtain an affidavit signed under penalty of perjury from the Subcontractor that the Subcontractor has paid the specified general prevailing rate of per diem wages to its employees and any amounts due under Section 1813.

9.1.4 Design Builder or Subcontractor will, as a penalty to the state or political division on whose behalf the Subcontract is made, forfeit \$25 for each worker employed in the execution of the Construction Work for each calendar day that the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Section 1813. Notwithstanding the provisions of Sections 1810 to 1815, inclusive, of this Labor Code, or any stipulation inserted in a subcontract, the work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, will be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than 1 1/2 times the basic rate of pay.

(a) Design Builder will post, at appropriate conspicuous points at the Project site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

(b) Pursuant to Labor Code 1813, the District is required to notify all violations of this provision to the Division of Labor Standards Enforcement.

10. SKILLED AND TRAINED WORKFORCE REQUIREMENTS

10.1 Requirements Under Public Contract Code section 2600. Design Builder has reviewed Public Contract Code section 2600 et seq. in its entirety and will ensure that Design Builder and its Subcontractors will use a "skilled and trained workforce" to perform all Construction Work on the Project that falls within an "apprenticeable occupation" in the building and construction trades.

10.1.2 "Apprenticeable occupation means an occupation for which the chief had approved an apprenticeship program under Labor Code section 3075 before January 1, 2014." Public Contract Code section 2601 (a). "Skilled and trained workforce" is defined under Public Contract Code section 2601 (d). "Skilled journey person" is defined under Public Contract Code section 2601 (e).

10.1.3 As of January 1, 2020, at least 60 percent of the skilled journeypersons employed to perform work on the Project by the Design Builder and each of its Subcontractors are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

10.1.4 Design Builder's attention is also directed to the provisions of Labor Code sections 1777.5, 1777.6, and 1777.7 concerning employment of apprentices by the Design Builder or any Subcontractor. Design Builder and Subcontractors will comply with all applicable requirements and apprenticeship standards as required by Labor Code 1777.5. Following award of this Contract, Design Builder will submit to Construction Manager a list of work



classifications that it plans to utilize on this Project as well as its plan for meeting all apprenticeship requirements in Labor Code 1777.5. Because Design Builder is subject to the standards under Public Contract Code section 2600 et seq., Design Builder will provide proof of this standard and its plan for meeting the applicable ratio to Program Manager and Construction Manager. As soon as practicable and no later than commencing Construction Work, Design Builder (or Subcontractors as applicable) will submit form DAS 140, Public Works Contract Award Information to the appropriate apprenticeship committee(s) and provide proof of submission to Program Manager and Construction Manager. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, the Administrator of Apprenticeships, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

10.1.5 Design Builder must provide the Program Manager and Construction Manager a monthly report as part of its payment application process demonstrating that Design Builder (if self-performing portions of the Construction Work) and its Subcontractors are in compliance with the skilled and trained workforce requirements under Public Contract Code section 2600 et seq. If Design Builder (if self-performing portions of the Construction Work) or any Subcontractor entity fails to demonstrate compliance with the skilled and trained workforce requirements, or if a report is incomplete, the District will withhold 150% of the value of the monthly billing from the non-complying party. Payments will be withheld until the offending contractor can demonstrate compliance.

11. UTILITIES

11.1 Existing. Consistent with Government Code section 4215, and notwithstanding any other provision of the Contract Documents, the District will be responsible for the timely removal, relocation, or protection of existing main or trunk-line utility facilities located on the Project site, if the utilities are not identified in the Project Documents (Exhibit 3A). However, the District will not be required to indicate the presence of existing service laterals or appurtenances whenever the presence of utilities on the Project site can be inferred from the presence of other visible facilities, such as buildings, and meter and junction boxes, on or adjacent to the Project site, and discovery of such situations will not be considered an Unforeseen and Differing Site Condition. If Design Builder discovers utility facilities not identified by the District in the Project Documents (Exhibit 3A), Design Builder it will immediately notify the Program Manager and utility in writing. Design Builder may be compensated for an Unforeseen and Differing Site Condition under Article 11 of the Contract only if the utility was not shown on the Project Documents, or Design Builder discovers lateral utility lines that could not be determined from visual inspection or inferred from the presence of visible facilities. If the public utility is the owner of the utility line, the public utility will have the sole discretion to perform repairs or relocation work or permit the Design Builder to do repairs or relocation work at a reasonable price.

11.2 Interruptions. Design Builder must provide 10 business days' written notice to the Program Manager and receive Program Manager approval before interrupting any utility service at the Project, and all emergency power, etc., must be in place before disruption of service.

11.3 Inspection Fees for Permanent Utilities. All inspection fees and other municipal charges for permanent utilities including, but not limited to, sewer, electrical, phone,



gas, water, and irrigation will be paid for by the District. Design Builder may either request reimbursement from the District or will be responsible for coordinating with the Program Manager and the District for the payment of the fees.

12. SOILS INVESTIGATIONS

12.1 Investigation. Design Builder has reviewed the geotechnical report and other Project Documents set forth in Exhibit 3A and has correlated its observations at the Project site per Section 3.3 of the Contract with the Contract Documents and included all such matters in the Contract Price other than Unforeseen and Differing Site Conditions. Before commencement of the Construction Work, Design Builder will make whatever additional tests it deems appropriate for proper completion of the Construction Work.

13. SURVEYING

13.1 Field Engineering. Design Builder will employ a California State licensed civil engineer or land surveyor to provide field engineering services to establish benchmarks and line and grade for horizontal and vertical control. Design Builder will establish all required reference points and benchmarks at the site, and will establish building lines and elevations, check for building framing plumbness and levelness, and establish on building frame the required basic grid lines. Design Builder will locate and protect control points before commencing the Construction Work, and preserve permanent reference points during construction. Design Builder will be responsible for replacing any control points that are lost or destroyed. Any additional surveying or layout caused as a result of Design Builder's or any of its Subcontractor's failure to take the necessary precautions to protect the data will be performed at Design Builder's own cost and expense.

14. TRENCHING, SHEETING, AND SHORING

14.1 Permit Requirements for Trenches 5'-0" or More in Depth. Design Builder agrees to comply in full with section 6500 of the Labor Code and to obtain the required permits prior to the initiation of any work, method, operation or process that involves: (i) construction of trenches or excavations that are 5'-0" or deeper and into which a person is required to descend; (ii) the construction of any building, structure, falsework, or scaffolding more than 3 stories high or the equivalent height; (iii) the demolition of any building, structure, falsework, or scaffold more than 3 stories high or the equivalent height; or (iv) the underground use of diesel engines in work in mines and tunnels.

14.1.1 Detailed Plans for Trenches 5'-0" or More in Depth. In compliance with Labor Code section 6705, the Design Builder will submit to the Design Professional of Record for its acceptance, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches 5'-0" or more in depth. If the plan varies from shoring system standards, the plan will be prepared by a registered civil or structural engineer. The plan will not be less effective than the shoring, bracing, sloping, or other provisions of the Construction Safety Orders, as defined in the California Code of Regulations.

14.2 Excavations Deeper than 4'-0". If Design Builder's Work involves digging trenches or other excavation that extends deeper than 4'-0" below the surface, Design Builder



will promptly, and before the following conditions are disturbed, notify the Program Manager, in writing, in accordance with Public Contract Code section 7104, of any:

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

14.2.2 Subsurface or latent physical conditions at the site differing from those indicated.

14.2.3 Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the Construction Work of the character provided for in this Contract.

14.3 Sheeting and Shoring. To the extent that Design Builder's Work involves construction of a pipeline, sewer, sewage disposal system, boring and jacking pits, or similar trenches or open excavations, which are 5'-0" or deeper, Design Builder will comply with all Applicable Law and codes and its Contract Price will include adequate sheeting, shoring, and bracing, or equivalent method, for the protection of life or limb pursuant to Labor Code section 6707, which will conform to applicable safety orders. Nothing in this section will be construed to impose tort liability on the District, the Program Manager, or any of their respective employees.

15. DIFFERING SITE CONDITIONS

15.1 Notice. The Design Builder will provide written notice to the Program Manager and the District's Authorized Representative within 5 business days discovery of any of the conditions listed in Section 14.2 above or for undisclosed, pre-existing site utilities, subject to Section 11.1 Design Builder and Program Manager will promptly investigate the conditions, and if they find that the conditions do so materially differ, or do involve hazardous waste, and cause a decrease or increase in the Contract Price or Contract Time, Design Builder may request a Change Order under Article 11 of the Contract. If it is determined that physical conditions at the site are not latent or are not materially different from those indicated in the Contract Documents or that no change in terms of the Contract Documents is justified, Program Manager will notify Design Builder in writing, stating reasons Design Builder will not be entitled to an adjustment in the Contract Price or Contract Time regarding claimed latent or materially different site conditions (whether above or below grade) if:

15.1.1 Design Builder knew of the existence of the conditions at the time Design Builder submitted its Contract Price; or

15.1.2 Design Builder should have known of the existence of the conditions as a result of having complied with the requirements of Contract Documents; or

15.1.3 The information or conditions claimed by Design Builder to be latent or materially different consist of information, conclusions, opinions or deductions of the kind that precludes reliance upon; or

15.1.4 Design Builder was required to give written notice of differing site conditions under the Contract Documents and failed to do so within the time required.



16. BUILDING INFORMATION MODELING

16.1 Building Information Modeling Workshop. If BIM is being utilized on the Project, Design Build Team will meet and develop detailed protocols for the use of Building Information Modeling on this Project, which will be documented in a BIM Execution Plan that will be incorporated into the Project Manual. Participation by Design Builder or any Subcontractor or supplier, other than Design Build Subcontractors, in contributing data or advice for use in the BIM will not be deemed the provision of Design Services. As-built drawings provided by the District are for reference only.

16.2 Submission of Signed and Stamped Drawings. 2D Drawings, calculations and Specifications must be generated, reviewed, sealed, and submitted to reviewing agencies and applicable Governmental Authorities. Design Professionals and the Design Build Subcontractors will each be responsible for, and will sign and stamp, the Drawings, Specifications and calculations prepared by them.

17. OPERATIONS AND MAINTENANCE TRAINING

17.1 Operations and Maintenance Training. Design-Builder will provide the following training services:

17.1.1 Design Builder will provide a full walkthrough of all Project facilities, noting locations on the plans and on the ground of all appurtenances.

17.1.2 Design Builder will conduct a final review with District staff and Engineer, of the final record documents (including final construction as-built plans), including the plans and specifications for reference.

17.1.3 Design Builder will train District staff and Engineer in all aspects of operations and maintenance of the Project facilities, and provide three copies of a operations and maintenance manual for the Project facilities.

18. NOT USED

19. QUALITY ASSURANCE AND QUALITY CONTROL

19.1 Quality Control Plan. Design Builder will prepare and submit to the Program Manager and the District for approval a Quality Control Plan (Tab 6, Project Manual) that describes the procedures and methods the Design Builder will utilize to control the quality of the Construction Work. The quality control plan must be approved by the Program Manager before the start of construction and will reflect the requirements for testing and inspection. The Program Manager reserves the right to require revisions of the quality control plan that are necessary to ensure the specified quality of the Construction Work. The Design Builder will assign appropriate site personnel to oversee quality control. No change in the quality control plan will be implemented without prior Program Manager approval. At a minimum the quality control plan will provide information regarding the following:

19.1.1 Identification of personnel for required training and qualification activities. Personnel substitutions by the Design Builder must be approved in advance by the District.



19.1.2 Procedures for testing and inspections that identify individual inspection or testing points and acceptance criteria, and include provisions for recording results and the responsible inspection/test personnel.

19.1.3 Procedures for identifying what applicable technical and quality requirements will be required of vendors supplying materials, parts and services to ensure compliance with the Construction Documents.

19.1.4 Procedures for receiving, inspecting and accepting materials and equipment. The procedures will include, at a minimum, examination of the physical condition for compliance with the Contract Documents, purchase order and/or subcontract agreement, and identifying and processing any non-conforming goods.

19.1.5 Provisions for identifying and timely remedying non-conforming or defective Construction Work.

19.1.6 Documentation control to maintain records of the activities included in the quality control plan. All documentation will be submitted to the Program Manager as part of the close-out documentation for this Project and therefore must be logically organized and indexed for reference.

19.2 Manufacturer's Field Services. To the extent required, the Design Builder will engage in a factory-authorized service representative to inspect field-assembled components and equipment installation, including service connections. All manufacturers' field service reports must be in writing and included as part of the records turned over to Program Manager during close-out.

19.3 Progress Photos. Design Builder will provide monthly digital progress photos that clearly depict the progress of the Construction Work. Construction photos must be taken from select vantage points to show the status of construction and progress since the last photographs were taken. Design Builder will collaborate with the Program Manager to determine general direction, vantage points, and number of photographs. Each digital image must include the date and time. All Project photos will be uploaded to the progress photo file of the Project's web based system.

19.4 Quality Control Reports. Design Builder will keep daily quality control reports throughout the duration of the construction process certifying that the relevant area of the Construction Work has been inspected. The quality control reports will be prepared, signed and dated by the personnel identified as the supervisor in the quality control plan and will include, at a minimum, the following information:

19.4.1 Identification of the material, equipment or component that was inspected and indicate, if applicable, if the Submittals have been reviewed and approved by the appropriate Design Professionals.

19.4.2 Indicate that materials and/or equipment comply with the requirements of the Specifications and Construction Documents and are properly stored, if not yet installed.

19.4.3 Indicate that the Construction Work has been coordinated under Section 8.4 of the Contract, that all required preliminary work has been inspected by the quality control



personnel and required Governmental Authorities, was properly performed, and that the area is ready to receive subsequent Construction Work. If the Construction Work is not acceptable, provide a written description of any re-work required in the area inspected with an explanation of the cause of the re-work (including which Subcontractors are involved), any cost involved in the required re-work, and the expected completion date of the required re-work.

19.4.4 Results of any off-site testing or quality control work and any required further actions.

19.4.5 Other necessary information including, directions received, quality control problem areas, deviations from the quality control plan, construction deficiencies encountered, quality control meetings held, acknowledgement that as-built drawings and BIM (if applicable) have been updated to reflect conditions, corrective direction given by quality control personnel, and corrective action taken by the Design Builder.

20. PROTECTION OF WORK AND PROPERTY

20.1 Site Utilities. Design Builder will contact the appropriate local authorities to locate all site and public utilities before commencement of the Construction Work. Design Builder will provide notice to all public utility companies before commencement of the Construction Work for coordination of structures and public utilities that are immediately adjacent to the Project site that may be impacted by construction operations.

20.2 Adjacent Properties. Design Builder will provide at least 2 days' notice to all adjacent property owners before commencement of the Construction Work.

20.3 Barriers and Warnings. Design Builder will provide barriers to prevent unauthorized entry to construction areas, to allow for safe use of the Project premise, and to protect existing facilities and adjacent properties from damage from construction operations.

20.4 Water Precautions. Design Builder will grade the Project site as required by the civil design included in the Construction Documents. During construction, the Design Builder will maintain all trenches and excavated areas free from water accumulation and will provide the necessary barriers to protect the Project site from ponding, running water and soil erosion. The Design Builder will provide for increased drainage of storm water and any water that may be applied or discharged on the Project site during performance of the Construction Work. All drainage facilities will be adequate to prevent damage to the Construction Work, Project site, and adjacent property. Design Builder will construct dikes, if necessary, to divert any increased runoff from entering adjacent property (except in natural channels), to protect the District's properties and the Construction Work, and to direct water to drainage channels or conduits. Design Builder will provide retention as necessary to prevent downstream flooding.

20.5 Pollution Control. The approved Pollution Control Plan is part of the Project Documents set forth in Exhibit 3A.

20.5.1 No sanitary wastes will be permitted to enter any drain or watercourse other than sanitary sewers. No sediment, debris, or other substance will be permitted to enter sanitary sewers without authorization of the receiving sanitary sewer service, and all possible best management practices will be taken to prevent materials from entering into any drain to watercourse.



20.5.2 If dewatering of excavations is required, Design Builder will obtain the necessary permits from local Governmental Authorities for discharge of the dewatering effluent. The Design Builder will be responsible for assuring that water quality of the discharge meets the appropriate permit requirements prior to any discharge. District will approve the location of any discharge of dewatering effluent in advance.

20.6 Erosion Control. The Design Builder will develop an erosion control plan that is consistent with Storm Water Pollution Prevention Plan (“SWPPP”) to prevent soil erosion at the Project site and adjacent property resulting from construction operations. Effective measures will be initiated before commencement of clearing, grading, excavation, or other operations that will disturb the natural protection. The proposed plan is subject to approval by the Program Manager and will be incorporated into the Stormwater Control Plan (Project Manual, Tab 8).

20.6.1 Erosion and sedimentation control practices will include installation of silt fences, straw wattle, soil stabilization, re-vegetation, and runoff control to limit increases in sediment in stormwater runoff, including but not limited to, detention basins, straw bales, silt fences, check dams, geo-fabrics, drainage swales, and sand bag dikes.

20.6.2 The Construction Work will be scheduled to expose areas subject to erosion for the shortest possible time, and natural vegetation will be preserved to the greatest extent practicable. Temporary storage and construction buildings will be located, and construction traffic routed, to minimize erosion. Temporary fast-growing vegetation or other suitable ground cover will be provided as necessary to control runoff.

20.7 Traffic Control. The Design Builder will prepare a Traffic Control Plan in accordance with the California Department of Transportation Traffic Manual as part of its Site Logistics Plan for review and approval by the applicable Governmental Authorities. The approved Traffic Control Plan will be incorporated into the Project Manual as Tab 5.

20.7.1 Traffic control will include signs, warning lights, reflectors, barriers, and other necessary safety devices and measures, including sufficient flagmen to direct vehicular traffic through the construction areas. No material or equipment will be stored or parked where it will interfere with the free and safe passage of public traffic. Design Builder will remove all equipment and other obstructions from the public right-of-way at the end of each day’s work, and at other times when construction operations are suspended for any reason.

20.7.2 All traffic associated with construction operations including, without limitation, delivery and mail trucks, will enter through the construction site access gate. Design Builder will provide signs directing construction and delivery traffic to this gate and will take all necessary steps to minimize inconvenience to the District and the general public throughout the construction process. No driveways or private roads will be blocked without notifying the property owner, and access must be restored during all non-working hours.

20.7.3 Safe access must be maintained for pedestrian traffic throughout any public work area at all times.

20.7.4 At least one lane of traffic in each direction on all roads used on the Project must be kept open at all times unless prior approval is provided by the Program Manager and any affected Governmental Authorities. No roads will be blocked or made



inaccessible without prior written consent of the Program Manager, the Program Manager and the affected Governmental Authorities in the form of an encroachment permit. Under no circumstances will Design Builder block or obstruct fire lanes.

20.8 Fire Protection. Design Builder is responsible for ensuring that all employees and Subcontractors comply with fire protection precautions:

20.8.1 All employees will be trained in the proper type and use of fire extinguishers.

20.8.2 Emergency phone numbers will be posted at phones and personnel entrances.

20.8.3 Batch plant areas, equipment service areas, parking areas, gas and oil drum storage areas, explosive storage areas, and small stationary engine sites will be cleared of all flammable materials.

20.8.4 All spark producing operation will require the use of fire extinguishing equipment rated not less than 2A-20B:C.

20.8.5 Open fires will not be permitted.

20.8.6 Use of gas or diesel powered tools and equipment in enclosed spaces will be avoided at all times. Exceptions may be made only if the use of the power tool(s) and/or equipment is determined necessary by and is authorized by the Program Manager and Design Builder's superintendent. In the case of such exceptions, measures will be taken to ensure adequate ventilation to prevent build-up of exhaust fumes and fuel vapors.

20.8.7 All gasoline and diesel powered equipment adjacent to, or inside a building or structure will have a fire extinguisher rated not less than 2A-20B:C available for use.

20.8.8 The travel distance from any point of hot work to the nearest fire extinguisher will not exceed 100 feet. All hot work will require a full time fire watch person whose sole duty is fire watch.

20.9 Repair of Damaged Property. If damage to persons or property occur as a result of the Construction Work, Design Builder will be responsible for proper investigation, documentation, including video or photography, to adequately memorialize and make a record of what transpired. The District and Program Manager will be entitled to inspect and copy any documentation, video, or photographs.

21. HAZARDOUS MATERIALS

21.1 Hazardous Materials and Substances. With regard to Hazardous Materials, Design Builder will comply with all Applicable Law. Design Builder and its Design Professionals, Subcontractors and equipment vendors will not cause or permit any Hazardous Materials to be generated, released, disposed, discharged, or brought onto or stored at the Project site or used in the Construction Work unless specified and only if there is not a reasonable substitute for the specified material and with the approval of the District. Design Builder will comply, and will ensure that all employees, agents, Design Professionals, Subcontractors, and equipment



vendors it retains comply with, and use all reasonable efforts and practices and cause any other persons under its control at the Project during the Work to comply with all Applicable Law and good business practices with respect to any Hazardous Material specified, located, used, deposited or brought on the Project, or released, disposed of, or transported on, to, under, from, or about the Project by any of them.

21.2 California Health and Safety Code. The California Health and Safety Code requires businesses to provide warnings before exposing individuals to materials listed by the Governor as chemicals "known to the State of California to cause cancer, birth defects or reproductive harm." If Hazardous Materials are used in the Construction Work, Design Builder is responsible for notifying its employees, agents, Design Professionals, Subcontractors, suppliers, and equipment vendors that Construction Work performed under the Contract Documents may result in exposures to chemicals on the Governor's list. Additionally, Design Builder is responsible for posting appropriate signage around the Project providing warning about Hazardous Materials as required by Applicable Law.

21.3 Disposal of Hazardous Materials. Hazardous Materials may not be disposed of on or at the Project site. Design Builder represents and warrants that any facility to which hazardous wastes may be moved is in compliance with any Applicable Law and that the facility is suitable to receive and/or dispose of, and may lawfully receive and/or dispose of the Hazardous Material.

21.4 Responsibility for Pre-Existing Conditions. The District is responsible for Hazardous Materials existing at the site before commencement of the Construction Work. However, to the extent that Design Builder discovers an unknown, pre-existing, Hazardous Material, the Design Builder will comply with the procedures set forth in Section 21.5. Provided that the Design Builder does not negligently exacerbate or mishandle the pre-existing hazardous condition, the District will be responsible for removal, disposal, abatement or remediation of the pre-existing Hazardous Materials, and for the clean-up, transport and disposal of those pre-existing Hazardous Materials in accordance with Applicable Law. The District will provide defense and indemnification for pre-existing Hazardous Materials to the extent provided in Section 13.6 of the Contract.

21.5 Discovery of Hazardous Materials. If Design Builder discovers Hazardous Materials on the site during the performance of the Construction Work, Design Builder will immediately (1) stop Construction Work in the affected area, (2) secure the area around the Hazardous Materials, and (3) notify Program Manager in writing with copy to the District's Authorized Representative of the condition. Construction Work in the affected area will not be resumed until after written authorization from Program Manager. To the extent that the pre-existing Hazardous Material is an Unforeseen and Differing Site Condition, or if the District requests that Design Builder abate and remove the pre-existing Hazardous Material, Design Builder will be entitled to submit a COR per Article 11 of the Contract for an adjustment in the Contract Price and/or Contract Time, as applicable.

21.6 Verification. The District will verify that the condition has been rendered harmless before Construction Work recommences in the affected area. If the Hazardous Material was pre-existing, District will pay for the services of the licensed laboratory. However, Design Builder will reimburse the District for the services of the licensed laboratory if the



Hazardous Material was brought on-site by the Design Builder or any of its Subcontractors, suppliers, or equipment vendors.

21.7 Design Builder's Liability and Responsibility. Design Builder is liable for the release, generation, disposal, or discharge of Hazardous Materials brought onto or stored at the Project site or used in the Construction Work and for any pollution related to the Construction Work and will provide defense and indemnification for claims arising from such Hazardous Materials per Section 13.2.8 of the Contract. In the event any such release or pollution occurs, Design Builder will abate and remove the same as required by Applicable Law, including decontamination, removal, and disposal of any contaminated soil, replacement of contaminated soil so removed, and repair of any damages, all at Design Builder's sole cost and expense. Design Builder will also be fully responsible for any negligent exacerbation or mishandling of pre-existing Hazardous Materials discovered at or near the site, including without limitation any release or discharge of any previously contained Hazardous Materials.

22. SAFETY

22.1 Responsibility. Design Builder is the "controlling employer" as defined by CalOSHA and is solely responsible for training and supervising its employees, Subcontractors, and suppliers regarding site safety, and for adhering to the Design Builder's Safety Program and all Applicable Law governing health and safety on construction sites. All Separate Contractors performing work at the Project site must comply with the Design Builder's Safety Program (Project Manual, Tab 4) and will be solely responsible for training of their respective employees, subcontractors, and suppliers.

22.2 Safety Director. Design Builder will designate a director of safety. The director of safety will be responsible for conducting regular site safety meetings for all Design Build Team Members and will conduct jobsite inspection per Section 22.6 to verify that the Construction Work is being performed in a safe and workmanlike manner and in compliance with the Design Builder's Safety Program (Tab 4, Project Manual). The safety director will provide written notice to any party in violation of the safety program demanding immediate correction of any known safety violation. The safety director will also notify the Program Manager of any known safety violations of Separate Contractors.

22.3 Safety Notices. As the "controlling employer", Design Builder will give notices and comply with Applicable Law, and lawful orders of Governmental Authorities bearing on safety of persons or property or their protection from damage, injury, or loss at the Project site.

22.4 Safety Data Sheets ("SDS"). Design Builder must comply with all requirements of the Hazardous Communications Standard (Title 29, Code of Federal Regulations, Part 1910, as amended). At a minimum, Design Builder will: (i) keep all SDS on file at the Project site and update as necessary; (ii) cause all Subcontractors and employees to clearly label all hazardous compounds as to content with appropriate warnings noted and the name and address of the manufacturer listed; and (iii) require that all Subcontractors and employees using hazardous compounds are trained in protective handling and are knowledgeable about the potential hazards.

22.5 Signage, Barriers, and Warnings. Design Builder will erect and maintain, as required by existing conditions and performance of the Construction Work, all necessary



barricades and signage for safety and protection and will notify owners and users of adjacent sites and utilities.

22.6 Daily Jobsite Walks. Design Builder will also conduct daily jobsite inspections to verify that the Construction Work is being performed in a safe and workmanlike manner and in accordance with the Design Builder's Safety Program (Project Manual, Tab 4). Design Builder will provide written notice to its Subcontractors demanding immediate correction of any known safety violation.

22.7 Weekly Safety Meetings. Design Builder will hold weekly meetings with its Subcontractors to review Subcontractor compliance with the safety program.

22.8 Emergencies. Design Builder may act in its sole discretion in case of an emergency to protect persons or property from threatened injury, damage or loss.

22.9 Accidents and Reporting. Design Builder will promptly notify and report all accidents to the police department, fire department and other Governmental Authorities as appropriate regarding accidents arising from the Construction Work that result in death, personal injury or fire. The Design Builder will also promptly report all accidents and near misses to the Program Manager.

22.10 Fines and Penalties. Design Builder is responsible for the payment of all fines levied against it or against the District arising from or related to violation of safety rules, regulations or statutes except for safety violations arising from the District's Separate Contractors' work.

22.11 Required Training. To the extent applicable, Design Builder will require all employees stationed at the Project site and Subcontractors to be trained in all applicable requirements regarding confined spaces per OSHA Standards for Confined Spaces (29 CFR section 1910.146, as amended), lock-out/tag-out procedures per OSHA Standards for Control of Hazardous Energy (29 CFR section 1910.147, as amended), and any Applicable Law.

22.12 Indoor Air Quality. With respect to the warm shell space, Design Builder will provide adequate ventilation and maintain acceptable indoor air quality through-out the Construction Work in order to help sustain the comfort and well-being of construction workers and provide proper site environmental conditions for materials installation. Adequate ventilation means air circulation and air changes as required to cure materials, dissipate humidity, and prevent accumulation of dust, fumes, mold, vapors, or gases. Indoor air quality of a space refers to the relative quality of air in the building with respect to contaminants and hazards and is determined by the level of indoor air pollution and other characteristics of the air, including those that impact thermal comfort such as air temperature, relative humidity and air speed.

23. TEMPORARY FACILITIES

23.1 General. Design Builder will review with the Program Manager where it proposes to locate its temporary construction facilities. Location of jobsite trailers, other temporary facilities, parking, etc., will be included on Design Builder's Site Logistics Plan (Tab 3, Project Manual). Location of temporary structures, trailers, and vehicle parking areas will be subject to prior written approval by the Program Manager. Temporary structures constructed by the Design Builder will remain its property and will be removed by Design Builder from the site



at its own expense, immediately upon completion of the Construction Work, and the site left in a clean and tidy condition.

23.2 Temporary Facilities. Design Builder will provide and maintain for the duration of the Work all temporary structures, equipment, trailers and/or warehouses necessary for performance of the Construction Work. Before proceeding with the erection or establishment of such facilities, Design Builder will provide the dimensions, description, and proposed location of all such temporary facilities on the Site Logistics Plan. Such facilities will be clearly marked with Design Builder's business title or logo, be adequate for the intended purpose, and conform to the requirements of all state and local regulations.

23.3 Temporary Electricity. Design Builder will provide, maintain, and pay for temporary electrical power at the Project site for construction purposes and trailers.

23.4 Temporary Communications. Design Builder will provide, maintain, and pay for all applicable communications and data service connections (including 10/100 Base-T Ethernet connections) for field offices, including all installation and connection charges.

23.4.1 At each telephone, post a list of important telephone numbers:

- (a) Police and fire departments.
- (b) Ambulance service.
- (c) Design Builder's home office.
- (d) Design Professionals' home offices.
- (e) Program Manager's office.
- (f) Principal subcontractors' field and home offices.

23.5 Temporary Water. Design Builder will provide, maintain, and pay for all required potable water required for construction field personnel as well as water required for and in connection with the construction operations such as dust control. Unnecessary waste of water will not be permitted. Design Builder must use special hydrant wrenches for opening and closing fire hydrants in lieu of pipe wrenches.

23.6 Temporary Fences. Design Builder will provide all necessary temporary fencing and gates required for the Project site. Placement of temporary fencing and gates will be subject to the Program Manager's approval. Design Builder will maintain all fences through Final Completion. Gates are to remain closed and locked during off-hours.

23.7 Temporary Sanitary Facilities. Provide and maintain all required temporary toilets and sinks for use of all design and construction personnel and field labor through Final Completion. Design Builder will provide at least 1 temporary sanitary facility for every 20 persons, or more if required by the applicable Governmental Authorities. All temporary sanitary facilities will comply with standards of the applicable Governmental Authorities.



23.8 Construction Equipment and Aids. Design Builder will furnish, install, maintain, and operate all construction equipment required by the performance of the Construction Work. Construction aids include elevators and hoists, cranes, temporary enclosures, swing staging, scaffolding and temporary stairs. When sandblasting, spray painting, spraying of insulation, or other activities inconveniencing or dangerous to property or the health of design or construction personnel or the public are in progress, Design Builder will enclose the area of activity to contain the dust, over-spray, or other hazard.

23.9 Temporary Lighting. Design Builder will provide temporary lighting that provides adequate illumination for construction operations, observations, inspections, and traffic conditions.

23.10 Heating and Cooling. Design Builder will provide temporary heating and cooling required by the Construction Work for curing or drying of completed installations or for protecting installed construction from adverse effects of low temperatures or high humidity. Equipment used will not have a harmful effect on completed installations or elements being installed.

23.11 Ventilation and Humidity Control. Design Builder will provide temporary ventilation required by construction activities for curing or drying of completed installations or for protecting installed construction from adverse effects of high humidity. Equipment used will not have a harmful effect on completed installations or elements being installed. Ventilation will produce ambient condition required and minimize energy consumption.

23.12 Removal of Temporary Facilities and Equipment. Design Builder will remove all temporary utilities, equipment, facilities, and materials before final inspection of the Project and clean and repair any damage caused by installation or use of temporary work restoring existing facilities to their original conditions.

23.13 Scaffolding and Hoisting. Design Builder will provide all bracing, hoisting, cranes, rigging, forklifts, ladders, scaffolding and other equipment necessary for the performance of the Construction Work. This will include flagmen and all necessary safety precautions.

23.13.1 Design Builder must prepare, for review only, engineered hoisting plans showing hoist locations, pad specifications matching existing slab-on-grade, out-rigger loads, pick points, boom swing, setting points and crane limits. Any changes from the hoisting plan are to be brought to the Program Manager's attention in writing before performing the Construction Work.

23.13.2 Design Builder will coordinate the hoisted loads so as not to overload the structure. Pre-sort deck and split truck deliveries as needed to accommodate erector's hoisting schedule.

24. CLEAN UP

24.1 Cleaning Up. Design Builder will keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by construction operations. At completion of the Construction Work, Design Builder is responsible for removing waste



materials, rubbish, construction tools and equipment, machinery and surplus materials from and about the Project. If the Design Builder fails to clean up as provided in the Contract Documents, the District may do so and the cost associated with the clean-up will be at Design Builder sole expense.

25. MISCELLANEOUS

25.1 Nondiscrimination/Equal Employment Opportunity.

25.1.1 Pursuant to Labor Code section 1735, Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, and other Applicable Law, the Design Builder, its Design Professionals, and Subcontractors will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, political affiliation, marital status, or disability on this Project. The Design Builder will take affirmative action to ensure that employees are treated during employment or training without regard to their race, color, religion, sex, national origin, age, political affiliation, marital status, or disability. Design Builder will include the nondiscrimination and compliance provisions of this clause in all subcontracts.

(a) During the performance of the Work, Design Builder and its Design Professionals, and Subcontractors will not deny benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, or discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40) or sex. Design Builder will ensure that the evaluation and treatment of employees and applicants for employment are free of discrimination.

(b) Design Builder will comply with the provisions of the Fair Employment and Housing Act (Gov. Code section 12900 et seq.), the regulations promulgated thereunder (Cal. Admin. Code, Tit. 2, sections 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code sections 11135-11139.5), and the regulations or standards adopted by the District to implement such article.

(c) Design Builder will permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to its books, records, accounts, other sources of information and its facilities as the Department or Agency requires to ascertain compliance with this clause.

(d) Design Builder and its Subcontractors will give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements.

25.1.2 Americans With Disabilities Act. Design Builder will be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12101 et seq.). All Work will be performed in compliance with ADA regulations.

25.1.3 Small/Minority/Women Owned Businesses. Design Builder and its Subcontractors will take affirmative steps to utilize small, minority, and women owned businesses as subcontractors, and for sources of supplies, equipment, materials, and other



services. Affirmative steps consist of: (i) including qualified small, minority and women's businesses on solicitations lists; (ii) assuring the small, minority and women's business are solicited whenever they are potential sources; (iii) dividing total requirements when economically feasible into small tasks or quantities to permit participation of small, minority and women's businesses; (iv) establishing delivery schedules, where the requirements of the Work permit, which will encourage participation by small, minority and women's businesses; (v) using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce; (vi) requiring each Subcontractor to take the affirmative steps of this Section 25.1.3 ; and (vii) Design Builder is encouraged to procure goods and services from labor surplus area firms.

25.2 Labor/Employment Safety.

25.2.1 The Design Builder will maintain emergency first aid treatment for his employees which complies with the California Code of Regulations, Title 8, Industrial Relations Division 1, Department of Industrial Relations, Chapter 4.

25.2.2 Employers on a construction project are responsible for the health and safety for their workers as regulated by municipal, State, and Federal acts and regulations. In addition to the Design Builder's Safety Program set forth in Tab 4 of the Project Manual, Design Builder is obligated to comply with all laws, regulations, and codes concerning safety as will be applicable to the Construction Work and to the safety standards established during the progress of the Construction Work.

25.3 Notice Of 3rd Party Claims. Pursuant to Public Contract Code section 9201, the District will provide Design Builder with timely notification of the receipt of any third-party claim relating to the Contract Documents.

25.4 Change In Name Or Legal Entity. If a change in name or nature of the Design Builder's legal entity is anticipated, Design Builder will notify the Program Manager to ensure that the change will be properly reflected on the Contract.

25.5 Assignment Of Anti-Trust Actions. Pursuant to Public Contract Code section 7103.5 and Government Code sections 4554 and 4553, in entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, Design Builder, its Design Professionals, and Subcontractors offer and agree to assign to the District 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. section 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 the purchase of goods, services, or materials pursuant to the Contract Documents or any subcontract or consulting agreement. This assignment will be made and become effective at the time the District makes final payment to the Design Builder, without further acknowledgment by the parties.

25.6 Prohibited Interests

25.6.1 Financial Interest. No public official or representative of the District who is authorized in such capacity and on behalf of the District to negotiate, supervise, make, accept, approve, or to take part in negotiating, supervising, making, accepting or approving any



engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Project, will be or become directly or indirectly interested financially in this Contract.

25.6.2 Conflict of Interest. The District's officers, employees, or agents will not engage in the award or administration of this Contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: (i) the employee, officer or agent; (ii) any member of their immediate family; (iii) their partner or (iv) an organization that employs, or is about to employ any of the above, has a financial interest in Design Builder. The District's officers, employees or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from Design Builder or its Subcontractors, or Design Professionals.

25.6.3 Corporate or Financial Affiliation. Design Builder will not knowingly contract with a supplier or manufacturer if the District, Program Manager, any individual who prepares Drawings and Specifications (including Design Professionals) or any of their respective employees, has a corporate or financial affiliation with the supplier or manufacturer.

25.6.4 No Gratuities. Design Builder warrants that it has not offered or given any gratuities (in the form of entertainment, gifts, or otherwise) to any official, employee, or agent of the District, or the Program Manager in an attempt to secure this contract or favorable treatment in awarding, amending, or making any determinations related to the performance of the Work under this Contract. If the District finds after a notice and hearing that Design Builder, or any of Design Builder's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts, or otherwise) to any official, employee, or agent of the District in an attempt to secure this Contract or favorable treatment in awarding, amending, or making any determinations related to the performance of the Contract, the District may, by written notice to Design Builder, terminate this Contract per Section 18.3. The District may also pursue other rights and remedies under Applicable Law.

25.6.5 Anti-Kickback. Design Builder will comply with the Copeland Anti-Kickback Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR Part 3). This Act provides that Design Builder will be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public facilities, to give up any part of the compensation to which they are otherwise entitled.

25.7 Drug and Alcohol Free Workplace.

25.7.1 Certification. Design Builder certifies that it has complied with Government Code section 8355 relating to a drug free workplace and will comply with the requirements included in the Design Builder's Safety Program (Project Manual, Tab 4). Design Builder will submit a certificate under penalty of perjury stating that Design Builder will:

(a) Publish 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.

(b) Establish a drug-free awareness program to inform employees about: (i) the dangers of drug abuse in the workplace; (ii) the person's or organization's policy



of maintaining a drug-free workplace; (iii) any available drug counseling, rehabilitation, and employee assistance programs; and (iv) the penalties that may be imposed upon employees for drug abuse violations.

(c) Require that each employee performing Construction Work on the Project be given a copy of the statement required by Section 25.7.1 and that the employee agrees to abide by the terms of the statement as a condition of employment.

25.7.2 The use or possession of alcohol or marijuana by the Design Builder, or others under the Design Builder's control, on the Project site is strictly prohibited.

25.8 Project Holidays. The following holidays are non-work days unless the District specifically requires the Design Builder to perform Work: New Year's Day, Martin Luther King Jr.'s Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving, and the Friday after Thanksgiving, and Christmas Day.

25.9 Notice Of Taxable Possessory Interest. In accordance with Revenue and Taxation Code section 107.6, the Contract Documents may create a possessory interest subject to personal property taxation for which Design Builder will be responsible.

25.10 Non-Collusion Declaration. In accordance with Public Contract Code section 7106, the Design-Builder must execute a Non-Collusion Affidavit (Exhibit 6D).

25.11 Iran Contracting Certification. Design-Builder certifies that it is not on the California Department of General Services (DGS) list of persons determined to be engaged in investment activities in Iran or otherwise in violation of the Iran Contracting Act of 2010 (Public Contract Code Section 2200-2208).



Exhibit 3

PLANS, SPECIFICATIONS, AND PROJECT DOCUMENTS

Exhibit 3A

PROJECT DOCUMENTS

Solar Photovoltaic System Proposal

Submitted to:

Ryan Harris

Chief Operating Officer



Submitted by

Veregy Pacific LLC

(Formerly Known as Empowered Solutions, LLC)



CA Contractor's License: # 1023083
CA Dept Industrial Relations: # 1000053722

June 30th, 2023

Ryan Harris, Chief Operating Officer
Mayers Memorial Hospital District
PO Box 459, 43563 Highway 299E
Fall River Mills, CA 96028

Mr. Harris,

Veregy looks forward to providing Mayers Memorial Hospital District (Mayers) with a complete and cost-effective solar power system for Mayer’s General Acute Care Hospital located at 43563 State Highway 299 E, Fall River Mills CA.

Veregy, and our professional registrants and contractors who will work on the project, possess all required qualifications to carry out the project’s site due diligence, engineering, authority having jurisdiction review and approvals, procurement, and construction of work as detailed within this proposal.

Proposal details are found in the following sections:

A. PROJECT AND SYSTEM SUMMARY.....	3
B. SYSTEM LAYOUT.....	5
C. SYSTEM MAJOR COMPONENTS	6
D. PROVISIONAL SINGLE LINE DIAGRAM.....	8
E. PROJECT SCOPE	9
F. PRELIMINARY PROJECT TIMEFRAME	10
G. TOTAL PROJECT PRICE AND PAYMENT SCHEDULE	10
H. TERMS AND CONDITIONS	11

We are hoping that you will find our proposal to be complete, our qualifications compelling and our enthusiasm for this project at the highest level. As you consider trusting this important project to Veregy, I want to assure you that it will have our highest attention and we will complete this project with the highest degree of professionalism.

We look forward to bringing decades of reliable solar power to the Hospital. Thank you again for the opportunity to work with Mayers and provide a proposal for this project.

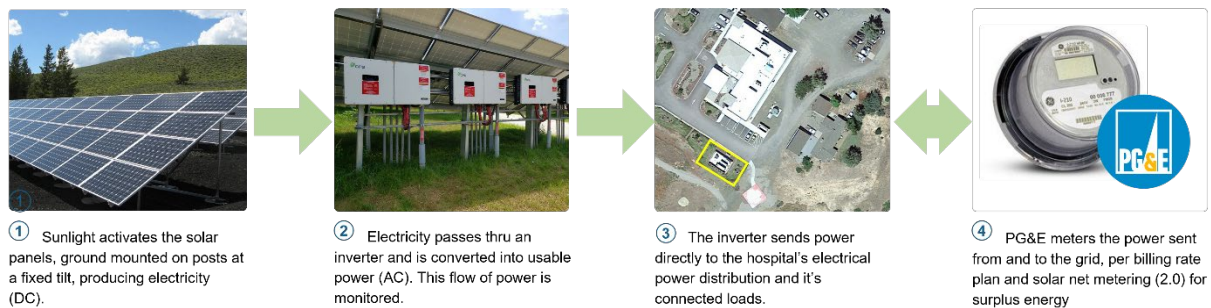


Shiva Subramanya
Director, Enterprise Sales, Veregy

A. Project and System Summary

This project entails the turnkey engineering, AHJ permitting and approvals, procurement, construction, and commissioning of a 668 kW-DC fixed-tilt ground mounted solar system to be installed and grid-connected to the Hospital's service entrance section (pad mounted, external to hospital), partly offsetting the PG&E supplied energy for the metered connection.

Electricity generation from the system will flow directly into the facility's electrical distribution, with monitoring of real-time and historic system performance provided through an online interface and allow for remote system management, alert functions, and reporting. As depicted in the below graphic is a summary of the system's method of operation.



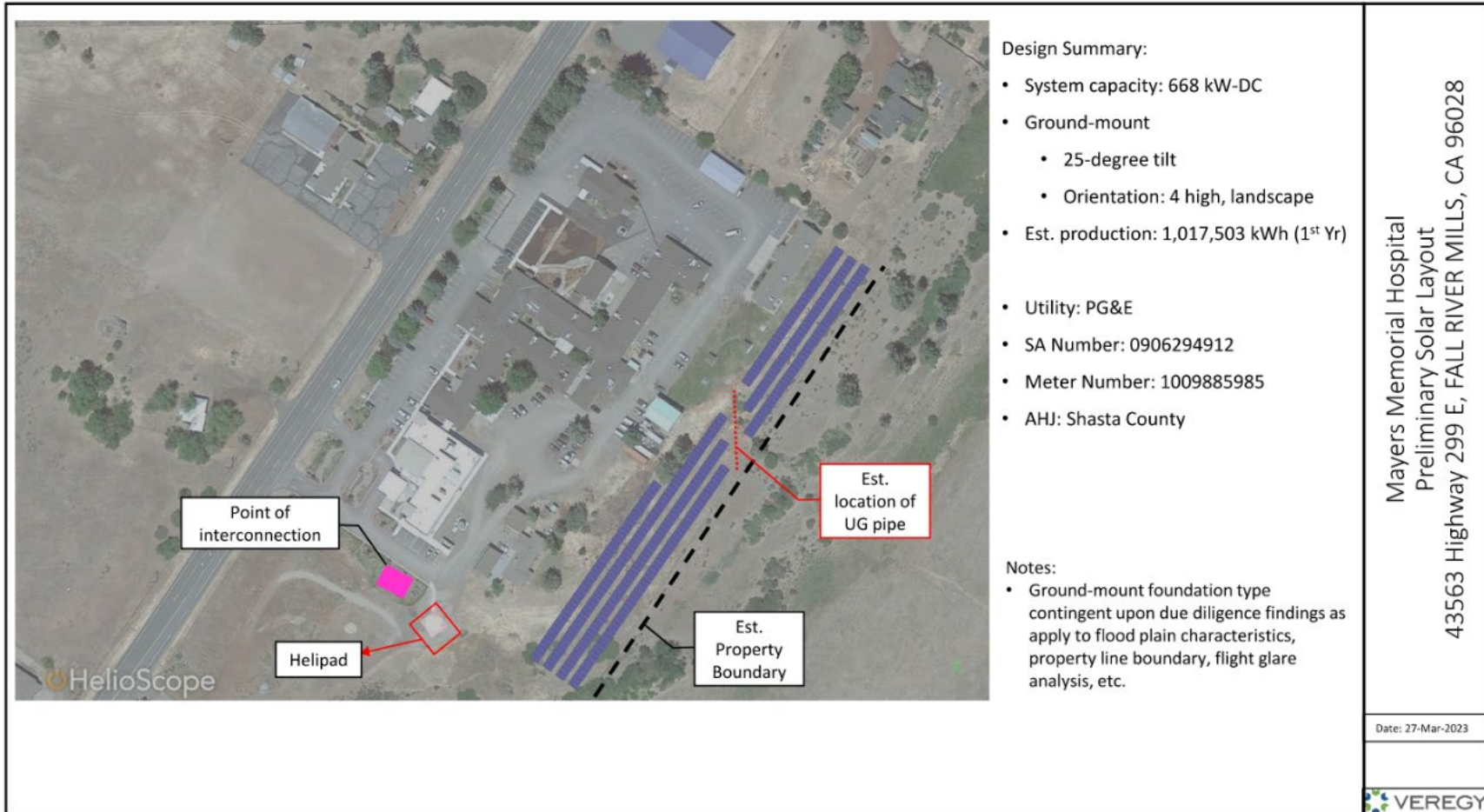
Design Summary:

- System Capacity: 668 kW-DC (667,800 W-DC)
 - Final system capacity subject to final PG&E interconnection approval.
 - PG&E Service Account 09062994912, Meter 1009885985
 - PG&E Project # 000125800287, application currently in the Initial Review (IR) activity/task Engineering Review phase.
- System Type: Fixed tilt, Ground Mounted Solar Arrays
 - Provisionally, the solar array racking shall be a fixed-tilt hardware specification ASCE 7-10, fully grounded, galvanized; G90 racking coating with a helical or screw foundation type.
 - Pending Geotechnical reporting of subsurface conditions, alternative solar array racking foundation type may be required.
 - Potential, alternative solar array racking cost impact to be reviewed with Mayers upon confirmation.
- Major system components provisionally specified.
 - See *Section C. Major System Components (Solar PV Modules, String Inverters, Racking)*
 - Upon procurement, Veregy shall procure same manufacturer components as specified, or equivalent components (manufacturer bankability, same or better workmanship and performance warranties)
- Method of Interconnection.

- See Section D. *Preliminary Single Line Electrical Diagram*
 - Provisionally and pending PG&E interconnection application approval, a line-side connection of the PV system shall be made at the existing 1200A busbars in the customers section of the switchgear.

The system will not electrically interface with the Hospital's existing backup power assets (generator) in the event of a PG&E outage, as it is grid-tied only. A PG&E interconnection application is currently in process for the project (project # 000125800287) and is currently in the Initial Review (IR) activity/task Engineering Review phase.

B. System Layout



C. System Major Components

The major system component selection for solar PV modules (solar panels), inverters and racking for the system are provisionally specified and could be replaced with any other equivalent components:

I. Solar PV Modules (Solar Panels):

High-Efficiency large format solar PV modules have been selected to consolidate the ground area needed and for a better balance of system component economics.

- Jinko Solar, JKM525-7TL4-TV-A1-US solar panels, 525 W-DC, have been provisionally utilized for system sizing, Manufacturer-provided 25-year linear power output warranty at 0.50% degradation per year.
- A total of 1,272 solar panels are specified in the current system design.
 - During the first year, the manufacturer shall warrant the actual power output of the modules will be no less than 97.5% of the labeled power output. From year 2 to year 25, the actual annual power decline will be no more than 0.6%; by the end of year 25, the actual power output will be no less than 83.1% of the labeled power output. A 10 to 12-year material warranty will apply.

II. Inverters:

String inverters mounted on racking to consolidate the conduit runs and thus minimize the amount of conduit run penetrations needed to interconnect the system.

- CPS SCA50KTL-DO/US-480 (50 kW-AC) and CPS SCA60KTL-DO/480 string inverters are specified and feature a manufacturer-provided 10-year product warranty.
- A total of 10 inverters (7-total at 50 kW-AC and 3-total at 60 kW-AC) comprise the current system design.
 - Manufacturer-provided 10-year product warranty

III. Racking and Foundations:

Fixed-tilt ground mounting racking with below grade foundation, modelled at 25° tilt angle, 125° azimuth. Foundation type, helical screw, or driven pile, to be finalized during detailed subsurface site investigation as occurs during the system's formal engineering phase.

- Ground racking offerings from APA Solar Racking, or equivalent, engineered system of standardized and lightweight ground mount steel structural components (25-year product warranty).

All major equipment warranties e.g., solar panel, inverter and monitoring system warranties are manufacturer-direct warranties. **At time of procurement, Veregy reserves the procurement option, with notification to Mayers Memorial Hospital District, the option to source alternate tier-one manufacturer components, as supported by documented specifications indicating equivalent power rating, performance, and warranty, as compared to the components listed.** While Veregy's intent is to source the exact tier-one manufacturer

components as specified in the above table, fluctuations in the global supply of these components and other supply bottlenecks may necessitate substitution with equivalent offering.

E. Project Scope

Inclusions:

- Ground-mount installation of 668 kW-DC solar PV with point of interconnection to the grid at the existing service.
- Performing due diligence activities to comply with requirements of applicable AHJs, including but not limited to:
 - Geotechnical study
 - Title reports
 - Transactional survey
 - Private utility locating
- Creating engineering documents (architectural, electrical, and structural), and obtaining permits from the county, utility, and other applicable AHJs (HCAI/OSHPD).
- Procurement of system components such as panels, inverters, racking, data monitoring, and balance of system (wire, conduits, combiner boxes etc.) as specified above.
- Deploying and managing subcontractors for structural and electrical installation of the PV system.
- Testing, commissioning, and start-up of the system.
- Performance and Payment Bond
- Prevailing Wages
- Warranty Terms
 - Equipment
 - Tier-1 Solar Module – During the first year, the manufacturer warrants the actual power output of the modules will be no less than 97.5% of the labeled power output. From year 2 to year 25, the actual annual power decline will be no more than 0.6%; by the end of year 25, the actual power output will be no less than 83.1% of the labeled power output. A 10 to 12-year material warranty will apply.
 - Inverter – Manufacturer-provided 10-year product warranty
 - All major equipment warranties e.g., solar panel, inverter and monitoring system warranties are manufacturer-direct warranties.
 - Workmanship
 - One (1) year workmanship warranty from Mayers acceptance of the project.
 - Collateral one (1) year workmanship warranties to be provided by all applicable subcontractors.
 - Two (2) on-site check-ups to evaluate system performance; one within 6 months of completion, and one performance evaluation one year after completion included.

Exclusions:

- A security perimeter fence around the PV array.
- Grid impact study if requested by the utility (PG&E).
- Upgrades to existing site service entrance section (SES), if required (subject to a thorough engineering site assessment).
- Generator tie-in into existing electrical service entrance section using onboard synchronizing and paralleling unit. No dedicated generator ATS.

- On-site or off-site improvements not related to the above-mentioned ground-mount arrays.
- Ground soil conditions must be conducive to allow for standard foundation to be installed (no spread footings or concrete casing), and for underground directional boring for conduit placement (no open trenching), unless otherwise specified.
- Hard Rock Drilling, Underground Obstructions, Caving Soils, Casing, and Water Mitigation.
- Interconnections assumed to fall within the "standard" or "fast-track" process for utility interconnection and will not require transfer-trip, cool-cell or other high-resolution communication equipment required by the utility.
- Pricing excludes ongoing O&M costs post commissioning and first year onsite evaluation services.
- No production guarantees are to be provided.
- Repairs of any electrical code violations at the existing facility.
- Redesigns after the 100% drawing submittal to the AHJ.
- Removal and/or disposal of hazardous materials.
- Arc Flash and/or breaker coordination study.
- Any landscaping beyond vegetation removal under the solar system

F. Preliminary Project Timeframe

Veregy *estimates* the current timetable for the overall project at 9 months, from notice to proceed to system commissioning. A detailed project schedule shall be issued by Veregy with completion of project due diligence and AHJ engagement and final determination of required permit and approvals processes and any required studies.

Until which time an accurate duration can be made for the AHJ application, review and approval phase (estimated at 1.5 months from time of initial submittals and application initiation), the timetable of the project as presented is subject to revision:

G. Total Project Price and Payment Schedule

Veregy proposes to complete this project on a lump-sum basis. Our price for this project is Two Million Three Hundred and Fifty Eight Thousand And Seven Hundred and Thirty Dollars Only (\$2,358,730).

Additionally, and by request of Mayers as a separately estimated project improvement / security measure, Veregy estimates the cost of standard chain link fence (2 m/6.5 ft high fence foundations and installation) surrounding the perimeter of the solar arrays at:

One hundred and Forty Two Thousand and One Hundred and Twenty Five (\$142,125)

Pending confirmation from Mayers and/or authorities having jurisdiction as to a security fence being required for final project approvals, the cost of the fence is considered an adder to the project as priced.

Veregy also proposes to perform the Storm Water Pollution Prevention Plan (“SWPPP”) and its associated execution (Section 20.6 of Exhibit 2 – Supplemental Conditions) for a Not to Exceed price of \$15,000. If the price exceeds this amount, Veregy will approach the hospital for a change order.

H. Terms and Conditions

Veregy proposes to perform the above scope of work under a mutually acceptable construction contract.

Exhibit 3B

CONSTRUCTION DOCUMENTS

SEE EXHIBIT 3 A

Exhibit 4

COMPENSATION

Exhibit 4A

LUMP SUM PRICE BREAKDOWN WITH QUALIFICATIONS AND ASSUMPTIONS

Lumpsum Price: Two Million Five Hundred and Fifteen Thousand Eight Hundred and Fifty Five (\$2,515,855)

PROJECT INCLUSIONS:

- • Ground-mount installation of 668 kW-DC solar PV with point of interconnection to the grid at the existing service.
- Performing due diligence activities to comply with requirements of applicable AHJs, including but not limited to:
 - Geotechnical study
 - Title reports
 - Transactional survey
 - Private utility locating
- Creating engineering documents (architectural, electrical, and structural), and obtaining permits from the county, utility, and other applicable AHJs (HCAI/OSHPD).
- Procurement of system components such as panels, inverters, racking, data monitoring, and balance of system (wire, conduits, combiner boxes etc.) as specified above.
- Deploying and managing subcontractors for structural and electrical installation of the PV system.
- Testing, commissioning, and start-up of the system.
- Performance and Payment Bond
- Prevailing Wages
- Warranty Terms
 - Equipment
 - Tier-1 Solar Module – During the first year, the manufacturer warrants the actual power output of the modules will be no less than 97.5% of the labeled power output. From year 2 to year 25, the actual annual power decline will be no more than 0.6%; by the end of year 25, the actual power output will be no less than 83.1% of the labeled power output. A 10 to 12-year material warranty will apply.
 - Inverter – Manufacturer-provided 10-year product warranty
 - All major equipment warranties e.g., solar panel, inverter and monitoring system warranties are manufacturer-direct warranties.
 - Workmanship
 - One (1) year workmanship warranty from Mayers acceptance of the project.
 - Collateral one (1) year workmanship warranties to be provided by all applicable subcontractors.
 - Two (2) on-site check-ups to evaluate system performance; one within 6 months of completion, and one performance evaluation one year after completion included.

Exclusions:

- Grid impact study if requested by the utility (PG&E).
- Upgrades to existing site service entrance section (SES), if required (subject to a thorough engineering site assessment).
- Generator tie-in into existing electrical service entrance section using onboard synchronizing and paralleling unit. No dedicated generator ATS.
- On-site or off-site improvements not related to the above-mentioned ground-mount arrays.

- Ground soil conditions must be conducive to allow for standard foundation to be installed (no spread footings or concrete casing), and for underground directional boring for conduit placement (no open trenching), unless otherwise specified.
- Hard Rock Drilling, Underground Obstructions, Caving Soils, Casing, and Water Mitigation.
- Interconnections assumed to fall within the "standard" or "fast-track" process for utility interconnection and will not require transfer-trip, cool-cell or other high-resolution communication equipment required by the utility.
- Pricing excludes ongoing O&M costs post commissioning and first year onsite evaluation services.
- No production guarantees are to be provided.
- Repairs of any electrical code violations at the existing facility.
- Redesigns after the 100% drawing submittal to the AHJ.
- Removal and/or disposal of hazardous materials.
- Arc Flash and/or breaker coordination study.
- Any landscaping beyond vegetation removal under the solar system

Exhibit 4B

STAFFING, BILLING RATES, AND KEY PERSONNEL



VEREGY 2023 HOURLY RATE SCHEDULE

Provider	Billable Rate
Senior Project Manager III	\$ 225.00
Senior Project Manager II	\$ 205.00
Senior Project Manager I	\$ 195.00
Project Manager III	\$ 185.00
Project Manager II	\$ 175.00
Project Manager I	\$ 165.00
Senior Site Superintendent	\$ 190.00
Site Superintendent	\$ 180.00
Senior Energy Engineer IV	\$ 225.00
Senior Energy Engineer III	\$ 205.00
Senior Energy Engineer II	\$ 195.00
Senior Energy Engineer I	\$ 190.00
Energy Engineer III	\$ 185.00
Energy Engineer II	\$ 180.00
Energy Engineer I	\$ 170.00
Associate Energy Engineer	\$ 165.00
Project Developer	\$ 205.00

Exhibit 4C

SCHEDULE OF VALUES

Scope Item	Scheduled Value
Permitting and Interconnection Costs	\$ 70,761.90
Field Supervision/Project Management	\$ 141,523.80
General Conditions	\$ 70,761.90
Design and Engineering	\$ 117,936.50
Material Procurement	\$ 919,904.70
Installation	\$ 872,730.10
Fencing	\$ 142,125.00
Commissioning	\$ 117,936.50
Erosion Plan	\$ 15,000.00
Closeout	\$ 47,174.60
Total	\$ 2,515,855.00

Exhibit 5

PROJECT EXECUTION

Exhibit 5B

DESIGN BUILD TEAM

1. Energylink
2. MW Engineering
3. MTI-KC Engineering Company
4. ADM Group

Exhibit 6

INSURANCE AND BONDING

Exhibit 6A

DESIGN BUILDER'S INSURANCE REQUIREMENTS



**Design Build Agreement
Exhibit 6A- Design Builder's Insurance Requirements**

1. GENERAL PROVISIONS

1.1 Term of Insurance Policies. All liability insurance must be in force prior to any Work under this Contract and must be maintained in force for a period of 10 years following Final Completion, except for professional liability which must be maintained for at least 5 years after Substantial Completion. Workers compensation and tools and equipment insurance must be in force from the inception of this Contract through Final Completion.

1.2 Qualifications and Rating. All insurance must be placed with insurers that are admitted or licensed to issue insurance in the State of California. All insurers must maintain an A.M. Best rating of at least A- or better and a financial classification of VIII or better.

1.3 Occurrence Basis. All commercial general liability, commercial automobile liability and any umbrella/excess policies must be written on an occurrence basis.

1.4 Retroactive Date and Extended Reporting Period. For insurance issued or renewed on a claims-made form, the retroactive date for coverage will be no later than the commencement of Design Services and must state that, in the event of cancellation or non-renewal, the discovery period for insurance claims will be at least 3 years after cancellation or non-renewal.

1.5 Standard Forms. To the extent applicable, the amounts and types of insurance will conform to the minimum terms, conditions, and coverages of the Insurance Service Office (ISO) policies, forms, and endorsements in effect when this Contract is executed.

1.6 Insurance Certificates and Copies of Policies. Prior to commencing any Work under this Contract, Design Builder will provide the Authorized Representative, and Program Manager with insurance certificates and endorsements reflecting the insurance required by this Contract and specifically naming the Indemnitees identified in Section 13.2 of the Contract as additional insured (see also additional insured in Business Terms Sheet) on all required liability policies other than professional liability or worker's compensation policies. Upon written request, Design Builder will provide District with complete and certified copies of the insurance policies required by this Contract. Receipt of insurance certificates and endorsements is a condition precedent to commencement of the Work. However, receipt of insurance certificates, endorsements, or copies of policies without objection by the District does not constitute acceptance or approval of insurance or relieve the Design Builder from its obligations to provide the required insurance under this Exhibit 6A. Design Builder will ensure that the certificates of insurance and endorsements indicate that Design Professionals and Subcontractors are in





**Design Build Agreement
Exhibit 6A- Design Builder's Insurance Requirements**

compliance with the insurance requirements set forth in this Exhibit 6A and per the limits indicated in their respective agreements.

1.7 Mayers Memorial Hospital District, and its respective officers, board members, directors, successors, assigns, employees, and inspectors must be named as additional insureds on all required commercial general liability, Design Builder's pollution liability, and automobile liability policies for Work performed under or incident to this Contract. If the additional insured has other insurance applicable to the loss, it will be on an excess or contingent basis.

1.8 Design Professionals. Design Builder will cause the Design Professional of Record to carry worker's, commercial general liability, commercial automobile liability, and professional liability per the terms and conditions of this Exhibit 6A and at the limits set forth in the Business Terms Sheet. All other Design Professionals will carry similar coverage at appropriate limits, however errors and omissions coverage must be a minimum of \$1,000,000 per claim and \$2,000,000 in aggregate. Design Builder will require Design Professionals to name Design Builder as well as the additional insureds included in the Business Terms Sheet on all liability policies except for professional liability and worker's compensation policies. Design Builder will cause Design Professionals to waive their rights of subrogation against Design Builder and the additional insureds per Section 1.12.

1.9 Subcontractors. Design Builder will cause Subcontractors to carry worker's compensation, commercial general liability, tools and equipment coverage and commercial automobile liability with similar coverages as required per the terms and conditions of this Exhibit 6A at appropriate limits for their respective portion of the Construction Work. Design Builder will require Subcontractor to name Design Builder as well as the additional insureds included in the Business Terms Sheet on their commercial general liability and automobile liability policies. Design Builder will cause Design Build Subcontractors to additionally carry errors and omissions insurance per the terms and conditions set forth in Section at a minimum of \$1,000,000 per claim and \$2,000,000 in aggregate. Design Builder will cause Subcontractors to waive their rights of subrogation against Design Builder and the additional insureds per Section .

1.10 No Reduction, Modification or Cancellation of Coverage. No insurance required by this Contract or any subcontract or consulting agreement may be reduced in coverage, modified or cancelled (except cancellation for non-payment of premium) without 30 days written notice to District's Authorized Representative with a copy to the Program Manager. All policy renewals during the term of Insurance Policies must be equal, or better, in terms and limits. The words "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon the company, its agents or representatives or any similar limitations on





**Design Build Agreement
Exhibit 6A- Design Builder's Insurance Requirements**

insurer's notification obligations" will be deleted from the certificate of insurance form's cancellation provision.

1.11 Primary Insurance. All liability policies required by this Contract are primary and non-contributory to any similar insurance maintained by the District or its inspectors for their own respective benefit.

1.12 Waivers of Subrogation. Design Builder and its Design Professionals and Subcontractors waive all rights against the District, as well as any additional insureds identified in the Business Terms Sheet for loss or damage to the extent reimbursed by any property or equipment insurance applicable to the Work, except such rights as Design Builder or the District may have to the proceeds of the insurance or to the extent prohibited by an applicable professional liability policy. A waiver of subrogation is effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. This waiver does not apply to faulty workmanship in the design or construction of the Project. If any applicable policies of insurance require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of those policies will cause them to either provide a "blanket waiver" endorsement or a subrogation endorsement that includes the name of the Project and the location of the Project site.

1.13 Deductibles and Self-Insured Retentions. All deductibles and self-insured retentions are the sole responsibility of the first named insured and are not reimbursable by the District.

2. SPECIFIC PROVISIONS APPLICABLE TO ALL REQUIRED INSURANCE POLICIES.

2.1 Workers Compensation. Coverage will include insurance as required by California state law and employer's liability coverage per the limits set forth in the Business Terms Sheet.

2.2 Commercial General Liability (CGL). CGL coverage must have combined single limits and excess coverage in the amounts listed in the Business Terms Sheet. Limits may be met by a combination of primary limits and excess coverage. The insurance must cover all operations of the Design Builder and its Design Professionals, Subcontractors, suppliers, and equipment vendors and must include, but is not limited to: (i) premises, operations and mobile equipment liability; (ii) completed operations and products liability; (iii) contractual liability for liability assumed under this Contract; (iv) broad form property damage liability; (v) medical and personal injury liability including coverage for sickness and death; (vi) explosion, collapse, and





**Design Build Agreement
Exhibit 6A- Design Builder's Insurance Requirements**

underground hazards; (vii) personal and advertising injury; (viii) severability of interests; (ix) pollution; and (x) cross-liability.

2.3 Excess Policies. Umbrella/excess policies must be following form or written on policies with coverage at least as broad as each and every one of the underlying policies, including completed operations and contractual liability, with limits as stated in the Business Terms Sheet.

2.4 Professional Liability. Design Builder will cause its Design Professionals and any Design Build Subcontractors to carry professional liability coverage for damages caused by negligent acts, errors or omissions arising out of the performance of Design Services for which Design Builder is legally liable pursuant to the limits set forth in the Business Terms Sheet and Section , and Sections (Design Professionals) and (Design Build Subcontractors) as applicable. Design Builder must also maintain professional liability coverage per the minimum limits set forth in the Business Terms Sheet to cover Design Builder's preconstruction services and any design-assist. Professional Liability coverage for Design Services must have a retroactive date preceding any Design Services performed by Design Builder or its Design Professionals and/or Design Build Subcontractors. Coverage for Design Services must include, but is not limited to the following coverage: design errors and omissions, and coverage for BIM management (if BIM is utilized).

2.5 Contractor's Pollution Liability Coverage. Design Builder will provide contractor's pollution liability coverage that includes first and third party liability with limits as set forth in the Business Terms Sheet. Design Builder will cause its Design Professionals and Subcontractors to carry pollution liability coverage with appropriate limits based on their respective portions of the Work. With respect to Construction Work, If pollution coverage is claims-made, the retroactive date will be before commencement of the Construction Work and maintained for 10 years after Final Completion. Regardless of whether during design or construction, Unless otherwise approved by the District, the policy will provide the following: (a) inclusion of contractual liability coverage; (b) inclusion of hazardous transporters pollution liability coverage; (c) no limitation or exclusion for claims by one insured party against another insured; (d) severability of interests; (e) natural resource damages coverage; and (f) mold coverage.

2.6 Automobile Liability. Design Builder's commercial automobile liability insurance must cover accidents occurring on-site and off-site with each accident and excess limits as stated in the Business Terms Sheet. This insurance must apply to all owned, leased, non-owned or hired vehicles to be used by the insured in performance of its obligations under this Contract. The insurance must include uninsured and underinsured coverage and any statutorily required "No Fault" benefits. If hazardous materials or waste are to be transported,





**Design Build Agreement
Exhibit 6A- Design Builder's Insurance Requirements**

Design Builder and its Subcontractor (as applicable) will be required to have the MCS-90 endorsement in accordance with Applicable Law.

2.7 Valuable Papers. Design Builder and its Design Professionals must have insurance covering loss, destruction, damage, injury or corruption of valuable papers, records, digital media, Drawings, Specifications, CAD drawings, Building Information Models, reports, maps, books, blueprints, and other printed and electronic documents and data with limits not less than \$500,000.

2.8 Tools and Equipment. With respect to Design Builder's operations, it will purchase, maintain and pay for all-risk contractor's equipment floater on all machinery, tools, equipment and other similar property in an amount at least equal to their fair market value and any deductible will be paid by the Design Builder. This insurance coverage will be the sole and complete means of recovery for any loss on machinery, tools, equipment, and other similar property.

3. MISCELLANEOUS

3.1 Evidence Prior to Final Payment. Design Builder and its Design Professionals and Subcontractors must provide evidence that their respective insurance coverages are effective, as required by this Exhibit 6A and the Business Terms Sheet before issuance of final payment under the Contract.

3.2 Additional District Remedy. If the Design Builder does not comply with the requirements of this Exhibit, the District may provide insurance coverage to protect the District and additional insureds and back-charge Design Builder for the cost of that insurance.

3.3 Insurance Does Not Limit Liability. Insurance coverage maintained by the Design Builder and its Design Professionals and Subcontractors does not limit the extent of liability or the defense and indemnity obligations of the Design Builder or its Design Professionals or Subcontractors under the Contract Documents or Applicable Law.

3.4 Modifications Only in Writing. The coverage and limits of insurance required by this Exhibit may not be altered, modified, or changed except as expressly agreed to in writing. No course of dealing or acceptance of certificates or policies will constitute a waiver of any of these insurance requirements.



Exhibit 6B

PAYMENT AND PERFORMANCE BOND

EXHIBIT 6B: Payment and Performance Bond

PAYMENT BOND

BOND NO. _____

AMOUNT: \$ _____

KNOW ALL MEN BY THESE PRESENTS, that _____ hereinafter called the PRINCIPAL, and _____, a corporation duly organized under the laws of the State of _____, having its principal place of business at _____ in the State of _____, and authorized to do business in the State of California, hereinafter called the SURETY, are held and firmly bound unto Mayers Memorial Hospital District hereinafter called the OBLIGEE, in the sum of _____ Dollars (\$ _____) lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the PRINCIPAL has entered into a Design Build Contract with the OBLIGEE for the design and construction of the Fall River Campus Solar Project and said PRINCIPAL is required under the terms of the Design Build Contract to furnish a bond securing payment of claims to which reference is made in Section 9554 of the Civil Code.

NOW, THEREFORE, if said PRINCIPAL or any of its subcontractors fails to pay any of the persons named in Section 9100 of the Civil Code, or amounts due under the Unemployment Insurance Code with respect to Construction Work or labor performed under the Design Build Contract, or any amounts required to be deducted, withheld and paid over to the Employment Development Department from the wages of employees of the Design Builder and its subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to Construction Work and labor, the SURETY will pay for the same, in an amount not exceeding the sum specified in this bond, and also will pay, in case suit is brought upon this bond, reasonable attorney's and expert witness fees, to be fixed by the court.

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

This bond is given to comply with Sections 9550 and 9554 of the Civil Code. The liability of the PRINCIPAL and SURETY hereunder is governed by the provisions of said Code, all acts amendatory thereof, and all other statutes referred to therein, including Section 8152 of the Civil Code.

The SURETY, for value received, hereby agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents, as defined in the Design Build Contract (inclusive of all Exhibits), which is incorporated herein, or to the Construction Work to be performed, or to the Construction Documents incorporated therein will impair or affect its obligations and its bond. The SURETY waives notice of any such change, extension of time, alteration or addition.



EXHIBIT 6B: Payment and Performance Bond

IN WITNESS WHEREOF the above-bound parties have executed this instrument this _____ day of _____, 2023 the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representatives, pursuant to authority of its governing body.

PRINCIPAL

BY: _____

SURETY

BY: _____

Note: Signature of person executing for SURETY must be notarized and evidence of corporate authority attached.

State of California)
) ss.
County of Shasta)

On _____ before me, (here insert name and title of the notary), personally appeared _____

_____,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

NOTE: A copy of the Power-of-Attorney to local representatives of the bonding company must be attached hereto.

EXHIBIT 6B: Payment and Performance Bond
PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS, that

WHEREAS, Mayers Memorial Hospital District (“District”) has entered into a Design Build Contract with _____, (“Design Builder”) for design and construction of the Fall River Campus Solar Project (“Project”).

WHEREAS, the Work to be performed by the Design Builder is more particularly set forth in the Contract Documents for the Project as defined in the Design Build Contract (inclusive of Exhibits), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Design Builder is required under the terms of the Design Build Contract to furnish a bond for the faithful performance of the Construction Work in accordance with the Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Design Builder and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto District in the sum of _____ DOLLARS, (\$_____), the sum being not less than one hundred percent (100%) of the total amount of the Construction Work, to be paid to District or its successors and assigns; for which payment, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Design Builder, or its heirs, executors, administrators, successors, or assigns approved by the District, will promptly and faithfully perform the covenants, conditions and agreements set forth in the Contract Documents and any alteration made in the Construction Work as provided by the Contract Documents, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and will faithfully fulfill all obligations including the express warranty of all materials, equipment, and workmanship; and will indemnify and save harmless the District, its board of directors, officers, and agents, partners, members, and affiliates as stipulated in the Contract Documents, then this obligation will become null and void; otherwise it will be and remain in full force and effect.

No extension of time, change, alteration, modification or addition to the Contract Documents or of the Construction Work will release or exonerate the Surety on this bond or in any way affect the obligation of this bond; and surety waives notice of any extension of time, change, alteration, modification, or addition.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation will hold good for a period of 1 year after Final Completion as defined in the Contract Documents and acceptance by the District and Governmental Authorities, during which time Design Builder remains obligated to make full, complete, and satisfactory repair and replacements and totally protect the District from loss or damage resulting from or caused by defective materials, equipment, or faulty workmanship. The obligations of Surety hereunder will continue so long as any obligation of Design Builder remains. Nothing herein will limit the District’s rights or the Design Builder’s or



EXHIBIT 6B: Payment and Performance Bond

Surety's obligations under the Contract Documents, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

Whenever Design Builder will be, and is declared by the District to be, in default under the Contract Documents, the Surety will remedy the default pursuant to the Contract Documents, or will promptly do one of the following, at the District's option:

- (1) Undertake through its agents or independent contractors, reasonably acceptable to the District, to complete the Work in accordance with all terms and conditions in the Contract Documents, including without limitation, all obligations with respect to payments, warranties, guarantees, and liquidated damages; or
- (2) Permit the District to complete the Work in any manner consistent with California law and reimburse the District for all costs it incurs in completing the Project, including but not limited to liquidated damages, and in correcting, repairing or replacing any defects in materials, equipment or workmanship, which do not conform to the Contract Documents.

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

Surety will not utilize Design Builder in completing the Work or accept a bid from Design Builder for completion of the Project if the District, when declaring the Design Builder in default, notifies Surety of the District's objection to Design Builder's further participation in the completion of the Work.

Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Construction Work on this Project, and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing the District's rights against the others.

No right of action will accrue on this bond to or for the use of any person or corporation other than the District or its successors or assigns.

If a suit is brought upon this bond by the District, Surety will pay all reasonable attorney's and expert witness's fees and costs incurred by the District in such suit.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their seals this _____ day of _____, 2023, the name and corporate seal of each corporate party being hereto affixed and these presents duly executed by its undersigned representative, pursuant to authority of its governing body.

Design Builder

By: _____
[name]

By: _____
[name]



EXHIBIT 6B: Payment and Performance Bond

SURETY:

By: _____
Attorney-In-Fact

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

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____

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

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

EXHIBIT 6B: Payment and Performance Bond

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of Shasta)

On _____ before me, (here insert name and title of the notary), personally appeared _____

_____,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

NOTE: A copy of the Power-of-Attorney to local representatives of the bonding company must be attached hereto.

Exhibit 6C

DISTRICT'S INSURANCE REQUIREMENTS

EXHIBIT 6C: District's Project Insurance Requirements

1. BUILDER'S RISK

1.1 Builder's Risk. The District will obtain and maintain in force during performance of the Construction Work a builder's risk insurance policy which will insure against physical loss and/or damage on an "all risks" replacement cost basis to all buildings, structures, materials and real property on site, offsite, and in transit, which are intended to be, or have already been incorporated into and forming part of the Project, except for damages caused by the peril or perils of an earthquake for which the District has agreed to take the risk for damages. The builder's risk policy must be purchased and maintained by a company or companies lawfully authorized to do business in the State of California and written on a replacement cost basis. This property insurance will be maintained, unless otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, from commencement of the Construction Work until the later of either Final Completion, or when no entity other than the District has an insurable interest in the covered property. This insurance will include the interests of the District and its Separate Consultants and Separate Contractors, Design Builder, and its Design Professionals and their respective tier-consultants, and Subcontractors and tier-subcontractors.

1.2 Loss of Use Insurance. District, at District's option, may purchase and maintain the insurance that will insure District against loss of use of District's property due to fire or other hazards, however caused. The existence of insurance benefiting District will not affect Design Builder's or its Subcontractors' obligations to perform the Work in accordance with the Contract Documents.

1.3 Loss Adjustment. The District has the sole right and power to adjust and settle a loss with its insurers, subject to the dispute resolution procedures set forth Article 17 of the Contract, and any settlement payments will be made payable to the District as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgagee clause or clauses with respect to the District's property damage. The policy will also provide for the recovery by the Design Builder of reasonable costs incurred to repair and/or replace damaged property. Upon the occurrence of an insured loss or claim of loss, monies received will be held by District who will make distribution in accordance with an agreement to be reached in such event between District and Design Builder. The Design Builder will pay Design Professionals, and Subcontractors their just shares of insurance proceeds received by the Design Builder and will require Design Professionals and Subcontractors to make payments to their respective tier-consultants and tier-subcontractors in similar manner. Design Builder will pay \$25,000 toward deductibles in connection with the loss or claim against the builder's risk insurance unless Design Builder can prove that the insured event was not cause by a negligent act, error, or omission of the any member of the Design Build Team.

1.4 Partial Occupancy. If applicable, partial occupancy or use of the Project in accordance with the Contract will not start until the property insurer(s) have consented to the partial occupancy or use. The District and Design Builder will take reasonable steps to obtain consent of the property insurer(s) and will take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance.

1.5 Waiver of Subrogation. The District and Design Builder and its Design Professionals, Subcontractors, and their respective tiers will waive all rights against each other as well as any additional insured for loss or damage caused by a covered peril under the builder's risk policy or any property insurance applicable to the Construction Work, except such



EXHIBIT 6C: District's Project Insurance Requirements

rights as those parties may have to the proceeds of the insurance. The District will require any Separate Contractors and Separate Consultants to provide similar waivers each in favor of other parties enumerated herein. A waiver of subrogation is effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. If any applicable policies of insurance require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of those policies will cause them to either provide a "blanket waiver" endorsement or a subrogation endorsement that includes the name of the Project and the location of the Project site.

2. OTHER COVERAGES

2.1 Property Insurance. The District will maintain property insurance during the course of the Project. If the District insures properties at or adjacent to the Project site under property insurance policies separate from those insuring the Project, the District waives all subrogation rights to the extent reimbursed by its separate property insurance for damages caused by fire or other causes of loss covered by such policies, except such rights as the insureds the District may have to the proceeds of insurance. All separate policies will provide for a similar waiver of subrogation.

2.2 Pollution Insurance. The District will procure and maintain 1st and 3rd party premise and completed operations pollution coverage for claims arising out of or resulting from pre-existing Hazardous Materials. The District's separate pollution coverage for premise and completed operations liability is primary for pre-existing conditions.



Exhibit 7

SITE DESCRIPTION



**Mayers Memorial
Hospital District**
Always Caring. Always Here.

**Design Build Agreement
Exhibit 7- Site Description**

Mayers Memorial Hospital, 43563 CA-299 (NB), Fall River Mills, CA.

APN 018-200-048. Area = 11.2+/- acres.

Zoning Designation – PF: Public facilities district.

The property is situated northwest of the Pit River, southeast of highway 299 and across the street from Fall River Mills Seventh Day Adventist church. Within the property, there are various buildings in addition to the hospital. The grounds immediately surrounding the hospital is a mix between mostly paved/parking and access road, with unpaved/gravel sections. Along the rear of the hospital, just behind the physical therapy building, the maintenance building and the doctor's sleep house, is natural vegetation and the upper slopes of a valley that leads to the Pit River. The proposed solar project is to be located at the rear of the facility between the Doctor's sleep house on the slope that leads down to the Pit River with good southern/south-eastern exposure.

