

**DESIGN - BUILD CONTRACT
PHOTOVOLTAIC SYSTEMS**

BETWEEN

MOUNT DIABLO UNIFIED SCHOOL DISTRICT

AND

SUN POWER CORPORATION, SYSTEMS

October 26, 2010

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DESIGN BUILD CONTRACT – PHOTOVOLTAIC SYSTEMS
Mount Diablo Unified School District - SunPower
(Government Code § 4217.10 et seq.)

THIS CONTRACT is entered into and effective _____, 2010 (this "Contract"), by and between **SunPower Corporation, Systems** ("Designer/Builder" or "SunPower") and **Mount Diablo Unified School District** ("District" or "Customer") (each, a "Party" and collectively, the "Parties").

RECITALS

A. District owns and operates certain public facilities specifically described as:

	<u>SITE NAME</u>	<u>ADDRESS</u>
1)	Administration Buildings:	1936 Carlotta Drive, Concord, CA 94519
2)	Ayers Elementary School:	5120 Myrtle Drive, Concord, CA 94521
3)	Bancroft Elementary School:	2200 Parish Drive, Walnut Creek, CA 94596
4)	Bel Air Elementary School:	663 Canal Road, Bay Point, CA 94565
5)	Cambridge Elementary School:	1135 Lacey Lane, Concord, CA 94520
6)	Clayton Valley High School:	1101 Alberta Way, Concord, CA 94521
7)	College Park High School:	201 Viking Drive, Pleasant Hill, CA 94523
8)	Concord High School:	4200 Concord Boulevard, Concord, CA 94521
9)	Delta View Elementary School:	2916 Rio Verde, Bay Point, CA 94565
10)	Diablo View Middle School:	300 Diablo View Lane, Clayton, CA 94517
11)	Eagle Peak Elementary School:	800 Hutchinson Road, Walnut Creek, CA 94598
12)	El Dorado Middle School:	1750 West Street, Concord, CA 94521
13)	El Monte Elementary School:	1400 Dina Drive, Concord, CA 94518
14)	Fair Oaks Elementary School:	2400 Lisa Lane, Pleasant Hill, CA 94523
15)	Foothill Middle School:	2775 Cedro Lane, Walnut Creek, CA 94598
16)	Glenbrook Middle School:	2351 Olivera Road, Concord, CA 94520
17)	Gregory Gardens Elementary School:	1 Corritone Court, Pleasant Hill, CA 94523
18)	Hidden Valley Elementary School:	500 Glacier Drive, Martinez, CA 94553
19)	Highlands Elementary School:	1326 Pennsylvania Boulevard, Concord, CA 94521
20)	Holbrook Elementary School:	3333 Ronald Way, Concord, CA 94519
21)	Loma Vista Adult Education Center:	1266 San Carlos Avenue, Concord, CA 94518
22)	Maintenance and Operations Base:	1480 Gasoline Alley, Concord, CA 94520

	<u>SITE NAME</u>	<u>ADDRESS</u>
23)	Meadow Homes Elementary School:	1371 Detroit Avenue, Concord, CA 94518
24)	Monte Gardens Elementary School:	3841 Larkspur Drive, Concord, CA 94519
25)	Mountain View Elementary School:	1705 Thornwood Drive, Concord, CA 94521
26)	Mt. Diablo Elementary School:	5880 Mt. Zion Drive, Clayton, CA 94517
27)	Mt. Diablo High School:	2450 Grant Street, Concord, CA 94520
28)	Northgate High School:	425 Castle Rock Road, Walnut Creek, CA 94598
29)	Oak Grove Middle School:	2050 Minert Road, Concord, CA 94518
30)	Olympic High School:	2730 Salvio Street, Concord, CA 94519
31)	Pine Hollow Middle School:	5522 Pine Hollow Road, Concord, CA 94521
32)	Pleasant Hill Elementary School:	2097 Oak Park Boulevard, Pleasant Hill, CA 94523
33)	Pleasant Hill Middle School:	1 Santa Barbara Road, Pleasant Hill, CA 94523
34)	Rio Vista Elementary School:	611 Pacific Avenue, Bay Point, CA 94565
35)	Riverview Middle School:	205 Pacifica Avenue, Bay Point, CA 94565
36)	Sequoia Elementary School:	277 Boyd Road, Pleasant Hill, CA 94523
37)	Sequoia Middle School:	265 Boyd Road, Pleasant Hill, CA 94523
38)	Shores Acres Elementary School:	351 Marina Road, Bay Point, CA 94565
39)	Silverwood Elementary School:	1649 Claycord Avenue, Concord, CA 94521
40)	Strandwood Elementary School:	416 Gladys Drive, Pleasant Hill, CA 94523
41)	Sun Terrace Elementary School:	2448 Floyd Lane, Concord, CA 94520
42)	Valhalla Elementary School:	530 Kiki Drive, Pleasant Hill, CA 94523
43)	Valle Verde Elementary School:	3275 Peachwillow Lane, Walnut Creek, CA 94598
44)	Valley View Middle School:	181 Viking Drive, Pleasant Hill, CA 94523
45)	Walnut Acres Elementary School:	180 Cerezo Drive, Walnut Creek, CA 94596
46)	Westwood Elementary School:	1748 West Street, Concord, CA 94521
47)	Willow Creek Center	1026 Mohr Lane, Concord, CA 94518
48)	Woodside Elementary School:	761 San Simeon Drive, Concord, CA 94518
49)	Wren Avenue Elementary School:	3339 Wren Avenue, Concord, CA 94519
50)	Ygnacio Valley Elementary School:	2217 Chalomar Road, Concord, CA 94518
51)	Ygnacio Valley High School:	755 Oak Grove Road, Concord, CA 94518

Such public facilities are collectively referred to herein as the "Facilities" or "Sites" or "Premises".

B. District wishes to reduce its energy consumption and energy costs in order to provide operational savings, promote energy conservation, improve the quality of its facilities and encourage students to learn about the use of solar energy as an alternative resource.

C. Pursuant to California Government Code Sections 4217.10 *et seq.*, District may enter directly into a contract for the design and construction of alternative energy facilities if the governing board of the District ("Board") determines that the anticipated cost to the District for energy provided by the solar energy facility under the contract will be less than the anticipated cost of energy consumed by the District in the absence of purchases under the contract.

D. At its October 26, 2010 Board meeting, the Board approved the required findings under Government Code Section 4217.10 *et seq.*

E. SunPower is a full-service energy services company with the technical capabilities to provide services to the District including, but not limited to, energy and energy system auditing, engineering, design, procurement, construction management, installation, construction, financing, training, monitoring and verification, maintenance, operation, and repair.

F. District and SunPower desire that SunPower design, install, maintain and operate solar photovoltaic systems on the Sites under the terms and conditions of this Contract.

G. Capitalized terms not defined in the text are defined in the attached **Exhibit L, Definitions**.

NOW THEREFORE, in consideration of the mutual covenants contained in this Contract, the Parties agree as follows:

PART I **AGREEMENT**

1. SunPower shall furnish to District for a total price of Sixty Five Million, Six Hundred Four Thousand, Three Hundred Ninety Eight Dollars (\$65,604,398.00) ("Contract Price"), the engineering, design, procurement, construction management, installation, construction, training, monitoring, verification, maintenance, operation, and repair ("Services" or "Work"), of photovoltaic systems with a total capacity of Eleven Thousand, One Hundred Ninety One kilowatts peak (11,191 kWp), produced through each photovoltaic system located at each Site (each one on Site a "System" and collectively, the "Project") detailed on the attached **Exhibit A-1, System Descriptions and Increments**. Designer/Builder shall perform the Work for each System in three phases (each an "Increment") with approximately seventeen (17) Sites to be included in each Increment, subject to modification as necessary and mutually agreed-upon by the Parties. The Sites to be included within each of the "First Increment", "Second Increment" and "Third Increment" are detailed in **Exhibit A-1**.
2. Subject to Section 1 of the Terms and Conditions, Work for each Increment shall be completed within the milestone schedules specified in the attached **Exhibit C, Project Schedule** ("Project Schedule"). Designer/Builder agrees that if the Work necessary for an Increment to achieve Substantial Completion is not completed on or prior to the Substantial Completion Date for such Increment, as provided in the Project Schedule, it is understood, acknowledged, and agreed that the District will suffer damage which cannot be accurately calculated. Pursuant to Government Code section 53069.85, Designer/Builder shall forfeit to the District, as fixed and liquidated damages for these incalculable damages, an amount equal to \$1.05 per kW(dc) of uninstalled system capacity to be determined by the formula listed below for each Increment, per day for each and every calendar day of delay beyond the milestone in the Project Schedule that Substantial Completion is achieved. Damages shall be calculated according to the following formula:

Daily damages = [\$1.05] X [amount of capacity in kW(dc) failing to reach Substantial Completion]

Additionally, the District shall be reimbursed by Designer/Builder for direct costs caused by the delay. These costs are limited to third-party services such as the DSA inspector of record and shall not be marked up by the District.

3. Designer/Builder shall not commence the Work under this Contract until Designer/Builder has submitted and District has approved the endorsement(s) of insurance required under the Terms and Conditions and District has issued a Notice to Proceed. Designer/Builder shall not commence the procurement, installation, and construction portions of the Work under this Contract until Designer/Builder has submitted and District has approved the performance bond and the payment (labor and material) bond(s).
4. To validate the energy output data provided by the Designer/Builder, the District reserves the right, at the District's expense, to audit the Systems' performance as long as there is no impact on the Designer/Builder's ability to meet its output guarantee obligations as described in **Exhibit G, Output Guarantee Parameters and Energy Output Data**.
5. This Contract incorporates by this reference Part I – Agreement, Part II - Terms and Conditions; and all documents and exhibits listed in Paragraph 6 below and attached to the Contract. By executing this Contract, Designer/Builder agrees to comply with all of the terms and conditions in Part I and Part II of the Contract. Should any term or condition of the Request for Proposal Submission (**Exhibit J**) conflict with any term or condition of this Contract, such term or condition of this Contract shall govern.
6. The Contract includes only the following documents and exhibits, as indicated:

<u> X </u> Part II - Terms and Conditions to Contract	<u> X </u> Exhibit A (Scope of Work)
<u> X </u> Prevailing Wage Certification	<u> X </u> Exhibit A-1 (System Descriptions and Increments)
<u> X </u> Workers' Compensation Certification	<u> X </u> Exhibit B (Operations & Maintenance Agreement)
<u> X </u> Criminal Background Investigation Certification	<u> X </u> Exhibit C (Project Schedule)
<u> X </u> Drug-Free Workplace / Tobacco-Free Environment Certification	<u> X </u> Exhibit D (Contract Price Breakdown Payment Schedule)
<u> X </u> Asbestos & Other Hazardous Materials Certification	<u> X </u> Exhibit E (District's Rules and Regulations)
<u> X </u> Lead-Product(s) Certification	<u> X </u> Exhibit F (Proposed System Locations)
<u> X </u> Insurance Certificates and Endorsements	<u> X </u> Exhibit G (Output Guarantee Parameters and Energy Output Data)
<u> X </u> Performance Bond (District's Form)	<u> X </u> Exhibit H (Warranties)
<u> X </u> Payment Bond (District's Form)	<u> X </u> Exhibit I (Education Program)
<u> X </u> Fingerprinting/Criminal Background Investigation Certification	<u> X </u> Exhibit J (Request for Proposal Submission)
	<u> X </u> Exhibit K-1 (Pre-Commencement Date Change Orders)[Separately attached]
	<u> X </u> Exhibit K-2 (Post-Commencement Date Change Orders)
	<u> X </u> Exhibit L (Definitions)

7. Designer/Builder hereby acknowledges that the Division of the State Architect ("DSA") and the District's DSA Project Inspector(s) ("Inspector" or "IOR") have authority to approve and/or stop Work if the Designer/Builder's Work does not comply with the requirements of the Contract, Title 24 of the California Code of Regulations, and all applicable laws. Designer/Builder shall be liable for any delay caused and extra work required by its non-compliant Work. Designer/Builder shall not be liable for delay caused solely by the District, the IOR or the DSA, provided that Designer/Builder's submittals to DSA and other governmental agencies meet the applicable standards required by that agency.
8. Inspection and acceptance of the Work shall be performed by:
 - 8.1 The District's Project Inspector with whom the District will contract at or prior to the District issuing a Notice to Proceed to Designer/Builder; and
 - 8.2 The Measure C Program Manager or his designee.
9. Designer/Builder recognizes that the District may obtain the services of a construction manager or consultant for the Work performed under this Contract. The construction manager or consultant, if any, would be authorized to give Designer/Builder instructions and authorizations and issue written approvals and the Notice to Proceed on behalf of District. District reserves the right to designate a different construction manager or consultant at any time. District shall provide forty-eight (48) hours notice to Designer/Builder if District designates a different construction manager or consultant. Any task, including, but not limited to, reviews or approvals that District may perform pursuant to this Contract may be performed by the construction manager or consultant, unless that task requires it be performed by the Board.
10. Unless otherwise indicated herein for a longer period of time, Designer/Builder shall guarantee all labor and material used in the performance of the construction portion of this Contract for a period of one year from the date of the District's written approval of the Work.
11. By signing this Contract, Designer/Builder certifies, under penalty of perjury, that all the information provided in the Contract is true, complete, and correct, to the best of its knowledge.

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 20__

Mt. Diablo Unified School District

Signature: _____

Print Name: _____

Print Title: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

Approved as to form:

By: _____

Legal Counsel

Dated: _____, 20__

SunPower Corporation, Systems

Signature: _____

Print Name: _____

Print Title: _____

Cal. Contractor License No.: _____

Structural Engineer License: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

Notice. Any notice required or permitted to be given under this Contract shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, or electronic mail addressed to the above individuals. Any notice personally given or sent by facsimile transmission or electronic mail shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

PART II
TERMS AND CONDITIONS TO CONTRACT

1. **NOTICE TO PROCEED.** District shall provide a single Notice to Proceed to Designer/Builder pursuant to this Contract, which consists of three Increments, at which time Designer/Builder shall proceed with the Work.
2. **SITE EXAMINATION.** Designer/Builder has examined each Site as described in **Exhibit A, Scope of Work** and **Exhibit J, Request for Proposal Submission**. By submitting its proposal, Designer/Builder warrants that it has made all Site examination(s) that it deems necessary as to the condition of the Site, its accessibility for materials, workers and utilities, and Designer/Builder's ability to protect existing surface and subsurface improvements. Notwithstanding the foregoing, should the Designer/Builder discover any latent or unknown conditions which will materially affect the performance of the Work hereunder, Designer/Builder shall immediately inform the District of such fact in writing and shall not proceed until written instructions are received from the District.
3. **EQUIPMENT AND LABOR.** Designer/Builder shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to furnish the Services herein described, the Services to be performed at such times and places as directed by and subject to the approval of the authorized District representative indicated in the attached Work specifications.
4. **SUBCONTRACTORS.** Subcontractors, if any, engaged Designer/Builder for any Service or Work under this Contract shall be subject to the approval of District, which shall not be unreasonably withheld. Designer/Builder agrees to bind every subcontractor by the terms of the Contract as far as such terms are applicable to subcontractor's work, including, without limitation, all indemnification, insurance, bond, and warranty requirements. If Designer/Builder subcontracts any part of this Contract, Designer/Builder shall be fully responsible to District for acts and omissions of its subcontractor and of persons either directly or indirectly employed by itself. Nothing contained in the Contract shall create any contractual relations between any subcontractor and the District.
5. **TERMINATION.**

5.1. Termination by District.

5.1.1 Breach. If Designer/Builder (a) fails to perform Designer/Builder's material duties as required by this Contract, (b) fails to fulfill in a timely and professional manner Designer/Builder's material obligations under this Contract, or (c) violates any of the material terms or provisions of this Contract, and any such failure or violation is not excused by the terms of this Contract and Designer/Builder does not take action to cure such breach within fifteen (15) Business Days after notice thereof, the District shall have the right to terminate this Contract, in whole or in part, unless such failures and violations are caused by the District; provided that, if the relevant failure or violation cannot reasonably be cured within the time period set forth above, such fifteen (15) Business Day period shall be extended as may reasonably be required so long as Designer/Builder starts the cure within the fifteen (15) Business Day period and continues good faith efforts to cure such breach in a reasonable period of time. In the event of a termination pursuant to this subdivision, Designer/Builder may invoice District for all Services performed until the notice of termination, but District shall have the right to withhold payment and deduct any amounts equal to District's costs because of Designer/Builder's actions, errors, or omissions that caused the District to terminate the Designer/Builder.

5.1.2 Convenience. District shall have the right in its sole discretion to terminate the Agreement for its own convenience. In the event of a termination for convenience, Designer/Builder may invoice District and District shall pay all undisputed invoice(s) for recoverable costs for Work performed until the date of termination, manufacturing costs for equipment to be installed in the Project that Designer/Builder cannot mitigate with diligent efforts, reasonable demobilization costs and rental costs for equipment that Designer/Builder cannot mitigate with diligent efforts. In the event that District terminates this Contract as provided in this subsection and there are no known potential claims related to Designer/Builder's Work, District shall, within fourteen (14) Days after the date of termination, release the Performance and Payment Bonds, although the Surety on Performance and Payment Bonds shall remain liable as indicated herein for all Designer/Builder's Work performed until the date of termination.

5.2. Designer/Builder Termination. Designer/Builder has the right to terminate this Contract if the District does not fulfill its material obligations under this Contract, effective upon fifteen (15) Days written notice to the District and subject to cure period provided in Section 5.1.1. Designer/Builder may invoice District and District

shall pay all undisputed invoice(s) for Services performed until the Designer/Builder's notice of termination.

5.3. Suspension of Project. If the District suspends the Project for more than one hundred eighty (180) consecutive Days, Designer/Builder shall be compensated for Services performed prior to notice of that suspension. When the Project is resumed, the schedule shall be adjusted and Designer/Builder's compensation shall be equitably adjusted to provide for expenses incurred associated with the suspension and in the resumption of the Designer/Builder's Services. If District suspends the Project for more than two (2) years, Designer/Builder may terminate this Contract by giving written notice. Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of such termination.

6. **SAFETY AND SECURITY.** Designer/Builder is responsible for maintaining safety in the performance of this Contract. Designer/Builder shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present, as per **Exhibit E, District's Rules and Regulations.**

7. **CHANGE IN SCOPE OF WORK.** There shall be no change whatsoever in the Work without an executed Change Order or a written Construction Change Directive authorized by the District as herein provided. District shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations unless the District has authorized the same and the cost thereof has been approved in writing by Change Order or Construction Change Directive. No extension of time for performance of the Work shall be allowed hereunder unless a claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Change Order or Construction Change Directive.

7.1. Designer/Builder shall perform immediately all work that has been authorized by a fully executed Change Order or Construction Change Directive. Designer/Builder shall be fully responsible for any and all delays and/or expenses caused by Designer/Builder's failure to expeditiously perform this Work.

7.2. District specifically understands, acknowledges, and agrees that the Designer/Builder shall be entitled to a Change Order upon the occurrence of any of the following: (a) all or any of the Work is delayed, suspended or accelerated by the District; (b) any breach by the District of the terms and conditions of this Contractor failure by the District to perform its obligations hereunder; (c) a change in the Applicable Law occurring after the Effective Date that affects Designer/Builder's performance hereunder; (d) the occurrence of an event of Force Majeure; (e) any delay in obtaining Permits or DSA approvals in accordance with Section 1 hereof; and (f) Work required or expenses or costs incurred as a result of or in connection with any of the exclusions set forth in this Contract (including Exhibit A hereto). For Change Orders granted pursuant to subsection (e), Designer/Builder will be entitled to a time extension only and will not be entitled to a monetary change.

7.3. Should any Change Order result in an increase in the Contract Price, the cost of that Change Order shall be agreed to, in writing, in advance by Designer/Builder and District and be subject to the unit prices mutually agreed to by the Parties in a separate document, which will be attached as an exhibit to this Contract. In the event that Designer/Builder proceeds with any change in Work without a Change Order executed by the District or Construction Change Directive, Designer/Builder waives any claim of additional compensation or time for that additional work.

7.4. Designer/Builder understands, acknowledges, and agrees that the reason for District authorization is so that District may have an opportunity to analyze the Work and decide whether the District shall proceed with the Change Order or alter the Project so that a change in Work becomes unnecessary.

7.5. Change Order. A Change Order is a written instrument prepared, issued and signed by the District, the Designer/Builder, the Architect (if applicable), and approved by the Project Inspector (if necessary) and DSA (if necessary), stating their agreement regarding all of the following:

7.5.1 A description of a change in the Work;

7.5.2 The amount of the adjustment in the Contract Price, if any; and

7.5.3 The extent of the adjustment in the time, if any.

7.6. Construction Change Directives. A Construction Change Directive is a written order prepared and issued by the District, the Construction Manager, and/or the District's designated representative and signed by the District and the Architect (if applicable), directing a change in the Work. The District may, by Construction Change Directive and without invalidating the Contract, order changes in the Work consisting of additions,

deletions, or other revisions. The District may issue a Construction Change Directive in the absence of agreement on the terms of a Change Order.

7.7. Force Account Directives. When work, for which a definite price has not been agreed upon in advance, is to be paid for on a force account basis, all direct costs necessarily incurred and paid by the Designer/Builder for labor, material, and equipment used in the performance of that Work, shall be subject to the approval of the District and compensation will be determined as set forth herein. The District will issue a Force Account Directive to proceed with the Work on a force account basis, and a not-to-exceed budget will be established by the District. All requirements regarding direct cost for labor, labor burden, material, equipment, and markups on direct costs for overhead and profit described in this section shall apply to Force Account Directives. However, the District will only pay for actual costs verified in the field by the District or its authorized representative(s) on a daily basis. The Designer/Builder shall be responsible for all cost related to the administration of the Force Account Directive. The markup for overhead and profit for Designer/Builder modifications shall be full compensation to the Designer/Builder to administer the Force Account Directive. The Design/Builder shall notify the District or its authorized representative(s) at least twenty-four (24) hours prior to proceeding with any of the force account work. Furthermore, the Design/Builder shall notify the District when it has consumed eighty percent (80%) of the budget, and shall not exceed the budget unless specifically authorized in writing by the District. The Designer/Builder will not be compensated for force account work in the event that the Design/Builder fails to timely notify the District regarding the commencement of force account work, or exceeding the force account budget. The Design/Builder shall diligently proceed with the work, and on a daily basis, submit a daily force account report on a form supplied by the District no later than 5:00 p.m. each day. The report shall contain a detailed itemization of the daily labor, material, and equipment used on the force account work only. The names of the individuals performing the force account work shall be included on the daily force account reports. The type and model of equipment shall be identified and listed. The District will review the information contained in the reports, and sign the reports no later than the next work day, and return a copy of the report to the Designer/Builder for their records. The District will not sign, nor will the Designer/Builder receive compensation for work the District cannot verify. The Designer/Builder will provide a weekly force account summary indicating the status of each Force Account Directive in terms of percent complete of the not-to-exceed budget and the estimated percent complete of the work. In the event the Design/Builder and the District reach a written agreement on a set cost for the work while the work is proceeding based on a Force Account Directive, the Design/Builder's signed daily force account reports shall be discontinued and all previously signed reports shall be invalid.

7.8. Price Request.

7.8.1 Definition of Price Request. A Price Request ("PR") is a written request prepared by the District, or on behalf of the District, requesting the Designer/Builder to submit to the District an estimate of the effect of a proposed change in the Work on the Contract Price and time.

7.8.2 Scope of Price Request. A Price Request shall contain adequate information, including any necessary drawings and specifications, to enable Designer/Builder to provide the cost breakdowns required herein. The Designer/Builder shall not be entitled to any additional compensation for preparing a response to a Price Request, whether ultimately accepted or not.

7.9. Proposed Change Order.

7.9.1 Definition of Proposed Change Order. A Proposed Change Order ("PCO") is a written request prepared by the Designer/Builder requesting that the District issue a Change Order based upon a proposed change to the Work.

7.9.2 Changes in Contract Price. A PCO shall include breakdowns pursuant to the revisions herein to validate any change in Contract Price.

7.9.3 Changes in Time. A PCO shall also include any changes in time required to complete the Project. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Project Schedule as defined in the Contract Documents. If Design/Builder fails to request a time extension in a PCO, then the Design/Builder is thereafter precluded from requesting time and/or claiming a delay.

7.9.4 Unknown and/or Unforeseen Conditions. If Designer/Builder submits a PCO requesting an increase in Contract Price and/or time that is based at least partially on Designer/Builder's assertion that Designer/Builder has encountered unknown and/or unforeseen condition(s) on the Project, then Designer/Builder

shall provide, to the District's satisfaction, information that demonstrates the unknown and/or unforeseen condition(s) were actually unknown and/or unforeseen. If not, the District may deny the PCO and the Designer/Builder shall complete the Project without any increase in Contract Price and/or time based on that PCO.

7.9.5 Format for Proposed Change. The format for Change Orders and PCOs shall be mutually agreed upon by District and Designer/Builder and shall be attached as an exhibit to this Contract. The form shall be used as applicable by the District and the Designer/Builder (e.g. Change Orders, PCO's) to communicate proposed additions and deductions to the Contract, supported by attached documentation.

7.10. Change Order Certification. All Change Orders and PCOs must include the following certification by the Designer/Builder:

7.10.1 The undersigned Designer/Builder approves the foregoing as to the changes, if any, and the Contract Price specified for each item and as to the extension of time allowed, if any, for completion of the entire Work as stated herein, and agrees to furnish all labor, materials, and service, and perform all work necessary to complete any additional work specified for the consideration stated herein. Submission of sums which have no basis in fact or which Designer/Builder knows are false are at the sole risk of Designer/Builder and may be a violation of the False Claims Act set forth under Government Code section 12650 et seq. It is understood that the changes herein to the Contract shall only be effective when approved by the District.

7.10.2 It is expressly understood that the value of the extra Work or changes expressly includes any and all of the Designer/Builder's costs and expenses, both direct, and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Any costs, expenses, damages, or time extensions relating to the event at hand or otherwise existing on or prior to the date of such Change Order or PCO and not included in such Change Order or PCO are deemed waived.

7.11. Determination of Change Order Cost. The amount of the increase or decrease in the Contract Price from a Change Order, if any, shall be determined in one or more of the following ways as applicable to a specific situation and at the District's discretion:

7.11.1 District acceptance of a PCO;

7.11.2 By unit prices contained in Design/Builder's original bid;

7.11.3 By agreement between District and Design/Builder.

7.12. Deductive Change Orders. All deductive Change Order(s) must be prepared pursuant to the provisions herein. Designer/Builder may be allowed a minimum of five percent (5%) aggregate total profit and overhead. If subcontractor work is involved, subcontractor shall be entitled to a minimum of five percent (5%) profit and overhead on the deducted work. Any deviation from this provision shall not be allowed.

7.13. Discounts, Rebates, and Refunds. For purposes of determining the cost, if any, of any change, addition, or omission to the Work hereunder, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to the Designer/Builder, and the Designer/Builder shall make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be allowed as a reduction of the Designer/Builder's cost in determining the actual cost of construction for purposes of any change, addition, or omission in the Work as provided herein.

7.14. Accounting Records. With respect to portions of the Work performed by Change Orders and Construction Change Directives, the Designer/Builder shall keep and maintain cost-accounting records satisfactory to the District, which shall be available to the District on the same terms as any other books and records the Designer/Builder is required to maintain under the Contract.

7.15. Notice Required. If the Designer/Builder desires to make a claim for an increase in the Contract Price, or any extension in the time for completion, it shall notify the District pursuant to the provisions herein. No claim shall be considered unless made in accordance with this section. Designer/Builder shall proceed to execute the Work even though the adjustment may not have been agreed upon. Any change in the Contract Price or extension of the time resulting from such claim shall be authorized by a Change Order.

7.16. Applicability to Subcontractors. Any requirements under this Article shall be equally applicable to Change Orders or Construction Change Directives issued to subcontractors by the Designer/Builder to the extent required by the Contract.

7.17. Alteration to Change Order Language. Designer/Builder shall not alter Change Orders. Designer/Builder shall execute finalized Change Orders and proceed under the provisions herein with proper

notice.

7.18. Failure to Execute Change Order. Each Party shall be in default of the Contract if such Party fails to execute a Change Order when such Party agrees with the addition and/or deletion of the Work in that Change Order.

8. **TRENCH SHORING.** If this Contract is in excess of \$25,000 and is for the excavation of any trench deeper than five (5) feet, Designer/Builder must submit and obtain District's acceptance, in advance of excavation, of a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If the plan varies from the shoring system standards established by the California Occupational Safety and Health Administration ("Cal-OSHA"), the plan shall be prepared by a registered civil or structural engineer.
9. **EXCAVATIONS OVER FOUR FEET.** If this Contract includes excavations over four (4) feet, Designer/Builder shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any: (1) Material that the Designer/Builder believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (2) Subsurface or latent physical conditions at the Site differing from those indicated; or (3) Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. District shall promptly investigate the conditions, and if it finds that the conditions do materially differ, or do involve hazardous waste, and cause a decrease or increase in the Designer/Builder's cost of, or the time required for, performance of any part of the Work, District shall issue a change order under the procedures described in the Contract. In the event that a dispute arises between the District and the Designer/Builder whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Designer/Builder's cost of, or time required for, performance of any part of the work, Designer/Builder shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. Designer/Builder shall retain any and all rights provided either by the Contract or by law which pertain to the resolution of disputes and protests between the Parties.
10. **LEAD-BASED PAINT.** Pursuant to the Lead-Safe Schools Protection Act (Education Code Section 32240 et seq.) and other applicable law, no lead-based paint, lead plumbing and solders, or other potential sources of lead contamination shall be utilized on this Project, and only trained and state-certified contractors, inspectors and workers shall undertake any action to abate existing risk factors for lead. Designer/Builder must execute the Lead-Based Paint Certification, if applicable.
11. **WORKERS.** Designer/Builder shall at all times enforce strict discipline and good order among its employees and the employees of its subcontractors and shall not employ or work any unfit person or anyone not skilled in work assigned to him or her. Any person in the employ of the Designer/Builder or a subcontractor whom the District may deem incompetent or unfit shall be dismissed from the Sites and shall not again be employed at any Site without written consent from District.
12. **CORRECTION OF ERRORS.** Designer/Builder shall perform, at its own cost and expense and without reimbursement from District, any work necessary to correct errors or omissions which are caused by Designer/Builder's failure to comply with the Contract requirements and the standard of care required herein.
13. **SUBSTITUTIONS.** No substitutions of material from those specified in the approved final design shall be made without the prior written approval of the District, which shall not be unreasonably withheld.
14. **DESIGNER/BUILDER SUPERVISION.** Designer/Builder shall provide competent supervision of personnel employed on the Sites, use of equipment, and quality of workmanship.
15. **CLEAN UP.** Debris shall be removed from the Premises in a timely manner by the Designer/Builder. The Sites shall be in order at all times when work is not actually being performed and shall be maintained in a reasonably clean condition.
16. **ACCESS TO WORK.** District shall provide to Designer/Builder all required access to the Premises in accordance with **Exhibit A**. District representatives shall at all time have access to the Work wherever it is in preparation or in progress. Designer/Builder shall provide safe and proper facilities for such access.
17. **PROTECTION OF WORK AND PROPERTY.** Designer/Builder shall erect and properly maintain at all times, as required by conditions and progress of the Work, all necessary safeguards, signs, barriers, lights, and

security persons for protection of workers and the public, and shall post danger signs warning against hazards created by the Work. In an emergency affecting life and safety of life or of Work or of adjoining property, Designer/Builder, without special instruction or authorization from District, is permitted to act at his or her discretion to prevent such threatened loss or injury.

18. **OTHER CONTRACTS/CONTRACTORS.** District reserves the right to let other contracts, and/or to perform work with its own forces, in connection with the Project. Designer/Builder shall afford other contractors reasonable opportunity for introduction and storage of their materials and execution of their work and shall properly coordinate and connect Designer/Builder's Work with the work of other contractors. In addition to Designer/Builder's obligation to protect its own Work, Designer/Builder shall protect the work of any other contractor that Designer/Builder encounters while working on the Project. Nothing herein contained shall be interpreted as granting to Designer/Builder exclusive occupancy of the Site, the Premises, or the Project. Designer/Builder shall not cause any unnecessary hindrance or delay to the use and/or school operation(s) of the Premises and/or to District or any other contractor working on the Project. If simultaneous execution of any contract or school operation is likely to cause interference with performance of Designer/Builder's Contract, Designer/Builder shall coordinate with those contractor(s), person(s), and/or entity(ies) and shall notify District of the resolution.
19. **ASSIGNMENT OF CONTRACT.** Designer/Builder shall not assign or transfer in any way any or all of its rights, burdens, duties, or obligations under this Contract without the prior written consent of District. This provision shall not limit the Designer/Builder's right to subcontract portions of its Work to other entities and assign this Contract and all related contracts without the consent of the District (i) to direct affiliates of Designer/Builder; (ii) to an entity that is controlled by, controls, or is under common control with Designer/Builder; or (iii) pursuant to a merger, consolidation, transfer of substantially all its assets, or by operation of law. This Contract will be binding on, enforceable by, and inure to the benefit of, the Parties and their respective successors and permitted assigns. Any assignment made in contravention of this clause shall be void and unenforceable.
20. **SCHEDULE.** If District does not deliver the Notice to Proceed on or prior to November 11, 2010, subject to Designer/Builder having submitted required bond and insurance documents, and/or if each of the following milestones is not completed by the dates set forth **Exhibit C Project Schedule**, the Substantial Completion Date for each applicable Increment shall be extended on a day for day basis equal to the longer of the number of days (i) after November 11, 2010 that District delivers the Notice to Proceed for all Increments and (ii) the date all of the following items are completed falls after the applicable Commencement Date for the applicable Increment:
 - 20.1. Designer/Builder shall have obtained the Permits required by Applicable Law to be obtained by Designer/Builder in order to commence construction and installation, as applicable, prior to such commencement; provided that an extension of the Substantial Completion Date for a failure to satisfy this Section 1.1 on or prior to the Construction Milestone Date shall only occur if Designer/Builder has (a) complied with all filing and application requirements of the relevant Government Authority in accordance with the Permit filing milestone provided for in the Project Schedule and (b) used commercially reasonable efforts to coordinate and cooperate with the relevant Government Authority; and
 - 20.2. District and DSA shall have approved such design and engineering work as required by and in accordance with Article 1 of **Exhibit A**; provided that, should there be any necessary pricing adjustments or lump sum payments necessitated by any Change Order, Designer/Builder shall have disclosed to District such adjustments or payments and District shall have notified Designer/Builder in writing that any such proposed price adjustments or lump sum payment obligations have been approved by District; provided further that an extension of the Substantial Completion Date for a failure to satisfy this Section 1.2 on or prior to the Construction Milestone Date shall only occur if Designer/Builder has (a) submitted the relevant design and engineering materials to the DSA in accordance with the DSA approval milestone provided for in the Project Schedule, (b) such design and engineering materials are in a form and scope as what would reasonably be expected by DSA in accordance with prudent industry standards and (c) used commercially reasonable efforts to coordinate and cooperate with the DSA.
21. **COMPLETION.**
 - 21.1. **Walk-Through as Prerequisite to Determination of Substantial Completion or System Acceptance.** When the Designer/Builder believes that the System has achieved Substantial

- Completion or System Acceptance, as applicable, it shall so notify the District. Promptly thereafter, the District shall schedule a walk-through of the System by Designer/Builder, District and the Inspector to determine whether and to what extent Substantial Completion or System Acceptance has been achieved. Any erroneous claims of completion by Designer/Builder resulting in a premature walk-through shall be at Designer/Builder's sole cost and expense, and District shall be entitled to reduce its payments to Designer/Builder under this Contract by an amount equal to any costs incurred by District due to the erroneous claims by Designer/Builder that the System has achieved Substantial Completion or System Acceptance, as applicable.
- 21.2. **District's Acceptance of Work.** District, in its sole discretion, may either (a) deliver to Designer/Builder notice confirming that Design Builder has achieved Substantial Completion or System Acceptance, as applicable; or (b) notify Designer/Builder that the relevant Work has not been completed, stating in detail the reasons. If District fails to inspect the Work and notify Designer/Builder that the relevant Work has not been completed within five (5) Business Days or if District delivers notice that Substantial Completion or System Acceptance has been achieved, the Work shall be deemed accepted by District as of the date Designer/Builder first delivered notice (the "Substantial Completion Date" or "System Acceptance Date", as applicable). If District timely notifies Designer/Builder that the relevant Work has not been completed, Designer/Builder shall take action to complete the relevant Work and shall deliver to District another notice once completed. This procedure shall be repeated until the relevant Work shall have been accepted or deemed accepted by the District. Final Completion of the Project, meaning that each System has achieved System Acceptance, may only be accepted as complete by an action of the Board (the date of such acceptance, the "Final Completion Date").
- 21.3. **Punch List Items.** Upon achieving Substantial Completion with respect to a System, Designer/Builder shall provide the District with a list of items still outstanding which are necessary to complete the System in accordance with the Specifications (the "Punch List"). Within five (5) Business Days after receipt of a proposed Punch List, the District shall either (a) approve the Punch List or (b) request that certain amendments or modifications be made to the Punch List. If the District does not request any amendments or modifications to the Punch List provided by Designer/Builder within such five (5) Business Day period, the District hereby expressly agrees to be bound the Punch List. If the District timely requests amendments or modifications to the Punch List, the Parties shall negotiate in good faith and shall promptly agree on and execute an amended Punch List. The Parties' agreement on the Punch List shall not be a pre-requisite to the relevant System achieving Substantial Completion and the Parties' failure to agree on the Punch List pursuant to this Section shall not delay or be deemed to preclude any System from achieving Substantial Completion hereunder.
- 21.4. **Designer/Builder's Failure to Correct Punch-List Items.** If the Designer/Builder fails to complete the Punch List prior to the expiration of the thirty-five (35) Day period immediately following recording of the Notice of Completion, the District shall withhold from the final payment owing to the Designer/Builder under this Contract an amount equal to one hundred and fifty percent (150%) of the estimated cost, as reasonably determined by the District, of each Punch List item until such time as the item is completed.
- 21.5. **Notice of Completion.** Once the District has accepted the Project, District shall thereafter cause a Notice of Completion to be recorded in the County Recorder's Office of Contra Costa County.
- 21.6. **Time is of The Essence.** Time is of the essence in the performance of and compliance with each of the provisions and conditions of this Contract in which time is a factor.
22. **FORCE MAJEURE CLAUSE.** The term "Force Majeure" shall mean those events beyond the control of the affected Party and which by the exercise of due diligence such Party could not reasonably avoid and which it has been unable to overcome, including acts of God and public enemy; fire; strike; loss or shortage of transportation facilities; lock-out; commandeering of materials, product, plant, or facilities by the government; relocation or construction of transmission facilities or the shutdown of such facilities for the purpose of necessary repairs; work by local utility directly impacting the Project; flood; earthquake, tornado; severe storm; volcanic eruptions; civil disobedience; sabotage; restraint by court order or public authority (whether valid or invalid). Neither Party shall be considered to be in default in the performance of any material obligation hereunder during the time and to the extent that it is prevented from obtaining delivery or performing by a Force Majeure event. Neither Party shall be relieved of its obligation to perform if such failure is due to causes

arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy with the exercise of all reasonable efforts within a reasonable time period. Either Party rendered unable to fulfill any of its obligations under this Contract by reason of an event of Force Majeure shall give prompt written notice of such fact to the other Party. Notwithstanding a Force Majeure event, the Party claiming such an event must provide satisfactory evidence that the event caused the delay or lack of performance and was not due to the fault or neglect of the Party claiming a Force Majeure event.

23. INDEMNIFICATION / HOLD HARMLESS CLAUSE.

23.1. To the furthest extent permitted by California law, Designer/Builder shall defend, indemnify, and hold harmless District, its trustees, members, agents, representatives, officers, consultants, employees, and volunteers from any and all third party demands, losses, liabilities, claims, suits, and actions (the "claims") of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising from personal or bodily injuries, death or property damage arising out of, connected with, or resulting from the performance of this Contract, except to the extent the claims are caused by the sole negligence or willful misconduct of District. District shall have the right to accept or reject any legal representation that Designer/Builder proposes to defend the District. However, such acceptance shall not be unreasonably withheld. This indemnification, defense, and hold harmless obligation includes any failure or alleged failure by Designer/Builder to comply with any provision of law, any failure or alleged failure to timely and properly fulfill all of its obligations under the Contract in strict accordance with its terms, and without limitation, any stop notice actions or liens, including liens by the California Department of Labor Standards Enforcement.

23.2. To the furthest extent permitted by California law, District shall defend, indemnify, and hold harmless Designer/Builder, agents, representatives, officers, consultants and employees from any and all third party demands, losses, liabilities, claims, suits, and actions (the "claims") of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising from personal or bodily injuries, death or property damage arising out of, connected with, or resulting from the performance of this Contract, except to the extent the claims are caused by the negligence, recklessness, or willful misconduct of Designer/Builder.

24. PAYMENT.

24.1. On a monthly basis, Designer/Builder shall submit an application for payment based upon the estimated value for materials delivered or Services performed under the Contract as of the date of submission ("Application for Payment") and consistent with the Schedule of Values and other information in **Exhibit D**. Within thirty (30) days after District's receipt of the Application for Payment, Designer/Builder shall be paid a sum equal to ninety percent (90%) of the value of the Work performed (Assuming the value of the Work performed is verified by Inspector and certified by Designer/Builder) up to the last day of the previous month, less the aggregate of previous payments and amount to be withheld. District may deduct from any payment an amount necessary to protect District from loss because of: (1) liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by District in performing any of Designer/Builder's obligations under the Contract which Designer/Builder has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop notices as allowed by state law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the Contract Price or by the scheduled completion date; (6) unsatisfactory prosecution of the Work by Designer/Builder; (7) unauthorized deviations from the Contract; (8) failure of Designer/Builder to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by District during the prosecution of the Work; (9) erroneous or false estimates by Designer/Builder of the value of the Work performed; (10) any sums representing expenses, losses, or damages, as determined by District, incurred by District for which Designer/Builder is liable under the Contract; and (11) any other sums which District is entitled to recover from Designer/Builder under the terms of the Contract or pursuant to state law, including section 1727 of the California Labor Code. The failure by District to deduct any of these sums from a progress payment shall not constitute a waiver of District's right to such sums. District shall retain 10% from all amounts owing as retention. Retention shall be paid pursuant to Public Contract Code sections 7107 and 7200. District may, at its discretion, reduce the retention as permitted pursuant to Public Contract Code section 9203.

24.2. Payment for material stored on or off the Sites is allowed at the sole discretion of District, so long as

Designer/Builder has submitted invoices with respect to such material in accordance with this Contract. If allowed, proof of off-site material purchases (invoices and checks and/or bills of lading), if applicable, and appropriate insurance coverage will be required. The maximum prepayment allowed by the District shall be one hundred (100%) percent of the actual value of the item being considered, less retention as indicated above. The Designer/Builder shall protect stored materials from damage. Damaged materials, even though paid for, shall not be incorporated into the Work.

- 24.3. Upon Final Completion in accordance with Article 20, Designer/Builder shall submit an Application for Payment for the final payment, which shall be for an amount equal to any and all retention held by the District as of such Final Completion Date together with the amount for all Work performed but not paid as of the Final Completion Date. Within forty-five (45) days after District's receipt of the Application for Payment, District shall pay Designer/Builder the final payment

25. PERMITS, APPROVALS, AND LICENSES.

- 25.1. Designer/Builder and all of its employees, agents, and subcontractors shall secure and maintain in force, at Designer/Builder's sole cost and expense, all licenses and permits as are required by law, in connection with the furnishing of materials, supplies, or Services herein listed.
- 25.2. Other than filing of notices of categorical exemption in compliance with the California Environmental Quality Act ("CEQA"), which shall be the responsibility of District, Designer/Builder is responsible for obtaining on behalf of District and at Designer/Builder's expense, permits and approvals (including DSA approval), required for the building, installation, and start-up of the Work required to complete the Project.
- 25.3. District shall cooperate fully with and assist Designer/Builder in obtaining all permits and approvals required under this Contract.
- 25.4. District shall be responsible for obtaining any other permits or approvals that may be required (including the filing of notices of categorical exemption in compliance with CEQA), including annual operating permits as applicable.

- 26. INDEPENDENT CONTRACTOR STATUS.** While engaged in carrying out the Services of this Contract, Designer/Builder is an independent contractor, and not an officer, employee, agent, partner, or joint venture partner of the District. Designer/Builder shall be solely responsible for its own Worker's Compensation insurance, taxes, and other similar charges or obligations. Designer/Builder shall be liable for its own actions, including its negligence or gross negligence, and shall be liable for the acts, omissions, or errors of its agents or employees.

- 27. ANTI-DISCRIMINATION.** It is District's policy that in connection with all work performed under contracts there shall be no discrimination against any employee engaged in the work because of race, national origin, ancestry, religion, age, physical or mental disability, sex, or sexual orientation of such person. Designer/Builder agrees to comply with applicable federal and California laws including, but not limited to the California Fair Employment Practice Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, Designer/Builder agrees to require like compliance by all its subcontractor(s).

- 28. PAYMENT BOND AND PERFORMANCE BOND.** Designer/Builder shall not commence the Work until it has provided to the District, in a form acceptable to the District, a Payment (Labor and Material) Bond and a Performance Bond, each in an amount equivalent to the construction portion of the Contract Price issued by a surety admitted to issue bonds in the State of California and otherwise acceptable to the District. All performance bond liability will cease one (1) year from the completion date of the work of this Contract. The balance of any warranty or guarantee beyond one year required by District shall continue to be guaranteed solely by Designer/Builder. The payment bond liability will cease at the termination of any time required by law. Notwithstanding anything to the contrary in the Contract, the Payment (Labor and Material) Bond and the Performance Bond are not applicable to the Output Guarantee.

- 29. DESIGNER/BUILDER'S INSURANCE.** Designer/Builder has in force, and during the term of this Contract (unless otherwise noted below) shall maintain in force with the minimum indicated limits, the insurance listed below. All policies shall contain waivers of subrogation against the District. In lieu of any insurances required in this Section, Designer/Builder may self insure hereunder and use a Self Administered Claims Program for this purpose. Designer/Builder will notify District in writing thirty (30) days prior to cancellation of the Self Administered Claims Program.

- 29.1. **Commercial General Liability Insurance.** Coverage to be written on an occurrence form. Coverage to be at least as broad as ISO form CG 002 (07/98), without endorsements that limit the policy terms with respect to: (1) the definition of an Insured Contract, (2) provisions for severability of interest, (3) explosion, collapse, underground hazard: [For review by District's risk management department]
- \$2,000,000 per occurrence for Bodily Injury and Property Damage
 - \$2,000,000 General Aggregate – other than Products/Completed Operations
 - \$1,000,000 Products/Completed Operations Aggregate
- 29.2. **Automobile Liability.** Coverage to be written on an occurrence form. Coverage for any auto, including all owned, hired and non-owned vehicles: combined single limit of \$2,000,000.
- 29.3. **Excess Liability Insurance.** Coverage to be written on an occurrence form. Coverage terms and limits to apply excess of the per occurrence and/or aggregate limits provided for Commercial General Liability, Auto Liability and Professional Liability. Coverage terms and limits to also apply in excess of those required for Employers Liability:
- \$4,000,000 aggregate
- 29.4. **Workers Compensation:** Statutory limits; and
- 29.5. **Employers' Liability:** \$1,000,000.
- 29.6. **Builder's Risk.** Coverage will cover each System and all materials from the time delivered to each Site for their full replacement cost value on an all risk or special cause of loss form from the Commencement Date of the applicable Increment through the Substantial Completion Date of the applicable Increment. Insurance shall be in a form and include deductible levels typically found in the insurance market for similar solar projects.

Commercial General Liability, Automobile Liability, Workers Compensation, and Employer's Liability limits may be reached through a combination of primary and umbrella/excess policies. Designer/Builder shall provide to the District certificate(s) of insurance and endorsements satisfactory to the District. The policy(ies) shall not be amended or modified and the coverage amounts shall not be reduced without thirty (30) days written notice to the District prior to cancellation. Except for worker's compensation insurance and professional liability insurance, District shall be named as an additional insured on all policies. Designer/Builder's policy(ies) shall be primary; any insurance carried by District shall only be secondary and supplemental. Designer/Builder shall not allow any subcontractor, employee, or agent to commence work on this Contract or any subcontract until the insurance required of the Designer/Builder of the subcontractor, or agent has been obtained.

30. **WARRANTY/QUALITY.** Unless a longer warranty is called for elsewhere in the Contract, Designer/Builder, manufacturer, or their assigned agents shall guarantee the workmanship, product or service performed against defective workmanship, defects or failures of materials for a minimum period of one (1) year from date when District achieves Substantial Completion.
31. **CONFIDENTIALITY.** To the extent permitted by applicable law, the Parties shall maintain the confidentiality of all information, documents, programs, procedures, and all other items that the Parties encounter during the Project and/or pursuant to the Contract. This requirement shall be ongoing and shall survive the expiration or termination of this Contract and specifically includes all student, parent, and disciplinary information. Notwithstanding the foregoing, Designer/Builder acknowledges that this Contract, once fully executed and approved by the Board, is public information, subject to release in response to public information requests under California Government Code § 6250 et seq. (Public Records Act).
32. **CONFLICT OF INTEREST.** Designer/Builder understands that its professional responsibility is solely to the District. Designer/Builder warrants that it and its employees and/or subcontractors presently have no interest and will not acquire any direct or indirect interest that would conflict with its performance under this Contract, including, without limitation, any direct and/or indirect interest with: (a) entity(ies) performing construction in the same discipline and in competition with any contractor on a District project; (b) entity(ies) connected or related to a trade union or joint labor management committee; (c) the District.
33. **COMPLIANCE WITH LAWS.** Designer/Builder shall give all notices and comply with all laws, ordinance, rules and regulations bearing on conduct of the Work as indicated or specified. If Designer/Builder observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Designer/Builder shall notify the District, in writing, and, at the sole option of the District, any necessary

changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Designer/Builder's receipt of a written termination notice from the District. If Designer/Builder performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Designer/Builder shall bear all costs arising therefrom.

34. **DISTRICT'S RIGHT TO AUDIT.** District retains the right to review and audit, and the reasonable right of access to Designer/Builder's and any sub-consultant's premises to review and audit the Designer/Builder's compliance with the provisions of this Contract ("District's Right"). The District's Right includes the right to inspect, photocopy, and to retain copies, outside of the Designer/Builder's premises, of any and all Project-related records and other information with appropriate safeguards, if such retention is deemed necessary by the District in its sole discretion. District shall keep this information confidential, as allowed by Applicable Law.
- 34.1. District's Right includes the right to examine any and all Project-related books, records, documents and any other evidence of procedures and practices that the District determines are necessary to discover and verify that Designer/Builder is in compliance with all requirements of this Contract.
- 34.2. Designer/Builder shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. Designer/Builder shall make available to District for review and audit, all Project-related accounting records and documents, and any other financial data. Upon District's request, Designer/Builder shall submit exact duplicates of originals of all requested records to District.
- 34.3. Designer/Builder shall include audit provisions in any and all of its subcontracts, and shall ensure that these sections are binding upon all subcontractors.
- 34.4. Designer/Builder shall retain all Project-related records and other information with appropriate safeguards during the Term of this Contract and for a minimum of five (5) years thereafter.

Designer/Builder shall comply with these provisions within fifteen (15) Days of the District's written request to review and audit any or all of Designer/Builder's Project-related records and information.

35. **DISPUTES.** In the event of a dispute between the Parties as to performance of the Work, the interpretation of this Contract, or payment or nonpayment for work performed or not performed, the Parties shall attempt to resolve the dispute by those procedures set forth in Public Contract Code section 20104 et seq., if applicable. Pending resolution of the dispute, Designer/Builder agrees it will neither rescind the Contract nor stop the progress of the Work, but will allow determination by the court of the State of California, in the county in which the District's administration office is located, having competent jurisdiction of the dispute. All claims of over \$375,000, which are outside the scope of Public Contract Code section 20104, et seq., may be determined by independent arbitration if mutually agreeable, otherwise by litigation.
- 35.1. Notice of the demand for arbitration of a dispute shall be filed in writing with the other party to the Contract.
- 35.2. The demand for arbitration of any claim of over \$375,000 shall be made within a reasonable time after written notice of the dispute has been provided to the other party, but in no case longer than ninety (90) days after initial written notice, and the demand shall not be made later than the time of Designer/Builder submission of the request for final payment.
- 35.3. Prior to Designer/Builder's initiation of any litigation or proceeding to recover any money damages under this Contract, Designer/Builder must first comply with the claims presentation requirements set forth in California Government Code Section 900 et seq.
36. **LABOR CODE REQUIREMENTS.** Designer/Builder shall comply with all applicable provisions of the California Labor Code, Division 3, Part 7, Chapter 1, Articles 1-5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars (\$1,000). Copies of the prevailing rate of per diem wages are on file with the District. In addition, Designer/Builder and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the California Labor Code, beginning with Section 1720, and including Section 1735, 1777.5 and 1777.6, forbidding discrimination, and Sections 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Designer/Builder or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts.
- 36.1. **Certified Payroll Records.** Designer/Builder and its subcontractor(s) shall keep accurate certified

- payroll records of employees and shall make them available to the District immediately upon request.
- 36.2. **Labor Compliance Program.** Designer/Builder specifically acknowledges and understands that if the District and/or its designee operates a labor compliance program on this Project, that the Designer/Builder shall perform the Work of the Project while complying with all the applicable provisions of the District's labor compliance program. The District has indicated that there is no labor compliance program or any project labor agreement applicable to this Project.
37. **COUNTERPARTS.** This Contract may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.
38. **GOVERNING LAW.** This Contract shall be governed by and construed in accordance with the laws of the State of California with venue of any action in a County in which the District administration office is located.
39. **PROVISIONS REQUIRED BY LAW DEEMED INSERTED.** Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and this Contract shall be read and enforced as though it were included therein.
40. **BINDING CONTRACT.** This Contract shall be binding upon the Parties and upon their successors and assigns, and shall inure to the benefit of said parties and their successors and assigns.
41. **DISTRICT WAIVER.** District's waiver of any term, condition, covenant or waiver of a breach of any term, condition or covenant shall not constitute the waiver of any other term, condition or covenant or the waiver of a breach of any other term, condition or covenant.
42. **INVALID TERM.** If any provision of this Contract is declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining parts, terms and provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term or provision will be deemed not to be a part of this Contract.
43. **ENTIRE CONTRACT.** This Contract sets forth the entire Contract between the Parties and fully supersedes any and all prior agreements, understanding, written or oral, between the Parties pertaining to the subject matter thereof. This Contract may be modified only by a writing executed by both Parties.
44. **OWNERSHIP OF CERTAIN PROPRIETARY PROPERTY RIGHTS.** District shall not, by virtue of this Contract, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the equipment. Designer/Builder shall grant to District a perpetual, irrevocable royalty-free license for any and all software or other intellectual property rights necessary for District to continue to operate, maintain, and repair the equipment in a manner that will yield maximum energy production and/or energy consumption reductions.
45. **OWNERSHIP OF ANY EXISTING EQUIPMENT.** Ownership of any equipment and materials presently existing at the Facilities at the time of execution of this Contract shall remain the property of the District even if it is replaced or its operation made unnecessary by work performed by Designer/Builder pursuant to this Contract. If applicable, Designer/Builder shall advise District in writing of all equipment and materials that will be replaced at the Facilities and District shall, within five (5) Business Days of Designer/Builder' notice, designate in writing to Designer/Builder which replaced equipment and materials that should not be disposed of off-site by Designer/Builder (the "Retained Items"). It is understood and agreed to by both Parties that District shall be responsible for and designate the location and storage for the Retained Items. Designer/Builder shall be responsible for the disposal of replaced equipment and materials, except for the Retained Items. Designer/Builder shall use commercially reasonable efforts to remove the Retained Items in such a manner as to avoid damage thereto, or if it is unreasonable to avoid damage altogether, to minimize the damage done.
46. **UTILITY WORK.** District expressly understands and agrees that the definition "Force Majeure" above also includes any Interconnection Facilities work that may need to be performed by the local Utility ("Utility") in order for Designer/Builder to fully implement the Project. "Interconnection Facilities" shall mean any distribution or transmission lines and other facilities that may be required to connect equipment supplied under this Contract to an electrical distribution/transmission system owned and maintained by the Utility. Any Interconnection Facilities work that may be required will be performed by the Utility under a separate contract between District and the Utility. Designer/Builder shall prepare all Interconnection Facilities documentation, and collect all Interconnection Facilities information in a time frame to ensure maximum benefit to the District and to comply with all requirements. Designer Builder shall also cooperate and assist the District in facilitating

the Interconnection Facilities work.

47. **ENERGY CREDITS.** District shall own all right, title, and interest associated with or resulting from the development, construction, installation and ownership of any facilities installed on the Project ("Generating Facilities"). This ownership includes the production, sale, purchase or use of the energy output including, and includes without limitation:
- 47.1. All Environmental Incentives associated in any way with the Generating Facilities. "Environmental Incentives" means all rights, credits (including tax credits), rebates, benefits, reductions, offsets and allowances and entitlements of any kind, howsoever entitled or named (including carbon credits and allowances), whether arising under federal, state or local law, international treaty, trade association membership or the like arising from the Generating Facilities or the energy produced or otherwise from the development, construction, installation or ownership of the Generating Facilities or the production, sale, purchase, consumption or use of the energy produced from the Generating Facilities. Without limiting the forgoing, "Environmental Incentives" includes green tags, renewable energy credits, tradable renewable certificates, portfolio energy credits, the right to apply for (and entitlement to receive) incentives under the California Solar Initiative or other incentive programs offered by the State of California and the right to claim federal income tax credits under Section 45 or 48 of the Code as such credits are available arising from the Environmental Attributes of the Generating Facilities or the energy produced from the Generating Facilities or the production, sale, purchase, consumption or use of the energy produced from the Generating Facilities.
 - 47.2. All rights and interests in performance based incentive payments to be made under the California Solar Initiative.
 - 47.3. All reporting rights and the exclusive rights to claim that District is responsible for the delivery of the energy from the Generating Facilities.
 - 47.4. District is responsible for the reductions in emissions of pollution and greenhouse gases resulting from the generation and delivery of energy.
 - 47.5. The District is entitled to all credits, certificates, registrations, etc., evidencing or representing any of the foregoing.
 - 47.6. District shall be the owner of and shall be entitled to all: (i) carbon reduction credits as defined under the California Action Reserve or such similar definition as enacted by the State of California or the U.S. Federal Government; and (ii) "renewable energy credits," as such term is defined in Section 399.12(h)(2) of the California Public Utilities Code, associated with the Generating Facilities, and Designer/Builder shall take such steps as District shall reasonably request to confirm District's ownership of such renewable energy credits.
 - 47.7. Designer/Builder is not responsible for compliance, certification, reporting, or other requirements associated with the sale, ownership, rights, or certifications for these energy credits, but Designer/Builder will provide advice and consultation to the District as requested.
 - 47.8. **Rebate Programs.** On behalf of the District, Designer/Builder shall prepare and submit to the applicable agencies all applications and documentation necessary for all available energy production incentives ("Incentive Funds"). This shall include actions necessary to ensure compliance with the Utility's (currently Pacific Gas & Electric) net metering program and all interconnection agreements and related documents for the District's participation and utilization of the benefits of that program. While Designer/Builder has extensive experience in assisting Districts with procuring Incentive Funds for school districts, Designer/Builder cannot guarantee that these Incentive Funds will be received by the District. Procurement, or lack thereof, of these Incentive Funds will not alter the Contract Amount of this Contract, or payment timeline associated with standard progress invoicing and payments.
48. **RESPONSIBILITIES OF THE DISTRICT.**
- 48.1. District shall examine the documents submitted by the Designer/Builder and shall render decisions promptly in order to avoid unreasonable delay in Designer/Builder's ability to complete its Services.
 - 48.2. District shall verbally or in writing advise Designer/Builder if District becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in Designer/Builder's documents. Failure to provide such notice shall not relieve Designer/Builder of its responsibility therefore, if any.

- 48.3. Unless the District and the Designer/Builder agree that a hazardous materials consultant shall be a consultant of the Designer/Builder, District shall furnish the services of a hazardous material consultant or other consultants when such services are requested in writing by Designer/Builder and deemed necessary by the District or are requested by the District. These services shall include: asbestos and lead paint survey; abatement documentation; and specifications related to said matters which are to be incorporated into documents prepared by Designer/Builder. If the hazardous materials consultant is furnished by the District and not a consultant of the Designer/Builder, the specifications shall include a note to the effect that they are included in the Designer/Builder's documents for the District's convenience and have not been prepared or reviewed by the Designer/Builder. The note shall also direct questions about the specifications to its preparer.
- 48.4. District personnel and/or its designated representatives shall coordinate with Designer/Builder as may be requested and desirable for the coordination or management of work related to the Project.
- 48.5. District shall provide to Designer/Builder all relevant information in its possession regarding the Project that the Designer/Builder needs to perform its Services. District shall provide this information and its decisions required under this Contract in a timely manner to avoid unreasonable delay in the Project.

49. LIMITATIONS ON LIABILITY.

- 49.1. Other than as provided in this Contract, District's financial obligations under this Contract shall be limited to the payment of the compensation provided in this Contract.
- 49.2. Notwithstanding any other provision of this Contract, in no event shall either Party be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Contract.
- 49.3. District shall not be responsible for any damage to persons or property as a result of the Designer/Builder's use, misuse or failure of any equipment used by Designer/Builder, or by its employees, even though such equipment be furnished or loaned to Designer/Builder by District.
- 49.4. Whether any action or claim is based on warranty, contract, tort or otherwise, under no circumstances shall Designer/Builder's total liability arising out of or related to this Contract exceed the total amount paid by District to Designer/Builder hereunder.

- 50. OUTPUT GUARANTEE.** Designer/Builder hereby guarantees to District guaranteed energy output from each System as indicated in the attached **Exhibit G** ("Output Guarantee"). The Output Guarantee is only excused by the terms of **Exhibit G** and shall not be excused by a failure of equipment, a failure of maintenance, operations, or repair, or any failed performance of Designer/Builder pursuant to its obligations under the Operations & Maintenance Agreement, attached hereto as **Exhibit B**. If Designer/Builder must exceed its obligations under the Operations & Maintenance Agreement to satisfy its obligations under the Output Guarantee, then the Designer/Builder shall take all necessary actions to satisfy the Output Guarantee, at no expense to the District.

PREVAILING WAGE CERTIFICATION

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours notice, payroll records, and apprentice and trainee employment requirements, for all Work on the above Project.

Date: _____, 2010
Proper Name of Designer/Builder: _____ SunPower Corporation, Systems
Signature: _____
Print Name: _____
Title: _____

WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700 in relevant part provides:

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 by 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, 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 employees.

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Contract.

Date: _____, 2010
Proper Name of Designer/Builder: _____ SunPower Corporation, Systems
Signature: _____
Print Name: _____
Title: _____

(In accordance with Article 5 – commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any Work under this Contract.)

CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

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

That I am a representative of the Designer/Builder currently under contract ("Contract") with the District; that I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Designer/Builder.

Designer/Builder certifies that it has taken at least one of the following actions with respect to the construction Project that is the subject of the Contract (check all that apply):

_____ The Designer/Builder has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Designer/Builder's employees and all of its subcontractors' employees who may have contact with District pupils in the course of providing Services pursuant to the Contract, and the California Department of Justice has determined that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of Designer/Builder's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto; and/or

_____ Pursuant to Education Code section 45125.2, Designer/Builder has installed or will install, prior to commencement of Work, a physical barrier at the Work Site, that will limit contact between Designer/Builder's employees and District pupils at all times; and/or

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

Name: _____

Title: _____

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

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

Date: _____, 2010

Proper Name of Designer/Builder: _____

Signature: _____

Print Name: _____

Title: _____

DRUG-FREE WORKPLACE / TOBACCO-FREE ENVIRONMENT CERTIFICATION

Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990, requires that every person or organization awarded a contract or grant for the procurement of any property or service from any state agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a state agency may be subject to suspension of payments or termination of the contract or grant, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred. The District is not a "state agency" as defined in the applicable section(s) of the Government Code, but the District is a local agency and public school district under California law and requires all contractors on District projects to comply with the provisions and requirements of Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990. Contractor shall certify that it will provide a drug-free workplace by doing all of the following:

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

I understand that if the District determines that I have either (a) made a false certification herein, or (b) violated this certification by failing to carry out the requirements of section 8355, that the Contract awarded herein is subject to termination, suspension of payments, or both. I further understand that, should I violate the terms of the Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of section 8350 et seq.

I acknowledge that I am aware of the provisions of Government Code section 8350 et seq. and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990.

In addition, and pursuant to, without limitation, 20 U.S.C section 6083, Labor Code section 6400 et seq., Health & Safety Code section 104350 et seq. and District Board Policies, all District sites, including the Sites, are tobacco-free environments. Smoking and the use of tobacco products by all persons is prohibited on or in District property. District property includes school buildings, school grounds, school owned vehicles and vehicles owned by others while on District property. I acknowledge that I am aware of the District's policy regarding tobacco-free environments and hereby certify that I will adhere to the requirements of that policy and not permit any of my firm's employees, agents, subcontractors, or my firm's subcontractors' employees or agents to use tobacco and/or smoke on the Sites.

Date: _____, 2010

Proper Name of Designer/Builder: _____ SunPower Corporation, Systems

Signature: _____

Print Name: _____

Title: _____

ASBESTOS & OTHER HAZARDOUS MATERIALS CERTIFICATION

Designer/Builder hereby certifies that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations "New Material Hazardous", shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Designer/Builder's work on the Project for District.

Designer/Builder further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material.

Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the District's determination. The costs of any such tests shall be paid by Designer/Builder if the material is found to be New Hazardous Material.

All Work or materials found to be New Hazardous Material or Work or material installed with "New Hazardous Material" containing equipment will be immediately rejected and this Work will be removed at Designer/Builder's expense at no additional cost to the District.

Designer/Builder has read and understood the document Hazardous Materials Procedures & Requirements, and shall comply with all the provisions outlined therein.

Date: _____, 2010

Proper Name of Designer/Builder: _____ SunPower Corporation, Systems

Signature: _____

Print Name: _____

Title: _____

LEAD-PRODUCT(S) CERTIFICATION

California Occupational Safety and Health Administration (CalOSHA), Environmental Protection Agency (EPA), California Department of Health Services (DHS), California Department of Education (CDE), and the Consumer Product Safety Commission (CPSC) regulate lead-containing paint and lead products.

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

The CDE mandates that school districts utilize DHS lead-certified personnel when a lead-based hazard is identified. Examples of lead-certified personnel include: project designers, inspectors, and abatement workers. Furthermore, since it is assumed by the district that all painted surfaces (interior as well as exterior) within the District contain some level of lead, it is imperative that the Designer/Builder, its workers and subcontractors fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials (**Including Title 8, California Code of Regulations, Section 1532.1**). Any and all Work which may result in the disturbance of lead-containing building materials must be coordinated through the District.

The California Education Code also prohibits the use or import of lead-containing paint, lead plumbing and solders, or other potential sources of lead contamination in the construction of any new school facility or in the modernization or renovation of any existing school facility. The Designer/Builder shall provide the District with any sample results prior to beginning Work, during the Work, and after the completion of the Work. The District may request to examine, prior to the commencement of the Work, the lead training records of each employee of the Designer/Builder.

If failure to comply with these laws, rules, and regulations results in a Site or worker contamination, the Designer/Builder will be held solely responsible for all costs involved in any required corrective actions, and shall defend, indemnify and hold harmless the District, pursuant to the indemnification provisions of the Contract, for all damages and other claims arising therefrom. If lead disturbance is anticipated in the Work, only persons with appropriate accreditation, registrations, licenses and training shall conduct this Work.

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

THE UNDERSIGNED HEREBY ACKNOWLEDGES, UNDER PENALTY OF PERJURY, THAT HE OR SHE HAS RECEIVED NOTIFICATION OF POTENTIAL LEAD-BASED MATERIALS ON THE OWNER'S PROPERTY, AS WELL AS THE EXISTENCE OF APPLICABLE LAWS, RULES AND REGULATIONS GOVERNING WORK WITH, AND DISPOSAL OF, SUCH MATERIALS WITH WHICH IT MUST COMPLY. THE UNDERSIGNED ALSO WARRANTS THAT HE OR SHE HAS THE AUTHORITY TO SIGN ON BEHALF OF AND BIND THE DESIGNER/BUILDER.

Date: _____, 2010

Proper Name of Designer/Builder: _____ SunPower Corporation, Systems

Signature: _____

Print Name: _____

Title: _____

PERFORMANCE BOND
(100% of construction portion of the Contract Price)

(Note: Designer/Builder must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("Board") of the Mount Diablo Unified School District, ("District") and SunPower Corporation, Systems, ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

_____ (Project Name)
("Project" or "Contract")

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

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

NOW, THEREFORE, the Principal and _____ ("Surety") are held and firmly bound unto the Board of the District in the penal sum of _____ DOLLARS (\$ _____), lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents, to:

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

The condition of the obligation is such that, if the above bounden Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the Contract and any alteration thereof made as therein provided, on his or its part to be kept and performed at the time and in the intent and meaning, including all contractual guarantees and warranties of materials and workmanship for one (1) year from the completion date of the work of this Contract, and shall indemnify and save harmless the District, its trustees, officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and virtue.

As a condition precedent to the satisfactory completion of the Contract, the above obligation shall hold good for one (1) year from the completion date of the work of this Contract, during which time Surety's obligation shall continue if Designer/Builder shall fail to make full, complete, and satisfactory repair, replace, and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship. Nothing herein shall limit the District's rights or the Designer/Builder's or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15 during the bond term.

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

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

Attention: _____

Telephone No.: (_____) _____ - _____

Fax No.: (_____) _____ - _____

E-mail Address: _____

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

(Affix Corporate Seal)

SunPower Corporation, Systems
Principal

By _____

Surety

By _____

Name of California Agent of Surety

Address of California Agent of Surety

Telephone Number of California Agent of Surety

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

PAYMENT BOND
Contractor's Labor & Material Bond
(100% of construction portion of the Contract Price)

(Note: Designer/Builder must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("Board") of the Mount Diablo Unified School District, (or "District") and SunPower Corporation, Systems, ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to

_____ (Project Name)
("Project" or "Contract")

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

WHEREAS, pursuant to law and the Contract, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by which the Contract is awarded in an amount equal to 100 percent (100%) of the Contract price, to secure the claims to which reference is made in sections 3179 through 3214 and 3247 through 3252 of the Civil Code of California, and division 2, part 7, of the Labor Code of California.

NOW, THEREFORE, the Principal and _____, ("Surety") are held and firmly bound unto all laborers, material men, and other persons referred to in said statutes in the sum of _____ Dollars (\$ _____), lawful money of the United States, being a sum not less than the total amount payable by the terms of Contract, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

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

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under sections 3179 through 3214 and 3247 through 3252 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

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

And the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of Contract or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

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

(Affix Corporate Seal)

SunPower Corporation, Systems
Principal

By

Surety

By

Name of California Agent of Surety

Address of California Agent of Surety

Telephone Number of California Agent of Surety

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

FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

One of the 3 boxes below **must** be checked, with the corresponding certification provided, and this form **must** be attached to this O&M Agreement:

[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.] Operator's employees will have only limited contact, if any, with District pupils and the District will take appropriate steps to protect the safety of any pupils that may come in contact with Operator's employees so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Operator for the services under this O&M Agreement. As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District. (Education Code § 45125.1 I)

Date: _____
District Representative's Name and Title: _____
Signature: _____

The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Operator's services under this O&M Agreement and Operator certifies its compliance with these provisions as follows: *"Consultant certifies that the Consultant has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Consultant's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Consultant, who may have contact with District pupils in the course of providing services pursuant to the O&M Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122. 1. A complete and accurate list of all Employees who may come in contact with District pupils during the course and scope of the O&M Agreement is attached hereto."*

Consultant's services under this O&M Agreement shall be limited to the construction, reconstruction, rehabilitation, or repair of a school facility and although all Employees will have contact, other than limited contact, with District pupils, pursuant to Education Code section 45125.2 District shall ensure the safety of the pupils by at least one of the following as marked:

- _____ The installation of a physical barrier at the worksite to limit contact with pupils.
- _____ Continual supervision and monitoring of all Consultant's on-site employees of Consultant by an employee of Consultant, _____, whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.
- _____ Surveillance of Employees by District personnel. **[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.]**

Date: _____
District Representative's Name and Title: _____
Signature: _____

[MUST BE COMPLETED BY CONSULTANT'S AUTHORIZED REPRESENTATIVE.] I am a representative of the Consultant entering into this O&M Agreement with the District and I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Consultant.

Date: _____, 2010
Name of Consultant or Company: SunPower Corporation, Systems
Signature: _____
Print Name and Title: _____

EXHIBIT A
SCOPE OF WORK

Article 1. DESIGN SERVICES

- 1.1. During the design and construction phases of the Project, Designer/Builder will meet with District to review equipment, scope of work, and installation plans that relate to the design and construction of the Project.
- 1.2. During the course of the Work, and at least weekly, Designer/Builder will provide reports to the District of the general status and progress of the Work.
- 1.3. **Scope, Responsibilities, and Services of Designer/Builder**
 - 1.3.1. Designer/Builder shall provide Services that comply with professional architectural standards, recognized industry standards for professional skill and judgment and Applicable Law.
 - 1.3.2. Designer/Builder acknowledges that all California school districts are now obligated to develop and implement storm water requirements. Designer/Builder is responsible for creation and implementation of a storm water pollution and prevention plan as required by law.
 - 1.3.3. Designer/Builder shall contract for or employ at Designer/Builder's expense, consultant(s) to the extent deemed necessary for completion of its Services on the Project including, but not limited to, architects, mechanical, electrical, structural, civil engineers, landscape architects, low voltage, data, and telephone consultants as necessary, licensed as required by the State of California. Nothing in the foregoing procedure shall create any contractual relationship between the District and any consultant employed by the Designer/Builder under terms of this Contract.
 - 1.3.4. District shall provide to Designer/Builder information and documentation that District currently has in its possession related to the Sites, including geotechnical reports, topographic surveys, and related items. If Designer/Builder determines that the information or documentation District provides is insufficient for purposes of design or if Designer/Builder believes it needs additional information, such as a geotechnical report; structural, mechanical, and/or chemical tests; tests for air and/or water pollution; test borings; test pits; determinations of soil bearing values; determinations of the location of all subsurface utilities; percolation tests; ground corrosion tests; resistivity tests; and/or tests for anticipating subsoil conditions, Designer/Builder shall procure those items, at its sole expense.
 - 1.3.5. Designer/Builder shall coordinate with District personnel and/or its designated representatives as may be requested and desirable, including with other professionals employed by the District for the design, coordination or management of other work on the Sites.
 - 1.3.6. Designer/Builder shall identify the regulatory agencies that have jurisdiction over essential building and design elements and coordinate with and implement the requirements of the regulatory agencies or their authorized agents, including, without limitation, California Department of Education (CDE), the Office of Public School Construction (OPSC), the Department of General Services (DGS), DSA Fire/Life Safety, DSA Access Compliance Section, DSA Structural Safety, State Fire Marshal, County and City Health Inspectors and any regulatory office or agency that has authority for review and supervision of school district construction projects.
 - 1.3.7. Designer/Builder shall provide Services required to obtain local agencies' approval for off-site work related to the Project including review by regulatory agencies having jurisdiction over the Project, if applicable.
 - 1.3.8. Designer/Builder shall coordinate with the IOR.
 - 1.3.9. Designer/Builder shall provide computer-generated pictures downloaded to computer files, updated as requested by the District, that the District may use on its website. Pictures shall be limited to Designer/Builder's Project scope.
 - 1.3.10. As part of the basic Services pursuant to this Contract, Designer/Builder is NOT responsible for the following, however, it shall coordinate and integrate its work with any of the following information and/or services provided by District:
 - 1.3.10.1. Ground contamination or hazardous material analysis.

- 1.3.10.2. Any asbestos and/or lead testing, design or abatement.
- 1.3.10.3. Compliance with the California Environmental Quality Act ("CEQA"), except that Designer/Builder agrees to coordinate its work with that of any CEQA consultants retained by the District, to provide current elevations and schematic drawings for use in CEQA compliance documents, and to incorporate any mitigation measures adopted by the District into the Project design at no additional cost to the District. If the District and/or its CEQA consultant does not provide mitigation measures to the Designer/Builder when reasonably required for incorporation into the Project design, Designer/Builder may invoice the District for the work required to incorporate those mitigation measures as Extra Services.
- 1.3.10.4. Historical significance report.
- 1.3.10.5. Re-zoning. It is assumed that the proposed locations are zoned for solar electric installations and no delays will occur due to zoning issues.
- 1.3.10.6. Easement adjustments. It is assumed that no roads, bridges, utility power lines, local CC&R's, etc, will be of such a nature as to disrupt the solar installation and no delays will occur due to easement issues.

1.4. **Designer/Builder Staff**

- 1.4.1. Designer/Builder has been selected to perform the Services herein because of the skills and expertise of key individuals.
- 1.4.2. Designer/Builder shall not change any of the key personnel without prior written approval by District, unless said personnel cease to be employed by Designer/Builder. In either case, District shall be allowed to interview and approve replacement personnel. Such approval shall not be unreasonably withheld.
- 1.4.3. If any designated lead or key person fails to perform to the reasonable satisfaction of the District, then upon written notice the Designer/Builder shall have five (5) days to remove that person from the Project and replace that person with one reasonably acceptable to the District.
- 1.4.4. Designer/Builder shall comply with Education Code section 17302(a) and agrees that any plans and/or specifications included in the Services shall be prepared under the supervision of licensed personnel, and that licensed personnel shall be in "responsible charge" of persons who observe the construction.

1.5. **Ownership Of Data**

- 1.5.1. Pursuant to Education Code section 17316, this Contract creates a non-exclusive and perpetual license for District to use, at its discretion, all plans, including, but not limited to, record drawings, specifications, and estimates that the Designer/Builder or its consultants, prepares or causes to be prepared pursuant to this Contract, limited to the Work.
- 1.5.2. Designer/Builder retains all rights to all copyrights, designs and other intellectual property embodied in the plans, record drawings, specifications, estimates, and other documents that the Designer/Builder or its consultants prepares or causes to be prepared pursuant to this Contract. Designer/Builder shall perform the Services and prepare all documents under this Contract with the assistance of Computer Aided Design Drafting (CADD) (e.g., AutoCAD) Technology. Designer/Builder shall deliver to District, on request, the tape, "thumb" drive, and/or compact disc format and compatible with AutoCAD 2010 (not .pdf). As to any drawings that Designer/Builder provides in a CADD file format, the District acknowledges that anomalies and errors may be introduced into data when it is transferred or used in a computer environment, and that the District should rely on hard copies of all documents.
- 1.5.3. In order to document exactly what CADD information was given to the District, Designer/Builder and District shall each sign a "hard" copy of reproducible documents that depict the information at the time Designer/Builder produces the CADD information. District agrees to release Designer/Builder from all liability, damages, and/or claims that arise due to any changes made to this information by anyone other than the Designer/Builder or Consultant(s) subsequent to it being

given to the District.

- 1.5.4. Following the termination of this Contract, for any reason whatsoever, Designer/Builder shall promptly deliver to the District upon written request the following items (hereinafter "Instruments of Service") in electronic format (Microsoft Word), unless otherwise indicated, assuming District has made all payments to Designer/Builder as required by the termination provisions in this Contract.
 - 1.5.4.1. One set of this Contract, including the bidding requirements, specifications, and all existing cost estimates for the Project, in hard copy, reproducible format.
 - 1.5.4.2. One set of fixed image CADD files in DXF format of the drawings that are part of this Contract.
 - 1.5.4.3. One set of non-fixed image CADD drawing files in DXF and/or DWG format of the site plan, floor plans (architectural, plumbing, structural mechanical and electrical), roof plan, sections and exterior elevations of the Project.
 - 1.5.4.4. All finished or unfinished documents, studies, reports, calculations, drawings, maps, models, photographs, technology data and reports prepared by the Designer/Builder under this Contract.
- 1.5.5. In the event District changes or uses any fully or partially completed documents without Designer/Builder's knowledge and participation, District agrees to release Designer/Builder of responsibility for such changes, and shall indemnify, defend and hold Designer/Builder harmless from and against any and all claims, liabilities, suits, demands, losses, costs and expenses, including, but not limited to, reasonable attorneys' fees, on account of any damages or losses to property or persons, including injuries or death, or economic losses, arising out of that change or use except to the extent the Designer/Builder is found to be liable in a forum of competent jurisdiction. In the event District uses any fully or partially completed documents without the Designer/Builder's full involvement, the District shall remove all title blocks and other information that might identify the Designer/Builder and the Designer/Builder's consultants.

1.6. **Certificate Of Designer/Builder**

- 1.6.1. Designer/Builder certifies that the Designer/Builder is properly certified and licensed under the laws and regulations of the State of California to provide the professional Services that it has herein agreed to perform.

Article 2. DESIGN SERVICES BY PHASE

2.1. **Early Design Phase(s).** Designer/Builder agrees to provide the Services described below:

- 2.1.1. Designer/Builder shall be responsible for the professional quality and technical accuracy of all studies, reports, projections, master plans, designs, drawings, specifications and other services furnished by Designer/Builder under this Contract as well as coordination with all master plans, studies, reports and other information provided by District. Designer/Builder shall, without additional compensation, correct or revise any errors or omissions in its studies, reports, projections, master plans, design, drawings, specifications and other services.
- 2.1.2. District shall provide all information in its possession to the extent the information relates to Designer/Builder's scope of Work. This information shall include, if available,
 - 2.1.2.1. Physical characteristics;
 - 2.1.2.2. Legal limitations and utility locations for the Sites;
 - 2.1.2.3. Written legal description(s) of the Sites;
 - 2.1.2.4. Grades and lines of streets, alleys, pavements, and adjoining property and structures;
 - 2.1.2.5. Adjacent drainage;
 - 2.1.2.6. Rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, and boundaries and contours of the Sites;

- 2.1.2.7. Locations, dimensions and necessary data with respect to existing buildings, other improvements and trees;
 - 2.1.2.8. Information concerning available utility services and lines, mechanical and other services, both public and private, above and below grade, including inverts and depths;
 - 2.1.2.9. Surveys, reports, as-built drawings;
 - 2.1.2.10. Subsoil data, chemical data, and other data logs of borings; and
 - 2.1.2.11. DSA Numbers for all buildings, as necessary to obtain DSA approval of plans to be submitted by Designer/Builder under the contracted scope of Work.
- 2.1.3. Designer/Builder shall visually verify this information and all existing utilities related to the Project, including capacity, and document the location of existing utility lines, telephone, water, sewage, storm drains and other lines on or around the Project to the extent determinable by the documents provided by the District. "Visually verify" means to verify to the fullest extent possible by physical inspection and reasonable investigation and without any destructive action.
- 2.2. **Schematic Design / Design Development Phase.** Designer/Builder shall prepare for District's review a design report, containing the following items if applicable to the Project scope, as follows:
- 2.2.1. Prepare and review with District staff a scope of work list and work plan identifying specific tasks including, but not limited to: concepts and schematic design preparation and estimating that are part of the Work of the Project. Also identified will be specific task responsibilities of the Designer/Builder, required completion times necessary for the review and approval by the District and by pertinent regulatory agencies and additional definition of deliverables.
 - 2.2.2. Solar structure layout at the Sites.
 - 2.2.3. **Structural**
 - 2.2.3.1. Structural drawing with all major members located and sized.
 - 2.2.3.2. Layout structural and identify structural systems.
 - 2.2.3.3. Identify foundation requirement (including fill requirement, piles) with associated soil pressure, water table and seismic center.
 - 2.2.4. **Landscape and Hardscape**
 - 2.2.4.1. Designer/Builder shall identify trees to be removed within the construction area. Designer/Builder is responsible for tree removal in the designated parking canopies/shade structure locations as depicted in **Exhibit F, List of Proposed System Locations**. Designer/Builder shall assist District in identifying other trees the District may be required to remove to prevent shading that would potentially impact power generation of the System(s) in areas outside the construction area. District will remove or maintain trees/shrubs if required to prevent shading that will impact power generation of the Systems in areas outside the construction area. Designer/Builder is not responsible for Site landscaping.
 - 2.2.4.2. Landscape and hardscape plans, as necessary to return the Sites to presentable condition for each Site for areas under and around each new structure, fencing, and parking lot areas.
 - 2.2.5. **Presentation**
 - 2.2.5.1. Designer/Builder shall present and review with the District the detailed design information and deliverables for this phase.
- 2.3. **Construction Documents Phase.** Upon District's acceptance of Designer/Builder's work in the design phase and assuming District has not delayed or terminated this Contract, Designer/Builder shall prepare from the accepted deliverables from the previous design phase of the Project a set of 100% complete construction documents for submission to DSA and for review by the District, and which will consist of the following for each proposed System within Designer/Builder's scope of Work:

- 2.3.1. **Electrical**
 - 2.3.1.1. Completed electrical drawings.
- 2.3.2. **Architectural**
 - 2.3.2.1. Completed site plan.
 - 2.3.2.2. Completed architectural details.
 - 2.3.2.3. Completed Site utility plans.
 - 2.3.2.4. Completed fixed equipment details and identification.
- 2.3.3. **Structural**
 - 2.3.3.1. Completed structural calculations.
- 2.3.4. **Mechanical**
 - 2.3.4.1. Completed energy production calculations and report.
- 2.3.5. **Landscape and Hardscape**
 - 2.3.5.1. Completed landscape and hardscape plans for each Site in construction areas and where appropriate for areas under and around each new structure, fencing, and parking lot areas as necessary to return the Sites to practical, presentable and functional condition(s), consistent with the surrounding area. This includes, unless inappropriate, paving where surrounding areas are paved and planting where surrounding areas have planting, excluding replanting of trees removed to allow construction of the System.
 - 2.3.5.2. Trees within the construction area will be identified for Designer/Builder removal.
 - 2.3.5.3. Designer/Builder is not responsible for Site landscaping (e.g. plant restoration or long term weed abatement). Beyond simple re-routing for photovoltaic shade structures/parking canopies foundation installation, irrigation work is the responsibility of the District.
- 2.3.6. **Deliverables and Numbers of Copies**
 - 2.3.6.1. Designer/Builder shall provide to the District a hard copy of the following items produced in this phase, together with one copy of each item in electronic format:
 - 2.3.6.1.1. Five copies of reproducible copies of working drawings;
 - 2.3.6.1.2. Two copies of engineering calculations;
 - 2.3.6.1.3. Two copies of statement of requirements for testing and inspection of service for compliance with applicable codes; and
 - 2.3.6.1.4. Two copies of the DSA file including all correspondence, meeting, back check comments, checklists to date.
- 2.3.7. **Record Drawings.** During construction, Designer/Builder shall incorporate all information on all As-Builts, sketches, details, and clarifications, and prepare one set of final Record Drawings for the District. The Record Drawings shall incorporate onto one set of electronic drawings, all changes from all As-Builts, sketches, details, and clarifications. The Designer/Builder shall deliver the Record Drawings to the District at completion of the construction and it shall be a condition precedent to the District's approval of the Designer/Builder's final payment.
- 2.3.8. **O&M Manuals / Warranties.** Designer/Builder shall review equipment, operation and maintenance manuals, and a complete set of warranty documents for all equipment and installed systems, to ensure that they meet the requirements of the plans and specifications. The Designer/Builder shall deliver the O&M Manuals / Warranties to the District at completion of the construction and it shall be a condition precedent to the District's approval of the Designer/Builder's final payment.

Article 3. DESCRIPTION OF WORK AND SERVICES BY SCOPE

- 3.1. **General.** Designer/Builder shall design, install, and construct the Work at the Sites. All Systems located at school sites shall be installed to conform to National Electric Code, DSA requirements, PG&E interconnection agreements, City and County access requirements, and incentives under the California Solar Initiative (CSI). Systems located at the District's M&O facility and Administrative Offices do not require DSA approval. Designer/Builder's Work shall include:
- 3.1.1. Meetings and discussions as needed with DSA, Fire Department, PG&E and others as needed to achieve project approval.
 - 3.1.2. Installation of solar parking canopies in parking areas and solar shade structures. Parking canopies and shade structures shall be limited to the areas generally indicated in the areas shown in **Exhibit F**, unless changes to locations are mutually agreed upon by the District and Designer/Builder.
 - 3.1.3. Installation of electrical equipment pad and utility tie-ins shall be limited to the areas generally indicated on the site plans provided in **Exhibit F**, unless changes to locations are mutually agreed upon by the District and Designer/Builder. To the extent practical, the selection of the final location will consider methods to block the view of the electrical equipment from offsite public areas.

Article 4. ASSUMPTIONS AND CONDITIONS

- 4.1. The scope of Work, Contract Price, and Project Schedule described in this Contract are based upon the assumptions and conditions described in this section and taken from the Request For Proposal ("RFP"). Should changes to these assumptions and conditions take place, Contract Price and Project Schedule adjustments will be agreed upon by both Parties through the Change Order process, as described in Section 7 of this Contract.
- 4.2. **General**
- 4.2.1. Designer/Builder assumes standard working hours (7 am – 5 pm, Monday-Friday).
 - 4.2.2. Designer/Builder assumes standard weather patterns and site conditions for planning the project schedule. Instances of excessive climate, weather (greater than the most adverse conditions in the last 3 years) or natural disasters may result in delays and or unplanned costs (i.e. additional labor, shipping, storage, and logistics costs) which will be the responsibility of the District. Delays due to adverse weather conditions will not be allowed for weather conditions which fall within the parameters listed below. Adverse weather delays may be allowed only if the number of days of adverse weather exceeds these parameters and Designer/Builder can verify that adverse weather caused delays. The parameters, subject to confirmation as the most up-to-date number of days in the past 3 year historical average per month, are as follows:
 - Adverse weather days: January (11); February (10); March (10); April (6); May (3); June (1); July (0); August (0); September (1); October (4); November (7); December (10)Whenever the Designer/Builder claims that a delay is due to any or all of the above named causes, it shall request, within five days of the start of the delay, an extension of time. The request shall be in writing and shall describe in detail the cause for the delay.

Any request for extension of time shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant is entitled as a result of the occurrence of said event. No claim for an adjustment in the Contract time will be valid and such claim will be waived if not submitted in accordance with the requirements of this Section 4.2.2.
 - 4.2.3. Any taxes or fees, other than sales tax, are excluded. Sales tax rate assumed to be 9.25%.
- 4.3. **Design**
- 4.3.1. District will provide uninhibited access to District as-built and individual school site record documentation, including electronic files, such as AutoCAD files. District will provide a comprehensive, relatively current, topographic mapping in electronic AutoCAD format for each Site for use in schematic and construction document and design development.
 - 4.3.2. Tree removal at the designated parking canopies/shade structure locations is the responsibility of the

Designer/Builder.

4.4. **Electrical**

- 4.4.1. Designer/Builder assumes there is no additional District-side protection or disconnects required by the District or utilities above that provided by the certified inverters.
- 4.4.2. Designer/Builder assumes electrical equipment such as the inverter and AC utility lockable disconnect will be installed on the ground with a standard Designer/Builder service concrete pad, located in close proximity to the shade structure/parking canopy support structures and within a maximum number of feet of the proposed electrical tie-in location as shown in **Exhibit F**.
- 4.4.3. Designer/Builders will use standard dig trenching, without issues related to underground utilities. Designer/Builder will use EMT conduit with rain-tight compression fittings for above ground installations and schedule 40 PVC conduit for below ground installations. Special requirements for concrete encased duct banks, concrete capped duct banks, or slurry are the responsibility of the District.
- 4.4.4. Designer/Builder has allowed for fifty (50) lineal feet (LF) of trenching for DC conductors from individual parking canopies/shade structure to local array inverter/electrical equipment housekeeping pad.
- 4.4.5. All utility-owned electrical equipment serving the campuses have adequate capacity to handle the photovoltaic system output.
- 4.4.6. Designer/Builder will use a cellular modem for communication with a third party monitoring company. All other communication and low voltage infrastructure is the responsibility of the District.
- 4.4.7. Energy Management System Integration or similar control or SCADA system integrations to the new photovoltaic array(s) is the responsibility of the District.
- 4.4.8. All parking lot light standards in direct conflict with installation of photovoltaic shade structures/parking canopies can be removed. Those existing lighting circuits can be re-used for photovoltaic shade structures/parking canopies lighting system and that those existing circuits have ample current carrying capacity to provide required lighting at shade structures/parking canopies. New lighting circuit installation beyond the areas where Systems will be installed as shown in **Exhibit F** and any required timing circuit reconfiguration is the responsibility of the District. Lighting design and/or installation beyond the photovoltaic shade structures/parking canopies is the responsibility of the District.

4.5. **Foundations and Equipment Pads**

- 4.5.1. Electrical equipment and equipment housekeeping pad shade structures/canopies are excluded from the Designer/Builder's scope of Work, unless electrical equipment and equipment housekeeping pads are located under photovoltaic shade structure/canopy (in which case the photovoltaic shade structure/canopy shall act as the equipment shelter).
- 4.5.2. Five-sided Galvanized Chain Link electrical equipment pads/enclosures will be installed by Designer/Builder. All enclosures are to be fitted with vinyl slats of sufficient length and width to obscure all interior equipment/hardware.
- 4.5.3. Photovoltaic shade structures/parking canopies will utilize a 36" round caisson approximately 3 feet above grade and approximately 10 feet below grade, for parking lot conditions and 36" round caisson, 10 feet deep and flush with asphalt finish grade in hard-court areas.
- 4.5.4. Assumed soil characteristics:
 - 4.5.4.1. IBC or UBC Table 18-I-A, Class 3 equivalent
 - 4.5.4.2. Non-hazardous, sandy gravel and/or gravel
 - 4.5.4.3. Allowable foundation pressure of 2,000 (psf) 2

- 4.5.4.4. Lateral Bearing strength below grade equal to 200 (Lbs./Sq.Ft./Ft. of depth
- 4.5.4.5. Lateral sliding coefficient is equal to .35
- 4.5.4.6. No sub-grade rocks or rock formations
- 4.5.4.7. Adequate drainage
- 4.5.4.8. No to low seismic conditions
- 4.5.4.9. Limited expansiveness
- 4.5.4.10. Low to moderate corrosivity
- 4.5.4.11. Depth to start of passive pressure is 0.5 feet

4.6. Structures

- 4.6.1. Painting of steel photovoltaic shade structure/canopy support structures is the responsibility of Designer/Builder. All other painting of equipment, special signage, decals, or protective barriers is excluded. All metal materials are either factory-finished or non-corrosive and will not need painting for weather protection.
- 4.6.2. Shade structures/parking canopies will provide 9 foot minimum clearance for parking and hard-court areas.

4.7. Site

- 4.7.1. Special drainage requirements and/or drainage design and interconnection to District's existing storm drain system or any other storm drain discharge system is excluded.
- 4.7.2. Requirements for accessibility upgrades and accessibility design beyond the confines of the photovoltaic shade structure/parking canopy structures are excluded.
- 4.7.3. Architectural enhancements to the photovoltaic shade structure/parking canopy structures are excluded.
- 4.7.4. It is assumed that modifications and/or reconfiguration of the existing parking lots will not be required to accommodate installation of the Systems as shown in **Exhibit F**.
- 4.7.5. A maximum of two fire hydrant flow tests per campus to evaluate adequate fire flow rate of campus for Contra Costa County Fire Protection District design review is assumed.

4.8. PG&E Requirements. The CSI provides financial incentives to customers installing PV systems in the investor owned utility territories of PG&E, Southern California Edison, and San Diego Gas and Electric. Designer/Builder shall ensure that all of the Work, as required, complies with all requirements, including the metering and monitoring requirements, outlined in the CSI Program Handbook.

4.9. Permitting and Regulatory Approvals

- 4.9.1. Designer/Builder, its designers and contractors shall provide documentation required for all approvals by DSA.
- 4.9.2. Designer/Builder shall notify the District and the IOR of required inspections and shall provide reasonable access and accommodations for inspections.
- 4.9.3. Schedule assumes 70 Business Days for approvals by the DSA in the Project Schedule. Designer/Builder shall not be responsible for construction delays caused by permit and approval requirements outside of its control.
- 4.9.4. It is assumed that the Sites are zoned for solar electric installation per Designer/Builder's design requirements and will not have to be re-zoned. Designer/Builder assumes that there will be no issues with any easements (such as roads), right-of-ways, bridges, utility power lines.
- 4.9.5. All Sites have a max wind speed 85mph 3 sec wind gust.
- 4.9.6. Special permits, approval requirements, monitoring, compliance requirements, fees and certifications

(such as CEQA applications, environmental impact report, wetlands delineation, water quality, archeological, endangered species, water rights, mineral rights, etc.) are the responsibility of the District.

4.10. **Monitoring**

4.10.1. Designer/Builder shall install the data acquisition system, which provides access by unlimited individuals to data via "SunPowerMonitor.com", which shall include options for display of daily energy generation by Site, and system-check features. This will include a system that will monitor and log the Entire System performance on a daily basis by Site. This information can be reviewed on a daily basis by District personnel. This information can be used to establish an operational baseline operation. Following is a detailed description of the Monitoring requirements:

4.10.1.1. Electricity generation monitoring reports

4.10.1.2. Communication with a third party monitoring company to be provided via cellular modem.

4.11. **Protection Of Existing Structures And Utilities**

4.11.1. The Sites have above-grade and below-grade structures, utility lines, and other installations that are known or believed to exist in the area of the Work. Designer/Builder shall locate these existing installations before proceeding with excavation and other operations that could damage same; maintain them in service, where appropriate; and repair damage to them caused by the performance of the Work. Should damage occur to these existing installations, the costs of repair shall be at the Designer/Builder's expense and made to the District's satisfaction.

4.11.2. Designer/Builder shall be alert to the possibility of the existence of additional structures and utilities. If Designer/Builder encounters additional structures and utilities, Designer/Builder will immediately report to the District for disposition of same as indicated in the General Conditions.

4.11.3. Designer/Builder shall conduct an engineering evaluation to determine whether any underground power lines will create the potential for electrolytic corrosion of any other underground utilities near such power lines. Where the potential for electrolytic corrosion exists, Designer/Builder shall also design and install (1) a cathodic protection system to protect such utilities or (2) another protection system approved by the District.

4.12. **Site Access**

4.12.1. Designer/Builder assumes there will be no issues with regard to access to on-site water and power as available for construction at no charge to Designer/Builder. Designer/Builder assumes use of an onsite fire hydrant for water supply during construction.

4.12.2. Removal and disposal of any existing hazardous waste materials, contaminated soils, or any other unforeseen site conditions that require special handling are excluded as part of this proposal. Changes to design or construction as a result of utilities and or hazards, underground or above ground, or any undocumented building upgrades are excluded from this proposal.

4.12.3. Re-stripping of the parking lot/hard-court areas, unless specifically related to the construction of the shade structure/parking canopies, is the responsibility of the District.

4.12.4. Designer/Builder assumes no new fire hydrants and/or water connections are required for installation of the photovoltaic shade structures/parking canopies.

4.12.5. Designer/Builder assumes site access for construction activities and deliveries during all hours of the week. Exclusive of local ordinances, District shall not restrict access to construction site during standard working hours (7 am – 5 pm, Monday-Friday).

4.12.6. Designer/Builder assumes existing roads can handle all required construction equipment such as drilling rigs, concrete trucks, delivery trucks, cranes, other lifting equipment, etc. Access road construction is the responsibility of the District.

4.12.7. District and Designer/Builder shall provide 24/7 unrestricted access to existing electric utility meter and the utility lockable disconnect location.

4.12.8. District to permit use of a temporary diesel generator onsite during construction activities, subject to local ordinances.

4.13. **Specific measures include:**

4.13.1. **All Sites**

4.13.1.1. Written Designer/Builder Safety Plans, signs and temporary fencing as needed;

4.13.1.2. Engineering and stamped drawings for District and DSA approval;

4.13.1.3. Layout drawings for Fire Department review;

4.13.1.4. Single line and electrical drawings for Pacific Gas & Electric;

4.13.1.5. Assistance with incentive forms and submission requirements;

4.13.1.6. Installation of Panels per approved design;

4.13.1.7. All DC and AC disconnects as required by code;

4.13.1.8. Combiner boxes as required;

4.13.1.9. All connectors and wire;

4.13.1.10. All necessary inverters per approved design;

4.13.1.11. Transformer and metering section as required;

4.13.1.12. Design, provide and set concrete pad(s); and

4.13.1.13. District requirements for concrete encased duct banks, concrete capped duct banks, or slurry are excluded.

4.13.2. **Safety/Security Features including:**

4.13.2.1. Galvanized chain link fencing 6' tall with wire mesh fabric for perimeter security fencing around electrical equipment pad.

4.13.2.2. Protective bollards and overhead "low ceiling" signs as needed.

4.13.2.3. Excavation, trenching, compaction and concrete or brick replacement with materials in kind. Standard dig trenching based on use of EMT conduit with rain-tight compression fittings for above ground installations and schedule 40 PVC conduit for below ground installations.

4.13.2.4. On-line connection(s) that can receive all information on power generation including, without limitation, daily power generation, cumulative generation, and historical daily generation.

4.13.2.5. Signage as required by PG&E.

4.13.2.6. Installation of structures, panels, wiring and trenching for ground-mounted solar shade structures.

4.13.2.6.1. Support structures will utilize a foundation of 36" round caisson approximately 3 feet above grade and approximately 10 feet below grade. Architectural enhancements to the PV array support structures are not included in this Contract.

4.13.2.6.2. Structures to be constructed with a minimum clearance of 9 feet for parking canopies. This Contract assumes all carport structures to be constructed in a single phase where possible with no phased scheduling to accommodate special parking provisions.

4.13.2.6.3. Solar structures constructed to withstand site max wind speed 85mph 3 sec wind gust, unless otherwise required by DSA.

- 4.13.2.7. Painting of structural steel and associated hardware components is the responsibility of Designer/Builder.
- 4.13.2.8. Pass through manufacturer warranties as indicated in **Exhibit H**.
- 4.13.3. The Designer/Builder shall not be obligated to perform the following:
 - 4.13.3.1. Electrical Equipment Shade Structures (canopies).
 - 4.13.3.2. Painting of equipment or special signage. Protective barriers and safety decals are included as required to provide a safe and complete Project.
 - 4.13.3.3. Re-stripping of the parking lots other than as required due to PV installation.
 - 4.13.3.4. Energy Management System integration or similar control or SCADA system integrations to the new elevated PV array and electrical equipment.
 - 4.13.3.5. Non-standard trenching, such as special requirements for concrete encased duct banks, concrete capped duct banks, or slurry, unless required by applicable codes or statutes.
 - 4.13.3.6. Upgrade of any utility-owned electrical equipment serving the Systems.
 - 4.13.3.7. Acquire special permits or certifications or pay special permit fees, pertaining to any such as environmental impact report, wetlands delineation, water quality, archeological, endangered species, water rights, mineral rights, etc.
 - 4.13.3.8. Construct for special drainage requirements and/or drainage design and interconnection to District's existing storm drain system or any other storm drain discharge system
 - 4.13.3.9. Accessibility upgrades and accessibility design that does not relate to the PV array support structures, the parking lots, the surrounding areas, or the access to the same.

4.14. **Commissioning**

4.14.1. **Summary**

- 4.14.1.1. Commissioning is a process for validating and documenting that the Systems are constructed and perform in conformity with this Contract.
- 4.14.1.2. The objective of the commissioning process is to verify that the performance of the Systems meet or exceed the design intent.
- 4.14.1.3. Commissioning includes special System start-up processes used to bring each System to a fully operational state, free of deficiencies in an efficient and timely manner
- 4.14.1.4. Training on related System and equipment operation and maintenance shall be scheduled to commence only after start-up is complete and each System has achieved System acceptance.

4.14.2. **Description**

- 4.14.2.1. Designer/Builder Startup: prior to District's acceptance of Work, Designer/Builder shall perform a program of activities including starting, testing, inspecting, adjusting balancing, correcting deficiencies and other similar activities.
 - 4.14.2.1.1. The District and the IOR shall be present to observe, inspect and identify deficiencies in Building Systems Operations.
- 4.14.2.2. The completion of startup means the entire Project including startup and fine tuning has been performed to the requirements of the Contract and is verified in writing by the District and the IOR.
- 4.14.2.3. Fine Tuning: Fine tuning is the responsibility of Designer/Builder after District's beneficial use and ending one year after District's beneficial use. During this time the Designer/Builder is responsible for optimizing systems and correcting deficiencies arising under normal operating conditions.

4.14.2.3.1. Includes a period after occupancy where systems are optimized under "live" operating conditions and any outstanding construction deficiencies are corrected.

4.14.2.3.2. Fine Tuning shall extend from date of District occupancy to one year after occupancy.

4.14.3. **Definition of Terms for Exhibit A.**

4.14.3.1. Designer/Builder's Pre-Commissioning Checklists: Includes installation and start-up items as specified to be completed by the appropriate contractors prior to operational verification through the functional testing process.

4.14.3.2. Installation Verification Process: Includes the on-site inspection and review of related System components for conformance to the Contract. The Designer/Builder shall verify systems readiness for functional testing procedures prior to the start of functional testing. Deficiencies will be documented by the District and the IOR for future resolution.

4.14.3.3. Functional Performance Testing Process: Includes the documented testing of System parameters, under actual or simulated operating conditions. Final performance commissioning of the Systems will begin only after the appropriate Designer/Builder certifies that Systems are 100% complete and ready for functional testing. The contractors will be required to schedule, coordinate and perform device tests, calibration and functional performance test procedures.

4.14.3.4. Deficiencies and Resolutions List: Includes a list of noted deficiencies discovered as a result of the commissioning process. This list also includes the current disposition of issues, and the date of final resolution as confirmed by the District and the IOR. Deficiencies are defined as those issues where products execution or performance does not satisfy the Contract and/or the design intent.

4.14.4. **Commissioning Duties And Responsibilities**

4.14.4.1. Designer/Builder Duties and Responsibilities:

4.14.4.1.1. Assure the participation and cooperation of subcontractors and suppliers under their jurisdictions as required to complete the commissioning process.

4.14.4.1.2. Complete Commissioning Report Forms. Reports are to be completed in a neat easily readable condition.

4.14.4.1.3. Complete the respective start-up and check out procedures and insure readiness of equipment and systems prior to the start of the functional performance testing. Written confirmation of System readiness for performance testing is required.

4.14.4.1.4. Provide qualified representatives for the functional performance commissioning process.

4.14.4.2. Assure that all subcontractors and suppliers include in their respective contracts cost necessary to participate in and complete the commissioning process.

4.14.4.3. Duties and responsibilities of others for Commissioning: The commissioning process requires the active participation of the District and the IOR, and any other related Consultants on the project.

4.15. **Maintenance, Operations and Repair.** Designer/Builder shall perform all work and services as indicated in the Operations & Maintenance Agreement, attached hereto as **Exhibit B**.

**Exhibit A-1
System Descriptions and Increments**

Increment	School Name	Address	City	State	Zip Code
1	Maintenance and Operations Base	1480 GASOLINE ALLEY	CONCORD	CA	94520
1	Administration Building	1936 Carlotta Dr.	CONCORD	CA	94519
1	Mt Diablo High	2450 GRANT ST	CONCORD	CA	94520
1	Olympic High	2730 SALVIO ST	CONCORD	CA	94519
1	Concord High School	4200 CONCORD BLVD	CONCORD	CA	94521
1	Glenbrook Middle	2351 OLIVERA RD	CONCORD	CA	94520
1	Rio Vista Elementary	611 PACIFICA AVE	BAY POINT	CA	94565
1	Riverview Middle	205 PACIFICA AVE	BAY POINT	CA	94565
1	Shore Acres Elementary	351 MARINA RD	BAY POINT	CA	94565
1	Delta View Elementary	2916 RIO VERDE	BAY POINT	CA	94565
1	Bel Air Elementary	663 CANAL RD	BAY POINT	CA	94565
1	El Dorado Middle	1750 WEST ST	CONCORD	CA	94521
1	El Monte Elementary	1400 DINA DR	CONCORD	CA	94518
1	Holbrook Elementary	3333 RONALD WAY	CONCORD	CA	94519
1	Monte Gardens Elementary	3841 LARKSPUR DR	CONCORD	CA	94519
1	Sun Terrace Elementary	2448 FLOYD LN	CONCORD	CA	94520
1	Westwood Elementary	1748 WEST ST	CONCORD	CA	94521
1	Wren Avenue Elementary	3339 WREN AVE	CONCORD	CA	94519
2	Northgate High	425 CASTLE ROCK RD	WALNUT CREEK	CA	94598
2	Ygnacio Valley High	755 OAK GROVE RD	CONCORD	CA	94518
2	Clayton Valley High	1101 ALBERTA WAY	CONCORD	CA	94521
2	Oak Grove Middle	2050 MINERT RD	CONCORD	CA	94518
2	Diablo View Middle	300 DIABLO VIEW LN	CLAYTON	CA	94517
2	Eagle Peak Elementary	800 HUTCHINSON RD	WALNUT CREEK	CA	94598
2	Woodside Elementary	761 SAN SIMEON DR	CONCORD	CA	94518
2	Ayers Elementary	5120 MYRTLE DR	CONCORD	CA	94521
2	Bancroft Elementary	2200 PARISH DR	WALNUT CREEK	CA	94596
2	Foothill Middle	2775 CEDRO LN	WALNUT CREEK	CA	94598
2	Pine Hollow Middle	5522 PINE HOLLOW RD	CONCORD	CA	94521
2	Highlands Elementary	1326 PENNSYLVANIA BLVD	CONCORD	CA	94521
2	Mountain View Elementary	1705 THORNWOOD DR	CONCORD	CA	94521
2	Mt Diablo Elementary	5880 MT ZION DR	CLAYTON	CA	94517
2	Silverwood Elementary	1649 CLAYCORD AVE	CONCORD	CA	94521
2	Valle Verde Elementary	3275 PEACHWILLOW LN	WALNUT CREEK	CA	94598
2	Walnut Acres Elementary	180 CEREZO DR	WALNUT CREEK	CA	94596
3	College Park High	201 VIKING DR	PLEASANT HILL	CA	94523
3	Pleasant Hill Middle	ONE SANTA BARBARA RD	PLEASANT HILL	CA	94523
3	Willow Creek Center	1026 MOHR LN	CONCORD	CA	94518
3	Cambridge Elementary	1135 LACEY LN	CONCORD	CA	94520
3	Fair Oaks Elementary	2400 LISA LN	PLEASANT HILL	CA	94523
3	Meadow Homes Elementary	1371 DETROIT AVE	CONCORD	CA	94518
3	Ygnacio Valley Elementary	2217 CHALOMAR RD	CONCORD	CA	94518
3	Loma Vista Adult Center	1266 SAN CARLOS AVE	CONCORD	CA	94518
3	Valley View Middle	181 VIKING DR	PLEASANT HILL	CA	94523
3	Sequoia Middle	265 BOYD RD	PLEASANT HILL	CA	94523
3	Gregory Gardens Elementary	1 CORRITONE CT	PLEASANT HILL	CA	94523
3	Hidden Valley Elementary	500 GLACIER DR	MARTINEZ	CA	94553
3	Pleasant Hill Elementary	2097 OAK PARK BLVD	PLEASANT HILL	CA	94523
3	Sequoia Elementary	277 BOYD RD	PLEASANT HILL	CA	94523
3	Strandwood Elementary	416 GLADYS DR	PLEASANT HILL	CA	94523
3	Valhalla Elementary	530 KIKI DR	PLEASANT HILL	CA	94523

Exhibit B

Operations & Maintenance Agreement

This Operations and Maintenance Agreement (this "O&M Agreement") is made and entered into as of [____], 2010 by and between **Mount Diablo Unified School District** ("District" or "Customer") and **SunPower Corporation, Systems** ("Operator") (collectively, "Parties").

NOW, THEREFORE, the Parties agree as follows:

1. **Services.** The Operator shall provide the services as described herein ("Services" or "Work") for a period of twenty (20) years.

SunPower Performance Plus Services

	<i>Performance Plus</i>
SunPower Warranty	✓
Entire System Commissioning & Inspection	✓
On-Site Faculty Training	One Time
Customer Technical Support Hotline	✓
SunPower's Performance Monitoring Website	✓
Performance Reports	Monthly
Daily Performance Monitoring and Notification	✓
Preventive Maintenance & Inspections	Annual
Entire System Testing	Annual
Performance Review	Annual
Module Cleaning	Annual
Corrective Maintenance – Field Service Diagnostics and Repairs	✓

Services that are included in the Service Level Option are indicated with a check mark (✓), or frequency. Services indicated with a check mark are continuous and have no annual limit, for example, "Customer Support Hotline." Services that do not have a check mark can be priced on a time and materials basis at the Customer's request.

Included in Scope of Services

- **SunPower Warranty**
 - Includes any labor, travel and materials associated with the administration or servicing of warranty related items as defined in the Design Build Contract (the "Contract") between the District and Operator, during the applicable Warranty Term (as defined in the Contract).
- **System Commissioning & Inspection**
 - Perform all applicable Site commissioning and inspection procedures.
- **Onsite Faculty and Staff Training**

- Complete training for up to 10 staff members on the Safety and Operational aspects of each System.
- **Customer Service Support Hotline,**
 - Technical support line: 1-800-251-9728 (24 hours per day, 7 days per week)
- **MySunPower website**
 - Customer website for monitoring operational and environmental performance of each System. All site data can be downloaded to Customer's computer in Microsoft Excel format.
 - Operator to furnish a customized, password protected, performance tracking website updated daily to provide information regarding the status and performance of each System.
 - District is provided with login credentials for use during the term of this O&M Agreement.
- **Performance Reports include:**
 - Actual vs. expected performance of each System for the actual period with a comparison of performance to a typical weather year. Environmental benefits are also calculated and reported. Annual Operations and Maintenance records will also be provided to Customer as requested. Optional custom reports can be supplied on a time and material basis.
- **Daily Performance Monitoring and Notification includes:**
 - Continuous monitoring of Customer's Systems via experienced solar monitoring technicians
 - Operational status (inverter and system on/off) and performance alerts (actual vs. expected performance) are continuously monitored by the SunPower Operations Center (SOC) system computers and monitoring technicians automatically receive alerts of System anomalies.
 - Monitoring technicians identify and respond to System alerts including contacting Customer's system administrator. If any System outages cannot be restored remotely, a SunPower PV technician may be dispatched to correct the problem in the field.
- **Preventative Maintenance, Inspections and System Testing includes:**
 - DAS accuracy checks via readings of kwh totals from District meter and individual inverters.
 - DC Operating Current Testing;
 - Open Circuit Voltage Testing;
 - Check PV for Damage or Defects;
 - Visual inspection of array mechanical components, including tracker, PV mounting systems
 - Visual inspection of AC and DC electrical components, including conductors, conduit, connectors, enclosures, fused and unfused disconnects, and switchgear;
 - Inverter inspection and check torque on electrical terminations;
 - Inverter filter cleaning/replacement;
 - Inverter Pad/Container – inspection and cleaning;
 - Check torque on mechanical connections throughout System;
 - Routine monitoring System maintenance and data integrity check;
 - Routine System maintenance to include correction of loose electrical connections, ground connections, replacement of defective modules found during testing, other minor maintenance repair work;
 - Inspect combiner boxes; tighten connections;
 - IR Camera Testing – array, combiner box, controllers, enclosures;
 - Inspection of Tracker control enclosures and components; tighten connections;
 - Tracker motor and screwjack lubrication;
 - Tracker operation test;
 - Site drainage inspection;
 - Ground system testing;
 - Sensor Calibration / Replacement;
 - Inverter Functional Testing; and
 - Corrosion Protection.

- **Performance Review**

- Annual System performance review looks at the following System component performance and provides a recommended action plan where applicable:
 - i. Expected vs. Actual System production (kWh)
 - ii. System Availability
 - iii. Recoverable Degradation – (Performance Index)
 - iv. Operation and Maintenance Records
 - v. Safety, Accidents and Environmental Reporting
 - vi. Proposal of Recommended Actions

- **Module Cleaning**

- Annual System module cleaning. Designer/Builder may clean modules more frequently at its own discretion.
 - i. Complete System module cleaning
 - ii. Visual inspection
 - iii. System walk down with Customer
 - iv. Any recommended actions

- **Corrective Maintenance**

The Systems identified in the Contract are fully covered under the warranties in the Contract, which include all labor, materials, supplies, and equipment necessary to satisfy the Output Guarantee, all at no cost to the District.

- **Preventative Maintenance Reporting:**

Designer/Builder to provide District with annual reports describing preventative maintenance measures performed. Report components shall include details as described in the Preventative Maintenance, Inspections and System Testing Section of this Exhibit B. The form of the report shall be provided to District during the design phase of the project.

Systems Under Warranty
<ul style="list-style-type: none"> • Troubleshooting & diagnostics of all system components
<ul style="list-style-type: none"> • Inverter resets: <ul style="list-style-type: none"> ○ Warranty-related resets: <ul style="list-style-type: none"> ▪ Unlimited ○ Non-warranty-related resets: <ul style="list-style-type: none"> ▪ Remote resets: <ul style="list-style-type: none"> • Unlimited ▪ On-site resets: <ul style="list-style-type: none"> • Limited to 2 times per year
<ul style="list-style-type: none"> • Repair or replacement of all System components
<ul style="list-style-type: none"> • District’s Advocate – represent the District’s interest during the Warranty Term with all System components suppliers to ensure rapid response and high quality solutions.

STANDARD LABOR FEE SCHEDULE

Charge Description	Amount	Notes
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Engineering Support	\$150	Hourly rate charged for engineering labor used in the performance of engineering services, requested by the Customer, and not included in the Services.
Field Service Support	\$125	Hourly rate charged for labor performed onsite, requested by the Customer, and not included in the Services.
System Cleaning Support	\$0.95	Rate charged per module per wash performed on site, requested by the Customer, and not included in the Services.
Subcontract Labor	Billed as incurred	Hourly rate charged at cost to Operator, which shall not be more than the hourly rates for the same services if provided by Operator, as indicated in this Fee Schedule, unless agreed to in advance by the District. District may require Operator to seek up to three (3) estimates for said services.
Travel Expenses	Billed as incurred	Includes transportation, lodging, meals and incidentals plus 15% mark-up.
Materials	Billed as incurred	Billed according to the Operator list price.

Note: Operator reserves the right to adjust this rate schedule annually, and shall notify the District of rate increases ninety (90) days prior to those rates becoming effective.

2. **Term.** Operator shall commence providing services under this O&M Agreement on the applicable System Acceptance Date and will diligently perform as required herein for twenty (20) years from that date. Documentation of the System Acceptance Date for each Increment will be as noted on the first invoice submitted to Pacific Gas & Electric by the third party monitoring provider required pursuant to the CSI Program and that initiates the CSI incentive payment process.

3. **Submittal of Documents.** The Operator shall not commence the Work under this O&M Agreement until the Operator has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:
 - _____ Signed O&M Agreement
 - _____ Workers' Compensation Certification (in the form attached to the Contract)
 - _____ Fingerprinting/Criminal Background Investigation Certification (in the form attached to the Contract)
 - _____ Insurance Certificates and Endorsements
 - _____ W-9 Form

4. **Compensation.** Compensation to Operator for the Work is included in the Contract Price, except as specifically indicated in the description of the Scope of Services herein.
 - 4.1. Payment for Work that requires additional payment shall be made for all undisputed amounts in monthly installment payments within thirty (30) days after the Operator submits an invoice to the District for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made.
 - 4.2. Invoices furnished by Operator under this O&M Agreement must be in a form acceptable to the District. All amounts paid by District shall be subject to audit by District.
 - 4.3. The granting of any payment by District, or the receipt thereof by Operator, shall in no way lessen the liability of Operator to correct unsatisfactory work, although the unsatisfactory character of that work

may not have been apparent or detected at the time a payment was made. Work, which does not conform to the requirements of this O&M Agreement, may be rejected by District and in that case must be replaced by Operator without delay.

5. **Notice.** Any notice required or permitted to be given under this O&M Agreement shall be as indicated in the Contract.
6. **Termination.**
 - 6.1. **Without Cause By District.** District may, at any time, with or without reason, terminate this O&M Agreement and compensate Operator only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Operator. Notice shall be deemed given when received by the Operator or no later than three days after the day of mailing, whichever is sooner.
 - 6.2. **With Cause By Operator.** If District materially breaches this O&M Agreement, Operator may, upon thirty (30) days notice, with just cause based on that breach, terminate this O&M Agreement. Upon this termination, Operator shall reimburse the District an amount reasonably acceptable to the District so the District can procure the Services from other vendor(s) for the remainder of the Term, less any damages to Operator based on the District's material breach of this O&M Agreement. The Output Guarantee in the Contract shall remain in full force and effect if the Operator terminates the District pursuant to this subdivision, but the Operator retains the right to challenge the performance of subsequent vendor(s)' to properly maintain, operate, and repair the Systems (as defined in the Contract) if the Output Guarantee is not being met.
7. **Right to Hire.** If Operator fails to perform any of its material obligations ("a Material Breach") under this O&M Agreement, the District shall notify the Operator in writing, and if after 30 days upon receiving such notice Operator hasn't corrected the Material Breach, the District shall have the right to hire other contractor(s) to correct the Material Breach at the sole cost and expense of Operator, which Operator shall pay within thirty (30) days of District's invoicing to Operator, provided that the District shall seek fair pricing when selecting such other contractors.
8. **Indemnification.** To the furthest extent permitted by California law, Operator shall defend, indemnify, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers ("the indemnified parties") from any and claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claim"), to property or persons, including personal injury and/or death, to the extent that any of the above arise out of, pertain to, or relate to the negligence, recklessness, errors or omissions, or willful misconduct of Operator, its officials, officers, employees, subcontractors, consultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, or this O&M Agreement. The District shall have the right to accept or reject any legal representation that Operator proposes to defend the indemnified parties.
9. **Limitation on Liability.**
 - 9.1. **CONSEQUENTIAL DAMAGES.** IN NO EVENT WILL OPERATOR OR ANY OF ITS AFFILIATES EMPLOYEES OR CONTRACTORS BE LIABLE TO DISTRICT OR ANY OF ITS AFFILIATES OR EMPLOYEES OR TO ANY THIRD PARTY FOR (I) ANY LOSS OF PROFIT OR REVENUE, OR FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SIMILAR OR ADDITIONAL DAMAGES, WHETHER INCURRED OR SUFFERED AS A RESULT OF THE UNAVAILABILITY OF FACILITIES, PERFORMANCE, NON-PERFORMANCE, TERMINATION, BREACH, OR OTHER ACTION OR INACTION UNDER THIS O&M AGREEMENT OR (II) FOR ANY OTHER REASON, EVEN IF DISTRICT ADVISES OPERATOR OF THE POSSIBILITY OF THIS LOSS OR DAMAGE.

9.2. **LIABILITY CAP.** IN NO EVENT SHALL OPERATOR'S TOTAL AGGREGATE LIABILITY UNDER THIS AGREEMENT IN ANY GIVEN YEAR EXCEED THE AMOUNT PAID UNDER THE CONTRACT FOR THE O&M SERVICES UNDER THIS O&M AGREEMENT.

10. **Insurance.** The Operator shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below. District has the right from time to time to require that such insurance limits be increased to reasonably reflect increased liability costs.

10.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Auto Automobile Liability Insurance that protects the Operator, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)

10.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of Section 3700 of the California Labor Code, the Operator shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this O&M Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

10.3. **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Operator's profession.

Type of Coverage	Minimum Requirement
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments	
Each Occurrence	\$ 2,000,000
General Aggregate	\$ 4,000,000
Automobile Liability Insurance - Any Auto	
Each Occurrence	\$ 2,000,000
General Aggregate	\$ 2,000,000
Professional Liability	\$ 2,000,000
Workers Compensation	Statutory Limits
Employer's Liability	\$ 2,000,000

10.4. **Proof of Insurance.** The Operator shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

10.4.1 A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

10.4.2 Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

10.4.3 An endorsement stating that the District and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement

shall also state that Operator's insurance policies shall be primary to any insurance or self-insurance maintained by District.

10.4.4 All policies shall be written on an occurrence form.

10.5. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District

11. **Assignment / Subcontracting.** Operator may subcontract the Work of this O&M Agreement or any part of it only upon prior approval of the District, which shall not be unreasonably withheld. Neither party shall, on the basis of this O&M Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.
12. **Compliance With Laws.** Operator shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Operator shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Operator observes that any of the Work required by this O&M Agreement is at variance with any laws, ordinance, rules or regulations, Operator shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this O&M Agreement shall be appropriately amended in writing, or this O&M Agreement shall be terminated effective upon Operator's receipt of a written termination notice from the District. If Operator performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Operator shall bear all costs arising therefrom.
13. **Certificates/Permits/Licenses.** Operator and all Operator's employees or agents shall secure and maintain in force all certificates, permits and licenses as are required by law in connection with the furnishing of Services pursuant to this O&M Agreement.
14. **Employment With Public Agency.** Operator, if an employee of another public agency, agrees that Operator will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this O&M Agreement.
15. **Drug-Free / Smoke Free Policy.** No drugs, alcohol and/or smoking are allowed at any time in any buildings and/or grounds on District property. No students, staff, visitors, consultants or contractors are to use drugs on the Sites.
16. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Operator agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and District policy. In addition, the Operator agrees to require like compliance by all its subcontractor(s).
17. **Fingerprinting of Employees.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Contract prior to Operator's performing of any portion of the Services.
18. **No Rights In Third Parties.** This O&M Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
19. **Limitation of District Liability.** Other than as provided in this O&M Agreement, District's financial obligations under this O&M Agreement shall be limited to the payment of the compensation provided in this O&M Agreement. Notwithstanding any other provision of this O&M Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this O&M Agreement for the services performed in connection with this O&M Agreement.

20. **Conflict of Interest.** Through its execution of this O&M Agreement, Operator acknowledges that it is familiar with the provisions of section 1090 *et seq.* and Section 87100 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event Operator receives any information subsequent to execution of this O&M Agreement, which might constitute a violation of said provisions, Operator agrees it shall notify District of this information.
21. **Integration/Entire Agreement of Parties.** This O&M Agreement constitutes the entire agreement between the Parties related to the Work of this O&M Agreement and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This O&M Agreement may be amended or modified only by a written instrument executed by both Parties.
22. **California Law.** This O&M Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this O&M Agreement shall be maintained in the county in which the District's administrative offices are located.
23. **Waiver.** The waiver by either party of any specific breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of that term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
24. **Severability.** If any term, condition or provision of this O&M Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
25. **Authority to Bind Parties.** Neither party in the performance of any and all duties under this O&M Agreement, except as otherwise provided in this O&M Agreement, has any authority to bind the other to any agreements or undertakings.
26. **Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this O&M Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.
27. **Captions and Interpretations.** Paragraph headings in this O&M Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this O&M Agreement. No provision of this O&M Agreement shall be interpreted for or against a party because that party or its legal representative drafted that provision, and this O&M Agreement shall be construed as if jointly prepared by the Parties.
28. **Calculation of Time.** For the purposes of this O&M Agreement, "days" refers to calendar days unless otherwise specified.
29. **Signature Authority.** Each party has the full power and authority to enter into and perform this O&M Agreement, and the person signing this O&M Agreement on behalf of each Party has been properly authority and empowered to enter into this O&M Agreement.
30. **Counterparts.** This O&M Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
31. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

IN WITNESS WHEREOF, the Parties hereto have executed this O&M Agreement on the date indicated below.

Dated: _____, 20__

Dated: _____, 20__

Mount Diablo Unified School District

SunPower Corporation, Systems

By: _____
Print Name: _____
Print Title: _____

By: _____
Print Name: _____
Print Title: _____

Exhibit C

PROJECT SCHEDULE

Milestone	First Increment Milestone Dates	Second Increment Milestone Dates	Third Increment Milestone Dates
Execution of Contract	October 27, 2010	October 27, 2010	October 27, 2010
District issues Notice to Proceed	November 11, 2010	November 11, 2010	November 11, 2010
Schematic Design Submittal to District for approval	January 7, 2011	March 31, 2011	July 6, 2011
Design submittal approved by District	January 28, 2011	April 21, 2011	July 27, 2011
Submittal to DSA and District	March 1, 2011	May 23, 2011	August 26, 2011
DSA approval	June 16, 2011	September 7, 2011	December 13, 2011
Commencement Date	June 17, 2011	September 8, 2011	December 14, 2011
Substantial Completion Date	October 17, 2011	February 28, 2012	April 15, 2012
System Acceptance Date	December 16, 2011	April 28, 2012	June 15, 2012
Final Completion Date	July 31, 2012	July 31, 2012	July 31, 2012

EXHIBIT D

CONTRACT PRICE BREAKDOWN AND SCHEDULE OF VALUES

The portion of the Contract Price that is attributable to each Site as follows:

NO.	ITEM	SCHEDULE QTY	UNIT	VALUE
Project Development & Management				
1	Notice To Proceed	1	LS	300,830.56
2	Performance & Payment Bonds	1	LS	1,187,679.05
3	Mobilization	1	LS	300,830.56
4	Project Management & Administration	1	LS	902,491.68
				-
Design				
5	Schematic Design Development (Initial Submittal)	1	LS	661,827.23
6	Schematic Design Approval	1	LS	721,993.34
7	Construction Documents Development	1	LS	902,491.68
8	Construction Document Submittal (DSA Submittal)	1	LS	682,283.71
				-
Procurement (Delivery to Site, In Insured Warehouse, or at Fabricator Shop)				
9	BOS Structural Steel Procurement & Fabrication	1	LS	5,248,351.84
10	BOS Mechanical Procurement (Hardware & Misc Metals)	1	LS	1,064,280.24
11	BOS Electrical Procurement (Equipment, Cable, Wire, Combiner Boxes, Lights, etc.)	1	LS	1,913,744.01
12	BOS Electrical Equipment Procurement (Inverters, Custom Breakers, Switchgear, etc.)	1	LS	1,633,509.94
13	PV Module Procurement	1	LS	22,371,099.72
				-
Installation				
14	Structure Foundation Installation	1	LS	2,711,085.01
15	Electrical Equipment Pad Foundation Installation	1	LS	989,130.88
16	Structural Steel Erection	1	LS	4,437,852.42
17	BOS Mechanical Installation (Mounting Hardware & Misc Metals)	1	LS	1,211,143.83
18	BOS Electrical Installation (Equipment, Cable, Wire, Combiner Boxes, Lights, etc.)	1	LS	3,478,804.60
19	Electrical Equipment Installation (Inverters, Switchgear, Enclosed Breakers)	1	LS	2,759,217.90
20	Fencing Installation	1	LS	848,943.97
21	Lighting Installation	1	LS	1,888,614.26
22	PV Installation	1	LS	1,396,455.46
23	Painting	1	LS	1,163,010.94
				-
Project Closeout				
24	As-built, Warranties, & O&M Manuals	1	LS	310,457.14
25	Commissioning & Training	1	LS	295,415.61
26	Punch List Complete/Final Acceptance	1	LS	784,566.10
				-
	SUBTOTAL DESIGN & CONSTRUCTION			\$ 60,166,112
Performance Guarantee and O&M				
27	Performance Guarantee (PEGU)	1	LS	1,960,000.00
28	Operations and Maintenance Services (O&M)	1	LS	3,478,286.00
				-
	SUBTOTAL PEGU AND O&M SERVICES			\$ 5,438,286
				-
	TOTAL PAYMENT			\$ 65,604,398

EXHIBIT E

DISTRICT'S RULES AND REGULATIONS

1. **Access**. Access to the school grounds and entry to buildings, classrooms, restrooms, mechanical rooms, electrical rooms, or other rooms, for construction purposes, must be coordinated with District and onsite District personnel before Work is to start. Unless agreed to otherwise in writing, only a school custodian will be allowed to unlock and lock doors in existing building(s). The custodian will be available only while school is in session, 7:00 am until 10:00 pm during days when school is in session. The custodian will be available from 7:00 am until 3:30 pm during scheduled school recesses (e.g., winter, spring and summer). If a custodian is required to arrive before 7:00 am or leave after 10:00 pm on those days when school is in session or after 3:30 pm during a scheduled recess period to accommodate Designer/Builder's Work, the overtime wages and benefits will be paid by the Designer/Builder unless, at the discretion of District, other arrangements are made in advance. On holidays and weekends, the Designer/Builder will be required to pay overtime wages and benefits to have a custodian on site.
2. **Maintaining Services**. The Designer/Builder is advised that Work is to be performed in spaces regularly scheduled for instruction. Interruption and/or periods of shutdown of public access, electrical service, water service, lighting, or other utilities shall be only as arranged in advance with the District. Designer/Builder shall provide temporary services to all facilities interrupted by Designer/Builder's Work.
3. **Maintaining Utilities**. The Designer/Builder shall maintain in operation during duration of Contract, drainage lines, storm drains, sewers, water, gas, electrical, steam, and other utility service lines within working area.
4. **Alcohol, Firearms and Tobacco Products**. Designer/Builder shall ensure that no alcohol, firearms, weapons, or controlled substances enter or are used at the Site. Designer/Builder shall immediately remove from the Site and terminate the employment of any employee(s) found in violation of this provision. Designer/Builder shall also ensure that no tobacco products are used on District property.
5. **Work During Instructional Time**. Designer/Builder affirms that Work may be performed during ongoing instruction in existing facilities. If so, Designer/Builder agrees to cooperate to the best of its ability to minimize any disruption to the school up to, and including, rescheduling specific work activities, at no additional cost to District.
6. **No Work During Student Testing**. Designer/Builder shall, at no additional cost to the District and at the District's request, coordinate its Work to not disturb District students including, without limitation, not performing any Work when students at the Site are taking State-required tests. The District shall provide a testing schedule at least 30 days prior to the start of work.
7. **Badge Policy For Designer/Builders**. All Designer/Builders, as well as their subcontractors and consultants, doing work for the District will provide their workers with identification badges. These badges will be worn by all members of the Designer/Builder's staff who are working in a District facility.
 - 7.1. Badges must be filled out in full and contain the following information:
 - 7.1.1. Name of Designer/Builder
 - 7.1.2. Name of Employee
 - 7.1.3. Designer/Builder's address and phone number
 - 7.1.4. An identification number which is prominently located at the top or bottom of the badge
 - 7.2. Badges are to be worn when the Designer/Builder or his/her employees are on site and must be visible at all times. Designer/Builders must inform their employees that they are required to allow District employees or the Project Inspector to review the information on the badges upon request.
 - 7.3. Failure to display identification badges as required by this policy may result in the assessment of fines against the Designer/Builder. Employees of the Designer/Builder or their subcontractors or

consultants who fail to display identification badges will be asked to leave the job site immediately and will not be allowed to return until they possess and display their assigned badge. There shall be no exceptions to this policy and the District shall not be held liable for time/work lost as a result of a Design/Builder's failure to comply with this policy.

8. **Language.** Unacceptable and/or loud language will not be tolerated, "Cat calls" or other derogatory language toward students or public will not be allowed.

9. **Disturbing the Peace (Noise and Lighting)**

- 9.1. Designer/Builder shall observe the noise ordinance of the Site at all times including, without limitation, all applicable local, city, and/or state laws, ordinances, and/or regulations regarding noise and allowable noise levels.
- 9.2. The use of radios, etc., shall be controlled to keep all sound at a level that cannot be heard beyond the immediate area of use. The District reserves the right to prohibit the use of radios at the Site, except for handheld communication radios (e.g., Nextel phones or radios).
- 9.3. If portable lights are used after dark, all light must be located so as not to direct light into neighboring property.
- 9.4. Equipment and impact tools shall have intake and exhaust mufflers.
- 9.5. Designer/Builder shall cooperate with District to minimize and/or cease the use of noisy and vibratory equipment if that equipment becomes objectionable by its longevity.
- 9.6. Designer/Builder acknowledges that adjacent facilities may remain in operation during all or a portion of the Work period, and it shall take all reasonable precautions to minimize noise as required by applicable laws and the Contract Documents.
- 9.7. Notice of proposed noisy operations, including without limitation, operation of pneumatic demolition tools, concrete saws, and other equipment, shall be submitted to the District a minimum of forty-eight (48) hours in advance of their performance.

10. **Utility Shutdowns And Interruptions**

- 10.1. Designer/Builder shall give the District a minimum of three (3) days written notice in advance of any need to shut off existing utility services or to effect equipment interruptions. The District will set exact time and duration for shutdown, and will assist Designer/Builder with shutdown. Work required to re-establish utility services shall be performed by the Designer/Builder.

11. **Traffic**

- 11.1. Driving on the Premises shall be limited to periods when students and public are not present. If driving or deliveries must be made during the school hours, two (2) or more ground guides shall lead the vehicle across the area of travel. In no case shall driving take place across playgrounds or other pedestrian paths during recess, lunch, and/or class period changes. The speed limit on-the Premises shall be five (5) miles per hour (maximum) or less if conditions require.
- 11.2. All paths of travel for deliveries, including without limitation, material, equipment, and supply deliveries, shall be reviewed and approved by District in advance. Any damage will be repaired to the pre-damaged condition by the Designer/Builder.
- 11.3. The District shall designate a construction entry to the Site. If Designer/Builder requests, the District determines it is required, and to the extent possible, the District shall designate a staging area so as not to interfere with the normal functioning of school facilities. Location of gates and fencing shall be

approved in advance with the District and at Designer/Builder's expense.

- 11.4. Parking areas shall be reviewed and approved by District in advance. No parking is to occur under the drip line of trees or in areas that could otherwise be damaged.

12. Barriers And Enclosures:

- 12.1. Designer/Builder shall obtain the District's written permission for locations and types of temporary barriers and enclosures, including fire-rated materials proposed for use, prior to their installation.
- 12.2. Designer/Builder shall provide and maintain temporary enclosures to prevent public entry and to protect persons using other buildings and portions of the Site and/or Premises, the public, and workers. Designer/Builder shall also protect the Work and existing facilities from the elements, and adjacent construction and improvements, persons, and trees and plants from damage and injury from demolition and construction operations.
- 12.3. Designer/Builder shall provide site access to existing facilities for persons using other buildings and portions of the Site, the public, and for deliveries and other services and activities.

13. Tree and Plant Protection

- 13.1. Designer/Builder shall preserve and protect existing trees and plants on the Premises that are not designated or required to be removed, and those adjacent to the Premises.
- 13.2. Designer/Builder shall provide barriers to a minimum height of 4'-0" around drip line of each tree and plant, around each group of trees and plants, as applicable, in the proximity of demolition and construction operations.
- 13.3. Designer/Builder shall not park trucks, store materials, perform Work or cross over landscaped areas. Designer/Builder shall not dispose of paint thinners, water from cleaning, plastering or concrete operations, or other deleterious materials in landscaped areas, storm drain systems, or sewers. Plant materials damaged as a result of the performance of the Work shall, at the option of the District and at Designer/Builder's expense, either be replaced with new plant materials equal in size to those damaged or by payment of an amount representing the value of the damaged materials as determined by the District.
- 13.4. Designer/Builder shall remove soil that has been contaminated during the performance of the Work by oil, solvents, and other materials which could be harmful to trees and plants, and replace with good soil, at Designer/Builder's expense.

14. Excavation Around Trees

- 14.1. Excavation within drip lines of trees shall be done only where absolutely necessary and with written permission from the District.
- 14.2. Where trenching for utilities is required within drip lines, tunneling under and around roots shall be by hand digging and shall be approved by the District. Main lateral roots and taproots shall not be cut. All roots 2 inches in diameter and larger shall be tunneled under and heavily wrapped with wet burlap so as to prevent scarring or excessive drying. Smaller roots that interfere with installation of new work may be cut with prior approval by the District. Roots must first be cut with a Vermeer, or equivalent, root cutter prior to any trenching.
- 14.3. Where excavation for new construction is required within drip line of trees, hand excavation shall be employed to minimize damage to root system. Roots shall be relocated in backfill areas wherever possible. If encountered immediately adjacent to location of new construction, roots shall be cut approximately 6 inches back from new construction.

- 14.4. Approved excavations shall be carefully backfilled with the excavated materials approved for backfilling. Backfill shall conform to adjacent grades without dips, sunken areas, humps, or other surface irregularities. Do not use mechanical equipment to compact backfill. Tamp carefully using hand tools, refilling and tamping until Final Acceptance as necessary to offset settlement.
- 14.5. Exposed roots shall not be allowed to dry out before permanent backfill is placed. Temporary earth cover shall be provided, or roots shall be wrapped with four layers of wet, untreated burlap and temporarily supported and protected from damage until permanently relocated and covered with backfill.
- 14.6. Accidentally broken roots should be sawed cleanly 3 inches behind ragged end.

15. Security

- 15.1. The Designer/Builder shall be responsible for project security for materials, tools, equipment, supplies, and completed and partially completed Work.

16. Dust and Dirt

- 16.1. Designer/Builder shall conduct demolition and construction operations to minimize the generation of dust and dirt, and prevent dust and dirt from interfering with the progress of the Work and from accumulating in the Work and adjacent areas including, without limitation, occupied facilities.
 - 16.2. Designer/Builder shall periodically water exterior demolition and construction areas to minimize the generation of dust and dirt.
 - 16.3. Designer/Builder shall ensure that all hauling equipment and trucks carrying loads of soil and debris shall have their loads sprayed with water or covered with tarpaulins, and as otherwise required by local and state ordinance.
 - 16.4. Designer/Builder shall prevent dust and dirt from accumulating on walks, roadways, parking areas, and planting, and from washing into sewer and storm drain lines.
- 17. Job Sign(s):** Signs other than a District-approved Project sign and/or signs required by law, for safety, or for egress, shall not be permitted, unless otherwise approved in advance by the District.
- 18. Publicity Releases.** Designer/Builder shall not release any information, story, photograph, plan, or drawing relating information about the Project to anyone, including press and other public communications medium, including, without limitation, on website(s).

EXHIBIT F

PROPOSED SYSTEM LOCATIONS

Administration Building

Site Address: 1936 Carlotta Dr., Concord, CA 94519



Ayers Elementary
Site Address: 5120 Myrtle Dr., Concord, CA 94521



Bancroft Elementary
Site Address: 2200 Parish Dr., Walnut Creek, CA 94596



Bel-Air Elementary
Site Address: 663 Canal Rd., Bay Point, CA 94565



Cambridge Elementary
Site Address: 1135 Lacey Ln., Concord, CA 94520



Clayton Valley High
Site Address: 1101 Alberta Way, Concord, CA 94521



College Park High
Site Address: 201 Viking Dr., Pleasant Hill, CA 94523



Concord High School
Site Address: 4200 Concord Blvd., Concord, CA 94521



Delta View Elementary
Site Address: 2916 Rio Verde, Bay Point, CA 94565



Diablo View Middle
Site Address: 300 Diablo View Ln., Clayton, CA 94517



Eagle Peak Elementary
Site Address: 800 Hutchinson Rd., Walnut Creek, CA 94598



El Dorado Middle
Site Address: 1750 West St., Concord, CA 94521



El Monte Elementary
Site Address: 1400 Dina Dr., Concord, CA 94518

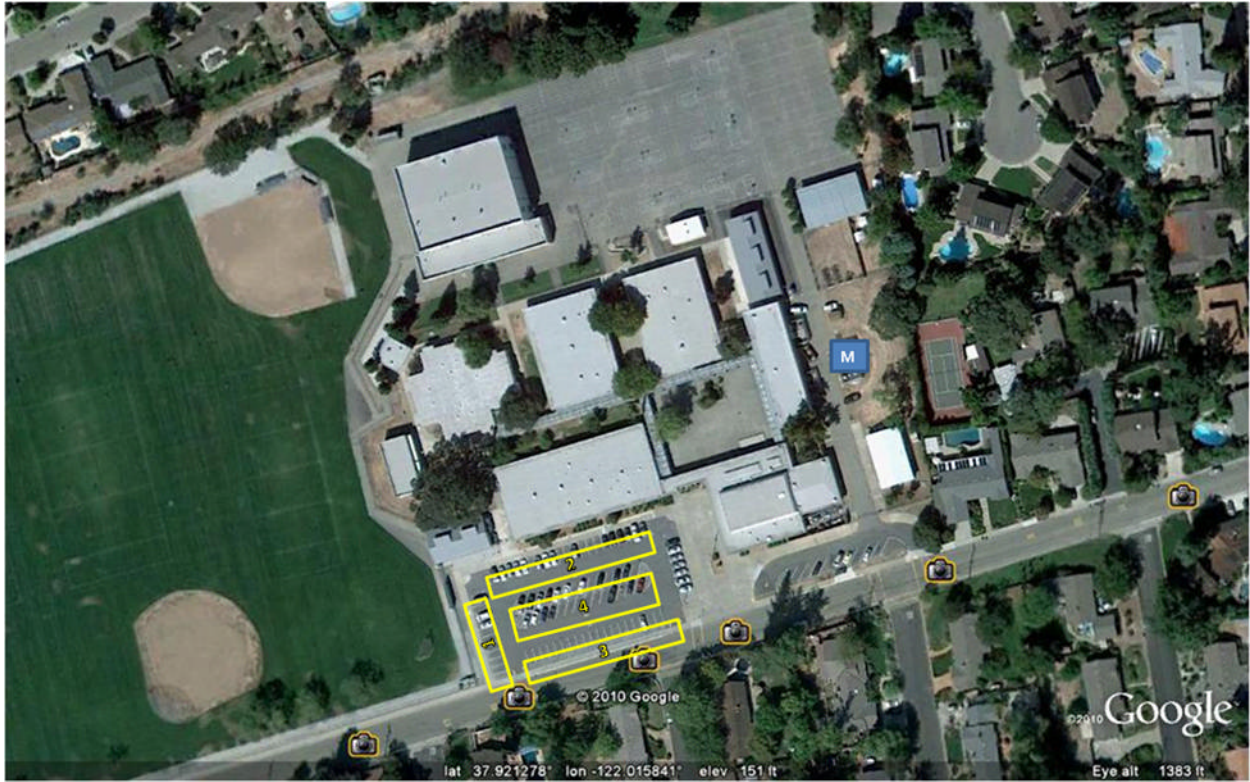


Fair Oaks Elementary
Site Address: 2400 Lisa LN, Pleasant Hill 94523



Foothill Middle

Site Address: 2775 Cedro LN, Walnut Creek CA 94598



Glenbrook Middle
Site Address: 2351 Olivera Rd., Concord, CA 94520



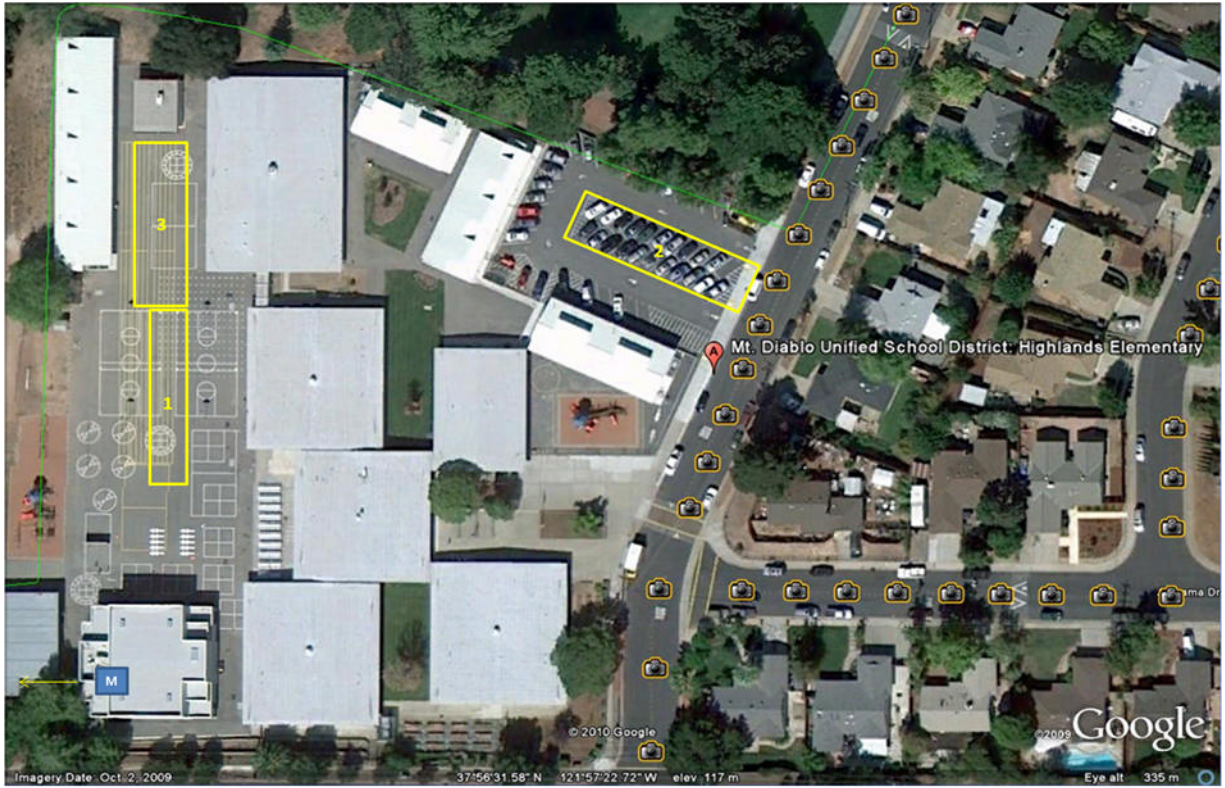
Gregory Gardens Elementary
Site Address: 1 Corritone Ct., Pleasant Hill, CA 94523



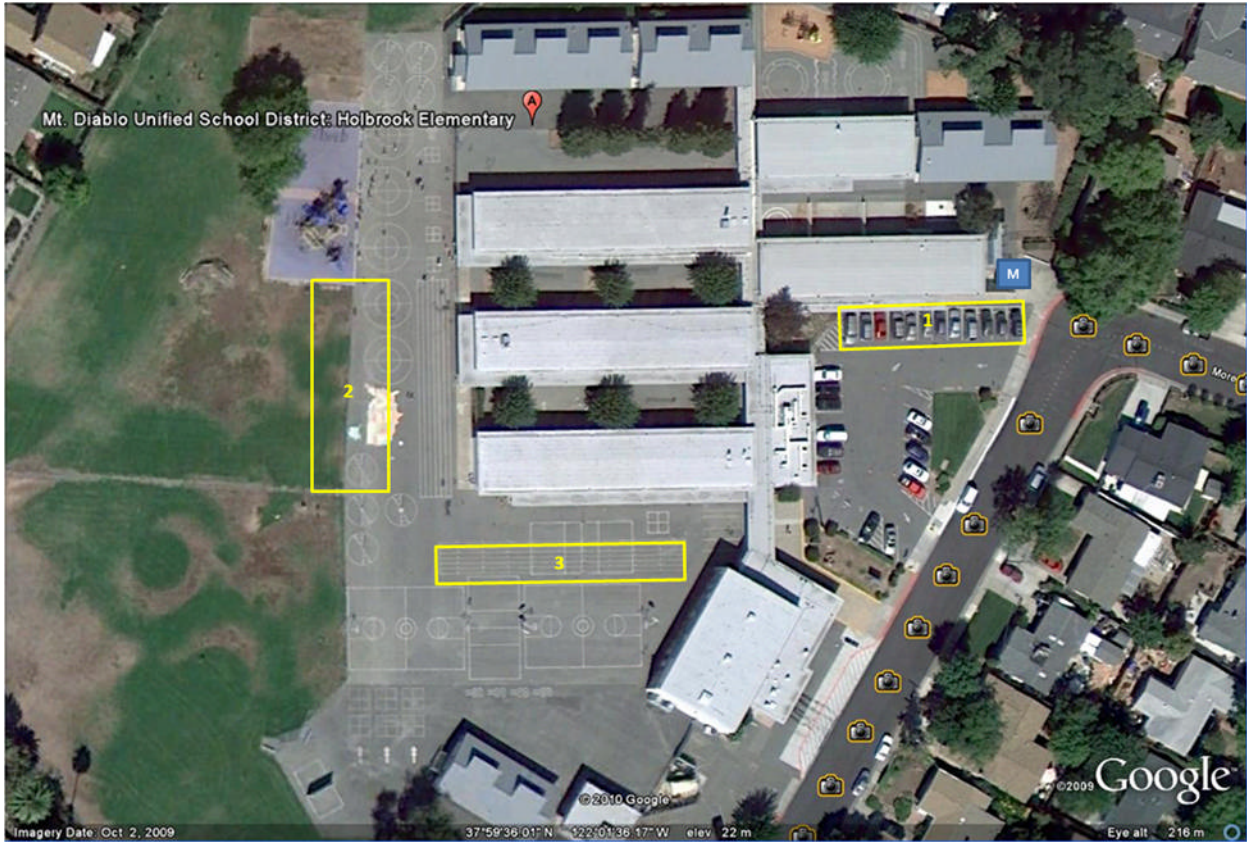
Hidden Valley Elementary
Site Address: 500 Glacier Dr. Martinez CA 94553



Highlands Elementary
Site Address: 1326 Pennsylvania Blvd, Concord CA 94521



Hollbrook Elementary
Site Address: 3333 Ronald Way, Concord CA 94519



Loma Vista Adult Center
Site Address: 1266 San Carlos Avenue, Concord CA 94518



Maintenance and Operations Base
Site Address: 1480 Gasoline Alley, Concord CA 94520



Meadow Homes Elementary
Site Address: 1371 Detroit Ave., Concord, CA 94518



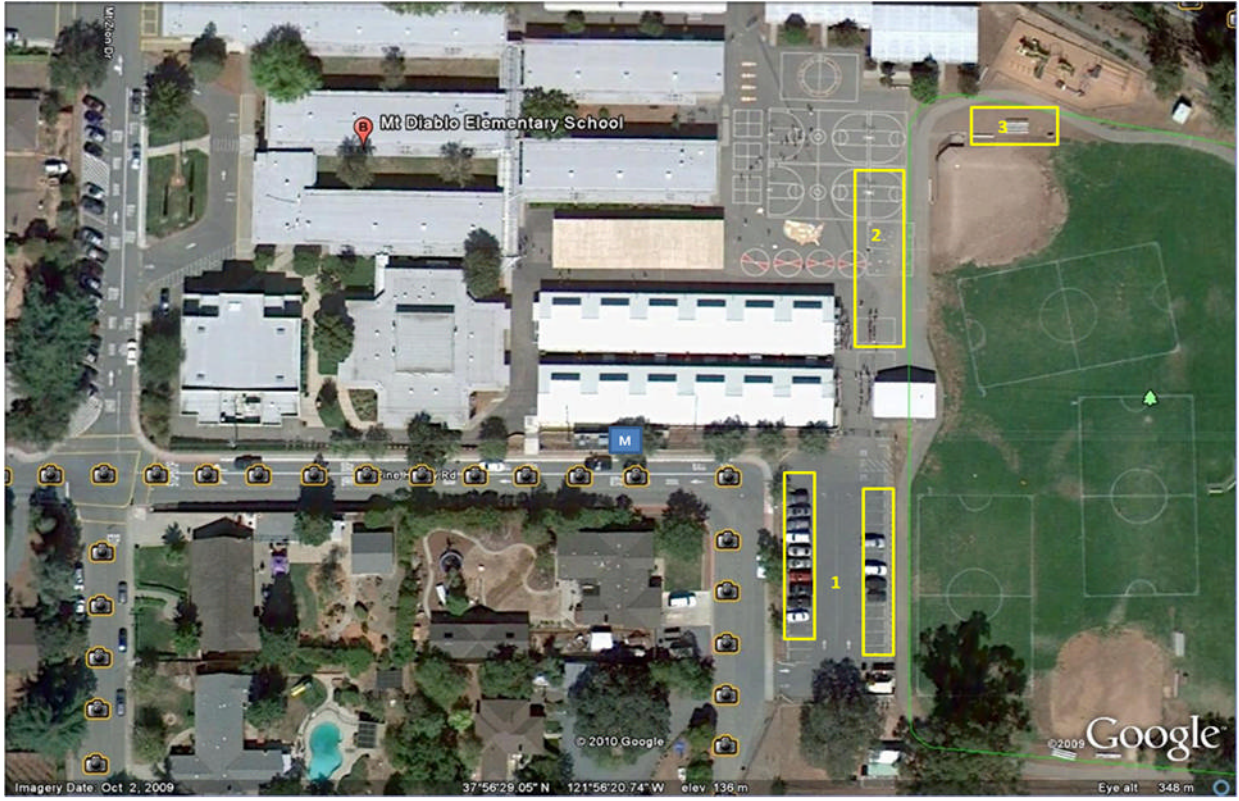
Monte Gardens Elementary
Site Address: 3841 Larkspur Dr., Concord, CA 94519



Mountain View Elementary
Site Address: 1705 Thornwood Dr., Concord, CA 94521



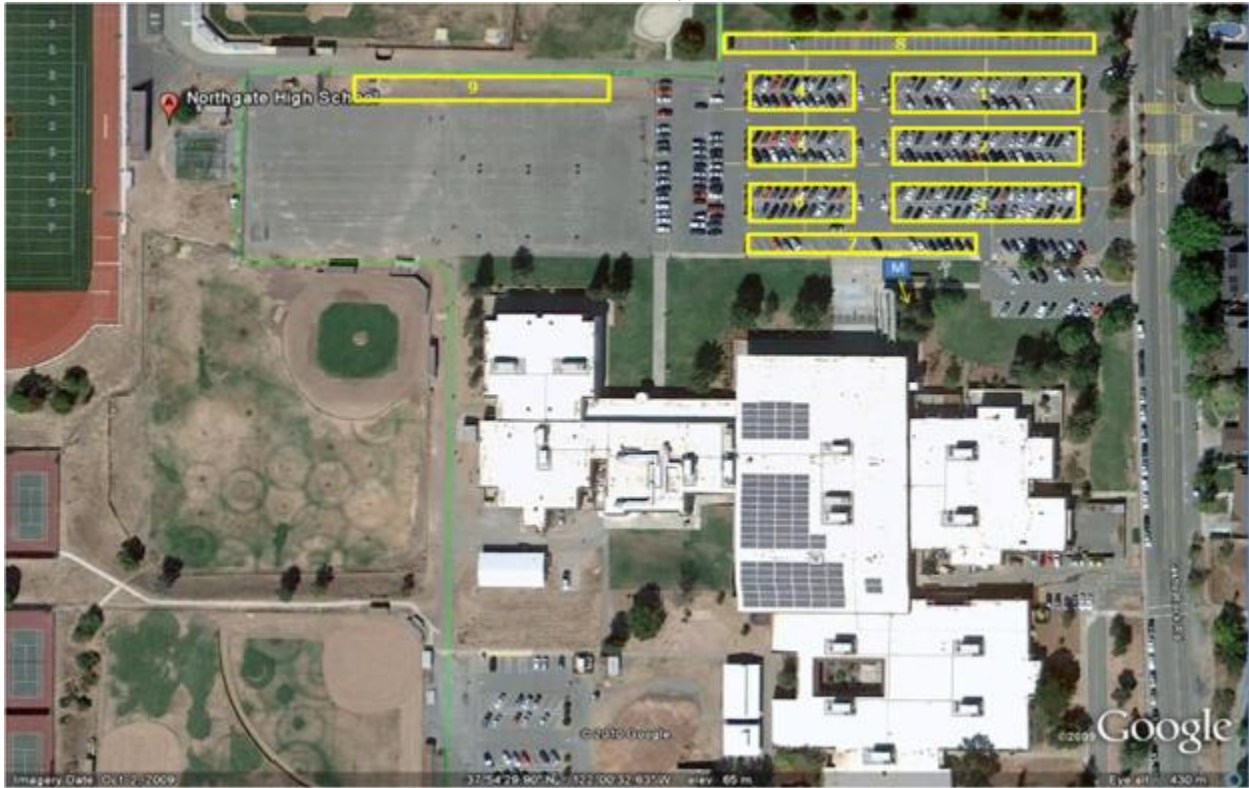
Mt. Diablo Elementary
Site Address: 5880 Mt. Zion Dr. Clayton CA 94517



Mt. Diablo High
Site Address: 2450 Gran St., Concord, CA 94520



Northgate High
Site Address: 425 Castle Rock Rd., Walnut Creek CA 94598



Oak Grove Middle
Site Address: 2050 Minert Rd., Concord, CA 94518



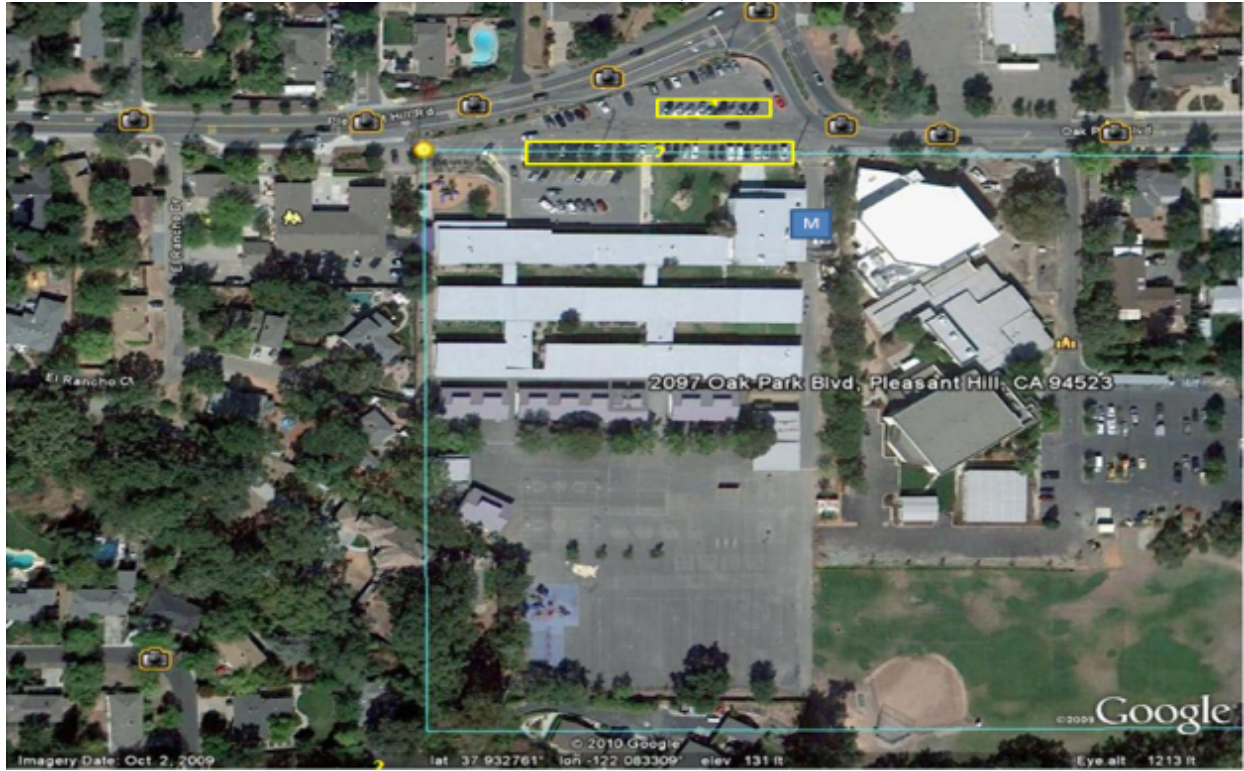
Olympic High
Site Address: 2730 Salvio St., Concord CA, 94519



Pine Hollow Middle
Site Address: 5522 Pine Hollow Rd, Concord CA 94521



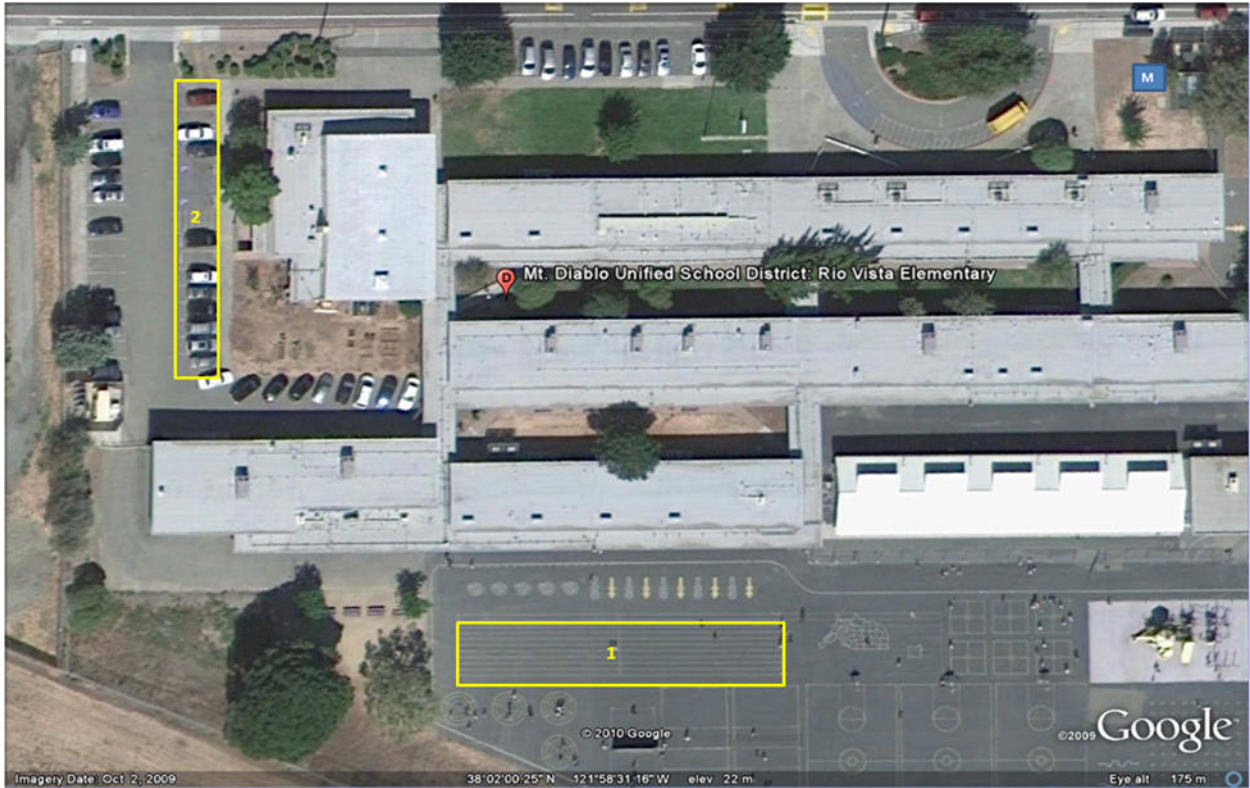
Pleasant Hill Elementary
Site Address: 2097 Oak Park Blvd, Pleasant Hill CA 94523



Pleasant Hill Middle
Site Address: 1 Santa Barbara Rd., Pleasant Hill, CA 94523



Rio Vista Elementary
Site Address: 611 Pacific Ave., Bay Point CA 94565



Riverview Middle
Site Address: 205 Pacifica Ave., Bay Point, CA 94565

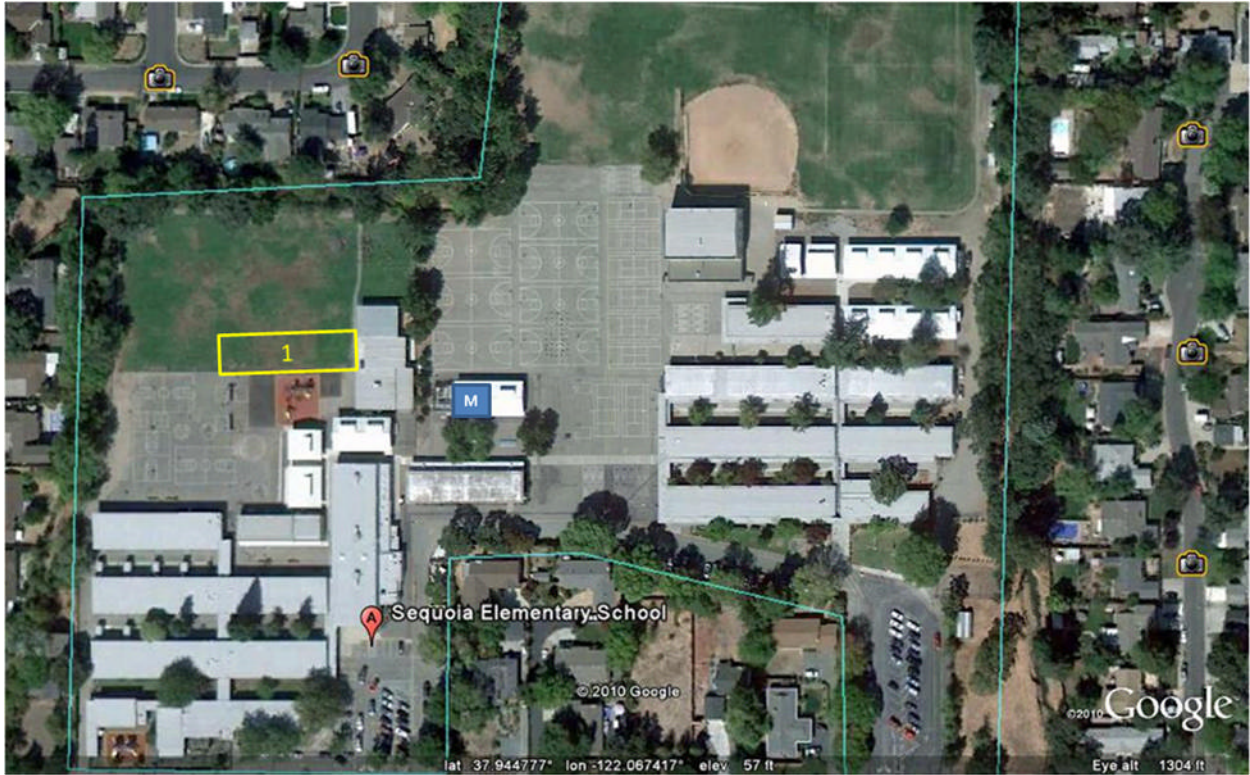


Sequoia Elementary
Site Address: 277 Boyd Rd., Pleasant Hill, CA 94523



Sequoia Middle

Site Address: 265 Boyd Rd., Pleasant Hill CA 94523



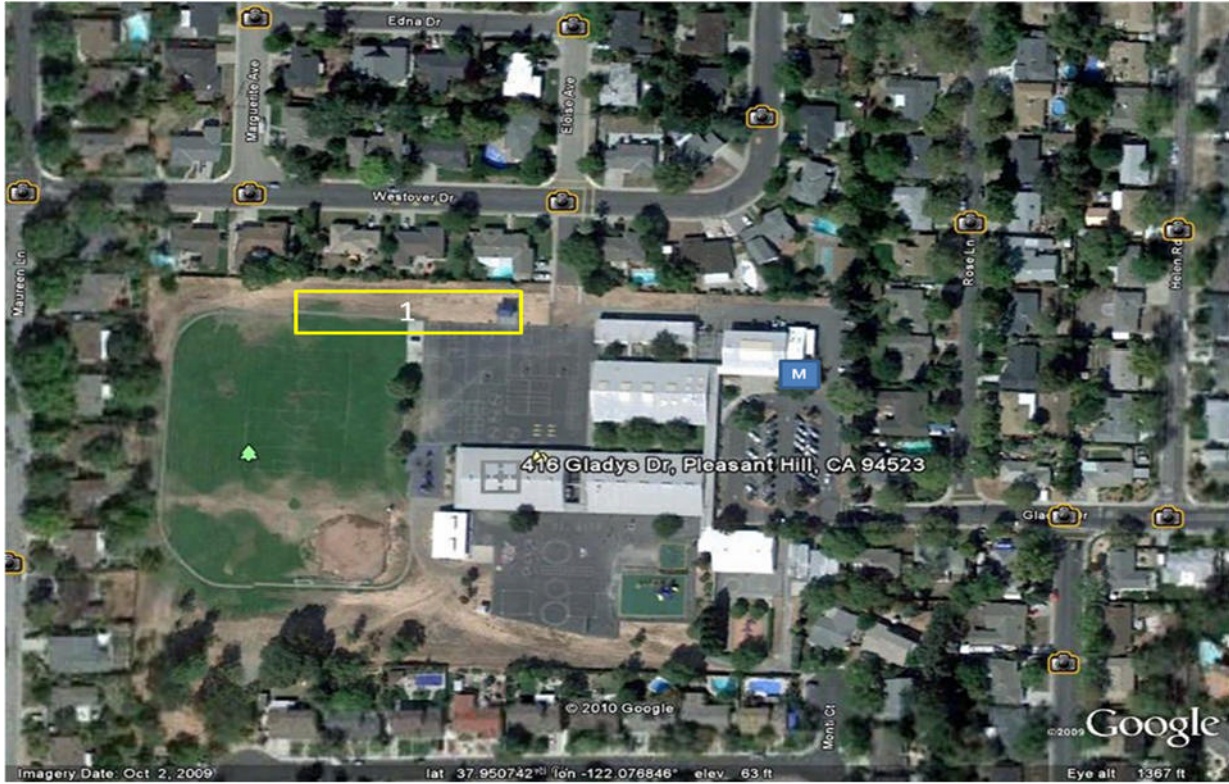
Shore Acres Elementary
Site Address: 351 Marina Rd., Bay Point CA 94565



Silverwood Elementary
Site Address: 1649 Claycord Avenue, Concord CA 94521



Strandwood Elementary
Site Address: 416 Gladys Drive, Pleasant Hill CA, 94523



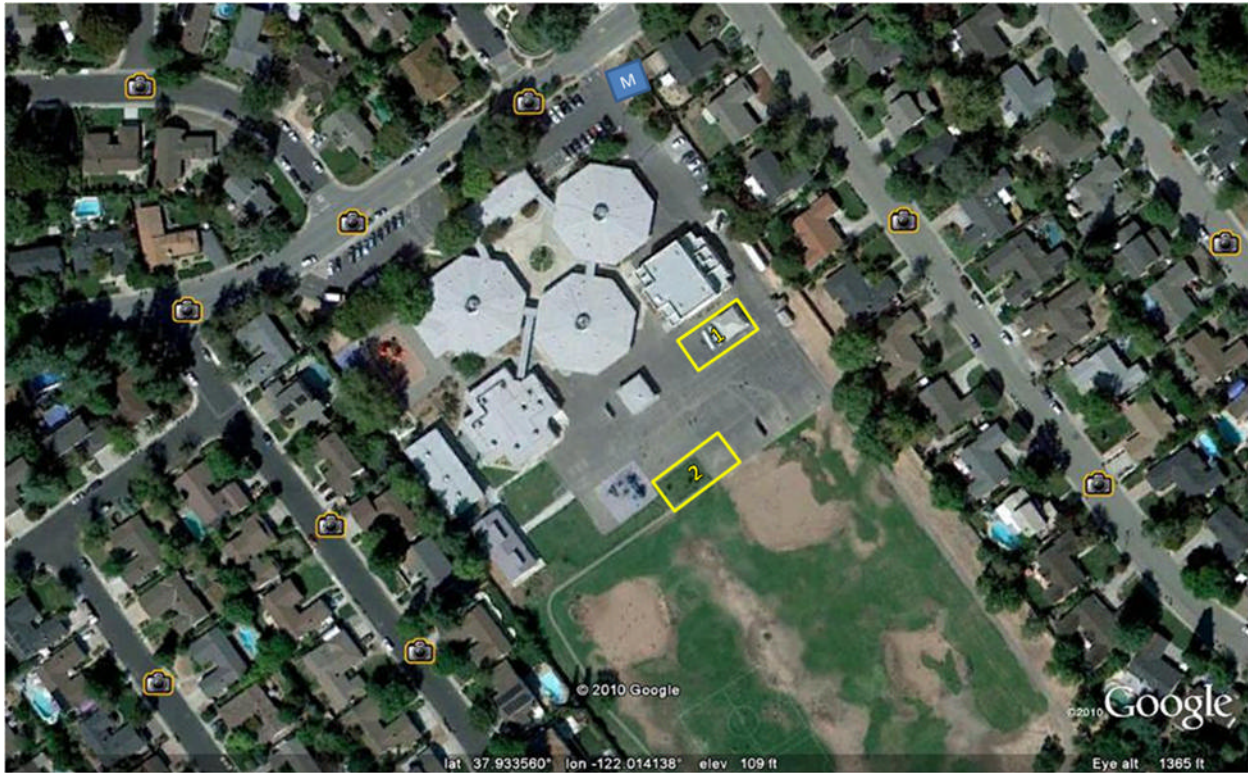
Sun Terrace Elementary
Site Address: 2448 Floyd LN, Concord CA, 94520



Valhalla Elementary
Site Address: 530 Kiki Dr., Pleasant Hill CA 94523



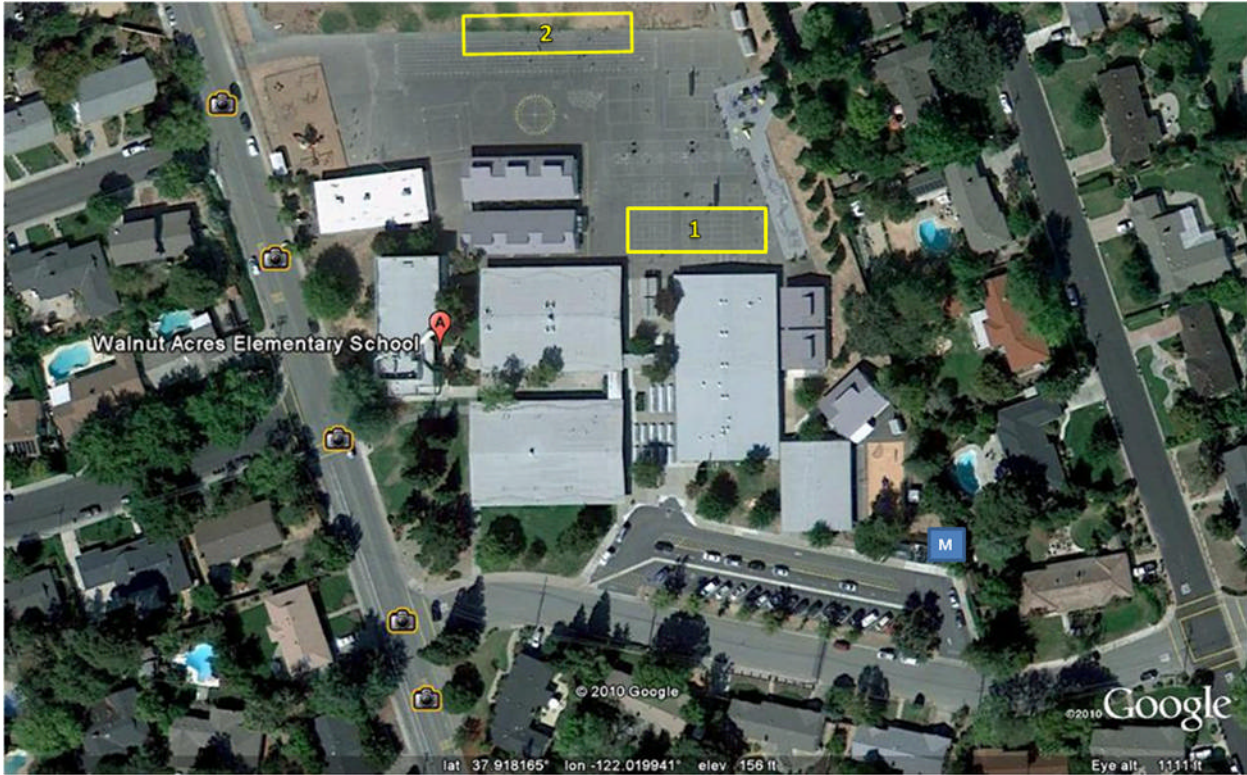
Valle Verde Elementary
Site Address: 3275 Peachwillow LN, Walnut Creek CA 94598



Valley View Middle
Site Address: 181 Viking Dr., Pleasant Hill CA, 94523



Walnut Acres Elementary
Site Address: 180 Cerezo Dr, Walnut Creek CA 94596



Westwood Elementary
Site Address: 1748 West St., Concord CA, 94521



Willow Creek Center
Site Address: 1026 Mohr LN, Concord CA 94518



Woodside Elementary
Site Address: 761 San Simeon Dr., Concord CA 94518



Wren Avenue Elementary
Site Address: 3339 Wren Ave, Concord CA 94519



Ygnacio Valley Elementary
Site Address: 2217 Chalomar Rd., Concord CA 94518



Ygnacio Valley High
Site Address: 755 Oak Grove Rd, Concord CA
945

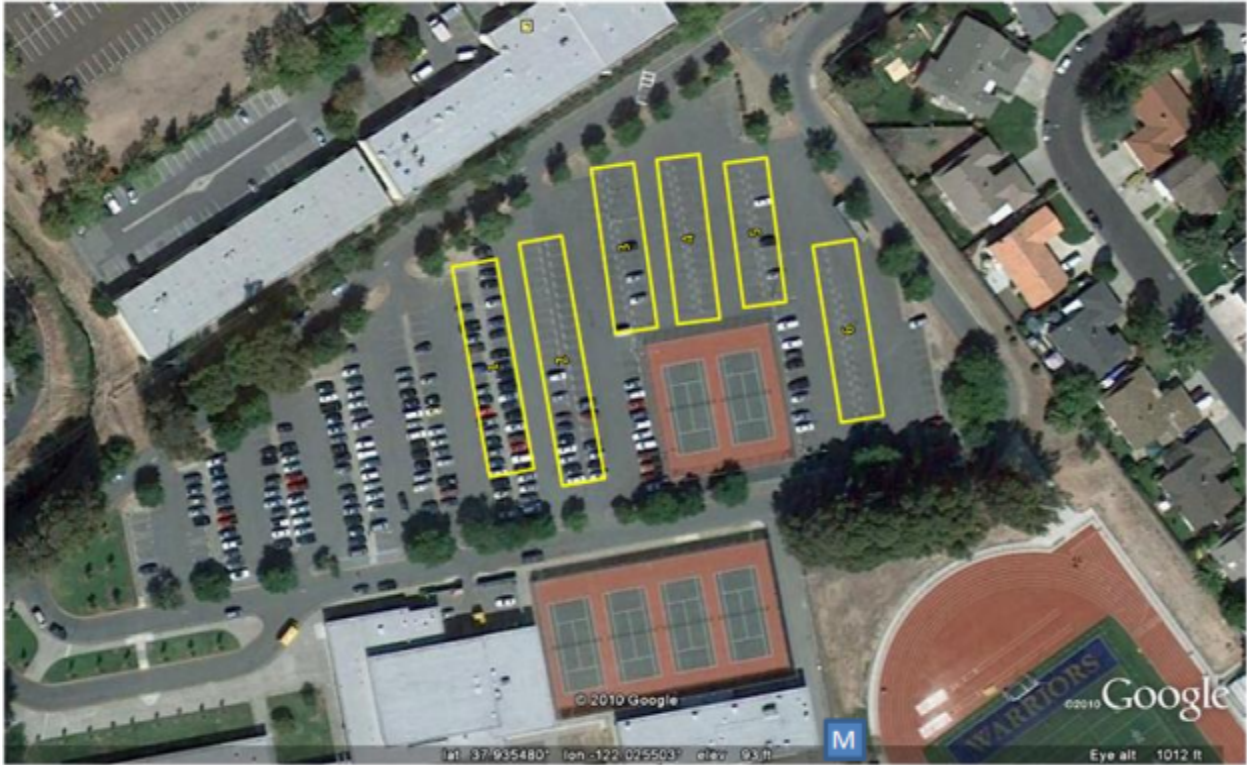


EXHIBIT G

OUTPUT GUARANTEE PARAMETERS AND ENERGY OUTPUT DATA

1. Term: The Output Guarantee Start Date for each system is the day the CSI incentive payment accrual begins and will remain in effect for twenty (20) years from that date. Documentation of this Start Date is as defined in O&M Agreement as described in **Exhibit B**.
2. The termination provisions in the O&M Agreement as described in **Exhibit B** shall alter the enforceability of the Output Guarantee, as indicated in those termination provisions.
3. Definitions:

Actual Generation means, for each Guarantee Year during the Term, a System's alternating current or "AC" electricity production in kilowatt-hours ("kWh") as calculated herein and detailed for each System.

Avoided Energy Price per kWh for each Guarantee Year, as set forth in Table 2, and for each constituent month thereof, is an estimate of the average monetary value of each kilowatt-hour of electricity produced by a particular System, which value is based on (a) the applicable electricity rates in effect on the date of execution of this Contract (per PG&E's advice letter #3631-E filed with the CPUC on March 11, 2010) and escalated each successive year of the Output Guarantee by 3%, plus (b) any applicable Incentive Rate.

DAS or Data Acquisition System, and detailed for each System means SunPower's system that displays historical meteorological and production data over an Internet connection and consists of hardware located on-site and software housed on SunPower's DAS server. The DAS measures and logs, at a minimum, the following parameters on a 15-minute average basis at the Sites: actual AC electricity production of the System each Site (in kWh), solar irradiance (in W/m²), temperature (in °C), and wind speed (in meters per second).

Expected Energy Production means, for a specified Guarantee Year and based on a Typical Meteorological Year, the kilowatt-hours set forth for each System in Table 2, below.

Guarantee Year means each consecutive year during the Term.

Guaranteed Level is 95% of the SEAMC.

Incentive Rate means the CSI rate in effect during a given Guarantee Year, as set forth in Table 2 for each System.

Monthly Factor is the ratio between (a) the monthly Utility Rate in a given year and (b) the annual Utility Rate for that same year, the latter of which is set forth in Table 2 for each System.

Monthly Accrual for each calendar month has the meaning set forth in Number 4, below.

Monthly Percent for each calendar month, as set forth in Table 1, is the multiplier used in determining the energy expected during a specified calendar month during that Guarantee Year.

PVSim means the software program utilized by SunPower to predict the amount of energy (kWh AC) a Solar Power System will produce in an average year which currently has the following characteristics: (1) based on PVFORM, the photovoltaic simulation software produced by Sandia National Laboratories and the US Department of Energy, (2) all photovoltaic characteristics are modeled, (3) all ancillary array losses are taken into account and (4) PVSim simulations use TMY2 from the NREL designated location nearest the Site.

SCADA means "Supervisory Control and Data Acquisition" for the monitoring system that Designer/Builder is providing as part of the Services.

SEAMC or Simulated Energy under Actual Meteorological Conditions means, with respect to any given period, AC Energy simulated by PV Sim using actual hourly insolation, wind speed, and air temperature as recorded by the SCADA at the Site, keeping all other inputs equal to those used when calculating SETMC.

SETMC or Simulated Energy under Typical Meteorological Conditions, with respect to any given period, AC Energy simulated by PV Sim using hourly insolation, wind speed, and air temperature data contained within the TMY2 file.

System means each separately-metered solar facility at a particular Site. The entire project consists of eight (8) systems. "**Entire System**" means all eight (8) Systems.

Term means the twenty (20) year period that the Output Guarantee is in effect.

True-Up Period means each consecutive five (5) year period during the twenty (20) years of the Term. Parties agree that no payment or credit shall be issued until the end of each True-Up Period. The Parties agree that the "true-up" shall occur on the end date of each True-Up Period to determine if there has been a net under-production. Any payment owing from the Designer/Builder shall be paid after each True-Up Period within thirty (30) days of notice from the District of an under production.

Utility Rate means the estimated weighted-average retail rate for electricity during a given period. For the purposes of calculating a Monthly Accrual, the Utility Rate for each Guarantee Year is set forth in Table 2 for each System.

4. SunPower shall calculate the Monthly Accrual for each calendar month, which may be prorated if necessary, during a Guarantee Year:

$$\text{Monthly Accrual} = ((\text{Monthly Factor} \times \text{Utility Rate}) + \text{Incentive Rate}) \times ((\text{Expected Energy Production} \times \text{Monthly Percent} \times \text{Guaranteed Level} \times \text{SEAMC/SETMC}) - \text{Actual Generation})$$

5. At the end of each True-up Period, SunPower shall provide District with a report detailing each System's Actual Production in comparison with the associated Expected Performance and with the Output Guarantee. If the sum of the Monthly Accruals is greater than zero (0), then SunPower shall pay to Customer an amount equal to the sum of all the Monthly Accruals (a "Guarantee Payment").
6. **Contingency for Equipment Failure.** In the event of hardware, communication, or other failure affecting the SCADA, SunPower will make commercially reasonable efforts to resolve the failure in a timely manner. In the event that data is lost, Actual Generation shall be adjusted to compensate for such lost data:
 - (a) In lieu of lost energy input data (insolation / temperature / windspeed), SunPower will utilize such data obtained from a nearby meteorological station that SunPower monitors and selects for such purpose.

In lieu of lost electricity data, SunPower will utilize the cumulative data from System meter readings to calculate the electricity generated during the missing interval. In the event that data from the System meter is inaccurate or missing, SunPower will simulate electricity production during the missing interval utilizing measured meteorological data and PVSIM. The simulated electricity production during the missing interval will be added to the Actual Generation for the subject Guarantee Year.

7. **Adjustment of Expected Generation.** If, and to the extent, any of the following events results in a material change in the production of electricity by the System, Expected Generation shall be adjusted correlatively for the period of such material change:
 - a) There is structural failure in a building which failure affects the support of the System or affects the integrity of the DAS;
 - b) There is any failure of the System to perform caused by legislative, administrative or executive action, regulation, order or requisition of any federal, state or local government, local utility or public utilities commission;
 - c) There is an event of Force Majeure; or
 - d) There is any change in usage of or structures on the Site, or buildings at or near the Site, without the prior written approval of SunPower.

The Parties acknowledge that the following Tables for the Systems are based on detailed calculations based on formulas imbedded in Excel Worksheets that are not included in this Contract. The Parties agree that if there is an error in the data in any of these Tables for the Systems or a mutually-agreed upon change to a System design, that the Parties shall, in good faith, meet and confer and revise these tables, as needed, to comport with the formulas used to determine these data and to, when required, amend this Contract to reflect the correct and revised data.

The projected System energy output used in the following tables is based upon the Systems shown in **Exhibit F** of this Contract. The projected System energy output will be adjusted if changes to the scope of Work are made subsequent to execution of this Contract.

Tables are for the entire Project across all Sites:

Table 1: Typical Monthly Expectations

Table 1: Typical Monthly Expectations

Month	SETMC (kWh)	Monthly (%)	Monthly Factor
Jan	739,469	4%	70%
Feb	908,147	5%	68%
Mar	1,359,012	8%	69%
Apr	1,700,764	10%	67%
May	2,022,257	12%	121%
Jun	2,073,157	12%	119%
Jul	2,127,398	12%	114%
Aug	1,925,347	11%	120%
Sep	1,594,784	9%	115%
Oct	1,224,350	7%	119%
Nov	823,424	5%	69%
Dec	673,604	4%	68%
Annual	17,171,710	100%	

Table 2: Annual Expectations

Guarantee Year	Expected Energy	Utility Rate	Incentive Rate	Avoided Energy Price per kWh
1	17,171,710	0.2100	0.1900	0.4000
2	17,085,852	0.2163	0.1900	0.4063
3	17,000,423	0.2228	0.1900	0.4128
4	16,915,420	0.2295	0.1900	0.4195
5	16,830,843	0.2364	0.1900	0.4264
6	16,746,689	0.2434	0.1900	0.4334
7	16,662,956	0.2508	0.1900	0.4408
8	16,579,641	0.2583	0.1900	0.4483
9	16,496,743	0.2660	0.1900	0.4560
10	16,414,259	0.2740	0.1900	0.4640
11	16,332,188	0.2822	0.1900	0.4722
12	16,250,527	0.2907	0.1900	0.4807
13	16,169,274	0.2994	0.1900	0.4894
14	16,088,428	0.3084	0.1900	0.4984
15	16,007,986	0.3176	0.1900	0.5076
16	15,927,946	0.3272	0.1900	0.5172
17	15,848,306	0.3370	0.1900	0.5270
18	15,769,064	0.3471	0.1900	0.5371
19	15,690,219	0.3575	0.1900	0.5475
20	15,611,768	0.3682	0.1900	0.5582

**Exhibit H
WARRANTIES**

SYSTEM WARRANTY

1. **System Information.** This Standard Warranty (this "Warranty") applies to each System installed by Designer/Builder pursuant to this Contract.
2. **SunPower System Warranty.** Designer/Builder warrants that each System shall conform to the Specifications on the Substantial Completion Date of the applicable Increment and shall be free from defects in materials and workmanship under normal operating conditions for a period of ten (10) years thereafter ("Warranty Term"); provided, however, that this Warranty shall not include any warranty statements provided by Other Manufacturers as described in Section 3 below. Upon a breach of the Warranty, Designer/Builder will, at its option, either repair or replace any defective parts. Unless this Warranty is extended by written agreement, District shall pay for any repair costs incurred by Designer/Builder after the Warranty Term expires. This Warranty applies solely to the System and does not include: (a) roof repair or maintenance or (b) site work, including but not limited to, grading and landscape maintenance, if applicable.
3. **Manufacturer Warranties.** Designer/Builder assigns to District the applicable pass-through warranties from Designer/Builder's manufacturers, including photovoltaic modules and inverters which are attached to this Exhibit H ("Other Manufacturers"). The Other Manufacturers shall be stated in the Design Submittal. Designer/Builder makes no representation or warranty, and District shall seek no recourse from Designer/Builder, unless specifically provided to the contrary, regarding the warranties of Other Manufacturers, including, without limitation, the power output of the photovoltaic modules.
4. **Warranty Exceptions.** This Warranty does not apply to:
 - 4.1 Damage, malfunction, or degradation of the System, including electrical output, caused by:
 - 4.1.1 failure to Properly Operate or Maintain the System (as described below); or
 - 4.1.2 any repair or replacement using a part or service not provided or authorized in writing by Designer/Builder; or
 - 4.1.3 normal wear and tear, including expected degradation electrical output; or
 - 4.1.4 environmental factors, including but not limited to corrosion, insects, animals, lightning, flooding, and winds in excess of design specifications;
 - 4.2 Damage, malfunction, or degradation of the System, including electrical output and System's supporting structure, without limit:
 - 4.2.1 resulting from District or third party abuse, accident, alteration, improper use, solar infringement, negligence, vandalism, theft, or an event of Force Majeure; or
 - 4.2.2 caused by unknown structural defects with the building or foundation upon which the System is located; or
 - 4.3 Change in usage of the building or site, including neighboring surroundings, which may affect building or site Permits and related requirements, without the written approval of Designer/Builder.
 - 4.4 For purposes of this Section, "Properly Operate and Maintain the System" shall mean that District, or qualified party on District's behalf, shall:

4.4.1 perform all initial troubleshooting and diagnostics, including photographic evidence when applicable, prior to submitting a warranty claim; and

4.4.2 otherwise operate and maintain the System in full accordance with the printed manuals and instructions provided with the System to District.

; provided that, for the avoidance of doubt, (A) resetting of any protective devices and replacement of any fuses or other consumables within the System are assumed to be included within Proper Operation and Maintenance and not included within the scope of this Warranty and (B) should the operation and maintenance of the System be performed by or on behalf of Designer/Builder pursuant to an Operations and Maintenance Agreement providing for such services for the duration of the Warranty Term, Proper Operation and Maintenance shall be deemed satisfied for purposes of this Warranty.

5. **Successors and Assigns.** This Warranty shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns (including, without limitation, any owner or tenant of any Site). No assignment by a party shall relieve such party of any of its obligations under this Warranty. Nothing in this Warranty, expressed or implied, is intended to confer any rights, remedies, obligations or liabilities under or by reason of this Warranty upon any person or entity other than the Parties. In the event that there is a change in ownership of any Site, District shall cause the new owner to execute and deliver to Designer/Builder an assumption of District's obligations under this Warranty in a form reasonably acceptable to Designer/Builder.

Disclaimer. Except as expressly provided herein, Designer/Builder expressly disclaims any and all warranties of any kind, express, implied or statutory, including without limitation any implied warranties of merchantability and/or fitness for a particular purpose. Neither the Contract nor any document furnished under it, unless explicitly stated, is intended to express or imply any warranty or guarantee with regard to the performance of the System, including, but not limited to, (i) electricity output, (ii) reduction in energy costs or environmental savings, (iii) financial savings or return on investment and (iv) public recognition.

The following warranties are the standard warranties from the manufacturers of components of the Systems. Designer/Builder is assigning these warranties to the District and these warranties shall not, in any way, reduce or limit the Output Guarantee and/or any additional warranty terms or durations indicated in the Agreement. Designer/Builder will install the SunPower E19 series modules.

Photovoltaic Module Warranty



SUNPOWER LIMITED WARRANTY FOR PV MODULES

Applies to the following models:

SPR-yyyEz-xxx-x – where yyy is a module power rating between 90 and 430 Watts

SPR-yyyz-xxx-x, where yyy is a module power rating between 80 and 420 Watts.

T5-SPR-yyy, where yyy is a module power rating between 290 and 325 Watts.

Serengeti branded pv modules: SER-yyyz, where yyy is a module power rating between 200 and 290 Watts ("xxx-x" "z" defines product variants)

1. Limited Product Warranty – Ten (10) Year Repair, Replacement or Refund Remedy

SunPower Corporation with offices at 3939 North First Street, San Jose, CA 95134 ("SunPower") warrants that for ten (10) years from the date of delivery, its Photovoltaic modules ("PV modules") shall be free from defects in materials and workmanship under normal application, installation, use and service conditions. If the PV modules fail to conform to this warranty, then for a period ending ten (10) years from date of delivery to the original end-customer ("the Customer"), SunPower will, at its option, either repair or replace the product, or refund the purchase price as paid by the Customer ("Purchase Price"). The repair, replacement or refund remedy shall be the sole and exclusive remedy provided under the Limited Product Warranty and shall not extend beyond the ten (10) year period set forth herein. This Limited Product Warranty does not warrant a specific power output, which shall be exclusively covered under clause 2 hereinafter (Limited Power Warranty).

2. Limited Power Warranty

- a) SunPower additionally warrants: If, within twelve (12) years from date of delivery to the Customer any PV module(s) exhibits a power output less than 90% of the Minimum Peak Power¹ as specified at the date of delivery in SunPower's Product datasheet, provided that such loss in power is determined by SunPower (at its sole and absolute discretion) to be due to defects in material or workmanship SunPower will replace such loss in power by either providing to the Customer additional PV modules to make up such loss in power or by providing monetary compensation equivalent to the cost of additional PV modules required to make up such loss in power or by repairing or replacing the defective PV modules, at the option of SunPower
- b) SunPower additionally warrants: If, within twenty five (25) years from date of delivery to the Customer any PV module(s) exhibits a power output less than 80% of the Minimum Peak Power¹ as specified at the date of delivery in SunPower's Product datasheet, provided that such loss in power is determined by SunPower (at its sole and absolute discretion) to be due to defects in material or workmanship SunPower will replace such loss in power by either providing to the Customer additional PV modules to make up such loss in power or by providing monetary compensation equivalent to the cost of additional PV modules required to make up such loss in power or by repairing or replacing the defective PV modules, at the option of SunPower.

3. Exclusions and limitations

- a) Warranty claims must in any event be filed within the applicable Warranty period.
- b) Warranty claims may only be made by, or on the behalf of, the original end customer or a person to whom title has been transferred for the PV Modules.

¹Minimum Peak Power¹ = Peak power minus the Peak power tolerance (as specified in SunPower's Product datasheet). "Peak power" is the power in peak watts that a PV module generates at STC (Standard Test conditions: Irradiance of 1000 W/m², light spectrum AM 1.5g and a cell temperature of 25 degrees C)

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- c) The Limited Warranties do not apply to any of the following:
1. PV modules which in SunPower's absolute judgment have been subjected to: misuse, abuse, neglect or accident; alteration, improper installation, application or removal (including but not limited to installation, application or removal by any party other than a SunPower authorized dealer; non-observance of the applicable SunPower installation, users and/or maintenance instructions; repair or modifications by someone other than an approved service technician of SunPower; power failure surges, lightning, flood, fire, accidental breakage or other events outside SunPower's control.
 2. Cosmetic defects stemming from normal wear and tear of PV module materials.
 3. PV modules installed in locations, which in SunPower's absolute judgment may be subject to direct contact with salt water.
- d) The Limited Warranties do not cover any transportation costs for return of the PV modules, or for reshipment of any repaired or replaced PV modules, or cost associated with installation, removal or reinstallation of the PV modules.
- e) When used on a mobile platform of any type, the Limited Power Warranty, applying to any of the PV modules shall be limited to twelve (12) years as per the provisions of clause 2(a) hereof.
- f) Warranty claims will not apply if the type or serial number of the PV modules is altered, removed or made illegible.

4. Limitation of Warranty Scope

SUBJECT TO THE LIMITATIONS UNDER APPLICABLE LAW, THE LIMITED WARRANTIES SET FORTH HEREIN ARE EXPRESSLY IN LIEU OF AND EXCLUDE ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR PARTICULAR PURPOSE, USE, OR APPLICATION, AND ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF SUNPOWER, UNLESS SUCH OTHER WARRANTIES, OBLIGATIONS OR LIABILITIES ARE EXPRESSLY AGREED TO IN WRITING SIGNED AND APPROVED BY SUNPOWER. SUNPOWER SHALL HAVE NO RESPONSIBILITY OR LIABILITY WHATSOEVER FOR DAMAGE OR INJURY TO PERSONS OR PROPERTY OR FOR OTHER LOSS OR INJURY RESULTING FROM ANY CAUSE WHATSOEVER ARISING OUT OF OR RELATED TO THE PRODUCT, INCLUDING, WITHOUT LIMITATION, ANY DEFECTS IN THE MODULE, OR FROM USE OR INSTALLATION. UNDER NO CIRCUMSTANCES SHALL SUNPOWER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, HOWSOEVER CAUSED. LOSS OF USE, LOSS OF PROFITS, LOSS OF PRODUCTION, LOSS OF REVENUES ARE THEREFORE SPECIFICALLY BUT WITHOUT LIMITATION EXCLUDED.

SUNPOWER'S AGGREGATE LIABILITY, IF ANY, IN DAMAGES OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE PAID TO SUNPOWER BY THE CUSTOMER, FOR THE UNIT OF PRODUCT OR SERVICE FURNISHED OR TO BE FURNISHED, AS THE CASE MAY BE, WHICH GAVE RISE TO THE WARRANTY CLAIM.

SOME STATES DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OF DAMAGES SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU.

5. Obtaining Warranty Performance

If you feel you have a justified claim covered by this Limited Warranty, immediately notify the (a) Installer, who sold the PV-modules, or (b) any authorized SunPower distributor, of the claim in writing, or (c) send such notification to SunPower Corporation, 3939 North First Street, San Jose, CA 95134, directly. In addition, please enclose evidence of the date of delivery of the PV module. If applicable, your installer or distributor will give advice on handling the claim. If further assistance is required, please write to SunPower for instructions. The return of any PV-modules will not be accepted unless prior written authorization has been given by SunPower.

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Inverter Warranty

Designer/Builder shall provide Owner with an extended manufacturer's warranty for the inverters for an additional ten years (for a total inverter(s) warranty period to the District of twenty (20) years) under the same terms as the following terms of the initial ten (10) year warranty from the manufacturer.

SATCON POWER SYSTEMS TERMS AND CONDITIONS OF SALE FOR PV POWERGATE® INVERTERS WITH TEN (10) YEAR WARRANTY

All sales of product including, without restriction, equipment, parts, repairs and related services ("Product") by SatCon Power Systems Canada Ltd. ("Seller") to the purchaser of such Product ("Purchaser") are subject to the terms and conditions set forth herein.

1.0 ACCEPTANCE OF TERMS AND CONDITIONS

Purchaser shall be deemed to have accepted these terms and conditions upon the earlier of (i) receipt of Seller's Order Acknowledgement (such Order Acknowledgement and these terms and conditions collectively "this Agreement"), or (ii) receipt in whole or in part of Seller's shipment of the Product, or (iii) payment in whole or in part for the Product. Any other terms, conditions or any deletion from or alteration to these terms and conditions including without restriction in Purchaser's order shall not apply unless agreed in writing by an authorized representative of Seller.

2.0 PRICES

- 2.1 Unless otherwise stated prices:
- (i) are in US Funds;
 - (ii) are subject to delivery terms stated in section 4.0;
 - (iii) are valid for thirty (30) days from date of quotation by Seller; and
 - (iv) do not include federal, provincial, state, local, or any other, taxes, charges, levies and duties.

3.0 PAYMENT TERMS

- 3.1 Unless otherwise stated, terms of payment shall be:
- (i) for sales of Product in aggregate amount not exceeding \$250,000.00, payment in full net 30 days on issuance by Seller of invoices and evidence of readiness to ship; and
 - (ii) for sales of Product in aggregate of greater than \$250,000.00, ten percent (10%) with order, balance payable in equal monthly payments commencing one (1) month after issuance of Purchaser's order and final payment net 30 days on issuance by Seller of invoices and evidence of readiness to ship.
- 3.2 Any late payment shall bear interest at the rate of one percent (1%) per month (12% per annum), and shall be calculated and due on a monthly basis.

4.0 DELIVERY, TITLE and RISK

- 4.1 Product sold hereunder shall be delivered FCA Seller's factory (INCOTERMS 2000). Risk of loss and damage shall pass to Purchaser on delivery.
- 4.2 Any delivery dates given are approximate and are based upon prompt receipt from Purchaser of all information essential to the proper execution of Purchaser's order.
- 4.3 The title to and property in any Product shall not pass to Purchaser until immediately prior to any sale of the Product by the Purchaser to any third party or until full purchase price of the Product has been paid, whichever occurs first, and Purchaser hereby grants to Seller a security interest in the Product and in any proceeds received by Purchaser on its resale of the Product to secure payment of all monies due to it by Purchaser from time to time under or pursuant to this Agreement or otherwise which Purchaser acknowledges include without restriction purchase monies for the Product. The Purchaser agrees that the security interest attaches immediately upon execution of this Agreement or upon execution of the formal Purchase Order to which the Terms and Conditions are attached. Purchaser acknowledges that Seller may make such filings and registrations with and give such notices to such government and non-government authorities and such third parties as it deems necessary to perfect and protect its security interest in the Product.
- 4.4 In the event that Purchaser fails to pay any amount owing or perform any of its obligations hereunder, becomes insolvent, initiates or becomes subject to any proceedings or seeks any relief under any bankruptcy or insolvency legislation, or any receiver, trustee, liquidator or custodian is appointed for Purchaser or any of its property, or if a distress or analogous process is levied upon the property of Purchaser or any part thereof, then Seller shall be entitled to exercise any remedies against all or part of the Product contemplated by the personal property security legislation of the jurisdiction applicable to the Product and the security interest granted hereby, and for this purpose Purchaser irrevocably grants Seller access to any premises where Product is located and authorizes Seller to use whatever means necessary to enforce such right of access.

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- 4.5 So long as any amount remains owing by Purchaser to Seller hereunder, Purchaser shall exercise proper care in the possession and use of Product and shall keep same at all times in good repair and free of all liens, options, taxes, charges, pledges, privileges and encumbrances. Purchaser shall insure physical Product against loss, destruction or theft for the full value of the replacement purchase price of the Product.
- 4.6 If shipment is delayed beyond the agreed delivery date due to the fault of Purchaser, Seller shall store the Product at Purchaser's expense (which may be at the place of manufacture). In such event:
- (i) risk of loss and damage shall pass to Purchaser on agreed delivery date; and
 - (ii) any amounts payable to Seller on or after delivery shall be payable on presentation of Seller's related invoices; and
 - (iii) all storage costs incurred by the Seller, including, but not limited to, all expenses of preparation into storage, material handling, storage, inspection, preservation, and insurance shall be for Purchaser's account and amounts shall be payable on presentation of Seller's related invoices.

5.0 WARRANTY

- 5.1 Seller warrants that any Product sold hereunder shall be free from defects in material and workmanship and shall substantially conform to the applicable specifications for a period (the "Warranty Period") terminating one hundred twenty six (126) months from the date delivery or one hundred twenty (120) months from the date of first use for commercial purposes, whichever occurs first.
- 5.2 In full satisfaction of any claim under this warranty, Seller shall, if satisfied after its inspection, tests or other assessment that the Product is defective, either (i) repair any defective part or parts, or (ii) make available to Purchaser such repaired or replacement part or parts or such service as is required to in Seller's opinion correct the defect. Parts shall be delivered in accordance with the delivery terms applicable to the parts and services hereunder and any excess or replaced parts shall be returned FCA Seller's factory (INCOTERMS 2000). Service shall be performed during normal working hours during times mutually agreed upon in advance by Seller and Purchaser. Seller and Operator shall mutually agree upon the conduct of any tests required to determine whether a Product is defective in advance of conducting such tests.
- 5.3 This warranty shall be void if:
- (i) the Products have been damaged in shipment or improperly stored, installed or maintained or otherwise have not been used in conformance with Seller's applicable instructions or have been altered or repaired without Seller's prior written consent;
 - (ii) Purchaser fails to notify Seller promptly in writing of any claim under this warranty; or
 - (iii) Purchaser fails to make any Product subject of a claim promptly available for inspection and correction.
- 5.4 This warranty does not apply to:
- (i) Damage, malfunction, or degradation of electrical output caused, directly or indirectly, by any repair or replacement using a part or service not provided or authorized in writing by the Seller;
 - (ii) Damage, malfunction, or degradation of electrical output resulting, directly or indirectly, from Purchaser or third party abuse, accident, alteration, improper use, negligence or vandalism, or from earthquake beyond the Product's rating, fire, flood, direct lightning strike to the Product or other acts of God and severe weather beyond the Product's rating;
 - (iii) Damage caused, directly or indirectly, by other events outside of the control of Seller; or
 - (iv) Any third party components or monitoring systems that are either, supplied by Purchaser or specified by Purchaser and purchased by Seller on behalf of Purchaser, and incorporated into the Product.
- 5.5 Subject to paragraph 12.2, this warranty extends to the owner, including any subsequent owner or a lessee and an assignee of a lease, at the same location during the Warranty Period of the photovoltaic system provided by Purchaser incorporating the Product (hereinafter referred to as "**Operator**").
- 5.6 This warranty is conditional upon:
- (i) The installation and operation, at Seller's sole discretion and expense, of Seller's remote monitoring system to verify the performance of any Product sold under this Agreement;
 - (ii) Satisfactory inspection by Seller's service representative, at Seller's sole discretion and expense, not more frequently than once a year;
 - (iii) Satisfactory rectification by Operator at its sole expense of any adverse or dangerous conditions or circumstances identified by such monitoring or inspection; and

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- (iv) Purchaser and the Operator executing and delivering to Seller and performing their obligations in compliance with the warranty registration and remote monitoring licensing agreements titled, “PowerGate® Warranty Registration”, and, if applicable, “PV View™ Licensing Agreement”.
- 5.7 THIS WARRANTY CONSTITUTES PURCHASER’S AND OPERATOR’S SOLE AND EXCLUSIVE REMEDY FOR CLAIMS AGAINST SELLER IN RESPECT OF DEFECTIVE OR NON-CONFORMING PRODUCTS HEREUNDER AND IS IN LIEU OF ALL OTHER WARRANTIES, CONDITIONS, GUARANTEES OR REPRESENTATIONS FROM SELLER RELATING TO THE PRODUCTS HEREUNDER, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, IN CONTRACT, TORT OR OTHERWISE, INCLUDING WITHOUT RESTRICTION ANY WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR PURPOSE, AND ANY SUCH WARRANTY, CONDITION, GUARANTEE OR REPRESENTATION IS HEREBY EXCLUDED.
- 5.8 SELLER SHALL NOT BE HELD LIABLE FOR ANY CONSEQUENTIAL DAMAGES OR LOSS OF USE ASSOCIATED WITH WARRANTY CLAIMS FOR SAID PRODUCT. FOR GREATER CERTAINTY, ANY CLAIMS UNDER THIS SECTION 5.0 ARE SUBJECT TO THE LIMITATIONS IN PARAGRAPH 6.1.
- 5.9 SELLER’S TOTAL LIABILITY FOR ANY AND ALL WARRANTY CLAIMS AND COSTS UNDER THIS SECTION 5.0 SHALL NOT EXCEED THE PRICE RECEIVED FOR SUCH PRODUCT.

6.0 LIMITATION OF LIABILITY

- 6.1 **Consequential Damages.** Notwithstanding the patent infringement provisions in section 9.0, In no event, whether as a result of a breach of contract, warranty, tort (including without restriction negligence) or otherwise, shall Seller be liable for any loss of profits or for any special, direct, indirect, consequential, incidental, exemplary or punitive damages, losses, injury, costs or expenses of any nature relating to any Product or related services sold hereunder.
- 6.2 **Limitation of Liability.** Notwithstanding the warranty provisions in section 5.0 and the patent infringement provisions in section 9.0, Seller’s total liability to Purchaser or any third party for any and all claims concerning the Products or related services under these terms and conditions or otherwise, whether as a result of a breach of contract, warranty, tort (including without restriction negligence) or otherwise, shall not exceed in aggregate the price received for such Product.

7.0 EXCUSABLE DELAY (FORCE MAJEURE)

- 7.1 Seller shall not be liable for delays in the performance of its obligations hereunder due to causes beyond its reasonable control including but not limited to acts of God, acts of Purchaser, fires, strikes, labour disturbances beyond Seller’s control, floods, epidemics, quarantine restrictions, war, insurrection or riot, acts of a civil or military authority compliance with priority orders or preference ratings issued by any Government, freight embargoes, car shortages, wrecks or delays in transportation, or severe weather.
- 7.2 Seller shall notify the Purchaser promptly of any delays set forth in paragraph 7.1, and shall specify, as soon as practicable, a new shipment date.
- 7.3 Where the period lost is at least sixty (60) days and the parties have not agreed upon a revised basis for performing the work, either party may, upon thirty (30) days written notice, terminate this Agreement. Cancellation charges shall be determined in accordance with section 8.0.

8.0 CANCELLATION

- 8.0 The Purchaser may cancel this Agreement at any time upon written notice and payment to the Seller of cancellation charges referred to in paragraph 8.2.
- 8.2 In the event that this Agreement is cancelled pursuant to paragraph 8.1, or the Excusable Delay Paragraph 7.1, the cancellation charges payable by the Purchaser to the Seller shall be calculated as follows:
- (i) Material, labour and indirect expenses committed or incurred to date of cancellation; and
 - (ii) Reasonable profit on (i) herein above cited.

9.0 PATENT INFRINGEMENT

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SATCON POWER SYSTEMS
TERMS AND CONDITIONS OF SALE FOR PV POWERGATE® INVERTERS
WITH TEN (10) YEAR WARRANTY

- 9.1 Seller shall defend any suit or proceeding brought against Purchaser to the extent based on any claim that any Product, or any part thereof, manufactured and sold hereunder by Seller, infringes any patent and shall pay all damages and costs (excluding consequential, incidental, exemplary or punitive damages or costs) awarded therein against Purchaser, provided that Purchaser notifies Seller promptly in writing of such suit or proceeding and gives Seller authority to defend and such information and assistance (at Purchaser's expense) required for defense of same. In case said Product, or any part thereof, is in such suit held to constitute infringement and the use of said Product or part is enjoined, the Seller shall, at its own expense at its option: (i) procure for the Purchaser the right to continue using said Product or part; (ii) replace same with non-infringing Product; (iii) modify it so it becomes non-infringing; or (iv) remove said Product.
- 9.2 Seller's total liability under this section 9.0, including without restriction for damages, losses, costs and expenses, shall not exceed in aggregate the price received for such Product.
- 9.3 This section 9.0 shall not apply to and the Seller shall assume no liability for any infringement resulting from (i) any Products, or any part thereof, manufactured to Purchaser's design or, (ii) circumstances in which a claim arises from using Products in combination with Purchaser's equipment or process and Purchaser agrees to indemnify, defend and hold Seller harmless from and against any costs, expenses, claims or other liability arising from or relating to any such infringement.
- 9.4 In respect of any Product not manufactured by Seller, the patent infringement protection offered by the manufacturer thereof shall apply in lieu of the foregoing.

10.0 CONFIDENTIALITY

- 10.1 All plans, drawings, technical specifications, documents, software, microfilm, data, and proprietary information relating to the Products hereunder are the confidential and proprietary information of Seller, and shall be treated in confidence by Purchaser, and shall not be copied, reproduced, or communicated to any third party in any way whatever except in connection with the operation and maintenance of the Product, under terms and conditions specified by Seller in writing.

11.0 SOFTWARE

- 11.1 If not governed by a separate license or agreement, any software furnished hereunder whether separately or incorporated with supplied hardware, including any subsequent updates, is provided for use by Purchaser on a restricted, non-exclusive, non-transferable basis on the following terms and conditions:
- (i) the software and any part thereof is to be used only by Purchaser for its own internal operations and on the Product on which the software is first installed;
 - (ii) software and hardware documentation developed by Seller shall not be copied in whole or in part; additional copies of software and any documentation may be obtained from Seller or its representatives at Seller's then standard charges, subject to applicable import and export laws and regulations;
 - (iii) any third party licensed software will be identified as such and Purchaser will be required to complete any sublicense specified by the software licensor; and
 - (iv) source code for software is not included (unless provided under separate agreement).

12.0 GENERAL

- 12.1 This Agreement shall constitute the entire agreement and shall supersede all prior agreements, arrangements, obligations, commitments and undertakings, oral or written between Purchaser and Seller with respect to the subject matter of this Agreement. Except as otherwise expressly set forth herein Seller makes no representation, warranty, condition or guarantee, express or implied, relating to the subject matter of this Agreement.
- 12.2 Purchaser shall not assign this Agreement or any part thereof without the prior written consent of the Seller.
- 12.3 Any order received by the Seller is subject to credit approval and may be cancelled if the Purchaser's credit standing is not satisfactory to Seller.
- 12.4 No penalties shall apply pursuant to the execution of Seller's obligations hereunder, unless accepted in writing by an authorized representative of the Seller.

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**SATCON POWER SYSTEMS
TERMS AND CONDITIONS OF SALE FOR PV POWERGATE® INVERTERS
WITH TEN (10) YEAR WARRANTY**

- 12.5 Any provision hereof which is contrary to law shall not invalidate any other provision hereof and any provision required to be included in this Agreement by applicable law shall be deemed to be incorporated herein.
- 12.6 The waiver by Seller or any breach or the failure by Seller to enforce any of the terms or conditions contained herein shall not in any way effect, limit or prevent Seller's right thereafter to rely on, enforce and compel strict compliance with each term or condition contained herein.
- 12.7 This Agreement shall be governed by the domestic laws of Ontario and of Canada applicable therein excluding the *International Sale of Goods Act* (Ontario) without reference to conflict of law rules and the parties hereto irrevocably attorn to the non-exclusive jurisdiction of the courts of such province.
- 12.8 (Applicable to the Province of Quebec, Canada). It is the express wish of the parties that this contract and all documents in connection with this contract be drawn up in English. Il est la volonté expresse des parties que le présent contrat et tous les documents qui s'y rattachent soient rédigés en langue anglaise.

EXHIBIT I

EDUCATION PROGRAM

Upon Final Completion of the Project, Designer/Builder will work with the District and the SunPower Foundation to provide the following services:

1. Assistance with development of solar class lesson plans;
2. Assistance developing multimedia, social networking tools and videos;
3. System monitoring activities;
4. Classroom and assembly presentations; and
5. Assistance with public education campaigns, activities and workshops surrounding Earth Day and Earth Month community events, outreach and initiatives.

Within 60 days of receipt of Notice to Proceed, District and Designer/Builder will coordinate with SunPower Foundation to further define the scope of this program.

EXHIBIT J

REQUEST FOR PROPOSAL SUBMISSION

[Attached as a separate document]

EXHIBIT K-1

CHANGE ORDERS PRIOR TO COMMENCEMENT DATE

[Attached as a separate document]

EXHIBIT K-2

CHANGE ORDERS AFTER COMMENCEMENT DATE

The following format shall be used as applicable by the District and the Designer/Builder to communicate proposed additions and deductions, supported by the attached documentation.

<u>SUBCONTRACTOR PERFORMED WORK</u>		EXTRA	CREDIT
(a)	<u>Material</u> (attach itemized quantity and unit cost plus sales tax)		
(b)	<u>Labor</u> (attach itemized hours and rates, fully encumbered)		
(c)	<u>Equipment</u> (attach suppliers' invoice)		
(d)	<u>Subtotal</u>		
(e)	<u>Subcontractor's overhead and profit</u> not to exceed ten percent (10%) of item (d)		
(f)	<u>Subtotal</u>		
(g)	<u>Designer/Builder's overhead and profit</u> , not to exceed five percent (5%) of Item (f)		
(h)	<u>Subtotal</u>		
(i)	<u>Bond</u> not to exceed one percent (1.1%) of Item (h)		
(j)	<u>TOTAL</u>		
(k)	Time		

<u>DESIGNER/BUILDER PERFORMED WORK</u>		EXTRA	CREDIT
(a)	<u>Material</u> (attach itemized quantity and unit cost plus sales tax)		
(b)	<u>Labor</u> (attach itemized hours and rates, fully encumbered)		
(c)	<u>Equipment</u> (attach suppliers' invoice)		
(d)	<u>Subtotal</u>		
(e)	<u>Designer/Builders's overhead and profit</u> not to exceed fifteen percent (15%) of item (d).		
(f)	<u>Subtotal</u>		
(g)	<u>Bond and Insurance</u> not to exceed one percent (1.1%) of Item (f)		
(h)	<u>TOTAL</u>		
(i)	Time		

Change Order Certification

All Change Orders must include the following certification by Designer/Builder:

The undersigned Designer/Builder approves the foregoing as to the changes, if any, and the Contract Price specified for each item and as to the extension of time allowed, if any, for completion of the entire Work as stated herein, and agrees to furnish all labor, materials, and service, and perform all work necessary to complete any additional work specified for the consideration stated herein. Submission of sums which have no basis in fact or which Designer/Builder knows are false are at the sole risk of Designer/Builder and may be a violation of the False Claims Act set forth under Government Code section 12650 et seq. It is understood that the changes herein to the Contract shall only be effective when approved by the Board.

It is expressly understood that the value of the extra Work or changes expressly includes any and all of the Designer/Builder's costs and expenses, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Any costs, expenses, damages, or time extensions not included are deemed waived.

EXHIBIT L
DEFINITIONS

"**Applicable Law**" means any applicable federal, state or local act, law, statute, ordinance, code, rule, regulation, Permit, order, judgment, consent or approval of any Governmental Authority.

"**Business Day**" means any day other than a Saturday, Sunday or a legal holiday in California, United States of America. In the event a time period set forth in this Contract expires on a Day that is not a Business Day, such period shall be deemed to expire on the next Business Day thereafter.

"**Change Order**" means a written instrument executed by the Parties stating their agreement regarding a description of a change in the Work, the amount of the adjustment to the Contract Price, if any, and the extent of the adjustment to the Project Schedule, if any.

"**Commencement Date**" means, with respect to each Increment, the date specified in the Project Schedule on which Designer/Builder anticipates commencing construction portion of the Work on the Sites.

"**Day**" means a period of 24 consecutive hours from 12:00 midnight (Pacific time), and shall include Saturdays, Sundays and all holidays except that in the event a time period set forth in this Contract expires on a Day that is not a Business Day, such period shall be deemed to expire on the next Business Day thereafter.

"**Final Completion**" means the date on which all Systems have achieved System Acceptance and the Board has approved completion of the Project.

"**Governmental Authority**" means any federal, state, local or other governmental, regulatory or judicial agency, authority, public utility, or other entity having legal jurisdiction over the Facilities or the Systems.

"**Interconnection Point**" means the point where a System is interconnected to District's electrical equipment.

"**Notice to Proceed**" means the District's written notice given to Designer/Builder directing Designer/Builder to commence performance of the entire Work.

"**Output Guarantee**" means the amount of energy output guaranteed by Designer/Builder from each System as indicated in Exhibit G.

"**Permit**" means each and every national, autonomic, regional and local license, authorization, certification, filing, recording, permit or other approval with or of any Governmental Authority, including, without limitation, each and every environmental, construction or operating permit and any agreement, consent or approval from or with any other person that is required by any Applicable Law or that is otherwise necessary for the performance of the Work.

"**PG&E**" means Pacific Gas & Electric.

"**Specifications**" means the specifications with respect to a System, as set forth in this Contract and, once accepted, as provided in the applicable Design Submittal.

"**Substantial Completion**" means, with respect to each Increment, (a) each System in the applicable Increment is mechanically, electrically, and structurally constructed in accordance with this Contract (except for Punch List items) and functionally complete and capable of delivery of electrical energy to the Interconnection Point and (b) District has received the Permission to Operate Letter and/or Permission to Interconnect Letter from PG&E with respect to each System in such Increment.

"**System Acceptance**" means, with respect to an Increment, the date on which all Systems in such Increment have achieved Substantial Completion and all Punch List items, including, without limitation, delivery of as-builts,

operations and maintenance manuals and all other deliverables and completion of all testing and commissioning, have been completed.