

**AGREEMENT TO PROVIDE A PHOTOVOLTAIC SYSTEM FOR THE
MONTEREY COUNTY DEPARTMENT OF PUBLIC WORKS**

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**AGREEMENT TO PROVIDE A PHOTOVOLTAIC SYSTEM FOR THE
MONTEREY COUNTY DEPARTMENT OF PUBLIC WORKS**

This AGREEMENT is made and entered into by and between the County of Monterey, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and Santa Cruz Westside Electric, Inc. dba Sandbar, hereinafter referred to as "CONTRACTOR" (collectively, the COUNTY and CONTRACTOR are referred to as "the Parties"), whereby CONTRACTOR shall provide a cost effective and energy efficient Solar Photovoltaic (PV) generating system to offset operations costs resulting from power consumption of the Laurel Yard Buildings A-H located 855 East Laurel Street in Salinas, California, in accordance with the specifications set forth in this AGREEMENT.

1.0 RECITALS

WHEREAS, COUNTY has received federal funds through an Energy Efficiency and Conservation Block Grant (EECBG) for the development of a solar PV system at the Laurel Yard Building; and

WHEREAS, CONTRACTOR has the expertise, capabilities, and license(s) necessary to determine and provide the services requested, and

WHEREAS, COUNTY is selecting the CONTRACTOR based on their expertise and their ability to perform the work at a fair and reasonable price to COUNTY.

NOW THEREFORE, the Parties, for the consideration hereinafter named, agree as follows:

2.0 INTENT OF THE AGREEMENT

The intent of this AGREEMENT is to summarize the contractual obligations of the Parties. The component parts of this AGREEMENT include the following:

- Attachment A: Energy Efficiency and Conservation Block Grant (EECBG) Special Terms and Conditions
- Attachment B: Scope of Work
- Attachment C: Department of Energy (DOE) Davis Bacon Desk Guide

- Exhibit 1: Project Schedule
- Exhibit 2: Cost Proposal
- Exhibit 3: Contractor's Certification as to Worker's Compensation
- Exhibit 4: Form of Payment and Performance Bonds

- Exhibit 5: Non-Collusion Affidavit Executed by Contractor
- Exhibit 6: Affidavit Concerning Employment of Undocumented Aliens
- Exhibit 7: Equal Employment Opportunity Certification
- Exhibit 8: Debarment and Suspension Certification
- Exhibit 9: Public Contract Code Section 10285.1 Statement
- Exhibit 10: Public Contract Code Section 10162 Questionnaire
- Exhibit 11: Public Contract Code Section 10232 Statement
- Exhibit 12: List of Subcontractors

Certificate of Insurance
Additional Insured Endorsements

All of the above-referenced AGREEMENT documents are intended to be complementary. Work required by one (1) of the above-referenced AGREEMENT documents and not by others shall be done as if required by all. In the event of a conflict between or among component parts of the AGREEMENT, the AGREEMENT documents shall be construed in the following order: AGREEMENT, Certificate of Insurance, and Additional Insured Endorsements. Requirements of the federal grant take precedence over all documents.

The AGREEMENT represents the entire and integrated AGREEMENT between the Parties hereto and supersedes all prior negotiations, representations, or agreements, either oral or written.

Modifications to this AGREEMENT may only be made in writing through either a written amendment or a Change Order signed by both Parties.

Partnering - This AGREEMENT imposes an obligation of good faith and fair dealing in its performance and enforcement. The COUNTY intends to encourage the foundation of a cohesive partnership with the CONTRACTOR and its principal subcontractors and suppliers. The objectives are effective and efficient AGREEMENT performance and completion within budget, on schedule, and in accordance with the AGREEMENT documents.

**3.0 ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT (EECBG)
SPECIAL TERMS AND CONDITIONS**

The COUNTY is using Energy Efficiency and Conservation Block Grant (EECBG) federal funds provided through the American Recovery and Reinvestment Act (ARRA) to finance this project. CONTRACTOR is required to comply with EECBG Grant requirements as specified in ATTACHMENT A: ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT (EECBG) SPECIAL TERMS AND CONDITIONS including any future amendments available at: <http://www1.eere.energy.gov/wip/guidance.html>.

4.0 SITE CONDITIONS

Familiarity with site and local conditions. Prior to executing this AGREEMENT, the CONTRACTOR shall visit the work site, familiarize himself with the local conditions under which the work is to be performed, and correlate his observations with the requirements of this AGREEMENT. By executing the AGREEMENT, the CONTRACTOR represents that he has done so. Based on such visits and investigations, CONTRACTOR shall notify the COUNTY in writing of any discrepancies between the local conditions and the requirements of the AGREEMENT. CONTRACTOR's failure to notify COUNTY prior to submitting its proposal shall be deemed an acknowledgment of and acceptance of any such discrepancies, and a waiver of any claims for extra work, which may result therefrom.

5.0 BUY AMERICAN

Buy American: CONTRACTOR is aware that it is subject to the requirements of the Buy American provision in the American Recovery and Reinvestment Act of 2009 (Section 1605 of Title XVI), as specified in Attachment A (EECBG Special Terms and Conditions) and any amendments available at: <http://www1.eere.energy.gov/wip/guidance.html>.

The Buy American provision in the American Recovery and Reinvestment Act of 2009 (Section 1605 of Title XVI), provides that, unless one (1) of three (3) listed exceptions applies (nonavailability, unreasonable cost, and inconsistent with the public interest), and a waiver is granted, none of the funds appropriated or otherwise made available by the Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all the iron, steel, and manufactured goods used are produced in the United States. CONTRACTOR is responsible to check the Office of Energy Efficiency and Renewable Energy regularly for updates and further guidance at: http://www1.eere.energy.gov/recovery/buy_american_provision.html.

6.0 SCOPE OF WORK

The project is to be completed in accordance with EECBG requirements included in Attachment A herein and any future amendments thereto available at: <http://www1.eere.energy.gov/wip/guidance.html>.

The scope of work is fully described in the Scope of Work attached hereto as **Attachment B, Scope of Work**.

7.0 DEFINITIONS

- 7.1 Construction. The phase of the work after the environmental clearance has been secured and designs have been approved by the COUNTY
- 7.2 Contract sum. The "contract sum" is stated in the AGREEMENT and is the total amount payable by the COUNTY to the CONTRACTOR for the performance of the work under the AGREEMENT.
- 7.3 CONTRACTOR. The "CONTRACTOR" is the person or organization identified as such in the AGREEMENT, or their authorized representative.
- 7.4 COUNTY is the County of Monterey, the owner of the project and identified as such in the AGREEMENT, or its authorized representative.
- 7.5 Design. The phase of the AGREEMENT during which environmental clearance and design of the project is completed, prior to any installation, grading, or construction activities.
- 7.6 Project. The "project" is the total construction including design by the CONTRACTOR
- 7.7 County's Project Manager. The County's Project Manager (PM) is the person or organization identified by the Director of Public Works as the person responsible for the management of the Project on behalf of the COUNTY.
- 7.8 Contractor's Project Manager. The Contractor's Project Manager is the person or organization identified by the CONTRACTOR as the person responsible for the management of the Project on behalf of the CONTRACTOR.
- 7.9 Shop drawings. "Shop drawings" are drawings, diagrams, illustrations, schedules, performance charts, brochures, and other data which are prepared by the CONTRACTOR or any subcontractor, manufacturer, supplier, or distributor, and which illustrate some portion of the work.
- 7.10 Site. The "site" is the location where the construction subject to this AGREEMENT is to take place.
- 7.11 Subcontractor. A "subcontractor" is a person or organization who has a direct contract with the CONTRACTOR to perform any of the work at the site or to furnish material worked to a special design according to plans and specifications of this work. The term "subcontractor" also includes sub-subcontractors performing work at the site or furnishing specially designed material for the work, who have only an indirect relationship to the CONTRACTOR.

- 7.12 Work. The "work" includes all labor necessary to produce the construction required by the AGREEMENT documents, and all materials and equipment incorporated or to be incorporated in such construction.
- 7.13 Owner. The "Owner" is the County of Monterey, the owner of the project and identified as such in the AGREEMENT.
- 7.14 Construction Specification Institute (CSI) (16) Sixteen. Division uniform system for classifying construction activities used for the schedule of values for each scope of work of the Project.

8.0 TERM OF AGREEMENT

- 8.1 The term shall commence with the signing of the AGREEMENT. This AGREEMENT is of no force or affect until signed by both CONTRACTOR and COUNTY, with COUNTY signing last. CONTRACTOR may not commence work prior to COUNTY's execution of the AGREEMENT.
- 8.2 CONTRACTOR shall commence work within ten (10) days of notification by COUNTY.
- 8.3 All work to be performed under this AGREEMENT shall be completed within two hundred and ten (210) calendar days.
- 8.4 Additionally, CONTRACTOR shall coordinate their work with all other Contractors whose work is affected by the Scope of Work defined in this AGREEMENT. CONTRACTOR expressly agrees to provide appropriate labor, material, and equipment in response to adjustments in the Project Schedule made by the County's Project Manager during the course of the project in order to maintain the required progress.
- 8.5 The COUNTY reserves the right to cancel this AGREEMENT, or any extension of this AGREEMENT, in accordance with Default and Termination Clause contained in Section 41.0 herein.

9.0 LICENSING

- 9.1 CONTRACTOR shall possess and maintain a valid license C10 as issued by the California State Contractor's License Board, during the entire term of this AGREEMENT.
- 9.2 CONTRACTOR shall ensure that the required licenses under both state and local jurisdictions are current during the full term of the AGREEMENT.

- 9.3 Each subcontractor must have an active and valid State Contractor's License with a classification appropriate for the work to be performed (Bus & Prof Code, § 7000 et seq.).

10.0 INSURANCE

10.1 Evidence of Coverage:

Prior to commencement of this AGREEMENT, the CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition the CONTRACTOR upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the COUNTY's, Contracts/Purchasing Department, unless otherwise directed. The CONTRACTOR shall not receive a "Notice to Proceed" with the work under this AGREEMENT until it has obtained all insurance required and such, insurance has been approved by the COUNTY. This approval of insurance shall neither relieve nor decrease the liability of the CONTRACTOR.

10.2 Qualifying Insurers:

All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

10.3 Insurance Coverage Requirements:

Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this AGREEMENT a policy or policies of insurance with the following minimum limits of liability:

- 10.3.1 Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

- 10.3.2 Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this AGREEMENT, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.
- 10.3.3 Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this AGREEMENT, in accordance with California Labor Code Section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.
- 10.3.4 Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$3,000,000 per claim and \$5,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this AGREEMENT, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this AGREEMENT.
- 10.3.5 Property insurance, covering the entire work at the site to the full insurable value thereof. This insurance shall include the interests of the COUNTY, the CONTRACTOR, and all subcontractors in the work and shall insure against the perils of fire, extended coverage, builder's risk, vandalism, and malicious mischief.
- 10.4 Other Insurance Requirements.
- All insurance required by this AGREEMENT shall be with a company that is acceptable to COUNTY and that is authorized and properly licensed to transact insurance business in the State of California. Unless otherwise specified by this AGREEMENT, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this AGREEMENT.
- 10.5 Each liability policy shall provide that the COUNTY shall be given notice in writing at least thirty (30) days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insured's with respect to claims arising from each subcontractor, if any, performing work under this AGREEMENT, or be accompanied by

a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

- 10.6 Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insured's with respect to liability arising out of the CONTRACTOR's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the COUNTY and that the insurance of the Additional Insured's shall not be called upon to contribute to a loss covered by the CONTRACTOR's insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.
- 10.7 Prior to the execution of this AGREEMENT by the COUNTY, CONTRACTOR shall file certificates of insurance with the County's Contract Administrator and COUNTY's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this AGREEMENT. The CONTRACTOR shall file a new or amended certificate of insurance within five (5) calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this AGREEMENT, which shall continue in full force and effect.
- 10.8 CONTRACTOR shall at all times during the term of this AGREEMENT maintain in force the insurance coverage required under this AGREEMENT and shall send, without demand by COUNTY, annual certificates to COUNTY's Contract Administrator and COUNTY's Contracts/Purchasing Division. If the certificate is not received by the expiration date, COUNTY shall notify CONTRACTOR and CONTRACTOR shall have five (5) calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this AGREEMENT, which entitles COUNTY, at its sole discretion, to terminate this AGREEMENT immediately.
- 10.9 Acknowledgment of workers' compensation requirements. As required by Labor Code Section 1861, the CONTRACTOR and each subcontractor shall, before commencing work on the project, sign and file with the COUNTY, the certificate in Exhibit 3.
- 10.10 Compliance. In the event of the failure of CONTRACTOR to furnish and maintain any insurance required by this insurance section, COUNTY shall have the right to take out and maintain such insurance for and in the name of the CONTRACTOR. CONTRACTOR shall pay the cost thereof and shall furnish all information necessary to obtain and maintain such insurance for the account of CONTRACTOR. COUNTY shall also have the right to set-off the costs of obtaining and maintaining such insurance

against any amounts due CONTRACTOR under the AGREEMENT Documents. Compliance by CONTRACTOR with the requirement to carry insurance and furnish certificates or policies evidencing the same contained in Insurance section shall not relieve CONTRACTOR from liability assumed under any provision of the AGREEMENT Documents, including, without limitation, the obligation to defend and indemnify each of the Indemnities.

10.11 Application of Insurance Proceeds.

- (a) In the event of any damage to or destruction of the work from any cause insured against by the insurance required under Insurance section, or any other insurance obtained by CONTRACTOR or any other source, COUNTY may, in its sole discretion, either:
- (i) require CONTRACTOR to repair any such damage or destruction and reconstruct the work in accordance with the AGREEMENT documents, and CONTRACTOR agrees to perform any such requirement of the COUNTY; or
 - (ii) terminate the AGREEMENT and CONTRACTOR shall have no claim arising out of such termination. In the event the work is repaired or reconstructed, appropriate adjustments, if any, in the amount of the AGREEMENT price or for the time of completion of the work shall be made by Change Order. COUNTY shall be given credit against any amount due CONTRACTOR under the AGREEMENT documents for the amount of any insurance proceeds collected by CONTRACTOR to the extent such proceeds cover costs otherwise payable by COUNTY under the AGREEMENT documents. In the event that COUNTY decides not to restore or reconstruct the work and terminates the AGREEMENT, CONTRACTOR shall receive from the insurance proceeds all amounts due CONTRACTOR under the AGREEMENT for that portion of the work completed as of the date of the event of damage or destruction.
- (b) In the event of any damage to or destruction of the work:
- (i) not due to or arising out of the fault or neglect of CONTRACTOR or any subcontractor; and
 - (ii) from a cause not insured against by the insurance required under this Insurance section, COUNTY may, in its sole discretion; either
 - (i) require CONTRACTOR to repair any such damage or destruction and reconstruct the work in accordance with the AGREEMENT Documents, and CONTRACTOR agrees to perform any such requirements of the COUNTY; or
 - (ii) terminate the AGREEMENT.

In the event COUNTY decides not to restore or reconstruct the work in accordance with the AGREEMENT Documents and cause termination of the AGREEMENT, CONTRACTOR shall have no claim arising out of such termination. In the event that work is repaired or reconstructed, appropriate adjustments, if any, in the amount of the contract price and for the time of completion of the work shall be made by Change Order. COUNTY shall be given credit against any amount due CONTRACTOR under the AGREEMENT documents to the extent insurance proceeds payable to CONTRACTOR cover costs otherwise payable by COUNTY under the AGREEMENT documents. In the event that COUNTY decides not to restore or reconstruct the work and causes termination of the AGREEMENT, COUNTY shall pay CONTRACTOR, as its sole compensation, all amounts due under the AGREEMENT Documents for the portion of the work completed as of the date of the event of damage or destruction. CONTRACTOR shall be solely responsible for and shall, without cost or expense to COUNTY, promptly and with all due diligence, restore and reconstruct any uninsured loss or damage to the work which occurs as a result of any fault or neglect of the CONTRACTOR or any subcontractor. This obligation is in addition to COUNTY's remedies under the AGREEMENT Documents or by law.

11.0 PERFORMANCE AND PAYMENT BONDS

Required bonds and amounts. The CONTRACTOR shall furnish a surety bond in an amount equal to one hundred percent (100%) of the contract sum as security for faithful performance ("Performance Bond") of this AGREEMENT, and shall furnish a separate surety bond in an amount at least equal to one hundred percent (100%) of the contract sum as security for the payment of all persons performing labor and furnishing materials in connection with this AGREEMENT. Both the Performance Bond and the Payment Bond must be executed by an admitted surety. The form of these bonds shall be as prescribed by COUNTY in Exhibit 4.

12.0 PREVAILING WAGES & DAVIS BACON ACT

- 12.1 CONTRACTOR is aware that it is subject to the requirements of the Davis-Bacon Act (DBA) (40 U.S.C. 3141-48) as specified in Attachment A (EECBG Special Terms and Conditions) and Attachment C (DOE Davis Bacon Desk Guide) herein.
- 12.2 DBA applies to contracts in excess of \$2,000 for the construction, alteration, and/or repair of public buildings or public works, including painting and decorating, where the United States or the District of Columbia is a direct party to the contract. DBA specifies that each covered contract contain provisions, found at Title 29 CFR 5.5, requiring Contractors to pay the laborers and mechanics employed on the project's site of the work, on a weekly basis, no less than the wages and benefits that are prevailing in the area as determined by the Secretary of Labor. Construction includes activities performed on the site of the work such as preparation for construction (e.g., demolition of existing

structures, equipment and material set-up, etc.), fabrication of materials, installation of materials, and post-construction clean-up. It is the CONTRACTOR's responsibility to refer to Attachment C: DOE Davis Bacon Desk Guide contained herein and the Department of Labor (DOL) website: <http://www.wdol.gov> – for DBA general wage determinations, policy statements ("All Agency Memoranda"), and forms.

- 12.3 California prevailing wage rates, when higher, must be applied. If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the general prevailing wage rates determined by the Director of the California Department of Industrial Relations for similar classifications of labor, CONTRACTOR and subcontractors shall pay not less than the higher wage rate. COUNTY will not accept lower State wage rates not specifically included in the Federal minimum wage determinations. This includes "helper" (or other classifications based on hours of experience) or any other classification not appearing in the Federal wage determinations. Where Federal wage determinations do not contain the State wage rate determination otherwise available for use by the Contractor and subcontractors, the Contractor and subcontractors shall pay not less than the Federal minimum wage rate, which most closely approximates the duties of the employees in question.

13:0 NON-COLLUSION AFFIDAVIT TO BE EXECUTED BY CONTRACTOR

Pursuant to Public Contract Code 7106, CONTRACTOR shall execute a non-collusion affidavit in the form provided in Exhibit 5.

14:0 UNDOCUMENTED ALIENS

Pursuant to Public Contract Code Section 6101, CONTRACTOR shall execute an Affidavit Concerning Employment of Undocumented Aliens in the form provided in Exhibit 6.

15:0 EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

CONTRACTOR shall execute an Equal Employment Opportunity Certification in the form provided in Exhibit 7.

16:0 COMPENSATION AND PAYMENTS

- 16.1 Compensation. It is mutually understood and agreed by both Parties that CONTRACTOR shall be compensated under the AGREEMENT in accordance with the terms set forth herein and Exhibit 2 attached hereto.

- 16.1.1 The aggregate total paid to CONTRACTOR shall not exceed \$711,867.00 over the term of the AGREEMENT.
- 16.1.2 The AGREEMENT is subject to approval by the COUNTY Board of Supervisors.
- 16.1.3 The COUNTY does not guarantee any minimum or maximum amount of dollars to be spent under this AGREEMENT.
- 16.2 Prices. Prices shall remain firm for the term of the AGREEMENT
- 16.3 Invoices. Invoice amounts shall be billed directly to the Department of Public Works.
- 16.4 Invoice amounts. Invoice amounts shall be billed directly to the Department of Public Works. CONTRACTOR shall reference the AGREEMENT number on all invoices submitted to the COUNTY. CONTRACTOR shall submit such invoices periodically or at the completion of services, but in any event, not later than fourteen (14) days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice including information required under EECBG Special Terms and Conditions, contained in Attachment A herein.
- 16.5 Monthly Progress Payments. Monthly progress payments shall be made to the CONTRACTOR, as provided in this Section.
- 16.6 Schedule of values. Before CONTRACTOR submits any application for payment, the CONTRACTOR shall submit to the County's Project Manager a schedule of values of the various portions of the work, to be used to enable the COUNTY to estimate the timing and amounts of the successive progress payments. The schedule shall be prepared in such form as may be specified in the AGREEMENT documents or by the County's Project Manager, or as may be agreed upon by the County's Project Manager and the CONTRACTOR. The schedule shall include such data as the County's Project Manager may require substantiating its correctness. Each item in the schedule shall include its proper share of overhead and profit. This schedule, when approved by the County's Project Manager, shall be used only for preparing and reviewing the CONTRACTOR's applications for payment, and will not be considered as fixing a basis for additions to or deductions from the contract sum.
- 16.7 Application for payment. On or before the fifth day of each month, the CONTRACTOR shall submit to the County's Project Manager an application for payment including a schedule of values, requesting payment for the work completed up to the end of that same month, using the standard American Institute of Architects (AIA) form for requesting progress payments or such other form as may be prescribed by COUNTY. The application shall be itemized by task and shall be supported by such data substantiating

the CONTRACTOR's right to payment as the COUNTY or the County's Project Manager may require.

- 16.8 Payment for stored materials and equipment. If payments are to be made on account of materials or equipment not incorporated in the work but delivered and suitably stored at the site, or at some other location agreed upon in writing, such payments shall be conditioned upon submission by the CONTRACTOR of bills of sale or such other procedures satisfactory to the COUNTY to establish the COUNTY's title to such materials or equipment or otherwise protect the COUNTY's interest including applicable insurance and transportation to the site.
- 16.9 Certificates for payment. If the CONTRACTOR has made application for payment as above, the County's Project Manager will, with reasonable promptness but not more than ten (10) days after the receipt of the application, issue a certificate for payment to the COUNTY, with a copy to the CONTRACTOR, for such amount as he determines to be properly due, or state in writing his reasons for withholding a certificate. A payment request determined not to be a proper payment request suitable for payment will be returned to the CONTRACTOR with a statement setting forth the reasons why the payment request is not proper. Payments shall be made on demands drawn in the manner required by law, accompanied by a certificate signed by the County's Project Manager, stating the work for which payment is demanded has been performed in accordance with the terms of the contract.
- 16.10 Findings to issue certificate. In determining to issue a certificate of payment, the County's Project Manager must make the following findings, based on his observations at the site, the schedule of values, and the data included in the application for payment:
- (a) that the work has progressed to the point indicated; and
 - (b) that, to the best of his knowledge, information, and belief, the quality of the work is in accordance with the contract documents (subject to an evaluation of the work for conformance with the contract documents upon substantial completion, to the results of any subsequent tests required by the contract documents, to minor deviations from the contract documents correctable prior to completion, and to any specific qualifications stated in his certificate); and
 - (c) that the CONTRACTOR is entitled to payment in the amount certified.
- 16.11 Payment by COUNTY. Promptly after the County's Project Manager has issued a certificate for payment, the COUNTY shall submit the appropriate documentation to the Monterey County Auditor, who shall make payment to CONTRACTOR within 30 days thereafter. All material and work covered by payments made shall thereupon become the sole property of COUNTY, and this provision shall not be construed as relieving CONTRACTOR from the continuing responsibility for all materials and work upon which payments have been made or the restoration of any damaged work, or as a waiver

of any right of COUNTY to require the fulfillment of all terms of this AGREEMENT. Title to all work completed in the course of construction and to all materials, including the specifications and other documents prepared by the County's Project Manager and/or the CONTRACTOR on account of which payment has been made shall be vested in COUNTY.

- 16.12 Limited effect of issuance of certificate or progress payment. By issuing a certificate for payment, the County's Project Manager shall not thereby be deemed to represent that he has made exhaustive or continuous on-site inspections to check the quality or quantity of the work or that he has reviewed the construction means, methods, techniques, sequences, or procedures, or that he has made any examination to ascertain how or for what purpose the CONTRACTOR has used the monies previously paid on account of the contract sum. Further, no certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the project by the COUNTY, shall constitute an acceptance of any work not in accordance with the AGREEMENT documents.

17.0 PAYROLL RECORDS

- 17.1 Compliance with Labor Code Sec. 1776. CONTRACTOR and all subcontractors shall comply with Labor Code Sec. 1776, the requirements of which are set forth in this article. The CONTRACTOR shall be responsible for compliance with these provisions by the subcontractors.
- 17.2 Accurate payroll records required. CONTRACTOR and each subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice worker, or other employee employed by him or her in connection with the public work.
- 17.3 Certification and inspection of payroll records. The payroll records enumerated under Section 16.2 shall be certified and shall be available for inspection at all reasonable hours at the principal office of the CONTRACTOR or subcontractor on the following basis:
- (a) A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request; and
 - (b) A certified copy of all payroll records enumerated in Section 16.2 shall be made available for inspection, or furnished upon request to a representative of COUNTY, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations; and
 - (c) A certified copy of all payroll records enumerated in Section 16.2 shall be made available upon request to the public for inspection or copies thereof made; provided,

however, that a request by the public shall be made through either the COUNTY, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal offices of the CONTRACTOR.

- 17.4 Filing of records. The CONTRACTOR and each subcontractor shall file a certified copy of the records enumerated in Section 16.2 with the entity that requested such records within ten (10) days after receipt of a written request.
- 17.5 Elimination of personal identification. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the COUNTY, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall 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 CONTRACTOR or subcontractor awarded the AGREEMENT or performing the AGREEMENT shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to; a joint labor-management committee established pursuant to the Federal Labor Management Cooperation Act of 1978 (29USC 175a) shall be marked or obliterated only to prevent disclosure of an individuals name and social security number.
- 17.6 Notice to COUNTY concerning location of records. The CONTRACTOR and each subcontractor shall inform the COUNTY as to the location of the records enumerated under Section 16.2, including the street address, city, and county, and shall, within five (5) working days, provide a notice of any change of location and address.
- 17.7 Notice of non-compliance; penalties. In the event of non-compliance with the requirements of this Section, the CONTRACTOR or subcontractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects such CONTRACTOR or subcontractor must comply with this Section. Should non-compliance still be evident after such ten (10) day period, the CONTRACTOR or subcontractor shall, as a penalty to the COUNTY, forfeit \$25 for each calendar day, or portion thereof, for each worker, until strict compliance is effected. 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.

18.0 INDEMNIFICATION

- 18.1 For purposes of the following indemnification provisions ("Indemnification Agreement"), "design professional" has the same meaning as set forth in California Civil Code Section 2782.8. If any term, provision or application of this Indemnification Agreement is found to be invalid, in violation of public policy or unenforceable to any extent, such finding shall not invalidate any other term or provision of this Indemnification Agreement and such other terms and provisions shall continue in full

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Agreement with Santa Cruz Westside Electric, Inc. dba Sandbar
Photovoltaic System
RMA -- Department of Public Works -- Architectural Services
Term: 210 Calendar Days
Not to Exceed: \$711,867.00

force and effect. If there is any conflict between the terms, provisions or application of this Indemnification Agreement and the provisions of California Civil Code Sections 2782 or 2782.8, the broadest indemnity protection for the COUNTY under this Indemnity Agreement that is permitted by law shall be provided by CONTRACTOR.

18.2 Indemnification for Design Professional Services Claims:

CONTRACTOR shall indemnify, defend and hold harmless COUNTY, its governing board, directors, officers, employees, and agents against any claims that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONTRACTOR, its employees, subcontractors, and agents in the performance of design professional services under this AGREEMENT, excepting only liability arising from the sole negligence, active negligence or willful misconduct of the COUNTY, or defect in a design furnished by the COUNTY.

18.3 Indemnification for All Other Claims or Loss:

For any claim, loss, injury, damage, expense or liability other than claims arising out of the CONTRACTOR's performance of design professional services under this AGREEMENT, CONTRACTOR shall indemnify, defend and hold harmless COUNTY, its governing board, directors, officers, employees, and agents against any claim for loss, injury, damage, expense or liability resulting from or alleging injury to or death of any person or loss of use of or damage to property, arising from or related to the performance of services under this AGREEMENT by CONTRACTOR, its employees, subcontractors or agents, excepting only liability arising from the sole negligence, active negligence or willful misconduct of the COUNTY, or defect in a design furnished by the COUNTY.

19.0 AGREEMENT AUDITS

19.1 CONTRACTOR agrees that the COUNTY or its designee shall have the right to review, obtain and copy all records pertaining to performance of the AGREEMENT. CONTRACTOR agrees to provide the COUNTY or its designee with any relevant information requested, and shall permit the COUNTY or its designee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONTRACTOR further agrees to maintain such records for a period of three (3) years after final payment under the AGREEMENT.

19.2 Records to be maintained

CONTRACTOR shall maintain all records required by the Federal regulations specified in 10 CFR Part 600 and Pub.L. 111-5 that are pertinent to the activities to be funded under this AGREEMENT. These records shall be retained for a period of three (3) years beginning at the time the CONTRACTOR receives notice in writing from the COUNTY that this project is complete.

19.3 Audit rights. With respect to any Change in the Work, other than one based on an agreed lump sum price, resulting in an increase in the AGREEMENT sum or extension of the AGREEMENT time, the CONTRACTOR shall cause its subcontractors and sub-subcontractors to afford access to the COUNTY at all reasonable times to any books, correspondence, instructions, receipts, vouchers, memoranda and records of any kind relating thereto, all of which each of them shall maintain for a period of at least three (3) years from and after the date the COUNTY makes payment on account of such Change in the Work. The CONTRACTOR and its subcontractors and sub-subcontractors shall make the same available within three (3) days following notification to the CONTRACTOR of the COUNTY's intent to audit, failing which the CONTRACTOR's claim for an increase in the AGREEMENT sum and/or extension of the AGREEMENT time, as applicable, shall be disallowed, and the CONTRACTOR shall have no recourse on account of such disallowance. The CONTRACTOR authorizes the COUNTY, and shall cause its subcontractors and sub-subcontractors to authorize the COUNTY, to check directly with any suppliers of labor and material with respect to any item chargeable to the COUNTY under this Section, to confirm balances due and to obtain sworn statements and waivers of lien, all if the COUNTY so elects.

20.0 APPRENTICES

It is state policy to encourage the employment and training of apprentices on public works contracts in conformity with standards set by law.

CONTRACTOR is aware of all state and federal requirements with respect to the hiring of apprentices and agrees to abide by these requirements, including those provisions of the DBA and state prevailing wage laws applicable to payment of apprentices.

21.0 NON-DISCRIMINATION

21.1 Non-discrimination in employment practices. CONTRACTOR and all subcontractors performing work related to this AGREEMENT, shall not discriminate against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, mental disability, medical condition (cancer related), sex, sexual orientation, age (over 40) or marital status. The CONTRACTOR agrees to comply with all applicable federal, state and local laws and/or regulations including, but not limited to, the California Fair Employment and Housing Act, Government Code Sections. 12900 et seq., Labor Code Sec. 1735 and Monterey County Code, Title 2, Chapter 2.80. In addition, the CONTRACTOR agrees to require like compliance by any subcontractors employed on the work by the CONTRACTOR.

- 21.2 "Discrimination" defined. As used in this AGREEMENT, the term "discrimination" includes but is not limited to the illegal denial of equal employment opportunity, harassment (including sexual harassment and violent harassment), disparate treatment, favoritism, subjection to unfair or unequal working conditions, and/or any other prohibited discriminatory practice. The term also includes any act or retaliation.
- 21.3 Application of Monterey County Code, Chapter 2.80. The provisions of Monterey County Code, Title 2, Chapter 2.80 apply to activities conducted pursuant to this AGREEMENT. CONTRACTOR and its officers and employees, in their actions under this AGREEMENT, are agents of the Owner within the meaning of Chapter 2.80, and are responsible for ensuring that their workplace and the services that they provide are free from discrimination, as required by Chapter 2.80. Complaints of discrimination made by CONTRACTOR, subcontractor(s), or any of their employees or agents against the Owner may be investigated and resolved using the procedures established by Chapter 2.80. CONTRACTOR shall establish and follow its own written procedures for the prompt and fair resolution of discrimination complaints made against CONTRACTOR by its own employees, agents and third parties, and shall provide a copy of such procedures to COUNTY upon demand by COUNTY.
- 21.4 Compliance with laws. During the performance of this AGREEMENT, CONTRACTOR shall comply with all applicable federal, state and local laws and regulations, which prohibit discrimination, including but not limited to the following:
- (a) California Labor Code Section 1735;
 - (b) California Fair Employment and Housing Act, Government Code Sections 12900 et seq., and the administrative regulations issued there under, Title 2 California Code of Regulations, Sections 7285.0 et seq. (Division 4 - Fair Employment and Housing Commission);
 - (c) California Government Code Sections 11135 - 11139.5 (Title 2, Div. 3, Part 1, Chap.1, Art. 9.5) and any applicable administrative regulations issued there under;
 - (d) Federal Civil Rights Acts of 1964 and 1991 (see especially Title VII, 42 USC Sections 2000d et seq.), as amended, and all administrative rules and regulations issued there under (see especially 45 CFR Part 84); and all guidelines and interpretations issued pursuant thereto;
 - (e) The Rehabilitation Act of 1973, Sections 503 and 504 (29 USC Sections 793 and 794), as amended; all requirements imposed by the applicable HHS regulations (45 CFR Part 84); and all guidelines and interpretations issued pursuant thereto;

- (f) Americans With Disabilities Act of 1990 (P.L. 101- 336), as amended, 42 USC Sections 12101 et seq., and 47 USC Sections 225 and 611, and any federal regulations issued pursuant thereto (see 24 CFR Chapter 1; 28 CFR Parts 35 and 36; 29 CFR Parts 1602, 1627 and 1630; and 36 CFR Part 1191);
- (g) Unruh Civil Rights Act, California Civil Code Sections 51 et seq.; and
- (h) Monterey County Code, Title 2, Chapter 2.80, as amended and procedures issued pursuant thereto.
- 21.5 Written assurances. Upon request by COUNTY, CONTRACTOR shall give any written assurances of compliance with the Civil Rights Acts of 1964 and 1991, as amended, the Rehabilitation Act of 1973, as amended, the Americans With Disabilities Act of 1990, as amended, and/or Executive Order 11246, as may be required by the federal government in connection with this AGREEMENT, pursuant to 45 CFR Sec. 80.4 or 45 CFR Sec. 84.5 or other applicable state or federal regulations.
- 21.6 Written non-discrimination policy. CONTRACTOR shall maintain a written statement of its non-discrimination policies, which shall be consistent with the terms of this AGREEMENT. Such statement shall be available to CONTRACTOR's employees, the Owner, Owner's officers and employees, and members of the public, upon request.
- 21.7 Notice to labor unions. CONTRACTOR shall give written notice of its obligations under these sections to labor organizations with which it has a collective bargaining or other AGREEMENT.
- 21.8 Access to records by government agencies. CONTRACTOR shall permit access by Owner and by representatives of the California Department of Fair Employment and Housing and the U.S. Equal Employment Opportunity Commission, and any federal and/or state agency providing funds for this AGREEMENT upon reasonable notice at any time during normal business hours, but in no case on less than 24 hours' notice, to such of its books, records, accounts, facilities, and other sources of information as the inspecting party may deem appropriate to ascertain compliance with these non-discrimination provisions.
- 21.9 Binding on subcontractors. The provisions of these sections shall also apply to all of CONTRACTOR's subcontractors. CONTRACTOR shall include the non- discrimination and compliance provisions of these sections in all subcontracts to perform work or provide services under this AGREEMENT.

22:0 INDEPENDENT CONTRACTOR

The CONTRACTOR shall be an independent contractor and shall not be an employee of the COUNTY, nor immediate family of an employee of the COUNTY. CONTRACTOR shall be responsible for all insurance (General Liability, Automobile, Workers' Compensation, unemployment, etc.) and all payroll-related taxes. CONTRACTOR shall not be entitled to any employee benefits. The CONTRACTOR shall control the manner and means of accomplishing the result contracted for herein.

23:0 ASSIGNMENT

Non-Assignment: CONTRACTOR shall not assign this AGREEMENT without the prior written consent of the COUNTY.

24:0 HAZARDOUS MATERIALS

24.1 The term "hazardous substance" means any substance on the list of hazardous substances established by the Director of Industrial Relations pursuant to the Labor Code Section 6382, which includes asbestos, lead, toxic chemicals, contaminants, any substance designated by the Environmental Protection Agency as a hazardous substance, and other pollutants and contaminants.

If Contractor encounters on the property any substance reasonably believed to be a Hazardous Substance that has not been rendered harmless, i.e., not potentially hazardous to human health, CONTRACTOR shall immediately stop work in the area affected and report the condition to the County's Project Manager in writing.

Neither the CONTRACTOR nor any subcontractor shall cause or permit any Hazardous Substance to be brought upon the property or used in the work without the prior written consent of the COUNTY.

CONTRACTOR and each subcontractor shall comply with all laws regarding the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation, or disposal of Hazardous Substances brought onto the property by CONTRACTOR, its subcontractors, and/or their personnel.

The handling of hazardous materials by CONTRACTOR shall be in conformance with all applicable legal requirements, including but not limited to Superfund Amendments and Reauthorization Act (SARA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) while performing services under this Agreement. Any handling, treatment, removal, decontamination, cleanup, transportation,

disposal, or disturbance in any of Hazardous Substances shall only be performed by the CONTRACTOR or any subcontractor licensed and certified to perform the work. Any hazardous substance abatement or remediation work will be performed in such a way that is legally consistent with the recommendations of the certified COUNTY agent, appropriate governmental agencies, and all applicable laws.

If there is a Hazardous Substance on the property, CONTRACTOR shall protect adjoining property and shall provide barricades, temporary fences, and covered walkways required to protect the health and safety of passersby as required by this AGREEMENT, prudent construction practices, and all applicable laws.

- 24.2 Appropriate documentation must be provided in a Material Safety Data Sheet (MSDS) and other documentation as necessary relating to the traits, characteristics, and pervasive properties of any hazardous materials shipped to the COUNTY. The CONTRACTOR and/or shipper understand that the COUNTY shall not accept any shipment of hazardous materials without complete documentation and safety information as required by law. MSDS sheets are required on site for all materials used in the job.

The COUNTY does not take responsibility for the improper packaging and/or transportation of any hazardous materials ordered by the COUNTY while in transit or storage prior to delivery and acceptance by the COUNTY. CONTRACTOR shall be solely liable for the transportation and disposal or release of any hazardous materials.

CONTRACTOR shall submit a Construction Waste Management Plan as part of the Construction Document Phase as specified in Attachment B, Scope of Work, Section I.3 (3).

25.0 SAFETY REQUIREMENTS

- 25.1 CONTRACTOR shall perform all safety functions in accordance with all applicable regulations.
- 25.2 CONTRACTOR shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work. CONTRACTOR shall take all reasonable precautions for the safety of and shall provide all reasonable protection to prevent damage, injury, or loss to:
- a) all employees on the work and all other persons who may be affected thereby;
 - b) all the work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody, or control of CONTRACTOR or any subcontractor; and

- c) other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.
- 25.3 Work is being performed in and around an operational facility. CONTRACTOR is responsible for the safety of COUNTY employees that occupy the other areas of the building and surroundings.
- 25.4 CONTRACTOR and its vendors shall abide by all COUNTY Project Manager's Safety Programs which are as follows:
- 24.4.1 Provide County Project Manager with all MSDS Sheets.
- 24.4.2 Provide County Project Manager with a copy of your job-specific safety program prior to proceeding with work.
- 24.4.2 OSHA-approved hard hats, safety glasses, safety vests, and work boots will be worn at all times.
- 25.5 CONTRACTOR's Construction Superintendent & Project Manager is committed to run all operations in a manner that is protective of human health and the environment as per OSHA standards.
- 25.6 Special note should be taken of mandatory 6 ft, 0 in tie-off safety requirements for all construction workers, including erection crews.
- 25.7 CONTRACTOR shall be responsible for the protection of all unforeseen existing conditions from splattering materials, cracking or breaking, etc. as a result of work. This includes but is not limited to building structure and finishes, utilities, and site work.
- 25.8 Store liquid materials in their original undamaged containers in a clean, dry, protected location and within the temperature range required. Protect stored liquid materials from direct sunlight.
- 25.9 Contractor shall promptly report in writing to the County's Project manager all accidents whatsoever arising out of, or in connection with the performance of the work, whether on or off the site, which caused death, personal injury, or property damage, giving full details and statements of witnesses.

26.0 TITLE

Title to all installed materials shall vest in the COUNTY.

27.0 CONFLICT OF INTEREST

The CONTRACTOR covenants that the CONTRACTOR, its responsible officers, and its employees having major responsibilities for the performance of work under the AGREEMENT, presently have no interest and during the term of the AGREEMENT shall not acquire any interests, direct or indirect, which might conflict in any manner or degree with the performance of the CONTRACTOR's services under the AGREEMENT.

28.0 TIME FOR PERFORMANCE AND LIQUIDATED DAMAGES

- 28.1 Time is of the essence. All time limits stated in the AGREEMENT documents are of the essence of the AGREEMENT. Funds obligated under the EECBG award are required to be expended with thirty-six (36) months after the award date to the COUNTY. Failure to comply with this requirement will jeopardize the funding and completion of the project.
- 28.2 Commencement and completion of work. CONTRACTOR shall commence the work on the starting date established in the Notice to Proceed and shall complete the work thereafter within the time limit established in the Project Schedule attached hereto as Exhibit I. CONTRACTOR understands that timely completion is essential for this project.
- 28.3 Prosecution of work. CONTRACTOR shall prosecute the work diligently and expeditiously with adequate forces and shall complete it within the time specified in the AGREEMENT documents.
- 28.4 Date of final completion. When the CONTRACTOR believes that the work is completed, CONTRACTOR shall request that the County's Project Manager inspect the work and certify its completion. The COUNTY will respond promptly to such a request. The date of final completion of the work or any designated portion thereof is the date on which, after the County's Project Manager certifies that construction has been completed in accordance with the AGREEMENT documents, the COUNTY's Board of Supervisors accepts the work.
- 28.5 Grounds for extension of time. The time for completion of the work shall be extended by Change Order for such reasonable time as the County's Project Manager may determine if an extension of time is reasonably necessary due to a delay caused to the CONTRACTOR by any of the following circumstances:
- (a) sole act or sole negligence of the COUNTY, any employee of either, or any separate contractor employed by the COUNTY;

- (b) any Change Ordered in the work, which change is requested by the COUNTY which is not due to the act or negligence of CONTRACTOR.
- (c) any labor disputes, fire, unusual delay in transportation, unavoidable casualties, or causes beyond the CONTRACTOR's control and which CONTRACTOR could not reasonably have foreseen or made reasonable provisions for, and which are not caused by or the continuance of which is not due to, any act or failure to act on behalf of CONTRACTOR; or
- (d) any other cause which the COUNTY determines may justify the delay.
- 28.6 Extensions of time due to failure to furnish interpretation. No extension of time shall be allowed for delay caused by the COUNTY's failure to promptly provide an interpretation of the AGREEMENT, except in the following circumstances:
- (a) The County's Project Manager failed to provide the interpretation for over fifteen (15) days after demand was made for such interpretation, and it would be reasonable to extend time due to such failure; or
- (b) The Parties have agreed upon a schedule for the provision of interpretations, the County's Project Manager failed to comply with that schedule, and it would be reasonable to extend time due to such failure.
- 28.7 Claims for extension of time. Notwithstanding the provisions of Section 5 and 6 above, none of the causes of delay described therein shall be deemed a valid excuse for CONTRACTOR's failure to start, perform, or complete the work, or any portion thereof, on time unless CONTRACTOR has notified the COUNTY or its representative, in writing, of the alleged cause of delay within five (5) days after commencement of the cause of the delay. Should the COUNTY disagree with CONTRACTOR that the alleged delay warrants an extension of time for the performance of any act required hereunder, the CONTRACTOR shall notify the COUNTY in writing, provided that the CONTRACTOR shall proceed with the work during the period that the COUNTY and CONTRACTOR seek to resolve the matter.
- 28.8 Liquidated damages. The amount of liquidated damages shall be one thousand nine hundred Dollars (\$1,900.00) per day.

THE PARTIES AGREE THAT IN CASE ALL THE WORK CALLED FOR UNDER THE AGREEMENT IN ALL PARTS AND REQUIREMENTS IS NOT COMPLETED WITHIN THE TIME SPECIFIED IN THE AGREEMENT DOCUMENTS, DAMAGE WILL BE SUSTAINED BY THE COUNTY, AND THAT IT IS AND WILL BE IMPRACTICABLE AND EXTREMELY DIFFICULT TO DETERMINE THE ACTUAL DAMAGE WHICH THE COUNTY WILL THEREBY SUSTAIN. THE PARTIES THEREFORE AGREE THAT THE CONTRACTOR SHALL PAY TO THE COUNTY THE SUM SET FORTH IN THE AGREEMENT, IF ANY, FOR EACH

CALENDAR DAY OF DELAY UNTIL THE WORK IS COMPLETED AND ACCEPTED. CONTRACTOR AND HIS SURETY SHALL BE LIABLE FOR THE TOTAL AMOUNT THEREOF. THE CONTRACTOR AGREES TO PAY SAID LIQUIDATED DAMAGES ESTABLISHED HEREIN, AND FURTHER AGREES THAT THE COUNTY MAY DEDUCT THE AMOUNT THEREOF FROM ANY MONEYS DUE OR THAT MAY BECOME DUE THE CONTRACTOR UNDER THE AGREEMENT.

- 28.9 Removal or relocation of main or trunk line utility facilities. The CONTRACTOR shall not be assessed for liquidated damages for delay in completion of the project, when such delay was caused by the failure of the COUNTY or a utility company to provide for removal or relocation of existing main or trunk line utility facilities; however, when the CONTRACTOR is aware that removal or relocation of an existing utility has not been arranged, CONTRACTOR shall promptly notify the COUNTY and the utility company in writing, so that provision for such removal or relocation may be made to avoid and minimize any delay which might be caused by the failure to remove or relocate the main or trunk line utility facilities, or to provide for their removal or relocation. In accordance with Government Code Section 4215, if the CONTRACTOR while performing the AGREEMENT discovers any existing main or trunk line utility facilities not identified by the COUNTY in the AGREEMENT plans or specifications, he shall immediately notify the COUNTY and utility in writing. The utility, where it is the owner of the facilities, shall have the sole discretion to perform repairs or relocation work or permit the CONTRACTOR to do such repairs or relocation work at a reasonable price. The CONTRACTOR shall be compensated for the costs of locating, repairing damage not due to the failure of the CONTRACTOR to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy, and for equipment on the project necessarily idled during such work. Such compensation shall be in accordance with the extra work provisions set forth elsewhere in the AGREEMENT documents. Conversely, CONTRACTOR shall not be compensated for the costs of locating, repairing damage and removing or relocating such utility facilities which is due to the failure of the CONTRACTOR to exercise reasonable care. In such an event, CONTRACTOR shall not be credited for nor given an extension of time for equipment on the project necessarily idled during such work necessitated by CONTRACTOR's failure to exercise reasonable care.

29.0 COUNTY PROJECT MANAGER

- 29.1 COUNTY's representative. The COUNTY designates David Pratt as the County's Project Manager. The County's Project Manager shall be the COUNTY's representative during construction and until final payment as provided in this AGREEMENT. COUNTY shall designate in writing any change in its Project Manager.

29.2 Instructions issued through County's Project Manager. The COUNTY shall issue instructions to the CONTRACTOR through the County's Project Manager.

CONTRACTOR shall forward all communications to the COUNTY through the County's Project Manager.

30.0 LOBBYING RESTRICTIONS

30.1 No funds may be used for lobbying purposes.

A. The CONTRACTOR certifies to the best of his or her knowledge and belief that:

1. No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of the CONTRACTOR to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; the CONTRACTOR shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

C. The CONTRACTOR also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

31.0 USE OF COUNTY PREMISES

COUNTY's Use of Premises. Construction work to accommodate the COUNTY's continued access to and use of the premises during the construction period and coordinate the construction schedule and operations with the Project Manager.

32.0 WARRANTIES

- 32.1 Warranty as to all work. The CONTRACTOR shall guarantee all work performed under this AGREEMENT against defective materials or workmanship for a period of one (1) year from the date of final acceptance by the COUNTY, or for such longer time period as may be prescribed by law or by the terms of any applicable special guarantee required by the AGREEMENT, including but not limited to those identified in Section 32.5.1 below. The CONTRACTOR shall remedy any defects appearing within that time period and pay for any damage resulting there from.
- 32.2 Repair of defective work. CONTRACTOR shall, within a reasonable time but in no case longer than five (5) calendar days after receipt of written notice, dispatch a responder to determine nature of and cause(s) of defective materials or workmanship which may develop during said one (1) year period. No further documentation, such as a COUNTY issued purchase order, work authorization, or service requisition shall be required by CONTRACTOR to initiate the service call. CONTRACTOR shall, within a reasonable time but in no case longer than fifteen (15) calendar days after receipt of written notice thereof, repair and/or replace any defects in materials or workmanship which may develop during said one (1) year period and any damage resulting from the repairing or replacing of such defects at his own expense and without cost to COUNTY. In the event CONTRACTOR fails to dispatch a responder or remedy any such defect within such reasonable time, COUNTY may proceed to have such defects remedied at CONTRACTOR's expense, and CONTRACTOR shall pay the costs and charges incurred thereby and any other damages of COUNTY. Nothing contained in this Section shall operate to relieve CONTRACTOR from responsibility after one (1) year from the date of final acceptance of the completed work by COUNTY as regards to damages resulting from defects, both latent and patent, departures from the requirements of the AGREEMENT, fraud, or such other gross mistakes as amount to fraud, and CONTRACTOR shall indemnify, defend and save COUNTY harmless from and against liability, loss or damage arising by reason of any and all such matters. CONTRACTOR shall transfer to COUNTY all guarantees and warranties on equipment included within the project which CONTRACTOR receives from material men and subcontractors. Neither acceptance nor payment nor any provision in these documents shall be deemed to be a waiver by COUNTY nor to relieve CONTRACTOR of any responsibility under the AGREEMENT. Notwithstanding the above, failure by the CONTRACTOR to take corrective action

within twenty-four (24) hours after personal or telephonic notice by the COUNTY on items affecting use of facility, safety, or the preservation of property, shall result in the COUNTY taking whatever correction action it deems necessary. All costs resulting from such action by the COUNTY shall be claimed against CONTRACTOR or, if necessary, the CONTRACTOR's performance bond.

- 32.3 Title free of liens at time of each progress payment. The CONTRACTOR warrants and guarantees that title to all work, materials, and equipment covered by an application for payment, whether incorporated in the project or not, shall pass to the COUNTY upon the receipt of such payment by the CONTRACTOR, free and clear of all liens, claims, security interests, or encumbrances.
- 32.4 Warranty as to liens. No materials, supplies, or equipment for work under this AGREEMENT shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by seller or supplier. CONTRACTOR warrants good title to all material, supplies, and equipment installed or incorporated in the work and agrees upon completion of all work to deliver the premises, together with all improvements and appurtenances constructed or placed thereon by him, to COUNTY free from claims, liens, or charges. CONTRACTOR further agrees that neither CONTRACTOR nor any person, firm, or corporation furnishing any materials or labor for any work covered by this AGREEMENT shall have any right to any lien upon the premises or any improvement or appurtenance thereon. Nothing contained in this Section, however, shall defeat or impair the right of persons furnishing material or labor under any bond given the CONTRACTOR for their protection or any rights under any law permitting such persons to look to funds due CONTRACTOR in the hands of the COUNTY, and this provision shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing material for work when no formal AGREEMENT is entered into for such material.
- 32.5 Other Warranties. In addition to the warranties in the AGREEMENT Documents, CONTRACTOR shall assign to COUNTY all assignable warranties it obtains from manufacturers or suppliers with respect to any materials, equipment, or fixtures incorporated into the work, but the assignment shall not relieve CONTRACTOR of any of its guaranties or obligations. CONTRACTOR's guaranties and the AGREEMENT Documents shall not act as a bar to CONTRACTOR's liability for any third party claim against CONTRACTOR, and are in addition to, not exclusive of, CONTRACTOR's other obligations under the AGREEMENT Documents, including, without limitation, CONTRACTOR's obligation to indemnify and defend COUNTY.

32.5.1 System Performance Warranty

CONTRACTOR shall provide a system performance warranty as follows:

Carports: 10 Year Materials and Labor from release of Bond

Inverter: 10 Year Standard Warranty

Panels: Product warranty 10 years

Panel Performance Guarantee: Guaranteed output of 90% for 10 years and
80 % for 25 years

All Other Materials and Devices: 5 Year Complete System Warranty

32.6 No Limitations. Nothing in this Section shall be construed to establish a period of limitation with respect to any latent or patent defects in the work or claims or liabilities arising there from. The establishment of time periods relates only to the specific obligation of CONTRACTOR to correct or cause correction of the work, and has no relationship to the time within which its obligation to comply with the AGREEMENT documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the CONTRACTOR's liability with respect to its obligations under the AGREEMENT documents or in connection with the work.

33.0 SOFTWARE SECURITY REQUIREMENTS

All software/hardware purchased must be free of malicious code such as viruses, Trojan horse programs, worms, spy ware, etc. Malicious code or malware (short for malicious software) is defined as software (or firmware) designed to damage or do other unwanted actions on a computer system. Common examples of malware include viruses, worms, Trojan horses and spy ware. Viruses, for example, can cause havoc on a computer's hard drive by deleting files or directory information. Spy ware can gather data from a user's system without the user knowing it. This can include anything from the web pages a user visits to personal information, such as credit card numbers.

34.0 ASSIGNMENT UNDER CARTWRIGHT ACT AND CLAYTON ACT

Pursuant to Public Contract Code 7103.5(b), CONTRACTOR agrees to assign to the COUNTY all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700 of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the AGREEMENT. This assignment shall be made and become effective at the time the COUNTY tenders final payment to the CONTRACTOR, without further acknowledgment by the Parties. This clause shall be included in all subcontracts.

35.0 DEBARMENT AND SUSPENSION CERTIFICATION

In accordance with the U. S. Department of Energy regulations implementing Executive Order 12549, Debarment and Suspension, CONTRACTOR shall complete Debarment and Suspension Certification, attached as Exhibit 8.

36.0 PUBLIC CONTRACT CODE SECTION 10285.1 STATEMENT

In accordance with Public Contract Code Section 10285.1 (Chapter 376, Stats. 1985), the CONTRACTOR shall complete Public Contract Code Section 10285.1 Statement attached as Exhibit 9.

37.0 PUBLIC CONTRACT CODE SECTION 10162 QUESTIONNAIRE

In accordance with Public Contract Code Section 10162, the CONTRACTOR shall complete questionnaire attached as Exhibit 10.

38.0 PUBLIC CONTRACT CODE SECTION 10232 STATEMENT

In accordance with Public Contract Code Section 10232, CONTRACTOR shall complete Public Contract Section 10232 Statement attached as Exhibit 11.

39.0 FORCE MAJEURE

"Force Majeure" means any cause beyond the reasonable control of a party, including but not limited to acts of God, civil or military disruption, fire, strike, flood, riot, war, or inability due to the aforementioned causes to obtain necessary labor, materials or facilities.

If any party hereto is delayed or prevented from fulfilling its obligations under this AGREEMENT by Force Majeure, said party will not be liable under this AGREEMENT for said delay or failure, nor for damages or injuries resulting directly from the inability to perform scheduled work due to Force Majeure.

CONTRACTOR shall be granted an automatic extension of time commensurate with any delay in performing scheduled work arising from Force Majeure. CONTRACTOR agrees to resume such work within three (3) days after the Force Majeure has subsided enough to do so.

40.0 NON-APPROPRIATIONS CLAUSE

Notwithstanding anything contained in this AGREEMENT to the contrary, if insufficient funds are appropriated, or funds are otherwise unavailable in the budget for COUNTY for any reason whatsoever in any fiscal year, for payments due under this AGREEMENT, COUNTY will immediately notify CONTRACTOR of such occurrence, and this AGREEMENT shall terminate after the last day during the fiscal year for which appropriations shall have been budgeted for COUNTY or are otherwise available for payments. To the extent permitted by law, this provision will not be construed so as to permit COUNTY to terminate this AGREEMENT in order to hire another contractor or to allocate funds directly or indirectly to perform the same services.

41.0 DEFAULT AND TERMINATION OF THE CONTRACT DURING DESIGN AND CONSTRUCTION

- 41.1 COUNTY's right to stop work during Design. The COUNTY may terminate the AGREEMENT for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this AGREEMENT shall be reduced in proportion to the services provided prior to the date of termination.
- 41.2 COUNTY's right to terminate for "Good Cause" during Design. The COUNTY may cancel and terminate this AGREEMENT for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner

provided under this AGREEMENT. If COUNTY terminates this AGREEMENT for good cause, the COUNTY may be relieved of the payment of any consideration to CONTRACTOR, and the COUNTY may proceed with the work in any manner, which COUNTY deems proper. The cost to the COUNTY shall be deducted from any sum due to the CONTRACTOR under this AGREEMENT.

- 41.3 COUNTY's right to stop work during Construction. If the CONTRACTOR fails to correct defective work or fails to supply materials or equipment in accordance with the AGREEMENT documents, the COUNTY may order the CONTRACTOR to stop the work, or any portion thereof, until the cause for such order has been eliminated.
- 41.4 COUNTY's rights on CONTRACTOR's default during Construction. If the CONTRACTOR fails to prosecute the work diligently or fails to perform any provision of the AGREEMENT, the COUNTY may, after seven (7) days' written notice to the CONTRACTOR and without prejudice to any other remedy he may have, make good such deficiencies. In such case, any appropriate Change Order shall be issued deducting from the payments then or thereafter due the CONTRACTOR, the cost of correcting such deficiencies, including the cost of the County's Project Manager additional services made necessary by such default. Such Change Order shall not require the consent of the CONTRACTOR to be effective. The County's Project Manager must approve both such action and the amount charged to the CONTRACTOR. If the payments then or thereafter due the CONTRACTOR are not sufficient to cover such amount, the CONTRACTOR shall pay the difference to the COUNTY.
- 41.5 Termination by COUNTY during Construction.
- (a) The COUNTY may terminate the performance of the CONTRACTOR under this AGREEMENT, without prejudice to any other right or remedy the COUNTY may have, in the manner hereinafter provided, upon certification by the County's Project Manager that the following circumstances have arisen:
- (1) the CONTRACTOR is adjudged a bankrupt, or makes a general assignment for the benefit of his creditors, or a receiver is appointed on account of his insolvency (except as provided in (e), below);
 - (2) the CONTRACTOR refuses or fails, except in cases for which an extension of time is provided, to supply enough properly skilled workmen or proper materials;
 - (3) the CONTRACTOR fails to make prompt payment to subcontractors, to suppliers of materials or equipment, or to employees;
 - (4) the CONTRACTOR disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction; or

- (5) the CONTRACTOR otherwise is guilty of a substantial violation of the AGREEMENT.
- (b) To terminate the performance of the CONTRACTOR, COUNTY shall first give ten (10) days' written notice to CONTRACTOR and his surety, if any, stating COUNTY's intent to terminate the performance of the CONTRACTOR unless within ten (10) days the grounds for such termination have been removed, and giving his reasons therefore.
- (c) If within ten (10) days the grounds for termination are not removed, COUNTY may immediately terminate the performance of the CONTRACTOR and shall promptly serve notice of termination on the CONTRACTOR and the surety. The surety shall have the right to take over and perform the AGREEMENT, provided that, within fifteen (15) days after service upon it of said notice of termination, the surety must first give written notice to COUNTY that it intends to take over and perform the AGREEMENT, and within thirty (30) days after service upon it of said notice of termination, the surety must commence performance of the AGREEMENT. If surety fails to take either of these steps in a timely manner, COUNTY may immediately take possession of the site and of all materials, equipment, tools, construction equipment, and machinery thereon owned by the CONTRACTOR and may finish the work by whatever method he may deem expedient.
- (d) If within ten (10) days of COUNTY's notice of intent to terminate, the grounds for termination are not removed, the CONTRACTOR shall not be entitled to receive any further payment until the work is finished. If, upon completion of the work by COUNTY, the unpaid balance of the contract sum exceeds the costs of finishing the work (including compensation for additional design, engineering, managerial, and administrative services), such excess shall be paid to the CONTRACTOR. If such costs exceed such unpaid balance, the CONTRACTOR or his surety shall pay the difference to the COUNTY. The costs incurred by the COUNTY as herein provided shall be certified by the County's Project Manager.
- (e) Notwithstanding the foregoing, performance of the CONTRACTOR under this AGREEMENT may not be terminated, and the AGREEMENT may not be modified where a trustee in bankruptcy has assumed the AGREEMENT pursuant to 11 U.S.C. Sec. 365.

41.6 Termination by CONTRACTOR during Construction.

- (a) The CONTRACTOR may, upon seven (7) days' written notice to the County's Project Manager, may terminate the AGREEMENT if the work is stopped for a period of forty five (45) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the

CONTRACTOR and their subcontractor(s) or their agents or employees or any other person performing any of the work under a contract with the CONTRACTOR.

- (b) To terminate the AGREEMENT, the CONTRACTOR must give written notice to COUNTY of such termination, stating the reasons therefore.
- (c) The CONTRACTOR may then recover from the COUNTY payment for all work executed, for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, for lost profits, and for all other damages suffered by the CONTRACTOR on account of such stoppage of work.

41.7 Termination for Convenience of the COUNTY during Construction.

- (a) The performance of work under this AGREEMENT may be terminated by COUNTY in accordance with Section 8.0 in whole, or from time to time in part, whenever the COUNTY shall determine that termination is in the best interest of the COUNTY. Any such termination shall be effected by delivery to CONTRACTOR of a Notice of Termination specifying the extent to which performance of work under the AGREEMENT is terminated, and the date upon which such termination becomes effective.
- (b) After receipt of a Notice of Termination, and except as otherwise directed by the COUNTY, CONTRACTOR shall:
 - (1) stop work under the AGREEMENT on the date and to the extent specified in the Notice of Termination;
 - (2) place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the AGREEMENT as is not terminated;
 - (3) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
 - (4) assign to COUNTY all the right, title, and interests of CONTRACTOR under the orders and subcontracts so terminated, in which case COUNTY shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontractors if so directed by COUNTY;
 - (5) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, subject to the approval of the COUNTY;
 - (6) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(7) take such action as may be necessary, or as COUNTY may direct, for the protection and preservation of the property related to this AGREEMENT which is in the possession of the CONTRACTOR and in which COUNTY has, or may acquire, an interest.

(c) After receipt of a Notice of Termination, the CONTRACTOR shall submit to COUNTY a verified termination claim. Such claim shall be submitted promptly but in no event later than thirty (30) days from the effective date of termination, unless one (1) or more extensions in writing are granted by the COUNTY upon request of CONTRACTOR made in writing within such period or authorized extension of the period.

(d) CONTRACTOR and COUNTY may agree upon the whole or any part of the amount or amounts to be paid to CONTRACTOR by reason of the total or partial termination of work pursuant to this Section, which amount or amounts may included a reasonable allowance for profit on work done; provided that the total AGREEMENT price as reduced by the amount of payments otherwise made and as further reduced by the AGREEMENT price of work not terminated does not exceed the contract sum.

42.1 GENERAL CONDITIONS CONDUCT OF WORK

42.1.1 CONTRACTOR shall furnish all labor and equipment required to fulfill the AGREEMENT at no additional expense to the COUNTY.

42.1.2 CONTRACTOR agrees to furnish all supervision, labor, material, rentals, and equipment necessary to complete the Scope of Work.

42.1.3 CONTRACTOR agrees to use generally accepted and best professional methods for all work as described in this AGREEMENT.

42.1.4 No deviations from the AGREEMENT and Scope of Work, will be allowed without prior written consent of authorized County's Project Manager.

42.1.5 CONTRACTOR is responsible for verification of all field dimensions.

42.1.6 CONTRACTOR shall supervise and direct the work using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences, and procedures, and or coordinating all portions of the work under the AGREEMENT.

42.1.7 CONTRACTOR shall employ only licensed subcontractors possessing a California State Contractors State License Board (CSLB) for their appropriate classification.

- 42.1.8 CONTRACTOR agrees to furnish architectural, engineering and design professionals, licensed in the State of California in the appropriate classification to complete plans, specifications and documentation, and shall furthermore prosecute those documents for permitting through the County of Monterey's Building Services Department and other agencies and jurisdictions for authorization to construct the project.
- 42.1.9 CONTRACTOR shall at all times enforce strict discipline and good order among his employees, subcontractors and consultants and shall not employ on the work any unfit person or anyone not skilled in the task assigned to him.
- 42.1.10 The parking of equipment, storage of materials, and use of any permanent facilities in the project shall be as allowed by the County's Project Manager.
- 42.1.11 CONTRACTOR shall provide all temporary facilities and utilities to complete their scope of work. CONTRACTOR is responsible for all costs for special power requirements for CONTRACTOR's equipment, supply of power cords, task lighting, water connection, portable facilities, waste collection fencing and/or equipment for completion of his work.
- 42.1.12 All damage or loss to any property on or near the site caused in whole or in part by the CONTRACTOR, or anyone directly or indirectly in its employ, or by anyone for whose acts it may be liable, shall be remedied by the CONTRACTOR, at his expense, except damage or loss attributable to faulty specifications or working details, or to the acts or omissions of the COUNTY or anyone employed by it or for whose acts either of them may be liable, and not attributable to the fault or negligence of the CONTRACTOR.
- 42.1.13 CONTRACTOR shall sequence and barricade work that provides for the complete safety of the public and all construction personnel and shall create a minimum of interference with the normal flow of pedestrians and vehicles either on or off the site. This shall include, among other things, flaggers, delineators, and/or traffic plates across trenches to provide uninterrupted traffic flow. CONTRACTOR's proposed method of sequencing, barricading, traffic control, etc. shall be submitted to and have prior approval from the COUNTY.
- 42.1.14 CONTRACTOR will be responsible for the temporary protection of all of their installations to ensure the finished product is in "like new" condition at the completion of the project.
- 42.1.15 CONTRACTOR, at all times, shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. All construction materials, equipment and debris shall be removed from the area of work prior to the opening of business the next day. If the CONTRACTOR fails to clean up, the COUNTY may do so and the cost thereof shall be charged to the CONTRACTOR.

42.1.16 CONTRACTOR shall notify County's Project Manager in writing at least five (5) days in advance of any disruption of service, including but not limited to electrical and water. CONTRACTOR shall not proceed with the work until written authorization from the County's Project Manager.

42.2 GENERAL CONDITIONS CONTRACTOR'S ADMINISTRATIVE DUTIES

42.2.1 CONTRACTOR's Superintendent. The CONTRACTOR shall employ a competent, qualified Superintendent who shall provide full time, on site supervision of all aspects of the work. Full time means any and all times that CONTRACTOR, its agents, employees or subcontractors are performing any and all work. The Superintendent shall be satisfactory to the COUNTY, and shall not be changed except with the consent of the COUNTY. The COUNTY may request at any time that a CONTRACTOR remove its Superintendent from the project and provide an alternate Superintendent as approved by the COUNTY. The Superintendent shall represent the CONTRACTOR and all communications given to the Superintendent shall be as binding as if given to the CONTRACTOR. Important communications will be confirmed in writing. Other communications will be so confirmed on written request in each case.

42.2.2 CONTRACTOR's Project Manager. The CONTRACTOR shall employ a competent, qualified Project Manager to manage the entire project with the CONTRACTOR's and the Superintendent. The CONTRACTOR shall provide the COUNTY with the Project Manager's resume. The COUNTY must approve the Project Manager. The COUNTY reserves the right to interview the CONTRACTOR's Project Manager at any time. The COUNTY at any time during the course of construction may require the CONTRACTOR to substitute the Project Manager based on poor performance, lack of experience, product knowledge, project management skills and or the inability to prosecute the work in a workmanlike manner.

If CONTRACTOR fails to have such Superintendent and Contractor's Project Manager on the site at any time during the progress of the work, a penalty of Six Hundred Dollars (\$600.00) per day shall be deducted from the compensation otherwise due to CONTRACTOR, for each day on which such failure occurs. Such penalty shall not apply to temporary absences approved in advance by the COUNTY.

42.2.3 Owner's Representative. All coordination must be made with the County's Project Manager. All communication with the County's Project Manager must be made by the CONTRACTOR's Superintendent or Project Manager to maintain control and to prevent misunderstandings. All communication with the CONTRACTOR and the COUNTY shall be in writing.

42.3 GENERAL CONDITIONS
HOURS OF WORK

42.3.1 Eight (8) hour day; Forty (40) hour week. No work shall be performed by employees of CONTRACTOR in excess of eight (8) hours per day or forty (40) hours during any one (1) week, unless such employees are compensated for all such excess hours at not less than one-and-one-half (1 ½) times the basic rate of pay, as provided in Labor Code Sec. 1815. Holiday work when permitted by law shall also be compensated at not less than one-and-one-half (1 ½) times the basic rate of pay.

42.3.2 Penalties. Pursuant to Labor Code Sec. 1813, the CONTRACTOR shall forfeit, as a penalty to the COUNTY, twenty-five dollars (\$25) for each worker employed in the execution of the AGREEMENT by the CONTRACTOR or any subcontractor under him for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one (1) calendar week in violation of the provisions of the Labor Code Sections 1810-1815.

42.3.3 Approvals. CONTRACTOR will not be entitled to additional compensation for work performed outside of regular working hours, except to the extent such compensation is approved in writing by County's Project Manager in advance. If so approved, such compensation shall in such event cover only the direct cost of the premium portion of the time involved, when permitted, and be without any overhead or profit.

42.4 GENERAL CONDITIONS
SEPARATE AGREEMENTS ON SAME PROJECT

42.4.1 COUNTY's right to award separate AGREEMENTs. The COUNTY reserves the right to award other AGREEMENTs in connection with other portions of the project.

42.4.2 Coordination among CONTRACTORs. CONTRACTOR shall ascertain to his own satisfaction the scope of the project and the nature of any other AGREEMENTs that have been or may be awarded by COUNTY in prosecution of the project, to the end that CONTRACTOR may perform this AGREEMENT in light of such other AGREEMENTs, if any. Nothing herein shall be interpreted as granting to CONTRACTOR exclusive occupancy at the site. CONTRACTOR shall not cause any unnecessary hindrance or delay to any other subcontractor or consultant working on the project. If simultaneous execution of any AGREEMENT for the project is likely to cause interference with the performance of some other AGREEMENT or AGREEMENTs, the COUNTY shall decide which subcontractor or consultant shall cease work temporarily and which subcontractor or consultant shall continue or whether work can be coordinated so that subcontractor or consultant may proceed simultaneously. COUNTY shall not be responsible for any damages suffered or extra costs incurred by CONTRACTOR

resulting directly or indirectly from the award or performance or attempted performance of any other AGREEMENT or AGREEMENTS on the project, or caused by any decision or omission of COUNTY respecting the order of precedence in performance of the AGREEMENTS. Any delay in the progress of the work as a result of such priorities shall not give rise to any adjustments in the AGREEMENT Price and CONTRACTOR agrees that its sole right and remedy therefore shall be an extension of time.

42.4.3 Responsibility to other subcontractor or consultant. The CONTRACTOR shall afford other subcontractor or consultant on the same project reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly connect and coordinate his work with theirs.

42.4.4 Duty to inspect other subcontractor or consultant's work. If any part of the CONTRACTOR's work depends for proper execution or results upon the work of any other separate subcontractor or consultant, the CONTRACTOR shall inspect and promptly report to the County's Project Manager any apparent discrepancies or defects in such work that render it unsuitable for such proper execution and results. Failure of the CONTRACTOR to inspect and report shall constitute an acceptance of the other subcontractor or consultant's work as fit and proper to receive his work, except as to defects which may develop in the other separate subcontractor or consultant's work after the execution of the CONTRACTOR's work. Any work exhibiting unacceptable quality as defined by the AGREEMENT documents will result in CONTRACTOR's payment (or a portion thereof) being withheld until the unacceptable work is corrected to meet the required quality standards, per Section 15 herein.

42.4.5 Damage to other subcontractor or consultant's work. Should the CONTRACTOR cause damage to the work or property of any separate subcontractor or consultant on the project, the CONTRACTOR shall, upon due notice settle with such other subcontractor or consultant by agreement or arbitration, if he will so settle. If such separate subcontractor or consultant sues the COUNTY or initiates an arbitration proceeding on account of any damage alleged to have been so sustained, the COUNTY shall notify the CONTRACTOR who shall defend such proceedings and indemnify and hold harmless COUNTY.

42.4.6 Responsibility for costs caused by one subcontractor or consultant to another. Any costs to one (1) subcontractor or consultant or his subcontractors on the project caused by defective or ill-timed work by another subcontractor or consultant or his subcontractors on the project shall be borne by the party responsible for such defective or ill-timed work.

42.4.7 COUNTY's right to settle disputes over clean-up. If a dispute arises between the separate subcontractor or consultant as to their responsibility for cleaning up under Section 38.1, the COUNTY may clean up and charge the cost thereof to the several subcontractor or consultant, as the COUNTY shall determine to be just.

42.5. GENERAL CONDITIONS:
CHANGE ORDERS

42.5.1 Change orders. The COUNTY, without invalidating the AGREEMENT, may order changes in the work within the general scope of the AGREEMENT consisting of additions, deletions, or other revisions. The contract sum and the time for performance of the work shall be adjusted accordingly. All such changes in the work shall be authorized by Change Order, and shall be executed under the applicable conditions of the AGREEMENT documents. The contract sum and the time for performance of the work may be changed only by Change Order.

The amount to be paid to the CONTRACTOR pursuant to the AGREEMENT Documents shall, where applicable, be increased or decreased in the manner hereinafter set forth; provide, however, that if the CONTRACTOR should proceed with a Change in the Work upon an oral order, by whomsoever given, it shall constitute a waiver by the CONTRACTOR of any claim for an increase in the contract sum on account thereof. Upon receipt of said written Change Order or Written Directive, the CONTRACTOR shall promptly proceed with the Change in the Work, even though the amount of any resultant increase or decrease in the contract sum has not yet been determined. All Changes in the Work shall be performed in accordance with the AGREEMENT Documents.

42.5.2 Method to calculate adjustments in contract price. Determination of the method to be used to calculate adjustments in the contract price shall be at the sole discretion of the COUNTY. The use by the CONTRACTOR of the Total Cost Method (calculating the total sum of expenses incurred on the project, less amounts paid, marked up by overhead and profit) of pricing changes and claims is expressly prohibited (provided however, the COUNTY may use a "make whole" analysis to determine the reasonableness of the CONTRACTOR's claim). One of the following methods shall be used:

- A. Unit Price Method;
- B. Firm Fixed Price Method (also known as Lump Sum); or
- C. Time and Materials Method.

A. Unit Price Method:

1. Whenever COUNTY or its representative authorizes CONTRACTOR to perform on a Unit Price basis, COUNTY's authorization shall clearly state the:
 - a. Scope of Work to be performed;
 - b. Applicable Unit Price; and
 - c. Not to exceed amount of reimbursement as established by the COUNTY.

2. The applicable unit price shall include reimbursement for all direct and indirect costs of the Work, including overhead and profit.
3. CONTRACTOR shall only be paid under this method for the actual quantity of materials incorporated in or removed from the Work and such quantities must be supported by field measurement statements verified by COUNTY.

B. Firm Fixed Price Method:

1. The CONTRACTOR and COUNTY may mutually agree on a fixed amount as the total compensation for the performance of changed work.
2. Any adjustments to the contract price using the Firm Fixed Price Method shall include, when appropriate, all reasonable costs for labor, equipment, material, overhead and profit. Such overhead and profit shall be calculated in accordance with Provision 42.5.4(b)(4)F.
3. Whenever the COUNTY authorizes CONTRACTOR to perform changed work on a Firm Fixed Price Method, the COUNTY's authorization shall clearly state:
 - a. Scope of Work to be performed;
 - b. Total Fixed Price payment for performing such work.

C. Time and Materials Method:

1. Whenever the COUNTY authorizes the CONTRACTOR to perform Work on a Time and Materials basis, COUNTY's authorization shall clearly state:
 - a. Scope of Work to be performed;
 - b. A not to exceed amount of reimbursement as established by the COUNTY.
2. CONTRACTOR shall:
 - a. Cooperate with COUNTY and assist in monitoring the Work being performed;
 - b. The CONTRACTOR's and subcontractors' labor hours, materials, and equipment charged to work under the Time and Materials Method shall be substantiated by detailed time cards or logs completed on a daily basis before the close of business each working day. The CONTRACTOR shall initial each time card and/or log at the close of each working day. Records of the CONTRACTOR and Subcontractors pertaining to work paid for on a Time and Material method shall be maintained and available for inspection as requested by the COUNTY or its representatives;
 - c. Perform all work in accordance with this provision as efficiently as possible; and

- d. Not exceed any cost limit(s) without COUNTY's prior written approval.
3. CONTRACTOR shall submit costs and any additional information requested by the COUNTY to support CONTRACTOR's requested price adjustment.

No change in the contract price shall be allowed to the extent:

- (1) CONTRACTOR's changed cost of performance is due to the fault, acts, or omissions of CONTRACTOR, or anyone for whose acts or omissions CONTRACTOR is responsible;
- (2) the change is concurrently caused by CONTRACTOR and COUNTY; or
- (3) the change is caused by an act of Force Majeure.

The COUNTY shall not be responsible for, and the CONTRACTOR shall not be entitled to, unallowable costs. Unallowable costs include, but are not limited to:

- (1) interest or attorney's fees of any type other than those mandated by California statutes;
- (2) claim preparation or filing costs;
- (3) the cost of preparing or reviewing Change Proposals or Requests for Change Orders;
- (4) lost profits, lost income or earnings;
- (5) rescheduling costs;
- (6) costs for idle equipment when such equipment is not at the Site, has not been employed in the Work and is not scheduled to be used at the Site;
- (7) lost earnings or interest on unpaid retention;
- (8) claims consulting costs;
- (9) the costs of corporate officers or staff visiting the Site or participating in meetings with the COUNTY;
- (10) any compensation due to the fluctuation of foreign currency conversions or exchange rates;
- (11) loss of other business; and

- (12) any other special, consequential, or incidental damages incurred by the CONTRACTOR or subcontractors.

42.5.3 Signatures on change orders. A Change Order shall be in writing and shall be signed by the COUNTY. Alternatively, the Change Order may be signed by the COUNTY's Project Manager or COUNTY alone, provided he has written authority from the COUNTY for such procedure and that a copy of such written authority is furnished to the CONTRACTOR if he agrees to the adjustment in the contract sum or the contract time. Except as otherwise provided herein, the Change Order shall also be signed by the CONTRACTOR in order to be effective, indicating the CONTRACTOR's consent to the changes made.

42.5.4 Determining cost or credit for change order.

- (a) The cost or credit to the COUNTY resulting from a Change in the work shall be determined in one or more of the following ways:

- (1) by mutual acceptance of a lump sum for work and materials properly itemized;
- (2) by unit prices stated in the AGREEMENT documents or subsequently agreed upon; or
- (3) as provided in subsection (b).

- (b) All Parties to the AGREEMENT shall observe the following procedures for all change proposals and shall require all subcontractors to follow the same procedures:

- (1) Each change proposal will carry a unique identifying number, such as C-001, A-001 or O-001 which identifies the originator, i.e. C = CONTRACTOR, O = Owner and a chronological serial number. All correspondence referring to that Change Order, no matter who originates the correspondence, shall refer to the same identifying number. Any change proposal without such number shall be returned to the originator.
- (2) The items of Work involved shall be identified by specific reference to drawing and detail number and specification section if possible.
- (3) The quantities of material or other Work involved will be identified along with the costs thereof. The items of Work shall be arrayed in a manner that is consistent with the Construction Specifications Institute (CSI) (16) sixteen division uniform system for classifying construction activities used for the schedule of values for each project component.
- (4) The total cost of a change proposal shall be limited to the following elements of cost, overhead, and profit:

A. Labor - For all labor, including foreman supervision, but excluding general Superintendent, as may be necessary, the CONTRACTOR shall be reimbursed for labor costs as provided herein. The labor cost of a change in the work shall be calculated as the sum of the following:

- i. Wages of labor on the CONTRACTOR's payroll, including foreman, directly engaged in the Work; hourly rates for each classification of worker shall be identified;
- ii. Engineering and drafting performed;
- iii. Fringe benefits established by the governing trade organizations;
- iv. Federal Insurance Contributions Act costs and Federal and State Unemployment Taxes;
- v. Net actual premium change for Commercial Liability, Workers' Compensation, Property Damage, and any other forms of Insurance.

B. Material -- The cost of materials resulting from a change in the Work shall be calculated in one or more of the following methods, at the COUNTY's election:

- i. Invoice Cost -- The CONTRACTOR may be paid the actual invoice cost of materials including actual freight and express charges and applicable taxes less all available discounts, rebates, and back charges, notwithstanding the fact that they may not have been taken by the CONTRACTOR. This method shall be considered only to the extent the CONTRACTOR's invoice costs are reasonable and the CONTRACTOR provides copies of vendor invoices, freight and express bills, and other evidence of cost accounting and payment satisfactory to the COUNTY. As to materials furnished from the CONTRACTOR's stocks for which an invoice is not available, the CONTRACTOR shall furnish an affidavit certifying its actual cost of such materials and such other information as the COUNTY may reasonably require;
- ii. Wholesale Price -- The CONTRACTOR may be paid the lowest current wholesale price for which the materials are available in the quantities required, including customary costs of delivery and all applicable taxes less all available discounts, rebates, and back charges; or,
- iii. COUNTY Furnished Materials -- The COUNTY reserves the right to furnish such materials as it deems advisable, and the CONTRACTOR shall have no Claim for costs, overhead or profit on such materials.

C. Equipment – The additional cost, if any, of machine-power tools and equipment usage shall be calculated in accordance with the following:

- i. Equipment Rates – The CONTRACTOR's own charge rates may be used if verified and approved by the COUNTY and based on the CONTRACTOR's actual ownership and operating cost experience. Rental rates contained in published rate guides may be used if their cost formulas and rate factors are identifiable, reflect the CONTRACTOR's historical acquisition cost, utilization and useful life, and do not include replacement cost, escalation contingency reserves, general and administrative expense, or profit. Rates shall be based on the CONTRACTOR's actual allowable costs incurred or the rates established according to the Rental Rate Blue book for Construction Equipment, published by Machinery Information Division of PRIMEDIA, whichever is less. The rental Rate Blue Book established rate shall be the monthly rate for the equipment plus the monthly rate for required attachments, divided by 176, plus the hourly operating cost, multiplied by the appropriate area adjustment factor if appropriate. The rates shall apply for actual equipment usage up to eight (8) hours per day. For all hours in excess of eight (8) hours per day or 176 hours per month, the established monthly rate shall be divided by 352, plus the hourly operating cost, multiplied by the area adjustment factor, if appropriate.
- ii. Transportation – If necessary equipment is not already at the Site and it is not anticipated that it would be required for the performance of other work under the terms of the AGREEMENT, the calculation shall include a reasonable amount for the costs of the necessary transportation of such equipment.
- iii. Standby – The CONTRACTOR shall only be entitled to standby equipment costs if:
 - (a) the equipment is ready, able, and available to do the Work at a moment's notice;
 - (b) CONTRACTOR is required to have equipment standby because of an event or condition solely caused by the COUNTY; and
 - (c) the CONTRACTOR can demonstrate that it could have and intended to use the equipment on other projects or jobs.

The CONTRACTOR shall be compensated at 50% of the adjusted hourly rate identified in the Rental Rate Blue Book for Construction Equipment, published by Machinery Information Division of K-111 Directory Corp. Standby shall not be paid during periods of CONTRACTOR caused delay, concurrent delay, unusually severe weather conditions, during any seasonal shutdown, routine maintenance, down-time or occurrence

specified in the AGREEMENT Documents. No payment shall be made for a twenty-four (24) hour period. Standby costs shall not be paid for weekends, holidays, and any time the equipment was not intended to be used on the project as demonstrated by the Project Schedule.

D. Subcontractors Cost – The Subcontractor's cost of Work shall be calculated and itemized in the same manner as prescribed herein for CONTRACTOR.

E. Bonds – Itemized statement of changes in costs of bonds.

F. Markup – The allowed markup for Change Order work shall not exceed the following two items:

- i. Fifteen percent (15%) combined overhead and profit markup for the CONTRACTOR performing the actual Change Order work; and
- ii. Seven percent (7%) combined overhead and profit markup on the direct costs for the CONTRACTOR's markup of subcontractor work.

In no event shall the total combined overhead and profit markup for the CONTRACTOR and all intermediate tier subcontractors and suppliers exceed twenty-two percent (22%) of the direct cost to perform the Change Order Work. Direct costs shall include Labor (as defined in provision 42.5.4 (b)(4)A), Materials (as defined in provision 42.5.4 (b)(4)B), Equipment (as defined in provision 42.5.4 (b)(4)C), Subcontractor Costs (as defined in provision 42.5.4 (b)(4)D), Bond (as defined in provision 42.5.4 (b)(4)E). All other costs shall be deemed overhead costs. Profit markup shall be allowed on delay, acceleration, unabsorbed overhead, or any other asserted impact costs.

G. Taxes – Taxes required to be paid by the CONTRACTOR but not included above.

- (5) Invoices or quotes shall accompany Change Proposals from vendors. Change proposals shall be sent to the County's Project Manager in duplicate, who shall maintain a database of all proposals which can readily determine the location and status of the change request. Change proposals shall include all cost backup, including breakdown of hours expended by jobsite personnel per task with or without overall execution of the work. Lump sum change proposals lacking necessary backup, as determined by COUNTY, will not be accepted or approved.
- (6) All change proposals shall be checked by the County's Project Manager for accuracy and fairness. Should CONTRACTOR utilize SMACNA or NECA cost estimating standards they will use seventy percent (70%) of the most favorable labor productivity rates.

- (7) When the final costs are agreed upon by the COUNTY and the CONTRACTOR, a Change Order will be prepared by the COUNTY for signature by the COUNTY and CONTRACTOR. The Change Order shall be the record document defining the costs and time extensions, if any, of the required and agreed-to change in the Work. A Change Order calculated in accordance with the provisions of this AGREEMENT shall be full and complete compensation and final settlement of all changes and claims for all:
- (a) time;
 - (b) direct, indirect, and overhead costs;
 - (c) profit; and
 - (d) any and all costs or damages associated with delay, inconvenience, disruption of schedule, impact, ripple effect, loss of efficiency or productivity, acceleration of work, lost profits, and/or any other costs or damages related to any work either covered or affected by the changed work, or related to the events giving rise to the change.
- (8) The CONTRACTOR shall keep and present, in the American Institute of Architects format, an itemized accounting together with appropriate supporting data. Pending final determination of cost to the COUNTY, payments on account shall be made on the CONTRACTOR's certificate for payment. The amount of credit to be allowed by the CONTRACTOR to the COUNTY for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease as confirmed by the County's Project Manager. When both additions and credits are involved in any one change, the allowance for overhead and profit shall be figured on the basis of net increase, if any.
- (9) If no agreement can be reached on changes in the work or costs, or the CONTRACTOR refuses to accept a Change Order, the COUNTY may issue the Change Order unilaterally. The CONTRACTOR shall comply with the requirements of the Change Order. The COUNTY shall provide for an equitable adjustment to the contract price and compensate CONTRACTOR accordingly. If the CONTRACTOR does not agree that the adjustment is equitable, it may submit a claim in accordance with Section 42.10. If CONTRACTOR refuses to comply with the Change Order, COUNTY may have the work done by another contractor or its own forces.

42.5.5 Changes requiring an increase in contract sum. If the Change in the Work will result in an increase in the contract sum, the COUNTY shall have the right to require the performance thereof on a lump sum basis, a unit price basis, or a time and materials basis, all as hereinafter more particularly described. The right of the COUNTY as aforesaid shall apply with respect to each such Change in the Work:

- (a) If the COUNTY elects to have the Change in the work performed on a lump sum basis, its election shall be based on a lump sum proposal which shall be submitted by the CONTRACTOR to the COUNTY within ten (10) days of the COUNTY's request

therefore, but the COUNTY's request for a lump sum proposal shall not be deemed an election by the COUNTY to have the Change in the work performed on a lump sum basis. The CONTRACTOR's proposal shall be in compliance with Sections 42.5.2, 42.5.3, & 42.5.4 of the General Conditions.

- (b) If the COUNTY elects to have the Change in the work performed on a unit cost basis, its election shall be based on a unit price proposal which shall be submitted by the CONTRACTOR to the COUNTY within five (5) days of the COUNTY's request therefore, but the COUNTY's request for a unit price proposal shall not be deemed an election by the COUNTY to have the Change in the work performed on a unit price basis. The CONTRACTOR's proposal shall be in compliance with sections 42.5.2, 42.5.3, & 42.5.4 of the General Conditions. Nothing herein contained shall preclude the COUNTY from requesting a lump sum proposal and a unit price proposal with respect to the same Change in the Work, in which event the CONTRACTOR shall submit both.
- (c) If the COUNTY elects to have the Change in the work performed on a time and material basis, the same shall be performed, whether by the CONTRACTOR's forces or the forces of any of its subcontractors or sub-subcontractors, at actual cost to the entity performing the Change in the work, without any charge for administration, clerical expense, supervision or superintendence of any nature whatsoever, except foremen directly involved in the Change in the work, or the cost use or rental of small tools. The CONTRACTOR's proposal shall be in compliance with sections 42.5.2, 42.5.3, & 42.5.4 of the General Conditions.
- (d) The COUNTY shall have no obligation or liability on account of a Change in the Work except as specifically provide in this section. Overhead and profit, as allowed under this section, shall be deemed to cover all costs and expenses of any nature whatsoever, including, without limitation, those for general condition items such as clean-up, protection, supervision, estimating, field operations, small tools and security, which the CONTRACTOR or any of its subcontractors or sub-subcontractors may incur in the performance of or in connection with a Change in the Work and which are not otherwise specifically recoverable by them pursuant to this section.
- (e) Until such time as the COUNTY makes it election under this Section, the CONTRACTOR shall submit daily time and material tickets to the COUNTY as required under Subparagraph (c), which shall be subject to authentication as therein provided. At such time as the COUNTY makes its election under this Section, an appropriate Change Order will be issued; provided, however, that until such time the COUNTY shall pay to the CONTRACTOR up to the COUNTY's reasonable estimated value of the Change in the Work.

(f) The work pursuant to this AGREEMENT shall be performed by the CONTRACTOR at no extra cost to the COUNTY despite any order from the COUNTY which designates or contemplates a portion of the work as a Change in the Work.

- 42.5.6 Changes requiring a decrease in contract sum. If the Change in the Work will result in a decrease in the contract sum, the COUNTY may request a quotation by the CONTRACTOR of the amount of such decrease for use in preparing a Change Order. The CONTRACTOR's quotation shall be forwarded to the COUNTY within five (5) days of the COUNTY's request and, if acceptable to the COUNTY, shall be incorporated in the Change Order. If not acceptable, the Parties shall make every reasonable effort to agree as to the amount of such decrease, which may be based on a lump sum properly itemized, on unit prices stated in the AGREEMENT Documents and/or on such other basis as the Parties may mutually determine. If the Parties are unable to so agree, the amount of such decrease shall be the total of the estimated reduction in actual cost of the work, as determined by the COUNTY in its reasonable judgment, plus fifteen percent (15%) thereof as overhead and profit. The CONTRACTOR's proposal shall be in compliance with sections 42.5.2, 42.5.3 & 42.5.4 of the General Conditions.
- 42.5.7 Changes affecting AGREEMENT time. If the Change in the Work will result in an extension or contraction of the AGREEMENT time, and the Parties are unable to agree as to the number of days by which the AGREEMENT time will be extended or contracted, the COUNTY shall not be required to make its determination until the work has been completed, at which time its determination shall be based on a review of the CONTRACTOR's books and records relating to the time involved in performing the Change in the Work and on the COUNTY's judgment as to whether the CONTRACTOR diligently performed the same.
- 42.5.8 Disputes regarding changes. If any dispute should arise between the Parties with respect to an increase or decrease in the contract sum or an expansion or contraction in the AGREEMENT time as a result of a Change in the Work, the CONTRACTOR shall not suspend performance of a Change in the Work or the Work itself unless otherwise so ordered by the COUNTY in writing. The COUNTY shall, however, pay to the CONTRACTOR up to the COUNTY's reasonable estimate of the value of the Change in the Work, regardless of the dispute, if said Change in the Work results in an increase in the contract sum; and the COUNTY shall have the right to decrease the contract sum to the COUNTY's reasonable estimated value of the Change in the Work, regardless of the dispute, if said Change in the Work results in a decrease in the contract sum.
- 42.5.9 Adjustment of unit prices. If unit prices are stated in the AGREEMENT documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of work proposed will create a hardship on the COUNTY or the CONTRACTOR, the applicable unit prices shall be equitably adjusted to prevent such hardship.

42.5.10 Concealed conditions. If concealed conditions encountered in the performance of the work below the surface of the ground are at variance with the conditions indicated by the AGREEMENT documents, or if previously unknown physical conditions encountered below the surface of the ground are of an unusual nature, differing materially from those generally recognized as inherent in work of the character and in the location provided for in this AGREEMENT, or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated in the AGREEMENT documents or be of an unusual nature, at variance with those ordinarily encountered and generally inherent in the work to be performed, then the contract sum shall be equitably adjusted by Change Order upon claim by either Party made within twenty (20) days after first observing the conditions.

42.5.11 Minor changes in the work. Subject to approval by the COUNTY, the COUNTY's Project Manager may order minor changes in the work not involving an adjustment in the contract sum or an extension of the AGREEMENT time and not inconsistent with the intent of the AGREEMENT documents. Such changes may be made by field order or by other written order. Such changes shall be binding on the COUNTY and the CONTRACTOR.

42.5.12 Field orders. Subject to approval by the COUNTY, the County's Project Manager may issue written Field Orders, which interpret the AGREEMENT documents or order minor changes in the work without change in contract sum or AGREEMENT time. The CONTRACTOR shall carry out such Field Orders promptly.

42.5.13 Limitations. Except as expressly provided by this Section, there shall be no change whatsoever in the plans and specifications and in the work. CONTRACTOR shall not vary the work, the AGREEMENT documents, or change, add to or omit any element, component part, or portion of the work without the express written consent of COUNTY, contained in an executed Change Order or field order as herein provided. COUNTY shall not be liable for the cost for any extra work or any substitutions, changes, additions, omissions, or deviations from the plans and specifications unless the same have been authorized by and the cost thereof approved in writing by Change Order. No extension of time for performance of the work shall be allowed hereunder unless claim for such extension shall be made at the time changes in the work are ordered and such duly adjusted in writing by COUNTY. CONTRACTOR recognizes and acknowledges that timely completion of the work is paramount and that its duty is to proceed with the work in accordance with the AGREEMENT documents, notwithstanding any request for change in the work, to the extent that proceeding is reasonable and feasible under the circumstances.

42.5.14 Review of AGREEMENT Documents. The CONTRACTOR's Superintendent shall carefully study and compare the AGREEMENT Documents, including but not limited to, the AGREEMENT, general conditions, drawings, specifications, addenda and modifications and shall at once report to the County's Project Manager any error, inconsistency or omission it may discover. The CONTRACTOR's Superintendent shall

not work without proper drawings, and specifications. If the CONTRACTOR's Superintendent performs any construction activity knowing it involves a recognized error, inconsistency or omission in the AGREEMENT Documents without such notice to the County's Project Manager, the CONTRACTOR shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

42.5.15 Requests for Information (RFI). RFI submittals shall come only from the CONTRACTOR (not from any subcontractors). The CONTRACTOR shall prepare the RFI in an RFI form approved by the County's Project Manager which shall include a detailed description of the conditions, cause and/or reason for the request. The RFI shall also include a proposed resolution. Each RFI shall reference the applicable Construction Documents. A transmittal letter over a subcontractor's RFI does not constitute an approved form.

42.6 GENERAL CONDITIONS INSPECTION OF WORK BY COUNTY

42.6.1 Project Manager's access to work. The County's Project Manager shall at all times have access to the work wherever it is in preparation and progress. The CONTRACTOR shall provide facilities for such access so the Project Manager may perform his functions under the contract.

42.6.2 Inspections. The County's Project Manager will make periodic visits to the site to familiarize himself generally with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the contract documents

42.6.3 Authority to reject work or to require special inspection or testing. The County's Project Manager may reject work which does not conform to the contract documents. Whenever, in their reasonable opinion, they consider it necessary or advisable to ensure the proper implementation of this contract, they may require special inspection or testing of the work in accordance with this Agreement, whether or not such work is then fabricated, installed, or completed. However, the County's Project Manager's authority to act under this paragraph, nor any decision made by them in good faith either to exercise or not to exercise such authority, shall not give rise to any duty or responsibility of the County's Project Manager to the CONTRACTOR, any subcontractor, any of their agents or employees, or any other person performing any of the work.

42.6.4 Uncovering of work.

(a) If any work is covered contrary to the request of the COUNTY, it must, at the request of the County's Project Manager, be uncovered for his observation and replaced at the CONTRACTOR's expense.

- (b) The County's Project Manager may ask to see any other work that has been covered prior to its inspection by the County's Project Manager, and the CONTRACTOR shall uncover the work. If such work is found to be in accordance with the contract documents, the cost of uncovering and replacement shall, by appropriate change order, be charged to the COUNTY. If such work is found not to be in accordance with the contract documents, the CONTRACTOR shall pay such costs unless it is found that a separate contractor caused this condition, and in that event, the COUNTY shall be responsible for the payment of such costs.

42.6.5 Correction of work.

- (a) The CONTRACTOR shall promptly correct all work rejected by the County's Project Manager as defective or as failing to conform to the contract documents whether observed before or after substantial completion and whether or not fabricated, installed, or completed. The CONTRACTOR shall bear all cost of correcting such rejected work, including the cost of the County's Project Manager's additional services made necessary thereby.
- (b) All such defective or non-conforming work shall be removed from the site if necessary, and the work shall be corrected to comply with the contract documents without cost to the COUNTY.
- (c) The CONTRACTOR shall bear the cost of making good all work of separate contractors destroyed or damaged by such removal or correction.

42.6.6 CONTRACTOR's failure to remove defective work. If the CONTRACTOR does not remove such defective or non-conforming work within a reasonable time fixed by written notice from the County's Project Manager, the COUNTY may remove it and may store the materials or equipment at the expense of the CONTRACTOR. If the CONTRACTOR does not pay the cost of such removal and storage within ten (10) days thereafter, the COUNTY may upon ten (10) additional days' written notice sell such work at auction or a private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the CONTRACTOR including compensation for additional architectural services. If such proceeds of sale do not cover all costs, which the CONTRACTOR should have borne, the difference shall be charged to the CONTRACTOR and an appropriate change order shall be issued. Such change order shall not require the CONTRACTOR's consent to be effective. Said amount may be deducted from any payment thereafter due to the CONTRACTOR under this or any other AGREEMENT with COUNTY. If the payments then or thereafter due the CONTRACTOR are not sufficient to cover such amount, the CONTRACTOR shall pay the difference to the COUNTY.

42.6.7 CONTRACTOR's failure to correct defective work. If the CONTRACTOR fails to correct such defective or non-conforming work, the COUNTY may correct it in accordance with this AGREEMENT.

42.6.8 Acceptance of defective or non-conforming work. If the COUNTY prefers to accept defective or non-conforming work, it may do so instead of requiring its removal and correction, in which case a change order will be issued to reflect an appropriate reduction in the contract sum, or, if the amount is determined after final payment, it shall be paid by the CONTRACTOR. The issuance of the final certificate, final payment, or any provisions in the AGREEMENT documents shall not relieve CONTRACTOR of responsibility for faulty materials, equipment, or workmanship. CONTRACTOR shall remedy any defects due to, and pay for any damage to, other work in accordance with the applicable guaranty or warranty provisions of the AGREEMENT documents.

42.6.9 Emergency corrective action by COUNTY. If, in the opinion of the COUNTY, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the COUNTY or third parties or to prevent interruption of operations of the COUNTY or third parties, the COUNTY will attempt to give notice to CONTRACTOR. If CONTRACTOR cannot be contacted promptly or does not comply with the COUNTY's request for correction within a reasonable time as determined by the COUNTY, the COUNTY may, notwithstanding the provisions of this AGREEMENT, proceed to make such correction or provide such attention and the costs of such correction or attention shall be charged against the CONTRACTOR. Such action by the COUNTY shall not relieve CONTRACTOR of any warranty obligations provided in this AGREEMENT.

42.7 GENERAL CONDITIONS SUBCONTRACTORS

All work performed for the CONTRACTOR by a subcontractor shall be pursuant to a written agreement between the CONTRACTOR and the subcontractor. All such agreements shall require performance by the subcontractors in conformity with the terms of this AGREEMENT, and shall include all terms of this AGREEMENT which are applicable to subcontractors.

No contractual relationship between COUNTY and subcontractors. Nothing contained in the AGREEMENT documents shall create any contractual relationship between the COUNTY and any subcontractor.

Subcontracted work shall be performed only by the subcontractors identified in Exhibit 12: List of Subcontractors. Substitution of subcontractors may be made only in conformity with the Subletting and Subcontracting Fair Practices Act, Chapter 4 (commencing with Section 4100, Part 1, Division 2 of the Public Contract Code).

CONTRACTOR shall pay each subcontractor, upon receipt of payment from the COUNTY, an amount equal to the percentage of the completion allowed to the CONTRACTOR on account of the subcontractor's work, less the percentage retained from payments to the CONTRACTOR.

CONTRACTOR shall be as fully responsible to COUNTY for the acts and omissions of the subcontractor as he is for acts and omissions of persons directly employed by him.

CONTRACTOR shall perform, and shall be deemed to have agreed that he is fully licensed in the State of California Contractors State License Board (CSLB) qualified to perform, all portion of scope of work for which a subcontractor has not been identified.

42.8 GENERAL CONDITIONS TESTS

42.8.1 CONTRACTOR's responsibility for required tests. If the AGREEMENT documents, laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction require any work to be inspected, tested, or approved, the CONTRACTOR shall give the County's Project Manager timely notice of its readiness and of the date arranged so the County's Project Manager may observe such inspection, testing, or approval. The CONTRACTOR shall bear all costs of such inspections, tests, and approval, unless otherwise provided.

42.8.2 Responsibility for tests not anticipated in AGREEMENT. If after the commencement of the work the County's Project Manager determines that any work requires special inspection, testing, or approval which Section 38.7.1 does not include, County's Project Manager will, upon written authorization from the COUNTY, instruct the CONTRACTOR to order such special inspection, testing, or approval, and the CONTRACTOR shall give notice as in Section 38.7.1. If such special inspection or testing reveals a failure of the work to comply:

(1) with the requirements of the AGREEMENT documents; or

(2) with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, then the CONTRACTOR shall bear all costs thereof, including the County's Project Manager's additional services made necessary by such failure; otherwise the COUNTY shall bear such costs, and an appropriate Change Order shall be issued.

42.8.3 Certificates of inspection. Required certificates of inspection, testing, or approval shall be secured by the CONTRACTOR and promptly delivered by CONTRACTOR to the County's Project Manager

42.8.4 Observation by County's Project Manager. If the County's Project Manager wishes to observe the inspections, tests, or approvals required by this Section, County's Project Manager will do so promptly and, where practicable, at the source of supply.

42.8.5 No waiver of CONTRACTOR's responsibility. Neither the observations of the County's Project Manager in the administration of the construction AGREEMENT, nor inspections, tests, or approvals by persons other than the CONTRACTOR shall relieve the CONTRACTOR from his obligations to perform the work in accordance with the AGREEMENT documents.

42.9 GENERAL CONDITIONS: MATERIALS

42.9.1 Materials provided by CONTRACTOR. Except as otherwise expressly stated in this AGREEMENT, CONTRACTOR shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete this AGREEMENT within the specified time.

42.9.2 Quality of materials. Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of good quality.

42.9.3 Provision and storage of materials. Materials shall be furnished in ample quantities and at such times as to insure uninterrupted progress of work and shall be stored properly and protected as required. CONTRACTOR shall be entirely responsible for damage or loss by weather or other causes to materials or work under this AGREEMENT. All stored items shall be inventoried, specified by identification numbers (if applicable), released to COUNTY by sureties of the CONTRACTOR and, if stored offsite, stored only in a reputable bonded warehouse.

42.9.4 Substitution of materials. Whenever in the specifications any materials, process, or article is indicated or specified by grade, patent, or proprietary name or by the name of the manufacturer, such specification shall be deemed to be used for the purpose of facilitating the description of the material, process, or article desired and shall be deemed to be followed by the words "or equal," and CONTRACTOR may, unless otherwise stated, offer any material, process, or article which shall in every respect be substantially equal to or better than that specified. The burden of proof as to equality of any material, process, or article shall rest with CONTRACTOR. CONTRACTOR shall submit any request for substitution, together with any substantiating data, within thirty-five (35) days after the award of this AGREEMENT. These provisions authorizing submission of "or equal" justification data shall not in any way authorize an extension of time for performance of this AGREEMENT. In the event CONTRACTOR furnished material, processes, or articles that are more expensive than those specified, the difference in cost so furnished shall be borne by CONTRACTOR. Requests for substitution of products, materials or processes other than those specified must be accompanied by evidence whether or not the proposed substitution:

- (1) is equal in quality and serviceability to the specified item;
- (2) will not entail changes in detail and construction of related work;

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Agreement with Santa Cruz Westside Electric, Inc. dba Sandbar
Photovoltaic System

RMA -- Department of Public Works -- Architectural Services

Term: 210 Calendar Days

Not to Exceed: \$711,867.00

- (3) will be acceptable in consideration of the required design and artistic effect;
(4) will not provide a cost disadvantage to the COUNTY.

CONTRACTOR shall promptly provide, upon request, any other information that may be required of it to assist the COUNTY in determining whether the proposed substitution is acceptable. The final decision shall be that of the COUNTY. COUNTY's approval shall be in writing, shall follow the procedure for Change Orders, and shall be required for the use of a proposed substitute material. COUNTY may condition its approval of the substitution upon delivery to COUNTY of an extended warranty or other assurances of adequate performance of the substitution.

42.10 GENERAL CONDITIONS OPERATIONS AND MAINTENANCE

42.10 Operation and Maintenance Requirements:

42.10.1 Operations and Maintenance during Warranty Period

During the warranty period CONTRACTOR shall provide all necessary repairs needed to keep the system operating as specified in warranty:

- Annual system performance evaluation, including: system testing;
- All required warranty repair work within the 5 Year Complete System Warranty including equipment replacement.
- Repair and/or replacement of defective or parts (including equipment and labor) within the respective 5 Year Complete System Warranty and the Carport-like Structure 10 year Materials and Labor ;
- Annual monitoring for 10 years by the CONTRACTOR, including: energy production, reporting of problems to the COUNTY and dispatch of resources for expeditious resolution of problems.
- All required warranty repair and/or replacement work required after the 5 Year Complete System Warranty pertaining to the 10 year Inverter Standard Warranty, 10 year Solar Panel Product Warranty, 10 year Solar Panel Performance Guarantee, and 25 year Solar Panel Performance Guarantee shall be paid for at our then current hourly labor rates.

42.10.2 Operations and Maintenance Manuals: CONTRACTOR shall provide three (3) copies of operating and maintenance manuals in hard cover binders and deliver to COUNTY. As a minimum the binders shall include:

- A complete set of all approved submittals including shop drawings and product literature.
- As built drawings showing the final placement of all panels, combiner boxes, connections, and conduit placement.
- As built electrical plans, including three line diagrams, and elevation drawing showing the final placement of the electrical equipment
- Cleaning instructions for the PV panels.
- Copies of all start-up procedure measurements.
- Copies of all testing data and reports.
- Contact information for all subcontractors
- Hardware supplier contact information

**42.11 GENERAL CONDITIONS
CLAIMS AND DISPUTE RESOLUTION**

42.11.1 Prompt resolution of differences required. It is the intention of this Section that differences between the Parties arising under and by virtue of the AGREEMENT be brought to the attention of the County's Project Manager at the earliest possible time in order that such matters may be promptly settled, if possible, or other appropriate action may be taken promptly.

42.11.2 AGREEMENT interpretations, performance judging, and decisions by CONTRACTOR and County's Project Manager.

- (a) All claims may be presented informally first to the County's Project Manager. To the extent that resolution of the claim does not involve an extension of time or additional payments, the County's Project Manager may resolve, in writing or otherwise, claims that have been presented informally.
- (b) The County's Project Manager will be, in the first instance, the interpreter of the requirements of the AGREEMENT documents and the judge of the performance thereunder by both the COUNTY and CONTRACTOR. The County's Project Manager will, within a reasonable time, render such interpretations, as he may deem necessary for the proper execution or progress of the work. Claims, disputes and other matters in question between the CONTRACTOR and the COUNTY relating to the execution or progress of the work or the interpretation of the AGREEMENT documents shall be referred initially to the County's Project Manager for decision which he will render in writing within a reasonable time. In his capacity as interpreter and judge, he will exercise his best efforts to ensure faithful performance by both the COUNTY and the CONTRACTOR and will not show partiality to either. All interpretations and decisions of the County's Project Manager shall be consistent with the intent of the AGREEMENT documents.

42.11.3 Written notice to County's Project Manager. Any claim for additional compensation or for an extension of time shall be resolved as hereinafter provided. The CONTRACTOR shall not be entitled to the payment of any additional compensation for any occurrence or matter relating to this AGREEMENT and will not be granted any extension of time for performance under this AGREEMENT, unless the CONTRACTOR first gives written notice of such claim to the County's Project Manager.

42.11.4 Contents of notice of claim. The written notice of claim shall set forth the reasons for which the CONTRACTOR believes additional compensation will or may be due, the nature of the costs involved, the reasons for any extension of time and, insofar as possible, the amount of the claim and the amount of any time extension requested.

42.11.5 Time for giving notice. The notice of claim must be given to the County's Project Manager as follows:

(1) If the claim is for an increase in the AGREEMENT sum, he shall give the County's Project Manager written notice thereof within ten (10) days after the occurrence of the event giving rise to such claim; in addition, this notice shall be given by the CONTRACTOR before proceeding to execute the portion of the work to which the claim relates, except in an emergency endangering life or property, and except where the CONTRACTOR could not reasonably have discovered the facts giving rise to the claim prior to commencement of that portion of the work.

(2) All claims for extension of time shall be made in writing to the County's Project Manager no more than ten (10) days after the occurrence of the delay; otherwise they shall be waived. In the case of a continuing cause of delay, only one (1) claim is necessary.

(3) In all other cases, notice shall be given within ten (10) days after the happening of the event, thing, or occurrence giving rise to the claim.

42.11.6 Response by COUNTY - claims for under \$50,000 and for extensions of time. For claims of less than fifty thousand dollars (\$50,000) and for claims for extension of time, COUNTY shall respond in writing to any written claim within forty-five (45) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the claim any additional documentation supporting the claim or relating to defenses or claims the COUNTY may have against the claimant. If further information is thereafter required, it shall be requested and provided pursuant to Public Contract Code Section 20104.2(b)(2). The COUNTY's response to the claim, as further documented, shall be submitted to the claimant within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

42.11.7 Response by COUNTY - claims of fifty-thousand dollars (\$50,000) or more and less than or equal to three hundred seventy-five thousand dollars (\$375,000). For claims of

fifty thousand dollars (\$50,000) or more and less than or equal to three hundred seventy-five thousand dollars (\$375,000), and for all claims not covered by Section 38.10.4, COUNTY shall respond in writing to any written claim within sixty (60) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the claim any additional documentation supporting the claim or relating to defenses or claims the COUNTY may have against the claimant. If further information is thereafter required, it shall be requested and provided pursuant to Public Contract Code Section 20104.2(c)(2). The COUNTY's response to the claim, as further documented, shall be submitted to the claimant within thirty (30) days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

42.11.8 Prompt response when needed. Whenever it appears that a prompt response is essential, COUNTY will respond to claims sooner than the limits prescribed above.

42.11.9 COUNTY's response disputed or not made. If the claimant disputes the COUNTY's written response, or if the COUNTY fails to respond within the time prescribed, the claimant may so notify the COUNTY, in writing, either within fifteen (15) days of receipt of the COUNTY's response or within fifteen (15) days of the COUNTY's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the COUNTY shall schedule a meet-and-confer conference within thirty (30) days for settlement of the dispute.

42.11.10 Filing of Government Code claims. If the claimant still remains unsatisfied and desires to preserve the right to pursue the matter further, he must then file a claim with the COUNTY, pursuant to Government Code Sections 900 et seq. or Sections 910 et seq.

42.11.11 Civil action. If the Government Code claim is denied, the claimant may file an action in court. Such action shall be subject to Public Contract Code Section 20104.4. This Section applies only to claims subject to Public Contract Code Section 20104. If a claim is not subject to Public Contract Code Section 20104, the claimant's right to file a civil action shall be as otherwise provided by law.

42.11.12 Claims for damages. Should either Party to the AGREEMENT suffer injury or damage to person or property because of any act or omission of the other Party or of any of his employees, agents, or others for whose acts he is legally liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage, provided that in no case may such a claim be filed after expiration of any applicable statute of limitations for filing such a claim. Claims against COUNTY that are subject to this Section shall comply with all procedures set forth in the California Government Code concerning claims against public entities.

42.11.13 Consistency with Public Contract Code Sections 20104 et seq. If any claim arising under this AGREEMENT is subject to the provisions of Public Contract Code Sections

20104 et seq. (Div. 2, Part 3, Chapter 1, Article 1.5), and if the provisions of that Article require a procedure or procedural element different from that established in this AGREEMENT, then the provisions of that Article shall apply in place of the conflicting procedure or procedural element established herein.

42.12 GENERAL CONDITIONS USE OF SITE

42.12.1 Limit of operations. The CONTRACTOR shall confine his apparatus, the storage of materials, and the operations of his workers to limits indicated on the plans, or by law, ordinances, permits, or directions of the County's Project Manager and shall not unreasonably occupy the premises with his materials. Insofar as possible, the CONTRACTOR shall arrange his work and its progress to prevent any interference with the operations of the existing facilities. All utilities must be protected and connections made to utilities so as not to interrupt service.

42.12.2 Metering devices. For the purpose of providing utility service to the project, CONTRACTOR may install or cause to be installed metering devices or other equipment of utility companies or of political subdivisions, title to which is commonly retained by the utility company or political subdivision. If any such metering device or equipment is installed, CONTRACTOR shall advise COUNTY as to the owner of such device or equipment.

42.12.3 Sanitary facilities. CONTRACTOR shall provide sanitary toilet facilities for the use of all workers and subcontractors. The building shall be properly stocked and maintained in a sanitary condition at all times and shall be left at the site until removal is directed by the County's Project Manager. Use of the toilet facilities in the Work under construction shall not be permitted.

42.12.4 Field Office. CONTRACTOR shall provide a temporary, private office of not less than 150 square feet of floor area to be located as directed by the County's Project Manager and to be maintained until removal is authorized by the COUNTY. The office shall be of substantial waterproof construction with adequate natural light and ventilation by means of stock-design windows. The door shall have a key-type lock or padlock hasp. A table satisfactory for study of plans and two chairs shall be provided by CONTRACTOR. CONTRACTOR shall provide and pay for adequate lights, heat, and air conditioning for the field office until authorized removal.

43.0 NOTICES

Notices required to be given to the respective Parties under this AGREEMENT shall be deemed given by any of the following means:

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Agreement with Santa Cruz Westside Electric, Inc. dba Sandbar
Photovoltaic System

RMA - Department of Public Works - Architectural Services

Term: 210 Calendar Days

Not to Exceed: \$711,867.00

- (1) when personally delivered to the COUNTY's Contract Administrator or to CONTRACTOR's responsible officer;
- (2) when personally delivered to the party's principle place of business during normal business hours, by leaving notice with any person apparently in charge of the office and advising such person of the import and contents of the notice;
- (3) twenty-four (24) hours after the notice is transmitted by FAX machine to the other party, at the party's FAX number specified pursuant to this AGREEMENT, provided that the party giving notice by FAX must promptly confirm receipt of the FAX by telephone to the receiving party's office; or
- (4) three (3) days after the notice is deposited in the U. S. mail with first class or better postage fully prepaid, addressed to the party as indicated below.

Notices mailed or faxed to the Parties shall be addressed as follows:

TO THE COUNTY:

Contracts/Purchasing Officer
County of Monterey, Contracts/Purchasing Division
168 W. Alisal Street, 3rd Floor
Salinas, CA 93901-2439
Tel. No.: (831) 755-4990 FAX No.: (831) 755-4969

TO THE CONTRACTOR:

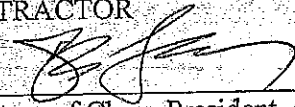
Santa Cruz Westside Electric, Inc. dba Sandbar
849 Almar Avenue, Suite C #528
Santa Cruz, CA 95060
Tel. No.: (831) 469-8888 FAX No.: (831) 515-5098

IN WITNESS WHEREOF, the Parties execute this AGREEMENT as follows:

MONTEREY COUNTY

CONTRACTOR

Contracts/Purchasing Officer

By: 
Signature of Chair, President, or
Vice-President

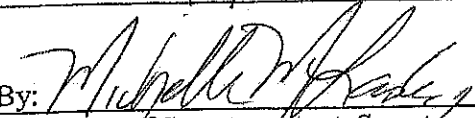
Dated:


Printed Name and Title

Approved as to Fiscal Provisions:

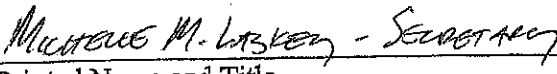
Dated: 11/1/11

Auditor/Controller

By: 
(Signature of Secretary, Asst. Secretary, CFO,
Treasurer or Asst. Treasurer)*

Dated:

RISK MANAGEMENT
COUNTY OF MONTEREY
Approved as to Indemnity and Insurance:
APPROVED AS TO INDEMNITY/
INSURANCE LANGUAGE

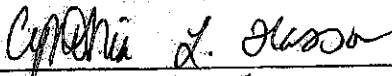

Printed Name and Title

Risk Management

Dated: 11/1/11

By: 
Date: 11-9-11

Approved as to Form and Legality
Office of the County Counsel


Deputy County Counsel

Dated: 11-3-11

*INSTRUCTIONS: IF CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this AGREEMENT on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the AGREEMENT.

**ATTACHMENT A – ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT (EECBG)
CONTRACTOR/VENDOR OR SUBCONTRACTOR
FLOWDOWN REQUIREMENTS**

ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT PROGRAM

**CONTRACTOR/VENDOR FLOWDOWN PROVISIONS FOR EECBG FINANCIAL ASSISTANCE
AWARDS**

SPECIAL TERMS AND CONDITIONS

Department of Energy (DOE) has classified CONTRACTOR as a vendor in this scenario therefore the following flowdown requirements specified in the Energy Efficiency and Conservation Block Grant Program's (EECBG) Special Terms and Conditions apply:

The provisions in 10 CFR 600.236, "Procurement", Section (i) "Contract Provisions", Numbers 1-13 are incorporated herein by reference.

1. RESOLUTION OF CONFLICTING CONDITIONS

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be referred to the DOE Award Administrator for guidance.

2. LIMITATIONS ON USE OF FUNDS

- a. By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, for gambling establishments, aquariums, zoos, golf courses or swimming pools.

3. STATEMENT OF FEDERAL STEWARDSHIP

DOE will exercise normal Federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.

4. SITE VISITS

DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. Contractor/vendor must provide, and must require its subcontractors to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

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5. REPORTING REQUIREMENTS

CONTRACTOR/Vendor shall cooperate with the COUNTY's request for information related to the following reporting requirements:

- a. Requirements. The reporting requirements for this award are identified on the Federal Assistance Reporting Checklist, DOE F 4600.2. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension or termination of the current award, and withholding of future awards. CONTRACTOR/vendor is advised that a willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies.
- b. Additional Recovery Act Reporting Requirements are found in the Provision below labeled: "REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT."

6. PUBLICATIONS

- a. CONTRACTOR/vendor shall consult with the County prior to any publications related to the results of the work conducted under this contract.
- b. CONTRACTOR/vendor is advised that an acknowledgment of DOE support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

Acknowledgment: "This material is based upon work supported by the Department of Energy [National Nuclear Security Administration] [add name(s) of other agencies, if applicable] under Award Number(s) [enter the award number(s)]."

Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

**ATTACHMENT A – ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT (EECBG)
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7. FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS

You must obtain any required permits, ensure the safety and structural integrity of any repair, replacement, construction and/or alteration, and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

8. LOBBYING RESTRICTIONS

By accepting funds under this contract, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

9. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS

You are restricted from taking any action using Federal funds, which would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE providing either a National Environmental Policy Act (NEPA) clearance or a final NEPA decision regarding this project.

If you move forward with activities that are not authorized for Federal funding by the DOE Contracting Officer in advance of the final NEPA decision, you are doing so at risk of not receiving Federal funding and such costs may not be recognized as allowable cost share.

If this award includes construction activities, you must submit an environmental evaluation report/evaluation notification form addressing NEPA issues prior to DOE initiating the NEPA process.

10. HISTORIC PRESERVATION

Prior to the expenditure of Project funds to alter any historic structure or site, the CONTRACTOR/vendor shall ensure that it is compliant with Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. If applicable, the Recipient or subrecipient must contact the State Historic Preservation Officer (SHPO), and the Tribal Historic Preservation Officer (THPO) to coordinate the Section 106 review outlined in 36 CFR Part 800. In the event that a State, State SHPO and DOE enter into a Programmatic Agreement, the terms of that Programmatic Agreement shall apply to all recipient and subrecipient activities within that State. SHPO contact information is available at the following link: <http://www.ncshpo.org/find/index.htm>. THPO contact information is available at the following link: <http://www.nathpo.org/map.html>. Section 110(k) of the NHPA applies to DOE funded activities.

The CONTRACTOR/vendor certifies that it will retain sufficient documentation to demonstrate that the CONTRACTOR/vendor has received required approval(s) from the SHPO or THPO for the Project. CONTRACTOR/vendor shall avoid taking any action that results in an adverse effect to historic properties

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pending compliance with Section 106. The CONTRACTOR/vendor shall deem compliance with Section 106 of the NHPA complete only after it has received this documentation. The CONTRACTOR/vendor shall make this documentation available to DOE on DOE's request (for example, during a post-award audit). CONTRACTOR/vendor will be required to report annually on September 1 the disposition of all historic preservation consultations by category.

11. WASTE STREAM

The CONTRACTOR/vendor agrees that it will create or obtain a waste management plan addressing waste generated by a proposed Project prior to the Project generating waste. This waste management plan will describe the CONTRACTOR's/vendor's plan to dispose of any sanitary or hazardous waste (e.g., construction and demolition debris, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, and asbestos) generated as a result of the proposed Project. The CONTRACTOR/vendor shall ensure that the Project is in compliance with all Federal, state and local regulations for waste disposal. The CONTRACTOR/vendor shall make the waste management plan and related documentation available to DOE on DOE's request (for example, during a post-award audit).

12. DECONTAMINATION AND/OR DECOMMISSIONING (D&D) COSTS

CONTRACTOR/vendor is advised that it cannot undertake:

- a. Decontamination and/or Decommissioning (D&D) of any of the COUNTY's facilities, or (ii) any costs which may be incurred by the CONTRACTOR/vendor in connection with the D&D of any of its facilities due to the performance of the work under this Contract, whether said work was performed prior to or subsequent to the effective date of the Contract.
- b. The decontamination and decommissioning (D&D) provision does not prohibit using EECBG funds for asbestos removal, lead paint removal and similar activities that are incidental to carrying out the EECBG activity. If the recipient determines that an EECBG activity requires additional measures for compliance with asbestos and lead paint removal requirements, DOE funds could be applied towards the cost of the energy efficiency improvement and up to twenty-five percent (25%) towards compliance efforts.

13. SUBGRANTS AND LOANS

- a. The CONTRACTOR/vendor hereby warrants that it will ensure that all its activities and activities by subcontractor(s) to accomplish the approved Project Description or Statement of Project Objectives are eligible activities under 42 U.S.C. 171534(1)-(13).
- b. Upon the CONTRACTOR/vendor selection of the subcontractor, the CONTRACTOR/vendor shall notify (i.e. approval not required) the COUNTY with the following information for each, regardless of dollar amount:
 - Name of Sub-Grantee
 - DUNS Number
 - Award Amount

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- Statement of work including applicable activities

14. CENTRAL CONTRACTOR REGISTRATION AND UNIVERSAL IDENTIFIER
REQUIREMENTS

A. Requirement for Central Contractor Registration (CCR)

Unless you are exempted from this requirement under 2 CFR 25.110, you as the CONTRACTOR/vendor must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Definitions

For purposes of this Contract:

1. Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at <http://www.ccr.gov>).

2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR Part 25, Subpart C:

- a. A Governmental organization, which is a State, local government, or Indian Tribe;
- b. A foreign public entity;
- c. A domestic or foreign nonprofit organization;
- d. A domestic or foreign for-profit organization; and
- e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:

a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

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- b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. ___210 of the attachment to OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations).
 - c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.
5. Subrecipient means an entity that:
- a. Receives a subaward from you under this award; and
 - b. Is accountable to you for the use of the Federal funds provided by the subaward.
6. COUNTY is the County of Monterey, the owner of the project and identified as such in the AGREEMENT, or its authorized representative.
7. Subcontractor is a person or organization who has direct contract with the ONTRACTOR/vendor to perform any of the work as the site or to furnish material worked to special design according to plans and specifications of this work. The term “subcontractor” also includes sub-subcontractors performing work at the site or furnishing specially designed material for the work, who have only an indirect relationship to the CONTRACTOR/vendor.

15. SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (May 2009)

Preamble

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act) was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning specific procedural requirements for the new reporting requirements. The CONTRACTOR/vendor will be provided these details as they become available. The CONTRACTOR/vendor shall cooperate with the COUNTY to comply with all requirements of the Act. If the CONTRACTOR/vendor believes there is any inconsistency between ARRA requirements and current award terms and conditions, the issues will be referred to the Contracting Officer for reconciliation.

Definitions

For purposes of this clause, Covered Funds means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special

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accounting codes and will be identified as Recovery Act funds in the grant, cooperative AGREEMENT or TIA and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

Non-Federal employer means any employer with respect to covered funds -- the CONTRACTOR/vendor, subcontractor, grantee, or recipient, as the case may be, if the CONTRACTOR, subcontractor, grantee, or recipient is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving covered funds; or with respect to covered funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

Recipient means any entity that receives Recovery Act funds directly from the Federal government (including Recovery Act funds received through grant, loan, or contract) other than an individual and includes a State that receives Recovery Act Funds.

Special Provisions

A. Flow Down Requirement

CONTRACTOR/vendor must include these special terms and conditions in any subcontract.

B. Segregation of Costs

CONTRACTOR/vendor must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects.

C. Prohibition on Use of Funds

None of the funds provided under this AGREEMENT derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

D. Access to Records

With respect to each financial assistance agreement awarded utilizing at least some of the funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, any representative of an appropriate inspector general appointed under Section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized –

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(1) to examine any records of the CONTRACTOR/vendor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to, and involve transactions that relate to, the subcontract, subcontract, grant, or subgrant; and

(2) to interview any officer or employee of the CONTRACTOR/vendor, grantee, subgrantee, or agency regarding such transactions.

E. Publication

An application may contain technical data and other data, including trade secrets and/or privileged or confidential information, which the applicant does not want disclosed to the public or used by the Government for any purpose other than the application. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies:

Notice of Restriction on Disclosure and Use of Data

The data contained in pages of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data here to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant.

Information about this AGREEMENT will be published on the Internet and linked to the website www.recovery.gov, maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under Sections 552 and 552a of Title 5, United States Code.

F. Protecting State and Local Government and Contractor Whistleblowers.

CONTRACTOR/Vendor is advised of the requirements of Section 1553 of the Act are summarized below. They include, but are not limited to:

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

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- gross management of an agency contract or grant relating to covered funds;
- a gross waste of covered funds;
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or
- as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Agency Action: Not later than thirty (30) days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Nonenforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration: Except as provided in a collective bargaining AGREEMENT, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this Section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, www.Recovery.gov, for specific requirements of this section and prescribed language for the notices.).

G. False Claims Act

CONTRACTOR/vendor shall promptly refer to the COUNTY any credible evidence that a principal, employee, agent, CONTRACTOR, sub-grantee, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

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H. Information in Support of Recovery Act Reporting

CONTRACTOR/vendor may be required to submit backup documentation for expenditures of funds under the Recovery Act including such items as timecards and invoices. CONTRACTOR/vendor shall provide copies of backup documentation at the request of the COUNTY.

I. Availability of Funds

Funds obligated to this award are available for reimbursement of costs until December 20, 2012.

16. REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT

CONTRACTOR/vendor shall cooperate with the COUNTY's request for information related to the following reporting and registration requirements:

(a) The CONTRACTOR/vendor is required to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The reports are due to the COUNTY no later than three calendar days after each calendar quarter in which the CONTRACTOR/vendor receives the assistance award funded in whole or in part by the Recovery Act.

(c) CONTRACTOR/vendor must maintain current registrations in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.

(d) The CONTRACTOR/vendor shall provide the COUNTY documentation necessary to report the information described in section 1512(c) of the Recovery Act.

17. NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

*Special Note: Definitization of the Provisions entitled, "REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009" and "REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS) – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009" will be done upon definition and review of final activities.

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18. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS –
SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

If the CONTRACTOR/vendor determines at any time that any construction, alteration, or repair activity on a public building or public works will be performed during the course of the project, the CONTRACTOR/vendor shall notify the COUNTY prior to commencing such work and the following provisions shall apply.

(a) *Definitions.* As used in this award term and condition--

(1) *Manufactured good* means a good brought to the construction site for incorporation into the building or work that has been--

(i) Processed into a specific form and shape; or

(ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(2) *Public building and public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

(3) *Steel* means an alloy that includes at least fifty percent (50%) iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Domestic preference.*

(1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111--5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in Paragraph (b)(3) of this Section and condition.

(2) This requirement does not apply to the material listed by the Federal Government as follows: None.

(3) The award official may add other iron, steel, and/or manufactured goods to the list in Paragraph (b) (2) of this Section and condition if the Federal Government determines that--

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- (i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than twenty-five percent (25%);
- (ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- (iii) The application of the restriction of Section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) Request for determination of inapplicability of Section 1605 of the Recovery Act.

- (1)(i) Any CONTRACTOR/vendor request to use foreign iron, steel, and/or manufactured goods in accordance with Paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including--
 - (A) A description of the foreign and domestic iron, steel, and/or manufactured goods;
 - (B) Unit of measure;
 - (C) Quantity;
 - (D) Cost;
 - (E) Time of delivery or availability;
 - (F) Location of the project;
 - (G) Name and address of the proposed supplier; and
 - (H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with Paragraph (b)(3) of this Section.
 - (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in Paragraph (d) of this Section.
 - (iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.
 - (iv) Any CONTRACTOR/vendor request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the CONTRACTOR/vendor could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.
- (2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to Section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds,

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and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to Section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with Section 1605 of the American Recovery and Reinvestment Act.

(d) *Data.* To permit evaluation of requests under Paragraph (b) of this Section based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity	Cost (dollars)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			
<i>Item 2:</i>			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[*Include all delivery costs to the construction site.]

19. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS) – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

(a) *Definitions.* As used in this award term and condition--

Designated country --

- (1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Chinese Taipei (Taiwan), Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland,

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Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom;

- (2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore);
- (3) A United States-European Communities Exchange of Letters (May 15, 1995) country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom; or
- (4) An Agreement between Canada and the United States of America on Government Procurement country (Canada).

Designated country iron, steel, and/or manufactured goods –

- (1) Is wholly the growth, product, or manufacture of a designated country; or
- (2) In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

Domestic iron, steel, and/or manufactured good –

- (1) Is wholly the growth, product, or manufacture of the United States; or
- (2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

Foreign iron, steel, and/or manufactured good means iron, steel and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

Manufactured good means a good brought to the construction site for incorporation into the building or work that has been

- (1) Processed into a specific form and shape; or
- (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of

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the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

Steel means an alloy that includes at least fifty percent (50%) iron, between .02 and 2 percent carbon, and may include other elements.

(b) Iron, steel, and manufactured goods.

(1) The award term and condition described in this section implements-

(i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of Section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in Section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. As of January 1, 2010, this obligation shall only apply to projects with an estimated value of \$7,804,000 or more.

(2) The CONTRACTOR/vendor shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in Paragraphs (b)(3) and (b)(4) of this Section.

(3) The requirement in Paragraph (b) (2) of this section does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows: None.

(4) The award official may add other iron, steel, and manufactured goods to the list in Paragraph (b) (3) of this Section if the Federal Government determines that--

(i) The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than twenty-five percent (25%);

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

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(iii) The application of the restriction of Section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of Section 1605 of the Recovery Act or the Buy American Act.*

(1)(i) Any CONTRACTOR/vendor request to use foreign iron, steel, and/or manufactured goods in accordance with Paragraph (b)(4) of this section shall include adequate information for Federal Government evaluation of the request, including--

- (A) A description of the foreign and domestic iron, steel, and/or manufactured goods;
- (B) Unit of measure;
- (C) Quantity;
- (D) Cost;
- (E) Time of delivery or availability;
- (F) Location of the project;
- (G) Name and address of the proposed supplier; and
- (H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with Paragraph (b)(4) of this Section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in Paragraph (d) of this Section.

(iii) The cost of iron, steel, or manufactured goods shall include all delivery costs to the construction site and any applicable duty.

(iv) Any CONTRACTOR/vendor request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to Section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is non availability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other appropriate actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to Section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods other than designated country iron, steel, and/or manufactured goods is noncompliant with the applicable Act.

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(d) *Data.* To permit evaluation of requests under Paragraph (b) of this Section based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity	Cost (dollars)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			
<i>Item 2:</i>			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[*Include all delivery costs to the construction site.]

20. WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT

CONTRACTOR/Vendor shall cooperate with the COUNTY's request for information related to the following Wage Rate requirements:

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by CONTRACTORS/vendors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

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(b) For additional guidance on the wage rate requirements of Section 1606, refer to DOL website: <http://www.wdol.gov>. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

21. DAVIS-BACON ACT AND CONTRACT WORKHOURS AND SAFETY STANDARD ACT

CONTRACTOR/Vendor shall cooperate with the COUNTY's request for information related to the following Davis-Bacon Act (DBA) requirements:

Definitions: For purposes of this provision, "Davis Bacon Act and Contract Work Hours and Safety Standards Act," the following definitions are applicable:

(1) "Award" means any grant, cooperative agreement or technology investment agreement made with Recovery Act funds by the Department of Energy (DOE) to a Recipient. Such Award must require compliance with the labor standards clauses and wage rate requirements of the DBA for work performed by all laborers and mechanics employed by Recipients (other than a unit of State or local government whose own employees perform the construction) Subrecipients, CONTRACTORS, and subcontractors.

(2) "CONTRACTOR/Vendor" means an entity that enters into a Contract. For purposes of these clauses, CONTRACTOR/vendor shall include (as applicable) prime CONTRACTORS, Recipients, Subrecipients, and Recipients' or Subrecipients' CONTRACTORS, subcontractors, and lower-tier subcontractors. "CONTRACTOR" does not mean a unit of State or local government where construction is performed by its own employees."

(3) "Contract" means a contract executed by a Recipient, Subrecipient, prime CONTRACTOR, or any tier subcontractor for construction, alteration, or repair. It may also mean (as applicable) (i) financial assistance instruments such as grants, cooperative agreements, technology investment agreements, and loans; and, (ii) Sub awards, contracts and subcontracts issued under financial assistance agreements. "Contract" does not mean a financial assistance instrument with a unit of State or local government where construction is performed by its own employees.

(4) "Contracting Officer" means the DOE official authorized to execute an Award on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process.

(5) "Recipient" means any entity other than an individual that receives an Award of Federal funds in the form of a grant, cooperative agreement, or technology investment agreement directly from the Federal Government and is financially accountable for the use of any DOE funds or property, and is legally responsible for carrying out the terms and conditions of the program and Award.

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(6) "Subaward" means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a Recipient to an eligible Subrecipient or by a Subrecipient to a lower-tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include the Recipient's procurement of goods and services to carry out the program nor does it include any form of assistance which is excluded from the definition of "Award" above.

(7) "Subrecipient" means a non-Federal entity that expends Federal funds received from a Recipient to carry out a Federal program, but does not include an individual that is a beneficiary of such a program.

(a) Davis Bacon Act.

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and, without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the CONTRACTOR/vendor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the DBA on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Paragraph (a)(1)(iv) of this Section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, *provided* that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under Paragraph (a)(1)(ii) of this Section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the CONTRACTOR/vendor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (A) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer

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shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the CONTRACTOR/vendor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the thirty (30) day period that additional time is necessary.

(C) In the event the CONTRACTOR/vendor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the thirty (30) day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to Paragraphs (a)(1)(ii)(B) or (C) of this Section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the CONTRACTOR/vendor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the CONTRACTOR/vendor does not make payments to a trustee or other third person, the CONTRACTOR/vendor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *provided* that the Secretary of Labor has found, upon the written request of the CONTRACTOR/vendor, that the applicable standards of the DBA have been met. The

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Secretary of Labor may require the CONTRACTOR/vendor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding.

The Department of Energy or the COUNTY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the CONTRACTOR/vendor under this Contract or any other Federal contract with the same prime CONTRACTOR, or any other federally-assisted contract subject to DBA prevailing wage requirements, which is held by the same prime CONTRACTOR, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the CONTRACTOR/vendor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Department of Energy, Recipient, or Subrecipient, may, after written notice to the CONTRACTOR/vendor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the CONTRACTOR/vendor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the DBA), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the DBA, the CONTRACTOR/vendor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. CONTRACTORS/vendor employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The CONTRACTOR/vendor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the CONTRACTOR/vendor will submit the payrolls to the COUNTY (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the DOE. The payrolls submitted shall set out accurately and completely all of the information

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required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime CONTRACTOR/vendor is responsible for the submission of copies of payrolls by all subcontractors. CONTRACTORS/vendors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the DOE if the agency is a party to the Contract, but if the agency is not such a party, the CONTRACTOR/vendor will submit them to the COUNTY (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the DOE, the CONTRACTOR/vendor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this Section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the COUNTY (as applicable), applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the CONTRACTOR/vendor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a) (3) (ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a) (3) (i) of Regulations, 29 CFR Part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by Paragraph (a)(3)(ii)(B) of this Section.

(D) The falsification of any of the above certifications may subject the CONTRACTOR/vendor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

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(iii) The CONTRACTOR/vendor or subcontractor shall make the records required under Paragraph (a)(3)(i) of this Section available for inspection, copying, or transcription by authorized representatives of the DOE or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the CONTRACTOR/vendor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the CONTRACTOR/vendor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees—

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. DOL, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the CONTRACTOR/vendor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a CONTRACTOR/vendor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the CONTRACTOR's/vendor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the CONTRACTOR/vendor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually

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registered in a program which has received prior approval, evidenced by formal certification by the U.S. DOL, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the CONTRACTOR/vendor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR Part 30.

(5) Compliance with Copeland Act requirements.

The CONTRACTOR/vendor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Contract.

(6) Contracts and Subcontracts.

The COUNTY, the COUNTY's CONTRACTORS/vendors and subCONTRACTOR shall insert in any Contracts the clauses contained herein in (a) (1) through (10) and such other clauses as the DOE may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The COUNTY shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of the Paragraphs in this clause.

(7) Contract termination: debarment.

A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a CONTRACTOR/vendor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Contract.

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(9) Disputes concerning labor standards.

Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the DOL set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the COUNTY the CONTRACTOR/Vendor (or any of its subcontractors), and the contracting agency, the U.S. DOL, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this Contract, the CONTRACTOR/Vendor certifies that neither it (nor he or she) nor any person or firm who has an interest in the CONTRACTOR's/Vendor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the DBA or 29 CFR 5.12(a)(1).

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the DBA or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act.

As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements.

No CONTRACTOR/Vendor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages.

In the event of any violation of the clause set forth in Paragraph (b) (1) of this Section, the CONTRACTOR/Vendor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such CONTRACTOR/Vendor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this Section, in the sum of ten dollars (\$10) for each calendar day on which such individual was required or permitted to work in excess of the

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standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in Paragraph (b)(1) of this Section.

(3) Withholding for unpaid wages and liquidated damages.

The DOE or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the DOL withhold or cause to be withheld, from any moneys payable on account of work performed by the CONTRACTOR/Vendor or subcontractor under any such contract or any other Federal contract with the same prime CONTRACTOR/Vendor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime CONTRACTOR, such sums as may be determined to be necessary to satisfy any liabilities of such CONTRACTOR/Vendor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in Paragraph (b)(2) of this Section.

(4) Contracts and Subcontracts.

The COUNTY, and COUNTY's CONTRACTOR/vendor or subcontractor shall insert in any Contracts, the clauses set forth in Paragraph (b) (1) through (4) of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The CONTRACTOR/vendor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in Paragraphs (b) (1) through (4) of this Section.

(5) The CONTRACTOR/Vendor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the CONTRACTOR/Vendor or subcontractor for inspection, copying, or transcription by authorized representatives of the DOE and the DOL, and the CONTRACTOR/Vendor or subcontractor will permit such representatives to interview employees during working hours on the job.

(c) Responsibilities for Davis Bacon Act.

(1) On behalf of the COUNTY the CONTRACTOR/vendor shall perform the following functions:

(i) Obtain, maintain, and monitor all DBA certified payroll records submitted by the subcontractors at any tier under this Contract;

(ii) Review all DBA certified payroll records for compliance with DBA requirements, including applicable DOL wage determinations;

(iii) Notify COUNTY of any non-compliance with DBA requirements by subcontractors at any tier, including any non-compliances identified as the result of reviews performed pursuant to Paragraph (ii) above;

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(iv) Address any subcontractor DBA non-compliance issues; if DBA non-compliance issues cannot be resolved in a timely manner, forward complaints, summary of investigations and all relevant information to the COUNTY;

(v) Provide the COUNTY with detailed information regarding the resolution of any DBA non-compliance issues;

(vi) Perform services in support of DOE and COUNTY investigations of complaints filed regarding noncompliance by CONTRACTORS/Vendors and subcontractors with DBA requirements;

(vii) Perform audit services as necessary to ensure compliance by CONTRACTORS/Vendors and subcontractors with DBA requirements and as requested by the COUNTY and DOE Contracting Officer; and

(viii) Provide copies of all records upon request by the COUNTY, DOE or DOL in a timely manner.

(d) Rates of Wages

The prevailing wage rates determined by the Secretary of Labor can be found at <http://www.wdol.gov/>.

ATTACHMENT B – SCOPE OF WORK

Scope of Work For Design & Installation of Solar Photovoltaic System

The scope of work shall include planning, permitting, design, engineering, labor, materials, construction management, construction, delivery, installation, and commissioning of a new 140 kW (kilowatt) DC (Direct current) (STC (Standard Test Conditions) Solar Photovoltaic (PV) Carport-like system at the Laurel Yard Buildings A-H located at 855 E. Laurel St. in Salinas, California. The project is to be completed within two hundred and ten (210) consecutive calendar days (including Saturdays, Sundays and all Federal holidays) and in accordance with Energy Efficiency and Conservation Block Grant (EECBG) requirements and any future amendments thereto. The project time includes an allowance of thirty (30) days total for delays while waiting for COUNTY and other governmental approvals. For each day that such delays exceed that allowance, CONTRACTOR shall be granted an extension of a day to complete the project.

The PV system shall be composed of carport-like structures covered with solar panels. Power generated shall pass to inverters and then tie-in to electricity grid at the main panel located on South side of the parking lot as indicated in site plan.

Construction activity shall include selective demolition of the existing employee parking lot and pavement for the installation of solar carport-like structures and solar modules and underground wiring. New work includes but is not limited to Cast-In-Place Concrete, Trenching, Structural Steel, Cold-Formed Metal Framing, Metal Fabrications, Special Construction/Mounting, extensive Electrical Work, and installation of Data Acquisition System and Monitoring including testing and training. CONTRACTOR shall ensure the solar photovoltaic system and carport-like structures are designed and constructed in compliance with current State of California 2007 Building Code and Electrical Code, Uniform Building Code (UBC) and National Electrical Code (NEC).

Solar Photovoltaic System Description

Size: 140 kW DC STC

Modules: American Made 240 WDC STC modules manufacturer TBD

Inverters: (2) American Made PV Powered Inverters sized for system

The system will be designed and mounted in the location identified in the preliminary site plan utilizing a carport "T" style shade structure system.

The carport structures will be fabricated of structural steel and be a single plane design with a five (5) degree tilt. Electrical conduits will be routed underground from the carports to an inverter pad located in close proximity to the carport arrays. The inverter pad will accommodate the designed inverters and all associated electrical components required for the installation. From the inverter pad, conduits will be routed underground to the MSB (Main Switch Board) for interconnection into the site electrical system. A single disconnect will be installed at this location for solar interconnection and single point disconnecting. The interconnection point will be the MSB located near the parking

ATTACHMENT B – SCOPE OF WORK

structures to be installed. Adequate space will be available for installation of the equipment and monitoring equipment at the MSB outside. CONTRACTOR will expand the existing equipment pad to accommodate the additional solar equipment to be mounted at the MSB. Underground conduits will be installed via either trenching or directional boring.

The Scope of Work includes the following components:

- I. Design and Engineering per California 2007 Building Code
- II. Construction
- III. Commissioning and Training
- IV. Monthly Project Status Meetings and On Site Meetings as Deemed Necessary by COUNTY Project Manager

I. Design and Engineering

All phases within the Design and Engineering Scope shall include providing and or executing the following in a timely manner: meetings, drawings, specifications, scaled drawings, documents, calculations, estimates, projections, permits, sub contracting, consulting, planning, building and electrical code review and definition, project management, documentation and contracting.

All information shall be electronically distributed to the COUNTY.

The Scope of Work for the Design and Engineering Phase shall include three (3) phases:

1. Programming & Schematic Design Phase
2. Design Development Phase
3. Construction Document Phase

CONTRACTOR shall identify the final location for the solar PV inverter equipment and its related components that shall meet the following criteria:

- Ease of maintenance & monitoring
- Efficient operation
- Low operating losses
- Secured location & hardware
- Compatibility with existing facilities.

ATTACHMENT B – SCOPE OF WORK

1. Programming & Schematic Design Phase

CONTRACTOR shall conduct an introductory meeting to introduce the design team to the COUNTY's representatives. The scope and project schedule shall be presented and reviewed with the COUNTY and a more detailed discussion of project programming shall follow. CONTRACTOR shall distribute a Project Organization Chart, including a contacts list, list of consultants, contractors, project budget and schedule and staff to the COUNTY. CONTRACTOR shall electronically distribute the contact information and minutes of all meetings to the COUNTY representatives. The meeting minutes shall be formally organized and documented to show new, old, closed and outstanding items per all Divisions of work, and shall be maintained for reference throughout the course of the project.

During the course of the Programming & Schematic Phase, CONTRACTOR shall develop, perform, execute and provide the following documents and information:

- 1) CONTRACTOR shall meet on site with COUNTY during the Programming & Schematic Plan phase for document review and approval. Contractor shall attend one (1) meeting with review and comment cycle.
- 2) COUNTY shall provide the Geotechnical, Underground Utility Detection Report and Survey Map (elevations) to CONTRACTOR.
- 3) CONTRACTOR shall provide scaled Programming & Schematic drawings (electronically scaled in Auto CAD) of the Site Plan showing all existing above and underground utilities, survey map (elevations) location of the geotechnical borings, proposed placement and elevation of the selected (selected by the COUNTY) carport-like structure, solar panel support structures, PV panels, inverter assembly and support structure, above and below ground conduit tie-in into the COUNTY's switch gear in both the Plan View and Elevation drawing formats.
- 4) CONTRACTOR shall provide Preliminary (Schematic) mounting details, with profile views of the proposed solar panels and carport-like structures at the employee parking lot west of Building A.
- 5) CONTRACTOR shall provide a Preliminary (Schematic) electrical diagram showing all points of connection to the building's distribution system, meters, inverter, disconnect, junction boxes, and other main components.
- 6) CONTRACTOR shall provide Preliminary (Schematic) of building penetrations and weather-proofing methods where the Inverter Conduits penetrate the COUNTY's switch gear.
- 7) CONTRACTOR shall provide Preliminary (Schematic) Equipment Data Sheets and a complete list of equipment, devices and components, listing the manufacturer, model number, warranties, and quantities for solar modules, meters, inverters, monitoring system, and mounting system.

ATTACHMENT B – SCOPE OF WORK

- 8) CONTRACTOR shall provide the Solar Photovoltaic System data which addresses the following:
 - a. Power Capacity (DC kW STC), Power Capacity (AC kW CEC)
 - b. Estimated capacity factor (%), annual output (kWh), and annual output degradation rate; methodology for developing these estimates
- 9) Based on approval by the COUNTY, CONTRACTOR shall prepare final Programming & Schematic design documents, plans and specifications for the project, including mounting profile of the solar panels, above ground utilities and underground utility trench network, inverter location and mounting assembly, and electrical engineering.
- 10) CONTRACTOR shall be given written permission to proceed to the Design development Phase from the COUNTY based on the approval of the Programming & Schematic documents, plans and specifications

2. Design Development Phase

During the course of the Design Development (DD) Phase, CONTRACTOR shall develop, perform, execute and provide the following documents:

- 1) CONTRACTOR shall meet on site with COUNTY during the DD Phase for document review and COUNTY approval. Contractor shall attend one (1) meeting with review and comment cycle.
- 2) CONTRACTOR shall provide a complete DD scaled (D size) drawing package, inclusive of all proposed drawings sheets, including a Preliminary Construction Specification document completed per Division of Work.
- 3) Drawing Sheets – Design Development Phase
CONTRACTOR shall provide information listed in 1 through 38. Information may be combined.

- 1 Title Page
- 2 General Construction Notes
- 3 Civil – Site Plan & Final Survey Map
- 4 Civil - Site Plan – Existing Above & Underground Utilities & Proposed Carport-like locations for new Solar Structure System
- 5 Civil – Demolition Plan & Staging & Temporary Controls
- 6 Civil – Storm Water/ Erosion Control Plan
- 7 Civil – Proposed Electrical Above & Underground Plan & Utility Trench Construction Details & Compaction Requirements
- 8 Architectural (Arch) – Plan View of Site Plan
- 9 Arch – Solar Carport-like Structure & Building Penetration Elevations
- 10 Arch – Solar Carport-like Structure & Solar Photovoltaic Panel Finish & Details
- 11 Arch – Inverter Assembly Module Location & Elevation
- 12 Arch – Construction & Finish Notes

ATTACHMENT B – SCOPE OF WORK

- 13 Structural – Plan View & All Elevations
- 14 Structural – Solar Carport-like Structure Steel Construction & Fabrication Notes
- 15 Structural – Solar Carport-like Structure Soils, Concrete & Rebar Fabrication & Construction Notes & Details
- 16 Civil – Demolition Plan & Staging & Temporary Controls which also addresses removal of light poles, and any saw cuts or curb removal
- 17 Structural – Carport-like Erection/Assembly/Connections/Mounting & Welding Details
- 18 Structural – Solar Carport-like Structure Foundation/Footing/Grade Beam Details
- 19 Structural – Carport-like Roof Plan
- 20 Structural – Carport-like Solar Panel Mounting System
- 21 Electrical – Site Plan
- 22 Electrical – Legend/Construction Notes/Devices/Components
- 23 Electrical – Calculations – Solar Photo Voltaic System Electricity
- 24 Electrical – Single Line Diagram
- 25 Electrical – Underground Plan & Details
- 26 Electrical – Solar Panel Assembly & Connectivity Details
- 27 Electrical – Inverter Module Assembly & Connectivity Details
- 28 Electrical – COUNTY Meter Tie In & Monitoring Devices & Details

Construction Specification Document

- 29 Construction Waste Management Plan
 - 30 Earthwork – Trenching/Import & Compaction (Note on Drawings O.K.)
 - 31 Portland Cement (Note on Drawings O.K.)
 - 32 Reinforcing Steel (Note on Drawings O.K.)
 - 33 Structural Steel (Note on Drawings O.K.)
 - 34 Electrical Components/Conduits/Wire/Breakers (Manufacturers Cut Sheets O.K.)
 - 35 Electrical Panels (Manufacturers Cut Sheets O.K.)
 - 36 Solar Photo Voltaic Panels (Manufacturers Cut Sheets O.K.)
 - 37 Solar Photo Voltaic Inverters (Manufacturers Cut Sheets O.K.)
 - 38 Solar Photo Voltaic Monitoring System (Manufacturers Cut Sheets O.K.)
-
- 4) CONTRACTOR shall provide scaled DD drawing (electronically scaled in Auto CAD) of the Site Plan showing all existing above and underground utilities, survey map (elevations) location of the geo-technical borings, proposed placement and elevation of the selected (selected by the COUNTY) carport-like structure, solar panel support structures, PV panels, inverter assembly and support structure, above and below ground conduit tie-in into the COUNTY's switch gear in both the Plan View and Elevation drawing formats.
 - 5) CONTRACTOR shall commence the DD phase, upon the COUNTY's selection of the carport-like design. Once the carport-like design is determined, CONTRACTOR shall complete the balance of the DD phase.

ATTACHMENT B – SCOPE OF WORK

- 6) CONTRACTOR shall provide DD scaled drawings of the solar panels, inverter mounting assembly and carport-like structures. The drawings shall include mounting details, profile views, plan views, and connection details.
- 7) CONTRACTOR shall provide DD Electrical single line diagram drawings, showing all points of connection to the building's distribution system, meters, inverter, disconnect, junction boxes, and other main components.
- 8) CONTRACTOR shall provide DD drawings of the equipment penetration and weather-proofing methods, where the Inverter conduits penetrate the COUNTY's MSB where the switch gear/meter is housed).
- 9) CONTRACTOR shall update and provide the Solar Photovoltaic System data, which addresses the following:
 - a. Power Capacity (DC kW STC), Power Capacity (AC kW CEC),
 - b. Estimated capacity factor annual output (kWh), and annual output degradation rate; methodology for developing these estimates.
 - c. Benefits of the proposed system and other relevant information
- 10) CONTRACTOR shall provide DD scaled and detailed Underground and Aboveground Electrical drawings for the new Solar Structure System, including written specifications which shall be included as notes on drawings/plan sheets, showing trenches, conduits, transitions, connections to the PV panels, inverter and tie in to the COUNTY's building where the switch gear/meter is housed.
- 11) CONTRACTOR shall provide a DD Construction (including products, components) Specification Document; including but not limited to the following: equipment data sheets, listing manufacturer, model number, warranties, quantities for solar modules, meters, inverters, monitoring system, mounting system, conduits, panels, wire, carport-like system, etc.
- 12) The COUNTY is required to approve the following documents and scopes of work, prior to CONTRACTOR commencing the Construction Document Phase: DD carport-like design, DD mounting profile of the solar panels, DD underground utility trench network, the DD Inverter location and mounting assembly, and DD electrical design.
- 13) Based on comments by the COUNTY, CONTRACTOR shall prepare final DD final documents, plans and specifications for the project, including carport-like design, mounting profile of the solar panels, above ground utilities and underground utility trench network, inverter location and mounting assembly, and electrical engineering.
- 14) CONTRACTOR shall be given written permission to proceed to the Construction Document Phase from the COUNTY based on the approval of the DD Phase documents, plans and specifications.

ATTACHMENT B – SCOPE OF WORK

3. Construction Document Phase

During the course of the Construction Document (CD) Phase, CONTRACTOR shall develop, perform, execute and provide the following documents and information:

- 1) CONTRACTOR shall meet on site with COUNTY during the CD Phase for document review, COUNTY approval and completion of the COUNTY Building permit process. Contractor shall attend one (1) meeting with review and comment cycle.
- 2) CONTRACTOR shall provide a final and complete CD scaled (D size) drawing package, inclusive of all proposed drawings sheets, including a Preliminary Construction Specification document completed per Division of Work.

Drawing Sheets -- Design Development Phase--CONTRACTOR shall provide information listed in 39 through 78. Information may be combined.

- 39 Title Page
- 40 General Construction Notes
- 41 Civil -- Site Plan & Elevations & Final Survey Map
- 42 Civil - Site Plan -- Existing Above & Underground Utilities & Proposed Carport-like locations
- 43 Civil -- Demolition Plan & Staging & Temporary Controls which also addresses removal of light poles, and any saw cuts or curb removal.
- 44 Civil -- Storm Water/ Erosion Control
- 45 Civil -- Proposed Electrical Above & Underground Plan & Utility Trench Construction Details & Compaction Requirements
- 46 Architectural (Arch) -- Plan View of Site Plan
- 47 Arch -- Carport-like Solar Structure & Building Penetration Elevations
- 48 Arch -- Carport-like Solar Structure & Solar Photovoltaic Panel Finish & Details
- 49 Arch -- Inverter Assembly Module Location & Elevation
- 50 Arch -- Construction & Finish Notes
- 51 Structural -- Plan View & All Elevations
- 52 Structural -- Carport-like Solar Structure Steel Construction & Fabrication Notes
- 53 Structural -- Carport-like Solar Structure Soils, Concrete & Rebar Fabrication & Construction Notes & Details
- 54 Structural -- Carport-like Erection / Assembly / Connections / Mounting & Welding Details
- 55 Structural -- Carport-like Foundation / Footing / Grade Beam Details
- 56 Structural -- Carport-like Roof Plan
- 57 Structural -- Carport-like Solar Panel Mounting System
- 58 Electrical -- Site Plan
- 59 Electrical -- Legend / Construction Notes / Devices / Components / Installation Procedures
- 60 Electrical -- Calculations -- Solar Photo Voltaic System Electricity

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- 61 Electrical -- Single Line Diagram
- 62 Electrical -- Underground Plan & Details
- 63 Electrical -- Solar Panel Assembly & Connectivity Details
- 64 Electrical -- Inverter Module Assembly & Connectivity Details
- 65 Electrical -- COUNTY Meter Tie In & Monitoring Devices & Details
- 66 Electrical -- Commissioning / Training / Turnover

Construction Specification Documents includes:

- 67 Construction Waste Management & Recycling Plan
- 68 Selective Demolition-Cutting & Patching (Note on Drawings O.K.)
- 69 Earthwork -- Trenching / Import & Compaction (Note on Drawings O.K.)
- 70 Portland Cement (Note on Drawings O.K.)
- 71 Reinforcing Steel (Note on Drawings O.K.)
- 72 Structural Steel (Note on Drawings O.K.)
- 73 Electrical Components / Conduits / Wire / Breakers (Manufacturers Cut Sheets O.K)
- 74 Electrical Panels (Manufacturers Cut Sheets O.K.)
- 75 Solar Photo Voltaic Panels (Manufacturers Cut Sheets O.K.)
- 76 Solar Photo Voltaic Inverters (Manufacturers Cut Sheets O.K.)
- 77 Solar Photo Voltaic Monitoring System (Manufacturers Cut Sheets O.K.)
- 78 Electrical -- Commissioning / Training / Turnover

- 3) CONTRACTOR shall commence the final CD phase, upon the COUNTY's approval of DD Phase documents, plans and specifications.
- 4) CONTRACTOR shall provide scaled CD drawings (electronically scaled in Auto CAD) of the Site Plan showing all existing above and underground utilities, survey map (elevations) location of the geo-technical borings, proposed placement and elevation of the selected (selected by the COUNTY) carport-like structure, solar panel support structures, PV panels, inverter assembly and support structure, above and below ground conduit tie- in into the COUNTY's switch gear in both the Plan View and Elevation drawing formats.
- 5) CONTRACTOR shall provide the final CD scaled drawings of the solar panels, inverter mounting assembly and carport-like structures. The drawings shall include mounting details, profile views, plan views, and connection details.
- 6) CONTRACTOR shall provide the final CD Electrical single line diagram drawings, showing all points of connection to the building's distribution system, meters, inverter, disconnect, junction boxes, and other main components.
- 7) CONTRACTOR shall provide the final CD drawings of the building penetration and weather-proofing methods, where the Inverter conduits penetrate the COUNTY's building (where the switch gear/meter is housed).

ATTACHMENT B – SCOPE OF WORK

- 8) CONTRACTOR shall update and provide the Solar Photovoltaic System data which shall address the following:
 - a. Power Capacity (DC kW STC), Power Capacity (AC kW CEC),
 - b. Estimated capacity factor, annual output (kWh), and annual output degradation rate of; methodology for developing these estimates.
- 9) CONTRACTOR shall provide the final CD Demolition scaled drawings and associated specifications, defining and delineating all affected areas, utilities, buildings, systems, right of ways, surfaces and sub surfaces, and light poles.
- 10) CONTRACTOR shall provide the final CD scaled and detailed Underground and Aboveground Electrical drawings, including written specifications, showing trenches, conduits, transitions, connections to the PV panels, inverter and tie in to the COUNTY's building where the switch gear/meter is housed.
- 11) CONTRACTOR shall provide the final and complete set of CD Construction (including products, components) documents, Construction Specification Document; including but not limited to the following: equipment data sheets, listing manufacturer, model number, warranties, quantities for solar modules, meters, inverters, monitoring system, mounting system, conduits, panels, wire, carport-like Solar Structure system, etc.
- 12) Subject to approval by the COUNTY of Monterey, Director of Public Works , CONTRACTOR shall prepare final CD documents, plans and specifications for the project, including the following:
 - a. CONTRACTOR final construction documents, plans, specifications, calculations, submittals, performance specifications shall be stamped and signed by the appropriate registered engineers, as required in the State of California, and shall obtain COUNTY approval on such documentation prior to proceeding with the permit application process.

CONTRACTOR shall secure from governing agencies and the utility company all required rights, permits, inspections, approvals, interconnection agreements, net metering agreements, and equipment at no additional cost to the COUNTY. The COUNTY shall become the signatory on all applications, permits, and utility agreements where necessary. CONTRACTOR shall complete and submit in a timely manner all documentation required for COUNTY to qualify for available rebates and incentives. County will pay permit fee for any Monterey County issued permits.

CONTRACTOR is responsible for the design of all elements of the project including but not limited to: civil, structural, architectural, mechanical, electrical, and specialty consulting areas. All drawings shall be stamped, as required, by an engineer(s) registered in the State of California.

ATTACHMENT B – SCOPE OF WORK

- 13) Prior to CONTRACTOR being given the Notice to Proceed for the Construction scope of work, CONTRACTOR shall be required to obtain a stamped Building Permit from the COUNTY of Monterey's Building Services Department. Once the building permit is finalized, the COUNTY shall be required to execute a Board of Supervisors Board Report and Board Order approving the Plans and Specifications and authorizing the Department of Public Works to construct the Carport-like Solar Structure Photovoltaic System. Upon approval of the Board Order, the COUNTY's Project Manager shall coordinate with CONTRACTOR to determine an acceptable Construction Start Date, and thereafter, the COUNTY's Project Manager shall execute and issue the Notice to Proceed document to CONTRACTOR.
- 14) CONTRACTOR shall not procure, pre-purchase, contract, buy and or make any agreement (verbal or written) to acquire any construction component and related construction service(s), other than design and engineering services prior to the COUNTY issuing final written approval of the Notice to Proceed document to CONTRACTOR for the construction phase.

II. Construction Phase: 140 KW Solar Photovoltaic Carport-like System

- 1) CONTRACTOR shall supply and install all equipment, materials, and labor necessary to complete the 140 KW Solar Photovoltaic carport-like system according to Monterey COUNTY General Conditions, CONTRACTOR approved permitted construction plans and EECBG terms and conditions. This shall also include temporary controls, construction fencing as needed, storm water pollution control, waste management and recycling plan, site preparation, grading and trenching for conduit installations. Construction activity shall include selective demolition of the existing parking lot and pavement for the installation of solar carport-like structures and underground wiring. New work includes but is not limited to Cast-In-Place Concrete, Trenching, Structural Steel, Cold-Formed Metal Framing, Metal Fabrications, Special Construction/Mounting, extensive Electrical Work, and installation of Data Acquisition System and Monitoring including testing and training.
- 2) CONTRACTOR shall install solar panels, inverters, and other components per COUNTY of Monterey permitted Plans and Specifications. All components are required to meet the California Energy Commission (CEC) Standards.
- 3) CONTRACTOR shall insure that all equipment, materials, and labor necessary to install the solar P.V system are compliant with EECBG special terms and conditions outlined in Attachment A herein.
- 4) Electrical Interconnections: CONTRACTOR shall supply and install all equipment required to interconnect the solar PV systems to PG&E electrical distribution system. CONTRACTOR shall fulfill all application, study, and testing procedures to complete the interconnection process. All costs associated with the utility interconnection, utility net metering, and setup shall be the responsibility of the CONTRACTOR.

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- 5) CONTRACTOR shall provide compaction testing for all below grade work. The compaction of the footings and trenching shall be performed by CONTRACTOR.

III. Commissioning and Training

- 1) Commissioning and Acceptance Test: During start-up of the solar PV system, CONTRACTOR shall demonstrate performance of each system and system element to the COUNTY. Required commissioning and acceptance test services include:
- Provide Operations Manuals with as-built construction drawings in both hardcopy and electronic format (pdf file);
 - Starting up the solar PV system until it achieves the performance requirements;
 - Conducting the performance testing over a week long period without causing interference to the tenant's daily operations;
 - Online Monitoring System;
 - Training

Monterey COUNTY Facilities staff, and any other persons deemed needing training by Monterey COUNTY, shall within ten (10) days of commissioning of the project, receive training from CONTRACTOR on the following topics:

1. Routine operation including:
 - a. Start-up and shut-down procedures
 - b. General and Laurel Street site specific hazard and safety issues
 - c. Description and location of all elements of the system
 - d. Inspection of array elements including solar carport-like structures, panels, inverters, and all interconnect wiring and electrical run details
 - e. Verification of operation: green light/red light and inverter display modes
2. Routine maintenance including:
 - a. Panel cleaning procedure
 - b. Post cleaning performance confirmation
 - c. General and Laurel Street site specific Hazard and Safety around maintenance issues
 - d. Service and troubleshooting procedures: contacts, location of contact information
3. Safety:
 - a. Accident prevention
 - b. Dos and don'ts
 - c. Specific electrical safety issues
 - d. Underground elements - location and markings

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4. Monitoring:
 - a. Location and operation of monitoring system
 - b. Establishing a performance baseline
 - c. Maintaining a system log
 - d. Identifying performance deviations requiring attention
 - e. Performance deviation response(s) - contact information for facility and other staff to report system alarms or outages
 - f. Location of contact information

2) System Performance Warranty

Carport-like structures:	10 Year Materials and Labor from Release of Bond
Inverter:	10 Year Standard Warranty
Panels:	Product warranty 10 years
Panel Performance Guarantee:	Guaranteed output of 90 % for 10 years and 80 % for 25 years
All Other Materials & Devices:	5 Year Complete System Warranty

3) Operation and Maintenance Requirements:

During the warranty period CONTRACTOR shall provide all necessary repairs needed to keep the system operating as specified in warranty:

- Annual system performance evaluation, including: system testing;
- All required warranty repair work within the 5 Year Complete System Warranty including equipment replacement.
- Repair and/or replacement of defective or parts (including equipment and labor) within the respective 5 Year Complete System Warranty and the Carport-like Structure 10 year Materials and Labor ;
- Annual monitoring for 10 years by the CONTRACTOR, including: energy production, reporting of problems to the COUNTY and dispatch of resources for expeditious resolution of problems.
- All required warranty repair and/or replacement work required after the 5 Year Complete System Warranty pertaining to the 10 year Inverter Standard Warranty, 10 year Solar Panel Product Warranty, 10 year Solar Panel Performance Guarantee, and 20 year Solar Panel Performance Guarantee shall be paid for at our then current hourly labor rates.

- 4) Operations and Maintenance Manuals: CONTRACTOR shall provide three (3) copies of operating and maintenance manuals in hard cover binders and deliver to COUNTY. Information shall be indexed and shall include plans and specifications for the entire system:

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A complete set of all approved submittals including shop drawings and product literature.

- As built drawings showing the final placement of all panels, combiner boxes, connections, and conduit placement.
- As built electrical plans, including three line diagrams, and elevation drawing showing the final placement of the electrical equipment.
- Cleaning instructions for the PV panels.
- Copies of all start-up procedure measurements.
- Copies of all testing data and reports.

IV. Monthly Project Status Meetings and On Site Meetings

CONTRACTOR shall attend one (1) Monthly Project Status Meetings and/or On Site Meeting. Meeting agenda shall include (but not limited to) minutes (prepared by Contractor) with action items from previous meetings, review of project schedule and budget and addressing EECBG reporting requirements.

CONTRACTOR shall attend two (2) Periodic Status Meetings and/or Site Visits with designated Department of Energy (DOE) Staff, in accordance with Attachment A herein.

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Prevailing Wage Requirements for Contractors on Federal Contracts and
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Introduction.

The U. S. Department of Energy (DOE) has prepared this Desk Guide for the use of contractors and subcontractors performing work on construction projects under a federal contract, or under a statute authorizing federal financial assistance, that requires the application of Davis-Bacon Act (DBA or the Act) prevailing wage requirements. This Desk Guide may also be used by grantees, subgrantees, and federal personnel to administer their respective roles and functions with respect to the DBA.

The objective of this Desk Guide is to provide simple, non-technical guidance to help contractors and subcontractors better understand their obligations under DBA. This objective supports DOE's policy that proper and consistent implementation of contract labor standards, along with full and open compliance by contractors, promotes good business and effective contracting in terms of price, quality of work, speed of delivery, customer satisfaction, and project success.

The guidance provided in this document does not constitute legal advice or substitute for full and careful review of the contract or agreement requiring application of DBA provisions, and compliance with all applicable statutes and regulations. Questions pertaining to

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the labor standards, including wage determinations, applicable to specific projects, contracts, or agreements must be addressed to the designated DOE contracting officer. Questions pertaining to the general application of DBA and other labor standards compliance issues may be referred to the Department of Labor's (DOL's) nearest regional office. In addition, the answers to many questions may be found on various DOE websites listed in Appendix A. This Desk Guide does not address contractor obligations under any state prevailing wage laws. Questions pertaining to the application of, or compliance with, various state labor laws should be addressed to the cognizant agency within each state.

The Desk Guide will be updated as further guidance is received from the Department of Labor, or as circumstances change.

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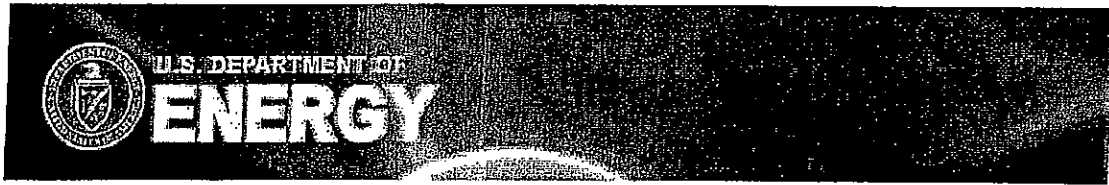
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**Prevailing Wage Requirements for Contractors on Federal Contracts and
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Chapter 1 Statutes, Regulations, Contract Clauses, Responsibilities.

Section 1-1 Labor Statutes Applicable to Federal Contractors.

a. The Davis-Bacon Act (40 U.S.C. 3141-48).

(1) DBA applies to contracts in excess of \$2,000 for the construction, alteration, and/or repair of public buildings or public works, including painting and decorating, where the United States or the District of Columbia is a direct party to the contract. DBA specifies that each covered contract contain provisions, found at Title 29 CFR 5.5, requiring contractors to pay the laborers and mechanics employed on the project's site of the work, on a weekly basis, no less than the wages and benefits that are prevailing in the area as determined by the Secretary of Labor. Construction includes activities performed on the site of the work such as preparation for construction (*e.g.*, demolition of existing structures, equipment and material set-up, *etc.*), fabrication of materials, installation of materials, and post-construction clean-up. The federal agency awarding the contract must make the determination that DBA applies to the project and must incorporate the applicable DBA clauses and wage determinations (also referred to as "wage decisions") into the requirements of the contract.

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(2) A construction “project” may often involve more than one “contract” if all such contracts are closely related in purpose, time, and place (*e.g.*, preparatory demolition contracts and final interior decorating contracts are often separate from the “construction” contract). DBA will apply to all such individual contracts, regardless of amount, if the overall project is in excess of \$2,000.

b. Davis-Bacon and Related Acts (DBRA).

(1) The Davis-Bacon “Related Acts” are numerous statutes that authorize federal assistance such as contributions, grants, loans, insurance, or guarantees for various programs involving construction, alteration and/or repair of hospitals, housing, sewage and water treatment plants, highways, airports, and similar structures. A DBRA will often include language further defining work that must be covered by the DBA prevailing wage requirements. The American Recovery and Reinvestment Act (Public Law 111-5 February 17, 2009) (Recovery Act) is an example of a DBRA statute. The Recovery Act states, “Notwithstanding any other provision of law and in a manner consistent with other provisions in this Act, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor...” In order to implement this Recovery Act requirement, the federal agency awarding the contract or providing the funding assistance must first make the determination that DBA applies to the project under the Recovery Act, and must then ensure that DBA clauses and wage determinations are made applicable to the performance of the work.

(2) Where DOE has determined that DBRA provisions apply, “contract” means contracts and subcontracts for construction, alteration, and/or repair awarded under DOE grants, cooperative agreements, technology investment agreements, loans, and loan guarantees authorized by a statute requiring the payment of DBA wages.

c. The Copeland “Anti-Kickback” Act (40 U.S.C. 3145 and 18 U.S.C. 874) (Copeland Act). The Copeland Act makes it unlawful to induce any person working on a federal contract or on a

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federally financed or assisted construction project to give up any part of the compensation to which he or she is entitled under his or her contract of employment. The Copeland Act and its regulations require contractors and subcontractors to submit weekly to DOE, as the contracting agency, a copy of all payrolls, along with a weekly "Statement of Compliance" certifying that the contractor has paid the full wages and benefits due the covered workers.

d. The Fair Labor Standards Act of 1938 (29 U.S.C. 201 *et seq*) (FLSA). FLSA covers most workers employed throughout the United States, including non-exempt workers employed on federal contracts. FLSA requires employers to pay their workers no less than the federal minimum wage (\$7.25/hour as of July 24, 2009), and to pay overtime compensation for hours worked in excess of 40 per week. (See Section 3-3 in this Desk Guide for guidance on overtime requirements.) FLSA also restricts the employment of children less than 18 years of age.

e. The Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq*) (CWHSSA). CWHSSA applies to certain federal contracts (including contracts for services, construction, or supply) that are in excess of \$100,000 and which may require or involve the employment of laborers or mechanics upon a public work. CWHSSA also applies to federally financed and assisted contracts in excess of \$100,000, where a federal law provides wage standards for the work. CWHSSA does not apply to such contracts where the federal assistance is solely in the nature of a loan guarantee or insurance. CWHSSA requires covered contractors to pay overtime compensation to laborers and mechanics (including watchmen and guards). Similar to the provisions in FLSA, CWHSSA requires overtime compensation to be paid at no less than one and one-half times the worker's basic hourly rate of pay for hours worked in excess of 40 per week. Failure to comply with the overtime requirements under CWHSSA can result in the contracting agency assessing the contractor liquidated damages computed at \$10/day per violation. CWHSSA also requires covered contractors to ensure that their workers are performing in a safe environment.

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Section 1-2 Related Federal Regulations.

- a. “Procedures for Predetermination of Wage Rates” (29 CFR Part 1). DOL regulations that govern the determination of prevailing wage and benefit rates under DBA, the publication of DBA wage determinations, and the procedures for obtaining and using timely DBA wage determinations.

- b. “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States” (29 CFR Part 3). DOL regulations that govern the application and enforcement of DBA, DBRA, and the Copeland Act, and detail the requirements under the Copeland Act for weekly payrolls, statements of compliance, and restrictions on payroll deductions.

- c. “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)” (29 CFR Part 5). DOL regulations governing the responsibilities of federal agencies to administer and enforce the provisions of DBA and DBRA, including applicable contract provisions and definitions of terms such as construction, public buildings and public works, site of work, laborers and mechanics, apprentices and trainees, wages, and bona fide benefits. These regulations outline federal agency responsibilities and procedures for enforcement of DBA and CWHSSA provisions and procedures for resolving disputes concerning payment of wages.

- d. U. S. Department of Energy Regulations. Regulations concerning DBA provisions that are specific to contractors who are party to a direct contract with DOE may be found at 48 CFR Part 970-2204-1-1.

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Section 1-3 Responsibilities.

a. Federal Contracting Agency.

(1) As the federal contracting agency directly awarding a contract or providing federal funding assistance for a construction project, **DOE must determine whether DBA or DBRA applies** to a project and, if applicable, to ensure that the appropriate DBA clauses and wage determination(s) are incorporated into the requirements of the project. These standard DBA clauses may be found at 29 CFR 5.5. Clauses modified with DOL approval for DOE-specific programs may be found as follows:

(a) Weatherization Assistance Program –

http://www2.eere.energy.gov/wip/pdfs/dba_clauses_weatherization.pdf

(b) Non-Weatherization Assistance Program (these clauses do not apply to direct federal contracts, loans under the Advanced Technologies Vehicles Manufacturing Program, or Title XVII loan guarantee programs) –

http://www1.eere.energy.gov/wip/pdfs/dba_clauses_non_wap.pdf

(2) As the contracting agency, DOE has **primary responsibility for the enforcement of construction labor standards** for the contracts, financial assistance, and other agreements it awards. The person designated as the contracting officer, as defined in 29 CFR 5.2, is responsible for ensuring that contractors and subcontractors submit timely certified payrolls consistent with contract terms, and for monitoring labor standards compliance by reviewing pay records and conducting worker interviews. (See Section 5-1 of this Desk Guide concerning Compliance Reviews.) DBA- and DBRA-covered contracts resulting from grants, cooperative agreements, technology investment agreements, loans, or loan guarantees, will specifically identify the responsibilities of recipients, subrecipients, local agencies, guaranteed parties, and contractors to administer and enforce the provisions of DBA, including reporting and recordkeeping requirements; obtaining, maintaining, monitoring, and reviewing payrolls; and assisting DOE in its DBA enforcement responsibilities.

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b. Prime Contractor.

(1) The **prime contractor** (often referred to as the **principal** or **general contractor**) is responsible for applying the appropriate DBA and CWHSSA labor standards and DBA wage determinations to all subcontracts for work performed by laborers and mechanics on the site of the work for the project. The prime contractor is also responsible for the labor standards compliance of all contractors on the project, including subcontractors at any level. DOE, as the contracting agency, may withhold on its own action, and shall withhold upon written request of DOL, sufficient monies from accrued payments or advances due the prime contractor as may be necessary to cover any underpayment of wages, fringe benefits, or overtime compensation resulting from violations of DBA and CWHSSA provisions. (Reference 29 CFR 5.5.) Financial assistance recipients must ensure contractor and subcontractor compliance with DBA and CWHSSA provisions as set forth in the applicable financial assistance agreement, and may also withhold sufficient monies from accrued payments or advances as may be necessary to cover any underpayment of wages, fringe benefits, or overtime compensation due as a result of DBA or CWHSSA violations.

(2) Under DBA or DBRA, “contractor” **does NOT include a unit of a state, local, or tribal government where the construction activities are performed by its own employees.** Any contracts awarded under DBRA by a state, local, or tribal government, however, must include DBA provisions and the contractors’ laborers and mechanics will be covered by the DBA requirements.

(3) Many contracts and financial assistance agreements will require the prime contractor to report all subcontracts awarded by the prime contractor. The prime contractor must submit to the contracting officer a completed SF-1413 Statement and Acknowledgment for each subcontract on covered projects within 14 days of the subcontract award. The prime contractor must execute a statement on this form that it has inserted all appropriate labor requirements into its subcontracts, and must include a statement signed by the subcontractor acknowledging that the appropriate clauses have been included in its subcontract. A copy of SF-1413 is included in

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the Appendices of this Desk Guide, and is also available at

[http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/\\$file/SF%201413.pdf](http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/$file/SF%201413.pdf).

c. **U. S. Department of Labor.** DOL has authority under Reorganization Plan No. 14 of 1950 to issue regulations, interpretations and opinions, and prevailing wage determinations under DBA/DBRA. DOL will also conduct investigations and take further steps to enforce the provisions of DBA/DBRA such as withholding of contract funds and conducting hearings to consider debarment of contractors found to be in violation. (See Section 5-3 of this Desk Guide concerning the penalties for violation of contract labor standards.)

Chapter 2 DBA Wage Determinations.

Section 2-1 DBA Wage Determinations. As noted above, when a federal contracting agency such as DOE determines that DBA/DBRA are applicable to a construction project, the agency is responsible for ensuring that DBA clauses are incorporated into the contract, along with the applicable **DBA wage determination(s)**. DBA wage determinations are issued by DOL and reflect the wages and benefits found to be prevailing for various classifications of workers in the locality (usually a county or group of counties) covered by each wage determination. Contracting agencies access DOL-published **general wage determinations** on www.wdol.gov and select the appropriate DBA general wage determination for each contract action. The contract or agreement for a covered project will contain clauses that direct the prime contractor and all subcontractors to comply with specific wage determination(s). **Any questions concerning which DBA wage determination is applicable to specific work must be addressed to the DOE contracting officer.**

NOTE: As more fully described below in Section 3-1, a DBA wage determination is selected based upon the location where the work will be performed (“site of the work”) and the nature of the construction project. If a project involves work at multiple sites, each with a different DBA wage determination, the contracting officer must insert the DBA wage determination appropriate for each locality. If work is to be performed in a locality not

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previously identified, the contracting officer must modify the contract and incorporate the DBA wage determination appropriate for that locality.

Section 2-2 General Wage Determinations.

a. Description of DBA General Wage Determinations. General wage determinations are issued not only by locality, but for certain types of construction within a locality, often referred to as “schedules.” For example, DOL will issue wage determinations for building construction (construction of sheltered enclosures with walk-in access, including multi-unit residential buildings five stories or more); highway construction (includes construction of roads, sidewalks, runways, alleyways, trails, paths, parking areas, etc.); residential construction (construction of single family homes and up to four-story apartment buildings); and heavy construction (construction of other public works that do not fit within the other schedules). Some localities also have separate DBA wage determinations for projects involving dredging, water and sewer line construction, dams, major bridges, or flood control.

NOTE: Guidance on the appropriate use of wage determinations in each schedule is noted in DOL’s “All Agency Memoranda #130 and #131” found on the WDOL.gov “Library” at <http://www.wdol.gov/aam.aspx>.

b. Projects Involving Multiple Types of Construction. When a project requires different types of construction, *e.g.*, building construction and highway construction, DOE, as the contracting agency, must incorporate the DBA wage determination for each schedule or type of construction if the separate type of construction comprises at least 20% of the total project cost, and/or costs \$1 million or more. If the separate type of construction comprises work that is only incidental to the total project (*i.e.*, less than 20% and costs less than \$1 million), the separate schedule will not be necessary.

Section 2-3 Project Wage Determinations. If the database for DBA general wage determinations does not contain an appropriate DBA wage determination schedule for the particular type of construction to be performed in a specific locality, the contracting agency,

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must submit a request to DOL (on SF-308, "Request for Wage Determination") for a **project-specific wage determination**. If virtually all of the work on a contract will be performed by a classification that is not listed on a general wage determination that would otherwise apply, the contracting agency may submit a SF-308 request to DOL for a project-specific wage determination, or may attach the applicable wage determination to the contract and require the contractor to submit to DOL an SF-1444 "Request for Authorization of Additional Classification and Rate" for the missing classification. See Section 3-1 e, of this Desk Guide on "conformances." DOL will issue a wage determination applicable only for that specific project. Project wage determinations are effective for 180 days from date of issuance, and, if not incorporated into an awarded contract prior to expiration, the contracting agency must request a new project wage determination. DOL has issued project wage determinations uniquely applicable to work performed under DOE's Weatherization Assistance Program which is funded under the Recovery Act and covered by DBA. As with the application of DBA general wage determinations, it is DOE's responsibility as the contracting agency to determine the need for and to request a project wage determination from DOL, and to incorporate it into the project's requirements.

Section 2-4 Timely Application of DBA Wage Determinations. The timely applicability of a DBA wage determination, and any modification issued by DOL for that wage determination, to any particular contract action is addressed in 29 CFR 1.6. It is the responsibility of DOE, as the contracting agency, to ensure that the most current DBA wage determinations are applied in accordance with these requirements. Generally, a DBA wage determination selected for a particular construction project is effective for the life of the project unless there is a substantial change in the scope of work. If, however, the contract contains options to extend the term of the contract, the contracting officer must incorporate the most current DBA wage determination in effect on the exercise of that option.

Section 2-5 Posting DBA Wage Determinations. It is the responsibility of the prime contractor to post all applicable DBA wage determinations on the job site in a prominent and accessible location, or to otherwise notify each worker employed on the job site of the wage and

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benefits due under DBA. DOL Form WH-1321, "Notice to All Employees," is available at <http://www.dol.gov/whd/programs/dbra/wh1321.htm>.

Chapter 3 Contractor Compliance with Contract Labor Standards.

Section 3-1 Worker Classifications under DBA Wage Determinations.

a. **Construction.** DBA applies to contracts for construction, alteration, and/or repair of public buildings or public works, including painting and decorating. Construction also includes activities such as those performed **on the site of the work** in preparation for construction (*e.g.*, demolition, equipment and material set-up, *etc.*), fabrication of materials, installation of materials, and post-construction clean-up. (Reference 29 CFR 5.2(j).)

b. **Site of the Work.** Under DBA, laborers and mechanics employed on the site of the work are covered by the Act. The site of the work is the physical place or places where the building or work called for in the contract will remain, and any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project. Job headquarters, tool yards, batch plants, borrow pits, *etc.*, are part of the site of the work provided they are dedicated exclusively, or nearly so, to performance of the contract or project and provided they are adjacent, or virtually adjacent, to the site of the work. (Reference 29 CFR 5.2(l).)

c. **Laborers and Mechanics.** DBA applies to laborers and mechanics working on the covered site of the work. Laborers and mechanics are defined as workers whose duties are **manual or physical in nature** as distinguished from mental or managerial work. Mechanics include workers who use tools or who are performing the work of a particular trade (*e.g.*, carpentry, plumbing, sheet metal work). (Reference 29 CFR 5.2(m).) Laborers and mechanics do not include individuals performing non-manual work such as supervising, engineering, architecture, timekeeping, clerical work, energy audits, electricity usage monitoring, or other administrative functions.

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(1) **Guards and Watchmen.** Guards and watchmen who perform no manual duties on the site of the work are not considered to be laborers or mechanics under DBA. Note, however, for purposes of CWHSSA's overtime compensation and safety requirements, the term "laborers and mechanics" includes watchmen and guards.

(2) **Apprentices and Trainees.** Laborers and mechanics include workers who are registered in approved apprenticeship or training programs. Approved programs are those which have been registered with DOL's Employment and Training Administration, Office of Apprenticeship, or registered with a DOL-recognized State Apprenticeship Council. Workers who participate in approved apprenticeship and training programs are provided documentation as evidence of their enrollment. Apprentices and trainees are paid wage rates in accordance with the provisions listed in the approved program. The rates are generally listed as a percentage to be applied to the wage rate listed in the applicable DBA wage determination for journeymen working in a particular classification. (Reference 29 CFR 5.2(n).)

(a) Under DBA, a contractor must pay no less than the full wages and benefits of a journeyman, as listed on the applicable wage determination, to any worker who is not registered in an approved program, or to any worker for whom the contractor has no documentation evidencing the worker's enrollment in an approved program. Contractors and subcontractors are responsible for obtaining proper documentation to support designating a worker as an apprentice or trainee.

(b) The wage rates listed in an apprenticeship and training program are generally expressed as a percentage of the journeyman wage rate for a specific period of time, increasing as the worker progresses through the program (example, 0-6 months 65%; 6 months to 1 year 70%). Apprenticeship programs also restrict the ratio of apprentices to journeymen working on a job site in a specific classification. Example: An approved program permits no more than three apprentice plumbers for each journeyman plumber working on the job site. If a contractor or subcontractor employs apprentices in excess of the ratio, all apprentices employed in excess of the ratio are not considered apprentices and are subject to the full journeyman wage requirements. As a practical enforcement policy, DOL will consider the first three apprentices (in

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this example) employed within the ratio, and workers that are employed subsequent to reaching the ratio will be due back wages to bring them to the DBA-required wage rate. (Reference DOL's *Field Operations Handbook*, Chapter 15, 15e01, at www.wdol.gov, "Library.")

(3) **Helpers.** "Helpers" under DBA are permitted only if the helper classification is listed on the contract's DBA wage determination. The duties of a helper are clearly defined by area practice within the locality, and are distinct from the duties of any other classification on the wage determination. If the classification of helper is not listed on the wage determination applicable to the work, the contractor must obtain approval from DOL for the use of that classification through the conformance process described in Section 3-1e of this Desk Guide on "Unlisted or Additional Classifications." A conformance request for a helper rate will only be approved by DOL if the contractor submitting the request includes information showing that helpers are a separate and distinct classification from other classifications on the wage determination, and that use of helpers is a prevailing practice in the specific construction industry in the locality.

(4) **Working Foremen.** Foremen or supervisors who regularly spend more than 20% of their time performing the duties of a laborer or mechanic on the site of the work, and who do not meet the exemption criteria under 29 CFR Part 541, are **covered by DBA for the hours spent performing the construction work**, and must be paid at no less than the appropriate wage rate for the classification of the work being performed by the working foreman. The other, non-construction hours spent by a supervisor or foreman directing the work of others, or performing other non-manual work such as timekeeping and reporting, are not covered by DBA.

(5) **Suppliers.** The manufacture and delivery to the work site of supply items such as sand, gravel, lumber, concrete, paint, and other materials, when accomplished by regular suppliers to the public in general, are activities not covered by DBA. However, if the material supplier's laborers and mechanics, in the course of delivering the products, perform more than an incidental amount of construction work at the job site, those laborers and mechanics are subject to DBA wages and benefits for the hours performing such work on the job site.

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(6) **Self-Employed Subcontractors.** The statutory language of DBA requires that all laborers and mechanics employed directly on the site of the work be paid no less than the predetermined wages “regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics.” (Reference 40 U.S.C. 3142(c)(1).) Under DBA, the term “employed” is not necessarily limited to “employee” and, therefore, may encompass certain independent contractors or workers. Self-employed “independent contractors” (often referred to as “1099 workers”) who perform as laborers or mechanics on a covered project are subject to DBA. The prime contractor must ensure that the “independent contractor” receives no less than the applicable DBA wage rate for the hours worked on the site of the work, and must ensure that such worker is reported on the certified payroll each week. However, an exception may apply to bona fide business owners – defined as any employee who owns at least 20% equity interest in the enterprise and who is actively engaged in its management – may be considered exempt under 29 CFR 541 even though they are themselves performing the work of a laborer or mechanic on the covered project. DBA would, therefore, not apply to these workers. Prime contractors are cautioned to consider use of this exemption carefully, and to seek advice from the nearest DOL Wage and Hour regional office (listed at <http://www.dol.gov/whd/whdkeyp.htm>) if they have questions. (See subparagraph 1-3b.(3) of this Desk Guide on the requirement to report subcontractors.)

(7) **Owner/Operators of Construction Equipment.** Except as noted below, owner-operators of equipment employed on the site of the work by covered construction contractors or subcontractors must be recognized as DBA-covered laborers or mechanics and must be paid in accordance with the applicable DBA wage determination for the hours worked on the job site.

(a) The exception to this rule is DOL’s administrative policy that DBA and CWHSSA do NOT apply to **bona fide owner-operators of trucks** or other hauling equipment who are employed as independent contractors performing such activity on the site of the work. DOL policy requires contractors and subcontractors to note these individuals on the certified payrolls by name, dates of work, and the notation, “Owner-Operator.” It will not be necessary to record the owner-operator’s hours or wages.

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NOTE: Workers employed as truck drivers (NOT owner-operators of trucks or other hauling equipment) driving on the site of the work are subject to DBA and CWHSSA. For further information concerning the application of DBA and CWHSSA to truck drivers, contact the nearest DOL Wage and Hour regional office (<http://www.dol.gov/whd/whdkeyp.htm>).

(b) The exception does NOT apply to owner-operators of equipment other than “hauling.” Therefore, owner-operators of equipment such as bulldozers, backhoes, drilling rigs, welding machines, and similar equipment are covered by DBA provisions. (Reference DOL’s “Significant All Agency Memoranda from the Administrator,” and *Field Operations Handbook*, Chapter 15, Section 15e, www.wdol.gov “Library.”)

(8) **Volunteers.** There are no exceptions to DBA coverage for volunteer labor unless an exception is provided for in a specific DBRA. The Recovery Act, one of the DBRA statutes applied to various projects funded or assisted through DOE, does NOT have any exception from DBA requirements for volunteer labor. Therefore, a Recovery Act-funded project requires that **all workers on the job site receive no less than full DBA wages and fringe benefits.** Questions concerning the use of volunteer labor on a Recovery Act-funded project must be addressed to the contracting officer.

d. **Area Practice and Worker Classifications.** The DBA wage determination is simply a listing of worker classifications and the basic hourly wage and fringe benefit rates that DOL has determined to be prevailing in the locality for each classification. Those rates must be paid to anyone performing work within those classifications on a covered project in that locality. The classifications are not generally defined by skill level or years of experience. Any worker performing work within the classification is subject to the wages and benefits for that classification regardless of skill or years of experience.

(1) There are no nationwide standard classification definitions under DBA. The proper classification of work performed by laborers and mechanics is that classification used by firms whose wage rates DOL determined to be prevailing in the area. While the duties of many classifications are usually clear (*e.g.*, plumbers, carpenters, painters, *etc.*), in some localities the

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contractor must determine the “prevailing area practice” in order to properly classify a worker. A survey of the firms performing similar construction work in that locality will provide the prevailing definition for each classification.

(2) If the DBA wage determination notes that the wage survey demonstrated that work in a particular construction classification in a locality is primarily performed by individuals represented by labor organizations, DOL will publish as the DBA minimum requirement the wage and benefit requirements found in the union agreements. The union contractors’ area practice would be used to define worker classifications. If a classification within a locality is not union-prevailing, DOL will publish the average resulting from its survey of rates paid to workers in a classification, and the definition of each classification will be determined by the prevailing area practice of firms performing such work within the survey.

(3) **Prime contractors and subcontractors** performing work on a covered project are responsible for classifying each worker properly in accordance with the applicable wage determination. Questions pertaining to classifications within a locality should be addressed to the nearest DOL regional office (listed at www.dol.gov/whd).

e. **Unlisted or Additional Classifications.** DBA wage determinations reflect the wages and benefits determined to be prevailing in a particular locality, based upon survey information provided to the Secretary of Labor. The survey information may not always be complete, and some wage determinations may not list a classification that is needed in the performance of the contract. If a worker classification needed on the project is not listed on the DBA wage determination, the contractor will need to request DOL’s approval of an **additional classification and the wage/benefit rate proposed for that classification**. The procedures for obtaining approval of an additional classification are found in DOL regulations 29 CFR 5.5(a)(1)(ii), and in the contract clauses. The process is also known as a “conformance” because the contractor is required to classify the unlisted worker classification “in conformance with” the classifications and rates that are listed on the wage determination.

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(1) The contractor's "conformance" request is submitted in writing through the contracting officer to DOL. **Subcontractors must submit their requests through the prime contractor** to the contracting officer. Generally, contractors will complete and sign an SF-1444, "Request for Authorization of Additional Classification and Rate" (copy included in this Desk Guide and available at www.wdol.gov/library.aspx), providing the contractor's information, contract information, the job title and a full description of duties, any information on "area practice," the contractor's proposed wage and benefit rates, and any other information that will support the request. The contractor is not obligated to use the SF-1444 form, but must provide the same information that is requested in that form. The request for approval must be submitted within 30 days of initial employment of workers in the additional classification.

(2) If the contractor has already employed workers in the proposed additional classification, the contractor's SF-1444 request should include the signature of each worker in that classification, noting whether they concur or disagree with the contractor's proposed rates. If the contractor's request is submitted to DOL through the contracting officer prior to employment of the workers in the classification, it would not include employee signatures.

(3) The completed request is then submitted by the contractor to DOE, as the contracting agency. The contracting officer must sign the request, either concurring or disagreeing with the contractor's proposal. If a worker or the contracting officer disagrees with the contractor's proposed additional classification or rate, a statement must be attached providing and supporting an alternate recommendation. DOE does not have authority to approve or reject a contractor's request for approval of an additional classification. Only DOL has this authority.

(4) **Tips for Obtaining DOL's Approval of Additional Classifications.** DOL cannot approve a contractor's request to add a classification to a DBA wage determination applicable to a specific project unless the contractor submits complete and proper information with the request. Some tips below will help in deciding what information is required.

(a) If a contractor is requesting DOL approval of a "Helper" classification, the request should provide sufficient information that the "Helper" classification is the "area

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practice” for that locality (*i.e.*, that the helper duties are clear and distinct from other classifications and use of the classification is prevailing in the particular locality).

(b) The contractor must ensure that the work to be performed by the additional classification is not part of the work routinely performed by another classification already listed on the wage determination. DOL will not approve a request based upon splitting the duties of a classification that is already listed on the wage determination in order to create a classification at a lower wage rate.

(c) The proposed wage and benefit rates for the proposed additional classification should bear a reasonable relationship to the wage rates listed on the wage determination. The proposed rates for a new skilled classification should be no lower than the wage rate of the lowest skilled classification listed on the wage determination. The contractor or subcontractor must pay the worker in the requested classification no less than the wage rate proposed in its conformance request, pending DOL’s approval of the rate.

(d) DOL may request additional information before issuing an approval or denial of the contractor’s request. Prompt and complete response to DOL’s request will help in quickly resolving any questions. Disagreements on the contractor’s proposal from either the worker or DOE, as the contracting agency, will be resolved by DOL.

(5) **DOL will respond to the contractor’s request for approval of an additional classification** by written notification to DOE, as the contracting agency. DOE will then notify the contractor of DOL’s decision. If DOL denies the contractor’s proposed wage or benefit rate, and directs rates in excess of the initial proposal, the contractor must pay the worker(s) no less than the approved rate retroactive to their initial work on the job site in that classification. The DOE contracting officer, either directly or through the financial assistance recipient, will request written confirmation from the contractor of its full and retroactive compliance with DOL’s decision.

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(6) Questions concerning the use of unlisted or additional DBA classifications should be referred to the nearest DOL regional office.

Section 3-2 Payment of DBA Wages and Benefits.

a. **Weekly Payrolls.** The DBA statute and regulations require that all laborers and mechanics employed under DBA “will be **paid unconditionally and not less often than once a week**, and without subsequent deduction or rebate on any account . . . except as permitted . . .” by requirements such as taxes or garnishments, or a worker’s voluntary agreement. (Reference 29 CFR 5.5(a).)

b. **Recordkeeping and Timecards.** It is the contractor’s responsibility to **keep and maintain accurate records of the hours worked** and the classification of work performed by each worker. Errors should be corrected promptly, with prompt payment of any back wages or benefits that may be due the worker as a result of the error. Failure to maintain complete and accurate pay, benefit, and time records may result in an investigation to determine the contractor’s status of compliance with the contract labor standards.

NOTE: It is the responsibility of the prime contractor or the financial assistance recipient to ensure that DOL’s DBA poster (WH-1321) and applicable DBA wage determinations are posted on the job site in a prominent and accessible place where they can be seen by the workers. The poster can be downloaded from DOL’s website at www.dol.gov/whd/regs/compliance/posters/davis.htm.

c. Basic Hourly Wage and Benefit Rates.

(1) DBA wage determinations list the various classifications of laborers and mechanics and the basic hourly wage rates that are found to be prevailing in each locality as determined by DOL’s surveys. Many DBA wage determinations also list hourly fringe benefit rates that must be paid to each worker in addition to the basic hourly wage rate. Contractors must ensure that each

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worker receives no less than the sum of the basic hourly wage rate and the hourly fringe benefit rate listed on the applicable wage determination for the worker's classification.

NOTE: If a DBA wage determination lists the wages and benefits for a particular classification as "\$20.00" and "\$3.00 + 3%," the contractor must pay at least the basic wage rate of \$20.00, and the hourly benefit rate of \$3.00 plus 3% of the basic hourly wage rate (or \$.60). The percentage is always applied to the basic hourly wage rate. The contractor must pay no less than \$23.60/hour for this worker.

(2) A contractor may discharge its obligation to each worker by paying the total wage and fringe benefit requirement in cash, or by providing a combination of wages paid in cash along with providing bona fide fringe benefits paid by the contractor such as health and life insurance premiums, retirement and savings contributions, vacation and other paid leave plans. (See Section 3-2f of this Desk Guide, "Payment of DBA Fringe Benefits," for references pertaining to "bona fide fringe benefits.")

(a) **Example:** The DBA wage determination requires \$18.00/hour basic hourly wage rate, and \$3.00/hour fringe benefits, for a total obligation of \$21.00/hour for the worker. The contractor may pay the entire \$21.00/hour in cash to the worker. Or, the contractor may pay \$18.00/hour in cash and provide a bona fide health insurance plan that costs the contractor \$3.00/hour in premiums. Or, the contractor may pay \$20.00/hour in cash and provide \$1.00/hour in benefits. Or, the contractor may pay \$16.00/hour in cash, and provide \$5.00/hour in fringe benefits.

(b) Contractors are obligated to record and report the type of payments made each week to meet their DBA requirement for wages and fringe benefits for each worker – payments made in cash to the worker in lieu of providing a fringe benefit plan; payments made to provide plans for each worker; and any combination of cash and benefit plan provided to each worker. (See Section 3-2f of this Desk Guide on payment of DBA fringe benefits, and Chapter 4 on preparing certified payrolls.)

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d. **Workers Performing at Two or More Classifications.** Contractors are required to maintain complete and accurate records of the hours worked by each worker, including identifying the hours worked by a worker at two or more classifications. The worker must be paid no less than the DBA wage rate for each of the hours worked at each classification. Failure to record the hours worked at each classification will result in DOL requiring the contractor to pay all hours worked that week at the highest of the multiple wage rates. (See Section 3-3c of this Desk Guide on the proper computation of overtime compensation for a worker working at multiple wage rates.)

e. **Payment of Piecework Rates, Salaries, or Other-Than-Hourly Rates.**

(1) Some workers may be hired on the basis of “piecework rates.” For example, a drywall hanger may be paid based upon the square feet of sheetrock hung, or a roofer may be paid on the basis of the number of square feet of roofing completed; or painters may be paid on the number of units or square feet painted each week. Other workers may be hired on the basis of an hourly rate plus piecework accomplished each week, or even paid on the basis of a **fixed salary** each week.

(2) Under DBA, the piecework or salaried **worker must still receive no less than the DBA minimum wages and benefits** for each covered hour worked each week. Therefore, the contractor must maintain accurate records of hours worked by each worker each week, and ensure that the worker receives no less than the DBA minimum for each hour worked regardless of pay method. **If the piecework or salary is not sufficient** to cover the DBA requirement for all covered hours that week, **the contractor must provide additional pay for that week** to bring the worker’s wages up to the minimum requirement. Each week will stand on its own, and any payments to the worker in excess of the DBA requirement in one week cannot be allocated to cover any underpayments of the DBA requirement in another week.

(3) Example: A laborer on a covered project is subject to \$20.00/hour DBA wage rate. He works a total of 35 hours in Week #1, which would require a DBA minimum of \$700.00 for that week. His pay is computed at a piecework rate that yields a total gross wage of \$1,000.00 for that

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week. He has, therefore, earned more than the minimum requirement under DBA. In Week #2, the worker works 45 covered hours and his piecework pay is computed at \$800.00. Total weekly pay for Week #2 is divided by total weekly hours, and equals \$17.78/hour – short of the DBA requirement of \$20.00/hour. The contractor must then pay the worker the \$800.00 in piecework pay, plus an additional \$100.00 to ensure that the worker receives the full DBA rate for all hours worked. The piecework wages paid in excess of the DBA minimum for Week #1 cannot offset the underpayment in Week #2. Salaried workers are computed the same way, each week.

NOTE: See Section 3-3c in this Desk Guide for information on computing proper FLSA and CWHSSA overtime compensation for workers employed at other than hourly wage rates.

f. Payment of DBA Fringe Benefits.

(1) DBA wage determinations often list both a basic hourly wage and a fringe benefit rate that must be paid to covered workers. The fringe benefit rate is usually listed as an hourly amount which must be paid for all hours worked each week, including overtime hours.

(2) Fringe benefits include contractor payments for life and health insurance premiums; retirement contributions; vacation, holiday, sick, and other paid leave; and other **bona fide** benefit plans; or equivalent payments to the worker in cash. The criteria used to determine whether a fringe benefit is bona fide under DBA are described in detail at 29 CFR 5.20 through 5.29, and in the DBA statute itself at Section 3141, Definitions. DOL's *Field Operations Handbook*, Chapter 15, Section 15f, also provides details on defining bona fide fringe benefits (<http://www.dol.gov/whd/FOH/index.htm>).

(3) Fringe benefits **do not include** contractor payments required by other federal, state, or local laws such as taxes (e.g., Social Security), workers compensation, or state disability insurance requirements. Fringe benefits also **do not include** payments made to or on behalf of workers for transportation expenses, board and lodging, or required uniforms or tools. These are customarily business expenses of the contractor and not a fringe benefit for the worker.

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(Reference 29 CFR Part 5, Subpart B, for guidance on providing bona fide fringe benefits under DBA.)

Section 3-3 Overtime Compensation.

a. DBA requires a contractor to pay no less than the minimum wage and fringe benefit listed on the applicable wage determination for each covered hour worked each week. DBA has no overtime (OT) compensation requirements. However, most contractors performing work on these projects are required by FLSA to pay OT compensation at time and one-half the worker's "regular rate of pay" for the hours worked in excess of 40 each week.

b. CWHSSA, applicable to laborers and mechanics (including guards and watchmen) on covered projects, also requires contractors to pay OT compensation for hours worked in excess of 40 hours each week, counting only those hours worked on CWHSSA-covered contracts during that week. CWHSSA does not have a site of the work limitation on coverage. All hours worked on covered contracts, including hours worked on the contract at off-site locations, are combined for the purpose of determining CWHSSA obligations.

(1) Overtime compensation under CWHSSA is computed on the basis of time and one-half the employee's basic hourly rate of pay, or the employee's "regular rate of pay" (if he works at two or more classifications with different hourly wage rates or is paid on a basis other than hourly). The basic hourly rate used for computing CWHSSA overtime compensation can never be less than the basic hourly wage rate required by the applicable DBA wage determination excluding any fringe benefits listed.

(2) Cash payments made to a DBA/CWHSSA worker for the purpose of meeting DBA fringe benefit requirements are not included in determining the basic hourly rate of pay for overtime purposes. See the example at paragraph c. (5) below.

c. A worker's "regular rate of pay" is determined by dividing the worker's total compensation each week by the worker's total number of hours worked that week (including both DBA-

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covered hours and non-DBA hours worked, *i.e.*, hours worked under FLSA). Additional information on overtime requirements and regular rate of pay can be found at 29 CFR Part 778.

Examples:

(1) If a worker works 45 hours in a week and is paid \$20.00/hour for all hours worked that week, the contractor is obligated to pay an additional \$10.00/hour for the five hours worked in excess of 40 that week.

(2) A second worker works only at **piecework** on a contract. The minimum DBA wage rate is \$15.00/hour. In Week #1, the worker works a total of 45 hours in a week, and earns a total of \$1,000 in piecework. His regular rate of pay will be \$1,000.00 divided by 45 hours, or \$22.22/hour for that week. The piecework more than meets the DBA minimum wage for all hours worked. For overtime requirements, the contractor must also pay the worker an additional \$11.11/hour (one-half of the \$22.22 regular rate) for the five hours over 40 that week.

(3) A third worker works **two different classifications in one week** – 25 hours at \$17.00/hour and 20 hours at \$20.00/hour. His straight-time pay will be 25 times \$17.00 or \$425.00, plus 20 times \$20.00 or \$400.00, for a total straight-time pay of \$825.00 that week. His overtime compensation will be computed at \$825.00 total, divided by 45 hours, which equals a regular rate of pay of \$18.33/hour. The contractor must pay this worker an additional \$9.16/hour for the five hours over 40 that week.

(4) A fourth worker works on a **salary basis**, a fixed amount for each week regardless of straight-time hours or work production. He is a mechanic and therefore not exempt from the requirements of DBA minimums or FLSA/CWHSSA overtime compensation. The salary is \$1,000/week. The DBA minimum for his classification is \$20.00/hour. In Week #1, this worker works 50 hours. His regular rate of pay is \$20.00/hour ($\$1,000 / 50 \text{ hours} = \$20.00/\text{hour}$). The contractor has met the DBA minimum wage requirement. The contractor is now required to pay an additional \$100.00 (one-half of the regular rate of pay = $\$10.00 \times 10 \text{ OT hours}$) in OT compensation, for a total weekly compensation of \$1,100.00. In Week #2, the worker works 60

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hours. His regular rate of pay is now \$16.67/hour ($\$1,000 / 60 \text{ hours} = \$16.67/\text{hour}$). The contractor is therefore required to bring the worker up to the DBA minimum wage requirement of \$20.00/hour by paying an additional \$3.33/hour (DBA rate of \$20.00/hour less \$16.67/hour paid), times 60 hours worked, or \$199.80. The worker's regular rate of pay is now \$20.00/hour, and the contractor must now compute the additional OT compensation due. He owes an additional \$200.00 (one-half the regular rate of \$20.00 equals \$10.00/hour, times 20 OT hours, or \$200.00). Total wages due this worker for this week are the \$1,000.00 salary, plus \$199.80 to bring him to the DBA minimum, plus OT compensation of \$200.00, or a total of \$1,399.80 for this week.

(5) A fifth worker works in a classification that requires \$20.00/hour DBA wage rate and \$3.00/hour DBA fringe benefits. The contractor pays for all of this in cash payments each week (reporting on the WH-347 that he pays \$20.00/\$3.00 in Column (6) of the report). The contractor's obligation for overtime compensation will be time and one-half the basic wage rate on the DBA wage determination (\$20.00), or an additional \$10.00/hour for each of the hours worked in excess of 40 per week. If the worker works 45 hours in Week #1, the contractor is obligated to pay 45 hours times \$20.00/hour DBA basic hourly rate; plus 45 hours times \$3.00/hour DBA fringe benefits; plus five hours times \$10.00/hour for overtime compensation, for total earnings that week of \$1,085.00.

d. Reference 29 CFR 778 for further guidance on paying OT compensation, and reference DOL's website at www.dol.gov/whd, "Overtime." Questions may also be addressed to DOL's nearest regional office.

Section 3-4 Payroll Deductions. DBA, Copeland Act, and related regulations require contractors and subcontractors to pay all laborers and mechanics "... **unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account . . . except as permitted . . .**" (Reference 29 CFR Part 3 concerning allowable payroll deductions.) Allowable deductions include withholding for income taxes, worker share of Social Security tax, wage garnishments or payments for judgments legally imposed against the worker by an appropriate authority (e.g., a court), and any legally-permissible deduction voluntarily

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authorized by the worker such as insurance premiums, retirement contributions, savings contributions, and similar payments. The Copeland Act prohibits contractors from requiring workers to kick-back (*i.e.*, give up) any earnings due them under DBA or CWHSSA. Contractors are cautioned to accurately record any and all deductions from workers' earnings, and to maintain records supporting the authorization of any deductions from a worker's earnings. (See Section 4-2f of this Desk Guide on reporting deductions.)

Chapter 4 DBA Certified Payrolls.

Section 4-1 Wage and Fringe Benefit Reporting Requirements.

a. DBA requires covered contractors to pay their workers not less than DBA-required wages and fringe benefits, in full, on a weekly basis.

b. The Copeland Act and DBA regulations require contractors to **provide payroll information** each week to the contracting agency, listing the workers on the project, including work classifications, hours worked, wage rates, benefits, overtime compensation, total wages paid, and information related to payroll deductions. The basic information required is almost identical to the information already required of contractors by the IRS, DOL, and other federal and state agencies concerned with various taxes, hours worked, wages and benefits paid, and similar contractor requirements.

NOTE: Contractors performing covered work with financial assistance funds through grants, loans, *etc.*, must submit certified payroll information to the financial assistance recipient in accordance with the terms of the applicable contract.

c. In addition, the Copeland Act requires DBA-covered contractors to provide a signed "Statement of Compliance" (or "certified payroll") certifying that the weekly payroll information is correct and complete and that each laborer and mechanic has been paid not less than the DBA prevailing wage and benefit rate for the work performed that week.

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d. The **due date** for each certified payroll to be submitted to DOE, as the contracting agency, or to the financial assistance recipient in accordance with the contract, is **no later than one week after each weekly pay date**. (For information regarding penalties for failure to submit certified payrolls or for falsification of payroll information, see Section 4-4b of this Desk Guide.)

e. The **prime contractor is responsible for the timely submission to DOE of certified payrolls for all subcontractors**. The prime contractor is obligated to notify all subcontractors of the labor provisions of the contract and to ensure that each subcontractor submits timely, accurate and complete certified payrolls.

NOTE: Financial assistance recipients must provide DOE certified payrolls consistent with the terms of the applicable contract.

f. DOL's Form WH-347, "Payroll," and instructions for completing it, can be found in a fillable PDF format at www.dol.gov/whd/forms/index.htm. The second page is used to report information about payment of fringe benefits and contains the "Statement of Compliance."

g. Form WH-347 is recommended for contractor use. Contractors may, however, provide another payroll reporting format as long as the payroll information is identical to that required by WH-347, and the "Statement of Compliance" contains the same certification language. Each separate page and attachment to a report must include the contractor's name, the project number, the week-ending date for the report, and the sequential payroll number.

Section 4-2 Completing Certified Payroll Form WH-347.

a. Name of Contractor/Subcontractor and Address. Check the box noting the category (contractor or subcontractor) of the reporting contractor and insert the contractor's complete name and address.

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b. Payroll No. Each payroll report must be numbered, beginning with “#1” as the first payroll submitted by the reporting contractor for the first week in which it employs covered workers on the site.

c. For Week Ending. Each contractor must establish a fixed workweek period of seven consecutive days (*e.g.*, Monday through Sunday; Sunday through Saturday). The hours worked by each laborer and mechanic during that workweek must be reported on each weekly payroll, along with wages and benefits paid for that week.

d. Project and Location. A brief description of the project name and the location where the work is performed (include the county or counties).

e. Project or Contract No. Prime contractors will report the number of the contract/project awarded to them; subcontractors may use the same number if they have it, or use the number of their subcontract with the named prime contractor.

f. Worker Information.

Column (1) **Worker name and worker identifying number** (or last four digits of worker’s Social Security Number – do **NOT** report the worker’s full SSN).

NOTE: Contractors are required by DBA, FLSA, and many other statutes to maintain accurate records of worker addresses and full SSNs. The WH-347 certified payroll reports that are required under DBA/Copeland Act do not require reporting worker addresses and full SSNs. Contractors must provide this information in a separate report if requested to do so during a compliance review.

Column (2) **Number of withholding exemptions.** This information may be reported for the contractor’s convenience in computing withholding taxes, or the column may be left blank.

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Column (3) **Worker classification(s)**. List the classification of work actually performed by each laborer and mechanic. If a worker works at more than one classification within a single week, show each classification separately for that worker, along with the hours worked and hourly rate of pay for each classification.

NOTE: Workers properly documented and employed as **apprentices** or **trainees** must be reported as such with the classification in which they work (example: “Plumber/Apprentice”), and supporting documentation evidencing the worker’s enrollment in an approved program must be attached to the first certified payroll reporting their hours worked on the project. (See Section 3-1 on Apprentices and Trainees.)

Column (4) **Workweek**.

(a) At the head of the column each contractor must note the **days of the week** that constitute the established seven-day **workweek** (e.g., “S-M-T-W-T-F-S” or “T-W-T-F-S-S-M,” etc.). In the box below the day of the week, note the **date** for each day reported (e.g., 25th, 26th, 27th, etc.). A workweek is a fixed and regularly recurring period of seven consecutive 24-hour periods. It need not coincide with the calendar week. (Reference 29 CFR 778.105.)

(b) In the boxes below the dates, report **only** the hours worked each day **on this covered project**, noting in the boxes marked “S” the straight-time hours worked, and in the boxes marked “O” the overtime hours worked. Do not include hours worked on any other project.

(c) Overtime hours reported in Column 4 (and totaled in Column 5) on the WH-347 are those hours worked on the covered project in excess of 40 hours in any workweek.

NOTE: Overtime Compensation. Reference Section 3-3 of this Desk Guide for information on meeting the requirements for overtime compensation under FLSA and CWHSSA.

Column (5) **Total hours worked for the week on this project**.

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Column (6) **Rate of Pay**. Show the straight-time rate of pay on the “S” line in this column, and show the overtime rate of pay on the “O” line in this column. If the contractor pays cash in lieu of providing a fringe benefit plan to meet the benefit requirements on the DBA wage determination, show both the regular wage rate and the fringe benefit rate paid in cash in Column 6 “S” box, in the following manner:

Example for reporting workers earning hourly wages and cash in lieu of fringe benefits: A worker earns the DBA basic hourly wage rate of \$18.00/hour, and \$3.00/hour for fringe benefits paid in cash each week. The contractor should report the rate of pay in Column (6) “S” (straight-time rate), \$21.00. If the worker worked overtime hours, the overtime rate of pay reported in Column (6) “O” will be no less than time and one-half the basic hourly wage rate of \$18.00, or \$27.00/hour, plus \$3.00/hour for the cash in lieu of fringe benefit requirement, for a total overtime rate of pay at \$30.00/hour.

Example for reporting workers employed at piecework rates: For a week in which an employer paid piecework instead of an hourly rate of pay, the employer must show on a signed attachment to the WH-347, or equivalent form, the computation for the worker’s basic hourly wage rate and overtime rate of pay.

Example A: In a week in which a worker worked 40 hours and was paid \$550.00 in piecework, the worker’s hourly wage rate is \$550.00 divided by 40 hours, or \$13.75/hour. If the DBA minimum for the classification is \$18.00/hour plus \$3.00/hour in fringe benefits, the employer must pay an additional \$7.25/hour to the worker to bring him to the total DBA minimum requirement of \$21.00/hour, and then report in Column (6) of the WH-347 “\$21.00” as rate of pay. The rate of pay reported in Column (6) for overtime (“O” hours) will be the same as noted in the example above, “\$30.00/hour” (time and one-half the straight-time rate plus cash in lieu of fringe benefits).

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Example B: In a week in which a worker worked 40 hours and was paid \$1,000.00 in piecework, the worker's hourly wage rate is \$1,000.00 divided by 40 hours, or \$25.00/hour. If the DBA minimum wage rate for the classification is \$18.00/hour plus \$3.00 in fringe benefits, the employer has met and exceeded the DBA requirement, and must report in Column (6) of the WH-347 "\$25.00" as the worker's straight-time rate of pay. The rate of pay reported in Column (6) for overtime ("O" hours) will be "\$37.50/hour" (time and one-half the worker's regular rate of pay).

(Reference Section 3-2 of this Desk Guide on piecework pay under DBA.)

Column (7) **Gross amount earned.** Each box has a diagonal line permitting the contractor to report each worker's total gross wages paid **specifically for work on the project** reported by this particular payroll (noted in the **upper portion of the box**), and total gross wages earned for the entire week (noted in the **lower portion of the box**). The total gross wages reported in the lower portion of the box would include not only the project work, but also any and all work performed by the worker on other DBA projects and work performed on non-DBA projects.

NOTE: For workers **working at more than one classification** on the project, the contractor must report for each worker the hours worked, total hours, rate of pay for each classification, and total gross wages (in columns (3), (4), (5), (6), and (7)).

Column (8) **Deductions.** Five columns are provided for reporting all deductions from each worker's gross wages, and a sixth column for the total of all deductions. Each deduction must be identified. If more columns are necessary, the contractor may provide this information on a separate, attached sheet. The total of the deductions on the separate attachment can be reported in the column headed "Other." The total amount of all deductions is reported in the last (6th) deduction column, "Total Deductions." When reporting a worker who has worked on a covered project as well as on non-project work in the same week, the entry in Column (8)'s

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“Total Deductions” should reflect the amount of deductions taken from the worker’s total wages for that week.

NOTE: Deductions must be identified (*e.g.*, “state income tax,” “loan repayment,” “purchase of equipment”). Any deduction other than those required by law (such as taxes) or required by order of an appropriate authority (such as wage garnishments) must be voluntary and authorized in writing by the worker or authorized by a collective bargaining agreement. For voluntary deductions, a short note describing the deduction and signed by the worker should be attached to the payroll report on which the deduction first appears.

Column (9) **Net wages paid for week**. Net wages paid is the total gross amount earned for all of the work performed that week (reported in the lower section of Column (7)) less total deductions (reported in the last section of Column (8)).

Section 4-3 Reporting Fringe Benefit Payments on Form WH-347.

a. Contractors are obligated to report payments made to comply with the DBA fringe benefit requirement and the manner in which these payments were made – either cash paid in lieu of providing a fringe benefit plan and/or payments made to a plan that provides benefits to the worker. Section (4) on the second page of the WH-347 serves the purpose of reporting the manner of payment of DBA benefits. Contractors should attach to a certified payroll report any additional information concerning payment of fringe benefits.

b. If the contractor pays all workers the required DBA fringe benefits in cash, in lieu of providing a benefit plan, the contractor must report the payment on the first page of the WH-347, in Column (6) “Rate of Pay” and in Column (7) “Gross Amount Earned.” The contractor must also check Box (4)(b) on the second page of the WH-347 indicating payment of cash in lieu of providing benefits.

c. If a contractor pays the required DBA fringe benefit rate into a bona fide fringe benefit plan for all workers, the contractor should check the box in Box (4)(a) on the second page of the

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WH-347. It is not necessary to show the amount paid into these plans on the first page of the WH-347 in Column (6). It will be necessary, of course, to maintain supporting documents for the benefit plan(s), and documents that evidence the contractor's contributions for those plans. A compliance review or investigation will include a review of these documents.

d. If a contractor pays some of the workers cash in lieu of providing a benefit plan, and provides other workers benefit plans to meet the DBA fringe benefit requirement, or pays a portion of the fringe benefit requirement in cash and a portion of the requirement into a bona fide benefit plan, the contractor should check whichever box in Section (4) represents the most-used payment method, and note in Section 4(c) the exceptions and the details of the payment method.

e. In reporting fringe benefits on the WH-347 or equivalent form, it is important that the contractor clearly show the method used to comply with DBA. Information that is confusing, incomplete, or inaccurate will generate further inquiries during payroll reviews and may result in a full investigation to ensure contractor compliance.

Section 4-4 Statement of Compliance (or Certification of Payroll).

a. The required Statement of Compliance is located on the second page of the WH-347. If a contractor uses any payroll format other than Form WH-347, the same Statement of Compliance must be signed and submitted with each weekly payroll. The **Statement of Compliance must be signed by a principal of the firm** (owner or an officer such as president, treasurer, or payroll administrator). The signature must always be that of a person who has authority to direct the payment of wages and benefits to the workers.

NOTE: Proper use of electronic signatures on certified payrolls and related compliance statements is permitted, and carries the same legal effect as handwritten signatures.

NOTE: In completing DOL's fillable pdf form, note that the Statement's "payroll period" dates require entries to be made numerically (example: instead of entering "14 day of June, 2010," enter "14 day of 06, 2010.")

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b. The willful falsification of a payroll report or a Statement of Compliance may subject the contractor to civil and/or criminal prosecution and may also be a cause for debarment. Inducing any person to “give up any part of the compensation to which he/she is entitled under” DBA and its related Acts (known as “kickbacks”) may also subject a contractor to prosecution and/or debarment.

Section 4-5 “No Work” Payrolls. Certified payrolls must be submitted each week to the designated agency for the project. If a contractor or subcontractor on a project performs no covered work in a specific week, there is no need to submit a certified payroll. If the contractor does not expect to be on the job site for several weeks, it is recommended that the contractor submit a statement to DOE, as the contracting agency, or to the financial assistance recipient, notifying it that the contractor will not be working on the project for an extended period of time, and providing an approximate date of return. For the next week in which work is performed on site by that contractor’s laborers or mechanics, the contractor must submit a certified payroll numbered sequentially following the last certified payroll submitted. This will help to avoid confusion about interruptions in receipt of weekly payroll reports.

Section 4-6 Retaining Payroll Records. Every contractor and subcontractor on covered projects must keep a complete set of pay records for at least three years after the project is completed. This includes basic payroll information, time cards, cancelled checks or receipts for cash payments for wages or benefits, apprenticeship documentation, evidence of payments to fringe benefit plans, and information on taxes and other payroll deductions.

Chapter 5 Payroll Reviews and Corrections.

Section 5-1 Compliance Reviews.

a. **General.** Federal contracting agencies, including DOE, have primary responsibility for the day-to-day enforcement of contract labor standards on a covered construction project. Generally, the contracting agency will be responsible for ensuring that contractors and subcontractors

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comply with the labor standards requirements. Prime contractors and first-tier financial assistance recipients must also ensure compliance by subcontractors. Compliance reviews include visits to the job site, worker interviews, review of time and pay records and related information, and discussions with the contractors and subcontractors. In addition, DOL may conduct its own investigation to determine compliance under DBA, FLSA, CWHSSA, and other labor laws applicable to a contractor. (See Section 5-3 concerning DOL's enforcement sanctions under these contract labor standards.)

b. **Worker Interviews.** The compliance reviewer will visit the job site and interview workers concerning their wages, hours, benefits, classifications, payroll deductions, and other related subjects. Contractors are required by law to provide access to their workers for the purpose of interviewing at the job site by either the designated compliance reviewer or a DOL investigator. Every effort will be made to ensure that the interviews cause as little disruption as possible in performance of the work on the job site. It is DOL's policy to protect the identity of workers and other sources during a compliance review or labor investigation. Therefore, such information will not be disclosed without prior consent of the source. On occasion, workers (including former workers) will be contacted off-site, by telephone, or at their place of residence. Contractor and subcontractor cooperation with this task is essential and any questions pertaining to the process should be addressed to DOE or the DOL investigator.

c. **Project Payroll Reviews.** The compliance reviewer will collect certified payroll reports submitted to DOE via the prime contractor (or recipient of loan, grant, loan guarantee, *etc.*), along with documents supporting the use of apprentices and trainees, documents supporting payroll deductions, written interviews completed at the job site and elsewhere, the applicable DBA wage determination, and other pertinent information such as the daily construction or contract progress reports. These documents will be reviewed to determine the contractor's status of compliance. The contracting officer will notify the prime contractor and subcontractor(s) of any discrepancies found during the review.

NOTE: As noted before, DOE, as the contracting agency, and financial assistance recipients may withhold accrued payments or advances as may be necessary to cover any

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underpayment of wages, fringe benefits, or overtime compensation due as a result of DBA or CWHSSA violations. For this reason, prime contractors and financial assistance recipients should review each contractor's payroll report for compliance issues **prior to submitting the report** to the contracting officer, consistent with the terms of the applicable contract. Systematic and careful review of contractor reports may detect any errors or violations early in the project, and thus avoid costly compliance reviews and underpayments of wages and/or fringe benefits due the workers.

d. Common DBA/CWHSSA Payroll Errors and Corrections.

(1) **Incomplete or inadequate payroll information.** If the contractor does not use the optional DOL Form WH-347 to report weekly payrolls, it must still provide all the information requested by that form.

(2) **Missing addresses and identifying worker number.** The contractor must report an identification number for each worker (or the last four digits of the worker's Social Security number if there is no other worker identification system in use). **Do NOT include full Social Security numbers or home addresses** on the weekly certified payrolls. Contractors must maintain such information in its basic pay and employment records and are obligated to provide this information, if requested, to the compliance reviewer or the DOL investigator.

(3) **Classifications.** If a contractor reports worker classifications that are not listed on the DBA wage determination, the contractor will be asked to either reclassify the worker in compliance with the classifications listed on the wage determination, or submit with the certified payroll report a copy of the SF-1444 "Request for Approval of Additional Classifications" that was submitted to DOL for approval. DOL's response will be sent to DOE, as the contracting agency. DOE will notify the prime contractor of DOL's response. If DOL's decision denies the contractor's proposed wage or benefit rate and directs an increase in either rate, the contractor must comply with the decision retroactive to the start of employment of the missing classification. If DOL denies the request for conformance of a proposed classification, noting that a classification already listed on the applicable wage determination is applicable, the

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contractor must comply with the decision retroactive to the start of employment of that classification. The contractor must submit a certified payroll reporting any retroactive payment of wages/benefits to the worker(s) as a result of DOL's decision.

(4) **Apprentices and Trainees.** The most typical violation involving the use of apprentices and trainees is the contractor's failure to submit documentation evidencing the worker's enrollment in an approved program. The second most typical violation involving these workers is the contractor's failure to comply with the apprenticeship program's ratio of apprentices to journeymen.

(5) **Overtime Compensation.** Payroll reports that indicate a worker worked in excess of 40 hours per week MUST include information regarding the contractor's compliance with the requirement to pay overtime compensation at not less than time and one-half the regular rate of pay. If the contractor failed to pay proper overtime compensation under CWHSSA, the contractor may also be liable to the United States for liquidated damages of \$10.00 per day per violation. If CWHSSA is not applicable to the worker, FLSA overtime violations may be referred to DOL for further investigation.

(6) **Fringe Benefits.** If the contractor or subcontractor fails to report payment of DBA fringe benefits that are required by the wage determination, the contractor will be asked to confirm compliance with the requirement to pay no less than the total wage and fringe benefit rates per hour, and to submit a corrected payroll report.

(7) **Signature.** If the signature is missing or does not have the level of authority required by the Act, the payroll report will be returned for correction.

Section 5-2 Violations and Restitution of Underpayment of Wages.

a. If DOE's compliance reviewer discovers a contractor's failure to pay the appropriate DBA wages and fringe benefits, the contractor will be notified immediately and the contractor will be required to pay full restitution to the workers. Typically, the contractor will be allowed 30

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days to correct the underpayments. The prime contractor is always responsible to the DOE contracting officer to ensure that subcontractors on the project pay the back wages in full and promptly.

b. **Simple Reporting Errors and Corrections.** Errors resulting from calculation errors, failure to attach proper documentation, and failure to report proper classifications may be resolved quickly and completely with informal notification to the prime contractor and subcontractor from the compliance reviewer, and prompt corrective response from the contractor. Contractors and subcontractors are responsible for knowing the contract's labor standards requirements and they must cooperate completely and promptly with all requests for compliance.

c. **The contractor found to be in violation and liable for unpaid wages or benefits must also submit a corrected payroll report to the contracting officer showing the computation of back wages and evidence of full payment to the workers.**

d. **Unlocated Workers Who Are Due Back Wages.** After an investigation discloses a contractor's failure to pay proper DBA wages or benefits, the contractor must make every reasonable effort to locate former workers and to pay back wages. If the contractor fails to locate any of the former workers, the contractor may be asked to provide to the DOE contracting officer evidence of its attempts to locate the workers (*e.g.*, returned mailings, *etc.*), and a list of the missing workers including name, last known address, Social Security number, dates of employment, and gross amount of underpayment due each of the workers. The contracting officer may withhold contract funds in the total amount of underpayment due the missing workers (or the contractor may be asked to provide payment by check to DOE as the contracting agency) for the purpose of asking the Comptroller General's office for assistance in locating the missing workers. The Act specifically authorizes the Comptroller General to disburse funds withheld for wages found to be due to laborers and mechanics under DBA. (Reference 40 U.S.C. Sec. 3144.)

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Section 5-3 Labor Standards Disputes and Sanctions for Violations of DBA Requirements.

a. **Labor Standards Disputes.** It is the responsibility of the contractor and subcontractor to be knowledgeable about their obligations under the several contract labor standards. It is DOE's responsibility as the contracting agency to enforce the provisions of DBA and CWHSSA. When the compliance reviewer notes violations such as failure to record hours worked, misclassification of workers, inappropriate use of apprentices and trainees, failure to pay benefits or overtime compensation, or unallowable deduction from wages, DOE will notify the prime contractor of the violations (and the subcontractor, if the violations are the result of the subcontractor's pay practices). If the contractor disagrees with the findings of the compliance reviewer, the prime contractor and/or subcontractor, or any other interested party, may ask DOL's Wage and Hour Administrator for a review and reconsideration of the issue. The Administrator's decision may then be appealed to DOL's Administrative Review Board. The requests must be timely and in writing. (Reference 29 CFR Part 1 for the procedures.)

b. **Withholding.** The contracting officer has the responsibility to withhold from payments due to the prime contractor any amounts believed to be due and unpaid to workers because of DBA violations. An authorized representative of DOL may also direct DOE to withhold contract payments due to violations of DBA. If funds remaining due to the contractor on the contract under which DBA violations occurred are insufficient, DOE can withhold funds from other contracts subject to DBA or CWHSSA that are held by the same prime contractor. Prime contractors and subcontractors will be notified in writing of any action to withhold payments due to labor violations.

c. **Debarment.** Contractors and/or subcontractors that are found by the Secretary of Labor to be in aggravated or willful violation of DBA will be debarred – ineligible to participate in any DBA/DBRA contracts – for up to three years. Debarment applies to the contractor or subcontractor and any firm, corporation, partnership, or association in which the contractor or subcontractor has a substantial interest. Debarment proceedings can be recommended by the DOE contracting officer or may be initiated by DOL. Proceedings are described in 29 CFR 5.12.

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Debarment under DBA and violations of contract clauses including DBA, CWHSSA, requirements for certified payroll reports, and other contract labor standards, can be the basis for DOE to terminate the contract.

d. **Falsification of Certified Payroll Reports.** Contractors or subcontractors found to have willfully falsified payroll reports (Statements of Compliance), including payrolls reporting correction of earlier violations, may be subject to civil or criminal prosecution. Penalties up to \$1,000 and/or one year in prison for each false statement may be imposed. (Reference 18 U.S.C. 1001 and 31 U.S.C. 231.).

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A DESK GUIDE TO
THE DAVIS-BACON ACT

WEB LINKS FOR ADDITIONAL
DAVIS-BACON ACT INFORMATION

• Frequently Asked Questions:

- http://www.gc.energy.gov/GCHotlineFAQ%20.htm#Davis_Bacon
- http://www1.eere.energy.gov/eere_faq/default.aspx?pid=10&spid=1 (EECBG)
- http://www1.eere.energy.gov/eere_faq/default.aspx?pid=10&spid=2 (WAP)
- http://www1.eere.energy.gov/eere_faq/default.aspx?pid=10&spid=3 (SEP)

• Davis-Bacon Act Clauses:

- Weatherization Assistance Program:
http://www1.eere.energy.gov/wip/pdfs/dba_clauses_weatherization.pdf
- Other Recovery Act Programs:
http://www1.eere.energy.gov/wip/pdfs/dba_clauses_non_wap.pdf

• U. S. Department of Labor, Wage and Hour Division:

- <http://www.dol.gov/whd/programs/dbra/wh1321.htm> - DBA Poster
- <http://www.dol.gov/whd/whdkeyp.htm> - DOL WHD Key Personnel and Regional Office Addresses
- <http://www.dol.gov/whd/recovery/pwrb/toc.htm> - DBA Area Practice Surveys
- <http://www.dol.gov/whd/FOH/index.htm> - DBA policies, including definitions of bona fide benefits
- <http://www.wdol.gov> – Website containing DBA general wage determinations, policy statements (“All Agency Memoranda”), and links to federal agency labor advisors, federal labor regulations, and forms

EXHIBIT 1 - PROJECT SCHEDULE

ID	Task Name	Duration	Month 1			Month 2					Month 3						
			W-3	W-2	W-1	W1	W2	W3	W4	W5	W6	W7	W8	W9			
1	Monterey Laurel Yard	129 days															
2	Receive Authorization	1 day															
3	Programming & Schematic Design	10 days															
4	Prog & Schem Design Review & Approval	3 days															
5	Detailed Design Development	15 days															
6	Detailed Design Review & Approval	5 days															
7	Construction Documents Development	5 days															
8	Construction Document Review & Approval	5 days															
9	Procurement of Steel	30 days															
10	Steel Fabrication off site	10 days															
11	Module/Inverter Procurement	5 days															
12	Site Construction	60 days															
13	Startup/Commissioning	5 days															
14	Permission To Operate	15 days															

Project: Laurel Yard Solar Prelimtr Date: Thu 9/29/11	Task	Summary	External Milestone	◇
	Split	Project Summary	Deadline	↓
	Milestone	External Tasks	Progress	▬

EXHIBIT 1 – PROJECT SCHEDULE

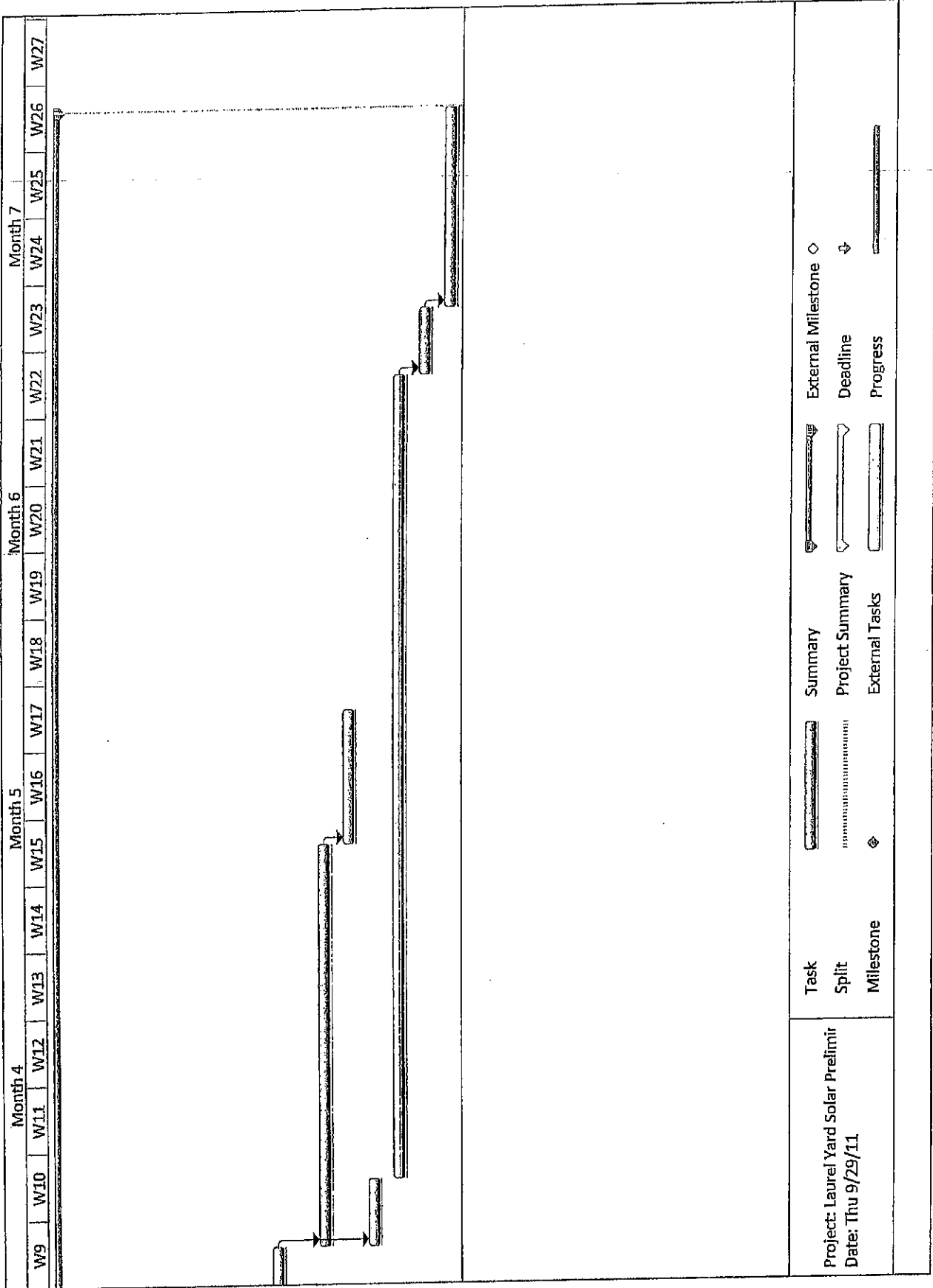
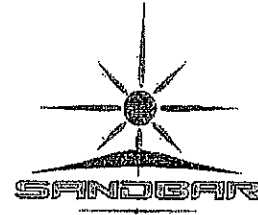


EXHIBIT 2 – COST PROPOSAL



September 26, 2011

Ms. Patricia Lopez
Department of Public Works
County of Monterey
168 W. Alisal St
2nd Floor
Salinas, CA 93901

**Proposal 11-050-001A.2: Photovoltaic Solar Energy Generation System
Laurel Yard Buildings A-H**

Dear Ms. Lopez,

Sandbar is pleased to provide the following proposal for Engineering, Procurement, and Construction (EPC) services as described herein of a covered parking style, grid-tied solar photovoltaic generation system for the Laurel Yard Buildings A-H located at 855 Laurel Drive in Salinas. The system will be interconnected to a single meter at the site.

Based on the provided Request-For-Proposal (RFP), including site plan, the project can be summarized as follows:

Laurel Yard Project:

1. Size: 140 kW DC STC
2. Modules: American Made 240 WDC STC modules manufacturer TBD
3. Inverters: (2) American Made PV Powered Inverters sized for system
4. The system will be designed and mounted in the location identified in the preliminary site plan utilizing a carport "T" style shade structure system. Previous example photos were provided for reference.

The attached proposal clarifications are integral to our submission. Our talented team of professionals stands ready to initiate the project upon your authorization. Please review the information, and do not hesitate to call me directly should you have any questions. I look forward to discussing the project with you further.

Very truly,

Scott Laskey

**SANDBAR
SOLAR & ELECTRIC**

EXHIBIT 2 – COST PROPOSAL

Scope of Work

Project Understanding

Sandbar and the team of partners will provide the complete system design, procurement, construction and installation inclusive of installing all PV equipment, carport structure, electrical conduit, wire, fittings, pull boxes, gutter, disconnects and distribution equipment, and support structure necessary for installation of the solar photovoltaic equipment from the carport mounting structure to the AC Point of Connection (POC) interconnection.

The carport structures will be fabricated of structural steel and be a single plane design with a 5 degree tilt. See photos attached for visual reference. Electrical conduits will be routed underground from the carports to an inverter pad located in close proximity to the carport arrays. The inverter pad will accommodate the designed inverters and all associated electrical components required for the installation. From the inverter pad, conduits will be routed underground to the MSB for interconnection into the site electrical system. A single disconnect will be installed at this location for solar interconnection and single point disconnecting. The interconnection point will be the MSB located near the parking structures to be installed. Adequate space will be available for installation of the equipment and monitoring equipment at the MSB outside. Sandbar will expand the existing equipment pad to accommodate the additional solar equipment to be mounted at the MSB.

Underground conduits will be installed via either trenching or directional boring.

Sandbar will provide the design, procurement, and installation per the Scope of Work document.

Project Clarifications:

The following clarifications are integral to this offering. Any adjustments to these items may result in additional costs or time requirements for the project.

1. No permit costs or inspection fees have been included. These costs if required will be billed to the County as an additional reimbursable at cost.
2. All NEPA, CEQA, SHPO requirements have been performed and approved and no additional requirements or limitation are expected for this project. Sandbar shall not be responsible for this effort and these reports and documents will be made available to the project.
3. Surveying, underground mapping, and geo-tech studies for the project have been performed and made available. If conditions differ from the report, additional costs may be incurred.
4. It is expected the existing main electrical equipment will be suitable for a supply side system interconnection. If equipment upgrade is required, additional costs for the equipment will be expected.
5. It is expected County approvals will be expedited and not cause project delays or additional time will be granted to avoid any liquidated damages as described in the contract documents. Sandbar cannot be responsible for schedule delays due to public hearing delays, or county approval and authorizations to the project.
6. Sandbar does not have any system sizing responsibilities, nor expected savings projections or guarantees for this project. System size is specified to be 140 kW DC STC. Sandbar shall build a system of said size to current standards and good workmanship.
7. Sandbar will not be responsible for as-building existing equipment or systems drawings for which no drawings exist. Sandbar will only as-build drawings developed for this project by the project team.

EXHIBIT 2 – COST PROPOSAL

Terms

This proposal is being offered as a Lump Sum Fixed Price for the scope as presented and clarified, contingent upon mutually agreed upon Contract Terms & Conditions. Billing will occur monthly with net 15 day terms.

Lump Sum Value: \$ 711,867.00

The following Cost breakdown Details are provided for informational purposes per request and not for line item selection:

E&D	\$	34,894.80
Construction & Materials	\$	660,972.95
Commissioning & Training	\$	8,000.00
Meetings & Other	\$	8,000.00
TOTAL:	\$	711,867.75

Rate Schedule

The following rate schedule shall be utilized for any additional effort which may be requested outside the current scope of work as described and clarified.

CLASSIFICATION	RATE
Project Manager	\$ 110/hr
Project Engineer	\$ 105/hr
CAD Designer/Drafter	\$ 60/hr
Project Foreman	At current prevailing rates
Journey Electrician	At current prevailing rates
Electrician Apprentice	At current prevailing rates
General Laborer	At current prevailing rates
Administrative Support	\$ 60/hr /
Material Markup	+15%
Mileage	At IRS rate
On-site truck/tools	\$ 40/day/resource

Sandbar is a dba fictitious business name for Santa Cruz Westside Electric, Inc.
CCL# 846294

**EXHIBIT 3 – CONTRACTOR'S CERTIFICATION AS TO
WORKERS COMPENSATION**

**CONTRACTOR'S CERTIFICATE AS TO WORKER'S
COMPENSATION**

(Labor Code Section 1861)

Labor Code Section 3700 provides, in relevant part:

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

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

I certify that I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this contract.

Dated 11/1/11

SANDBAR

Contractor's business name

By: 

Print Name: SCOTT LASKEY

And Title: PRESIDENT

Exhibit 4

PERFORMANCE BOND
(Public Contract Code Section 20129)

Bond # 12072497
Premium: \$9,619.00

WHEREAS, the County of Monterey has awarded to Principal,

Santa Cruz Westside Electric, Inc., dba Sandbar

as Contractor, a contract for the following project: **COUNTY of MONTEREY, DEPARTMENT OF PUBLIC WORKS, DESIGN & INSTALLATION OF A SOLAR PHOTOVOTAIC SYSTEM FOR THE LAUREL YARD** located at 855 East Laurel Drive, Salinas, California ; and

WHEREAS, Principal, as Contractor, is required to furnish a bond in connection with said contract, to secure the faithful performance of said contract.

NOW, THEREFORE, Santa Cruz Westside Electric, Inc., dba Sandbar
as Principal, and The Guarantee Company of North America USA

as Surety, are held and firmly bound unto the County of Monterey, a political subdivision of the State of California (hereinafter called "County"), in the penal sum of Dollars (\$ 711,867.75), for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

If the Principal, as Contractor, or Principal's heirs, executors, administrators, successors, or assigns, (1) shall in all things stand to and abide by and well and truly keep and perform the covenants, conditions, and agreements in said contract and any alteration thereof made as therein provided, on Principal's part to be kept and performed, at the time and in the manner therein specified and in all respects according to their true intent and meaning, and (2) shall indemnify, defend and save harmless the County, the members of its board of supervisors, and its officers, agents and employees as therein stipulated, then this obligation shall become null and void; otherwise, it shall be and remain in full force and virtue.

Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or the call for bids, or to the work to be performed there under, or the specifications accompanying the same, shall in any way affect its obligation under this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of said contract or the call for bids, or to the work, or to the specifications.

Exhibit 4

Whenever the Principal, as Contractor, is in default, and is declared in default, under the Contract by the County of Monterey, the County of Monterey having performed its obligation under the contract, Surety may promptly remedy the default, or shall promptly:

- 1.) Complete the contract in accordance with its terms or conditions, or
- 2.) Obtain a bid or bids for submission to County of Monterey for completing the Contract in accordance with its terms or conditions, and upon determination by the County of Monterey and Surety of the lowest responsible and responsive bidder, arrange for a contract between such bidder and the County of Monterey, and make available as work progresses (even though there should be a default or succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price.

If suit is brought upon this bond by the County and judgment is recovered, the Surety shall pay all litigation expenses incurred by the County in such suit, including attorneys' fees, court costs, expert witness fees and investigation expenses.

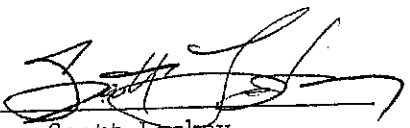
IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals this 31st day of October, 2011, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Santa Cruz Westside Electric, Inc.,
dba Sandbar

(Corporate Seal)

Principal

By:


Scott Laskey

Title:

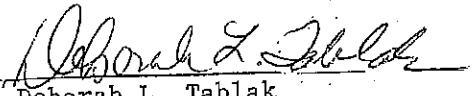
President

The Guarantee Company of
North America USA

(Corporate Seal)

Surety

By:


Deborah L. Tablak

Title:

Attorney-in-Fact

(Attach: 1) Copy of authorization for signature for Principal, and 2) original or certified copy of unrevoked appointment, Power of Attorney, Attorney-in-Fact Certificate bylaws or other instrument entitling or authorizing person executing bond on behalf of Surety to do so.)



THE GUARANTEE COMPANY OF NORTH AMERICA USA
Southfield, Michigan

POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS: That THE GUARANTEE COMPANY OF NORTH AMERICA USA, a corporation organized and existing under the laws of the State of Michigan, having its principal office in Southfield, Michigan, does hereby constitute and appoint

*Deborah L. Tablak, David Bachan, Yesenia Rivera
McSherry & Hudson*

its true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise.

The execution of such instrument(s) in pursuance of these presents, shall be as binding upon THE GUARANTEE COMPANY OF NORTH AMERICA USA as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at the principal office.

The Power of Attorney is executed and may be certified so, and may be revoked, pursuant to and by authority of Article IX, Section 9.03 of the By-Laws adopted by the Board of Directors of THE GUARANTEE COMPANY OF NORTH AMERICA USA at a meeting held on the 31st day of December, 2003. The President, or any Vice President, acting with any Secretary or Assistant Secretary, shall have power and authority:

1. To appoint Attorney(s)-in-fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereto, bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof; and
2. To revoke, at any time, any such Attorney-in-fact and revoke the authority given, except as provided below
3. In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner - Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

Further, this Power of Attorney is signed and sealed by facsimile pursuant to resolution of the Board of Directors of the Company adopted at a meeting duly called and held on the 31st day of December 2003, of which the following is a true excerpt:

RESOLVED that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any Power of Attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, contracts of indemnity and other writings obligatory in the nature thereof, and such signature and seal when so used shall have the same force and effect as though manually affixed.

IN WITNESS WHEREOF, THE GUARANTEE COMPANY OF NORTH AMERICA USA has caused this instrument to be signed and its corporate seal to be affixed by its authorized officer, this 6th day of June 2011.



State of Michigan
County of Oakland

THE GUARANTEE COMPANY OF NORTH AMERICA USA

Stephen C. Ruschak, Vice President

Randall Musselman, Secretary

On this 6th day of June, 2011 before me came the individuals who executed the preceding instrument, to me personally known, and being by me duly sworn, said that each is the herein described and authorized officer of The Guarantee Company of North America USA; that the seal affixed to said instrument is the Corporate Seal of said Company; that the Corporate Seal and each signature were duly affixed by order of the Board of Directors of said Company.



Cynthia A. Takai
Notary Public, State of Michigan
County of Oakland
My Commission Expires February 27, 2012
Acting in Oakland County

IN WITNESS WHEREOF, I have hereunto set my hand at The Guarantee Company of North America USA offices the day and year above written.

I, Randall Musselman, Secretary of THE GUARANTEE COMPANY OF NORTH AMERICA USA, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney executed by THE GUARANTEE COMPANY OF NORTH AMERICA USA, which is still in full force and effect.

IN WITNESS WHEREOF, I have thereunto set my hand and attached the seal of said Company this 31st day of October, 2011

I certify that this Power of Attorney is in effective as of 10/31/11



Randall Musselman, Secretary

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

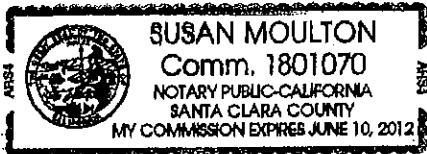
State of California

County of Santa Cruz

On **October 31, 2011**, before me, **Susan Moulton, Notary Public**, personally appeared **Deborah L. Tablak**, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Susan Moulton
Susan Moulton

-----OPTIONAL-----

DOCUMENT AND SIGNER

Type: Performance Bond # 12072497

Principal: Santa Cruz Westside Electric, Inc., dba Sandbar

Obligee: County of Monterey

Description: Design and Installation of a Solar Photovoltaic System for the Laurel Yard located at 855 East Laurel Drive, Salinas, CA

Deborah L. Tablak is Attorney-in-Fact representing The Guarantee Company of North America USA

SANTA CRUZ WESTSIDE ELECTRIC, INC. dba SANDBAR
CORPORATE RESOLUTION

Be it resolved that it is in the best interests of Santa Cruz Westside Electric, Inc. dba Sandbar to enter into contracts which will require signature authorizations and commitments for such contracts and surety bonds.

In furtherance of this resolution, Scott Laskey the President, is duly authorized to enter into and sign said contracts and surety bonds on behalf of Santa Cruz Westside Electric, Inc. Scott Laskey currently holds the officer position of President and has held that office since Corporate Inception of December 2004. The President is further authorized to provide such additional information and execute such other documents as may be required by the state, federal or local governments in connection with said contracts and to execute any amendments, rescissions, and revisions thereto.

The Corporate Secretary, Michelle M. Laskey, is authorized to impress the seal of Santa Cruz Westside Electric, Inc. on any such document, amendment, rescission, or revision.

I, Michelle M. Laskey, the Corporate Secretary of Santa Cruz Westside Electric, Inc., do hereby certify this to be a true copy of the resolution duly adopted at the Corporate Board Meeting on October 31, 2011, in Santa Cruz California, and that it has not been rescinded, amended or altered in any way, **and that it remains in full force and in effect.**


Secretary

10/31/11
Date

Exhibit 4

PAYMENT BOND
(Civil Code section 3248)

Bond # 12072497
Premium: Incl. w/ Perf. Bond

WHEREAS, the County of Monterey has awarded to Principal,
Santa Cruz Westside Electric, Inc., dba Sandbar

as Contractor, a contract for the following project: **COUNTY of MONTEREY, DEPARTMENT OF PUBLIC WORKS, DESIGN & INSTALLATION OF A SOLAR PHOTOVOTAIC SYSTEM FOR THE LAUREL YARD** located at 855 East Laurel Drive, Salinas, California, and

WHEREAS, Principal, as Contractor, is required to furnish a bond in connection with said contract, to secure the payment of claims of laborers, mechanics, materialmen, and other persons furnishing labor and materials on the project, as provided by law.

Santa Cruz Westside Electric, Inc.,
NOW, THEREFORE, we dba Sandbar
as Principal, and The Guarantee Company of North America USA

as Surety, are held and firmly bound unto the County of Monterey, a political subdivision of the State of California (hereinafter called "County"), and to the persons named in California Civil Code section 3181 in the penal sum of Seven Hundred Eleven* Dollars (\$ 711,867.75), for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents. *Thousand, Eight Hundred Sixty-Seven Dollars 75/100

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

If Principal or any of Principal's heirs, executors, administrators, successors, assigns, or subcontractors (1) fails to pay in full all of the persons named in Civil Code Section 3181 with respect to any labor or materials furnished by said persons on the project described above, or (2) fails to pay in full all amounts due under the California Unemployment Insurance Code with respect to work or labor performed under the contract on the project described above, or (3) fails to pay for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal and subcontractors pursuant to Unemployment Insurance Code section 13020 with respect to such work and labor, then the Surety shall pay for the same.

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

Exhibit 4

If the County brings suit upon this bond and judgment is recovered, the Surety shall pay all litigation expenses incurred by the County in such suit, including attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond inures to the benefit of any of the persons named in Civil Code section 3181, and such persons or their assigns shall have a right of action in any suit brought upon this bond, subject to any limitations set forth in Civil Code sections 3247 et seq. (Civil Code, Division 3, Part 4, Title 15, Chapter 7: Payment Bond for Public Works).

IN WITNESS WHEREOF the above-bounded parties have executed this instrument under their several seals this 31st day of October, 2011, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(Corporate Seal)

Santa Cruz Westside Electric, Inc.,
dba: Sandbar

Principal
By: [Signature]
Scott Laskey
Title: President

(Corporate Seal)

The Guarantee Company of
North America USA
Surety

By: [Signature]
Deborah L. Tablak
Title: Attorney-in-Fact

(Attach: 1) Copy of authorization for signature for Principal, and 2) original or certified copy of unrevoked appointment, Power of Attorney, Attorney-in-Fact Certificate bylaws or other instrument entitling or authorizing person executing bond on behalf of Surety to do so.)



THE GUARANTEE COMPANY OF NORTH AMERICA USA
Southfield, Michigan

POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS: That THE GUARANTEE COMPANY OF NORTH AMERICA USA, a corporation organized and existing under the laws of the State of Michigan, having its principal office in Southfield, Michigan, does hereby constitute and appoint

*Deborah L. Tablak, David Bachan, Yesenia Rivera
McSherry & Hudson*

Its true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise.

The execution of such instrument(s) in pursuance of these presents, shall be as binding upon THE GUARANTEE COMPANY OF NORTH AMERICA USA as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at the principal office.

The Power of Attorney is executed and may be certified so, and may be revoked, pursuant to and by authority of Article IX, Section 9.03 of the By-Laws adopted by the Board of Directors of THE GUARANTEE COMPANY OF NORTH AMERICA USA at a meeting held on the 31st day of December, 2003. The President, or any Vice President, acting with any Secretary or Assistant Secretary, shall have power and authority:

1. To appoint Attorney(s)-in-fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereto, bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof; and
2. To revoke, at any time, any such Attorney-in-fact and revoke the authority given, except as provided below
3. In connection with obligations in favor of the Kentucky Department of Highways only, It is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner – Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

Further, this Power of Attorney is signed and sealed by facsimile pursuant to resolution of the Board of Directors of the Company adopted at a meeting duly called and held on the 31st day of December 2003, of which the following is a true excerpt:

RESOLVED that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any Power of Attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, contracts of indemnity and other writings obligatory in the nature thereof, and such signature and seal when so used shall have the same force and effect as though manually affixed.

IN WITNESS WHEREOF, THE GUARANTEE COMPANY OF NORTH AMERICA USA has caused this instrument to be signed and its corporate seal to be affixed by its authorized officer, this 6th day of June 2011.



State of Michigan
County of Oakland

THE GUARANTEE COMPANY OF NORTH AMERICA USA

Stephen C. Ruschak, Vice President

Randall Musselman, Secretary

On this 6th day of June, 2011 before me came the individuals who executed the preceding instrument, to me personally known, and being by me duly sworn, said that each is the herein described and authorized officer of The Guarantee Company of North America USA; that the seal affixed to said instrument is the Corporate Seal of said Company; that the Corporate Seal and each signature were duly affixed by order of the Board of Directors of said Company.



Cynthia A. Takai
Notary Public, State of Michigan
County of Oakland
My Commission Expires February 27, 2012
Acting in Oakland County

IN WITNESS WHEREOF, I have hereunto set my hand at The Guarantee Company of North America USA offices the day and year above written.

I, Randall Musselman, Secretary of THE GUARANTEE COMPANY OF NORTH AMERICA USA, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney executed by THE GUARANTEE COMPANY OF NORTH AMERICA USA, which is still in full force and effect.

IN WITNESS WHEREOF, I have thereunto set my hand and attached the seal of said Company this 31st day of October, 2011
I certify that this Power of Attorney is in effect as of 10/31/11



Deborah L. Tablak
Randall Musselman, Secretary

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

State of California

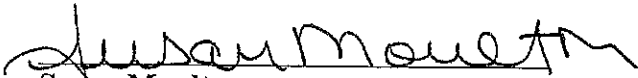
County of Santa Cruz

On **October 31, 2011**, before me, **Susan Moulton, Notary Public**, personally appeared **Deborah L. Tablak**, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.




Susan Moulton

-----OPTIONAL-----

DOCUMENT AND SIGNER

Type: Payment Bond # 12072497

Principal: Santa Cruz Westside Electric, Inc., dba Sandbar

Obligee: County of Monterey

Description: Design and Installation of a Solar Photovoltaic System for the Laurel Yard located at 855 East Laurel Drive, Salinas, CA

Deborah L. Tablak is Attorney-in-Fact representing The Guarantee Company of North America USA

SANTA CRUZ WESTSIDE ELECTRIC, INC. dba SANDBAR
CORPORATE RESOLUTION

Be it resolved that it is in the best interests of Santa Cruz Westside Electric, Inc. dba Sandbar to enter into contracts which will require signature authorizations and commitments for such contracts and surety bonds.

In furtherance of this resolution, Scott Laskey the President, is duly authorized to enter into and sign said contracts and surety bonds on behalf of Santa Cruz Westside Electric, Inc. Scott Laskey currently holds the officer position of President and has held that office since Corporate Inception of December 2004. The President is further authorized to provide such additional information and execute such other documents as may be required by the state, federal or local governments in connection with said contracts and to execute any amendments, rescissions, and revisions thereto.

The Corporate Secretary, Michelle M. Laskey, is authorized to impress the seal of Santa Cruz Westside Electric, Inc. on any such document, amendment, rescission, or revision.

I, Michelle M. Laskey, the Corporate Secretary of Santa Cruz Westside Electric, Inc., do hereby certify this to be a true copy of the resolution duly adopted at the Corporate Board Meeting on October 31, 2011, in Santa Cruz California, and that it has not been rescinded, amended or altered in any way, **and that it remains in full force and in effect.**


Secretary

10 / 31 / 11
Date

EXHIBIT 5 – NON-COLLUSION AFFIDAVIT EXECUTED BY CONTRACTOR

NONCOLLUSION AFFIDAVIT TO BE EXECUTED BY CONTRACTOR AND SUBMITTED WITH PROPOSAL

(Public Contract Code Section 7106)

State of California)
) ss.
County of SANTA CRUZ)

SCOTT LASKIN, being first duly sworn, deposes and says (1) that he or she is PRESIDENT of SANDBAR, the party making the foregoing proposal; (2) that the proposal is not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization, or corporation; (3) that the proposal is genuine and not collusive or sham; (4) that the Contractor has not directly or indirectly induced or solicited any other Contractor to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any Contractor or anyone else to put in a sham proposal, or that anyone shall refrain from proposing; (5) that the contractor has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the cost proposal price of the Contractor or any other Contractor, or to fix any overhead, profit, or cost element of the cost proposal price, or that of any other contractor, or to secure any advantage against the public body awarding the contract to anyone interested in the proposed contract; (6) that all statements contained in the proposal are true; and further, (7) that the contractor has not, directly or indirectly, submitted his or her cost proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Dated: 11/1/11

SANDBAR
Contractor's business name
By: [Signature]
Print Name: SCOTT LASKIN
And Title: PRESIDENT

Subscribed and sworn to me this ___ day of _____, 20__.

Notary Public in and for the County
of _____
State of California. **Notary Public**
See Attached

My commission expires _____.[Notary Stamp]

CALIFORNIA JURAT WITH AFFIANT STATEMENT

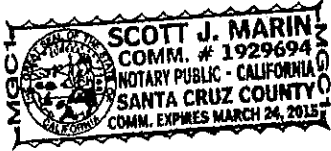
State of California }
County of Santa Cruz } ss.

- See Attached Document (Notary to cross out lines 1-8 below)
- See Statement Below (Lines 1-7 to be completed only by document signer[s], not Notary)

1 _____
2 _____
3 _____
4 _____
5 _____
6 _____
7 _____
8 _____
Signature of Document Signer No. 1 _____ Signature of Document Signer No. 2 _____

Subscribed and sworn to (or affirmed) before me this 1st day of November, 2011, by

- (1) Scott Laakey
- (2) _____



Place Notary Seal above

proved to me on the basis of satisfactory evidence to be the person(s) who appear before me.

[Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Further Description of Any Attached Document

submitted with proposal

Title or Type of Document: Non-Collision Affidavit to be executed by Contractor and
Document Date: 11/1/11 Number of Pages: 1
Signer[s] Other than above: None

RIGHT THUMBPRINT OF SIGNER #1
Top of thumb here

RIGHT THUMBPRINT OF SIGNER #2
Top of thumb here

EXHIBIT 6 - AFFIDAVIT CONCERNING EMPLOYMENT OF
UNDOCUMENTED ALIENS

AFFIDAVIT CONCERNING EMPLOYMENT OF
UNDOCUMENTED ALIENS TO BE SUBMITTED WITH
PROPOSAL

(Public Contract Code Section 6101)

State of California)
County of SANTA CRUZ) ss.

Public Contract Code Section 6101 provides that,

"No state agency or department, as defined in [Public Contract Code] Section 10335.7, that is subject to this code, shall award a public works or purchase contract to contractor, nor shall a contractor be eligible to propose for or receive a public works or purchase contract, who has, in the preceding five(5) years, been convicted of violating a state or federal law respecting the employment of undocumented aliens.

SCOTT LASKY, being first duly sworn, deposes and says (1) that he or she is the PRESIDENT of SANDBAR, the party making the foregoing proposal; and (2) that the party making the foregoing proposal has not, within the preceding five (5) years, been convicted of violating a state or federal law respecting the employment of undocumented aliens.

Dated: 11/1/11

SANDBAR
Contractor's business name

By: [Signature]

Print Name: SCOTT LASKY

And Title: PRESIDENT

Subscribed and sworn to me this ____ day of _____, 20__.

Notary Public in and for the
County Notary Public
of See Attached
State of California.

My commission expires _____
[Notary Stamp]

CALIFORNIA JURAT WITH AFFIANT STATEMENT

State of California
County of Santa Cruz } ss.

- See Attached Document (Notary to cross out lines 1-8 below)
- See Statement Below (Lines 1-7 to be completed only by document signer[s], *not* Notary)

1 _____

2 _____

3 _____

4 _____

5 _____

6 _____

7 _____

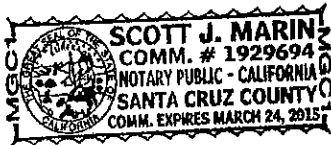
8 _____

Signature of Document Signer No. 1 _____ Signature of Document Signer No. 2 _____

Subscribed and sworn to (or affirmed) before me this 1st day of November, 2011, by

(1) Scott Laskey

(2) _____



Place Notary Seal above

proved to me on the basis of satisfactory evidence to be the person(s) who appear before me.

[Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Further Description of Any Attached Document

Title or Type of Document: Affidavit Concerning Employment of Unemployed Aliens to be Submitted Proposal

Document Date: 11/11 Number of Pages: 1

Signer[s] Other than above: None

RIGHT THUMBPRINT OF SIGNER #1
Top of thumb here

RIGHT THUMBPRINT OF SIGNER #2
Top of thumb here

EXHIBIT 7 - EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

The Contractor SANTA CRUZ INVESTING ECONOMIC, INC. dba SANDBAR,
proposed subcontractor _____,
hereby certifies that he has ____, has not participated in a previous contract or
subcontract subject to the equal opportunity clauses, as required by Executive Orders
10925, 11114, or 11246, and that, where required, he has filed with the Joint Reporting
Committee, the Director of the Office of Federal Contract Compliance, a Federal
Government contracting or administering agency, or the former President's Committee
on Equal Employment Opportunity, all reports due under the applicable filing
requirements.

Note: The Contractor must place a check mark after "has" or "has not" in one of the blank spaces
provided.

Note: The above Certification is part of the Agreement. Signing the Agreement on the signature
portion thereof shall also constitute signature of this Certification. Contractors are cautioned that
making false certification may result in criminal prosecution or administrative sanctions.

EXHIBIT 8 – DEBARMENT AND SUSPENSION CERTIFICATION

DEBARMENT AND SUSPENSION CERTIFICATION
TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29

The Contractor, under penalty of perjury, certifies that, except as noted below, he/she or any person associated therewith in the capacity of owner, partner, director, officer, manager:

- is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past 3 years;
- does not have a proposed debarment pending; and,
- has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining the Contractor's responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Note: The above Certification is part of the Agreement. Signing the Agreement on the signature portion thereof shall also constitute signature of this Certification. Contractors are cautioned that making false certification may result in criminal prosecution or administrative sanctions.

EXHIBIT 9 – PUBLIC CONTRACT CODE SECTION 10285.1 STATEMENT

PUBLIC CONTRACT CODE

PUBLIC CONTRACT CODE SECTION 10285.1 STATEMENT

In accordance with Public Contract Code Section 10285.1 (Chapter 376, Stats. 1985), the Contractor hereby declares under penalty of perjury under the laws of the State of California that the Contractor has _____, has not been convicted within the preceding three (3) years of any offenses referred to in that Section, including any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or Federal antitrust law in connection with the proposal, award of, or performance of, any public works contract, as defined in Public Contract Code Section 1101, with any public entity, as defined in Public Contract Code Section 1100, including the Regents of the University of California or the Trustees of the California State University. The term "Contractor" is understood to include any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, as referred to in Section 10285.1.

Note: The Contractor must place a check mark after "has" or "has not" in one of the blank spaces provided.

Note: The above Public Contract Code Statement is part of the Agreement. Signing this Agreement on the signature portion thereof shall also constitute signature of this Statement. Contractors are cautioned that making false certification may result in criminal prosecution or administrative sanctions.

EXHIBIT 10 – PUBLIC CONTRACT CODE SECTION 10162 QUESTIONNAIRE

PUBLIC CONTRACT CODE SECTION 10162 QUESTIONNAIRE

In accordance with Public Contract Code Section 10162, the Contractor shall complete, under penalty of perjury, the following questionnaire:

Has the Contractor, any officer of the Contractor, or any employee of the Contractor who has a proprietary interest in the Contractor, ever been disqualified, removed, or otherwise prevented from proposing on, or completing a federal, state, or local government project because of a violation of law or a safety regulation?

Yes _____ No X

If the answer is yes, explain the circumstances in the following space.

Note: The above Public Contract Code Questionnaire is part of the Agreement. Signing this Agreement on the signature portion thereof shall also constitute signature of this Questionnaire. Contractors are cautioned that making false certification may result in criminal prosecution or administrative sanctions.

EXHIBIT 11 – PUBLIC CONTRACT CODE SECTION 10232 STATEMENT

PUBLIC CONTRACT SECTION 10232 STATEMENT

In accordance with Public Contract Code Section 10232, the Contractor, hereby states under penalty of perjury, that no more than one (1) final unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two (2) year period because of the Contractor's failure to comply with an order of a federal court which orders the Contractor to comply with an order of the National Labor Relations Board.

Note: The above Public Contract Code Statement is part of the Agreement. Signing this Agreement on the signature portion thereof shall also constitute signature of this Statement. Contractors are cautioned that making false certification may result in criminal prosecution or administrative sanctions.

EXHIBIT 12 - LIST OF SUB-CONTRACTORS

LIST OF SUBCONTRACTORS

Project Name:

COUNTY of MONTEREY, DEPARTMENT OF PUBLIC WORKS, DESIGN & INSTALLATION OF A SOLAR PHOTOVOTAIC SYSTEM FOR THE LAUREL YARD located at 855 East Laurel Drive, Salinas, California

In compliance with the Subletting and Subcontracting Fair Practices Act (Chapter 4 [commencing with section 4100], Part 1, Division 2 of the Public Contract Code) and any amendments thereto, Contractor shall set forth below: (a) the name and the location of the place of business of each subcontractor who will perform work or labor or render service to the contractor in or about the construction of the work or improvement to be performed under this contract or a subcontractor licensed by the State of California who, under subcontract to the contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications in an amount in excess of one-half of one percent of the contractor's total cost proposal and (b) the portion of the work which will be done by each subcontractor under this Act. The contractor shall list only one subcontractor for each such portion as is defined by the contractor in this Agreement. The term "portion of work" refers to the type of work.

If contractor fails to specify a subcontractor or if a contractor specifies more than one subcontractor for the same portion of the work to be performed under the contract in excess of one-half of one percent of the contractor's total cost proposal, he shall be deemed to have agreed that he is fully qualified to perform that portion himself, and that he shall perform that portion himself.

Contractor shall not: (a) substitute any subcontractor, (b) permit any subcontract to be voluntarily assigned or transferred or allow it to be performed by any one other than the original subcontractor listed herein, or (c) sublet or subcontract any portion of the work in excess of one-half of one percent of the contractor's total cost proposal as to which this Agreement did not designate a subcontractor, except as authorized in the Subletting and Subcontracting Fair Practices Act. Subletting or subcontracting of any portion of the work in excess of one-half of one percent of the contractor's total cost proposal as to which no subcontractor was designated in the Agreement shall only be permitted in cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of the authority awarding this contract setting forth the facts constituting the emergency or necessity.

