

**Agreement for
Solar Photovoltaic Design-Build Services**

This AGREEMENT FOR SOLAR PHOTOVOLTAIC DESIGN-BUILD SERVICES ("Agreement") is made as of this 28th of October 2024, by and between the REDWOOD CITY SCHOOL DISTRICT, a California public school district ("District"), and HOLT Renewables, LLC, a Limited Liability Company registered to do business in California ("Contractor").

RECITALS

WHEREAS, the District approved the plan for Solar PV at 3150 Granger Way Site. ("Project Site").

WHEREAS, District desires to reduce its facilities' energy costs at the Project Site and improve the Project Site's facilities' energy quality, reliability, and efficiency by contracting to implement energy efficiency measures that enhance the District's energy and cost savings; and

WHEREAS, Contractor is a full-service design-build energy services firm with the technical capabilities to provide services to the District, including, but not limited to, energy efficiency consultation services, energy and energy system engineering, design, procurement, construction management, installation, construction, commissioning, training, monitoring, measurement and verification, and audit compliance services; and

WHEREAS, Government Code section 4217.12 authorizes a public agency to enter into an energy service contract with respect to an energy conservation facility on terms that the public agency's governing board determines are in the best interests of the public agency and if the governing board finds that the anticipated cost to the public agency for the energy provided by the energy conservation facility will be less than the anticipated marginal cost to the District of thermal, electrical or other energy that would have been consumed by the public agency in the absence of those purchases;

WHEREAS, the District is a public agency under the provision of Government Code section 4217.10 *et seq.* pertaining to energy service contracts; and

WHEREAS, the District has engaged in a process to select a qualified full-service design-build energy services firm based on several criteria, including, without limitation, firm qualifications and financial viability, experience working on energy efficiency projects and with school districts, and proposed scope of work and price; and

WHEREAS, the Parties intend to enter into this agreement as provided under those statutory guidelines; and

WHEREAS, Contractor was selected by the District by means of responses to the Request for Proposals ("RFP") for Solar PV dated June 6th, 2024.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, Contractor and the District each agree to the following:

AGREEMENT

- 1. Services.** Contractor shall furnish to the District the labor, equipment, material, and services as described in the Contract Documents, defined below in Section 6, including but not limited to **Exhibit "A"** ("System Descriptions"), **Exhibit "B"** ("Scope of Work"), **Exhibit "C"** ("Supplementary Criteria"), **Exhibit "D"** ("Design-Build Process And Submittal"), **Exhibit "E"** ("Solar Photovoltaic Canopy Structures"), **Exhibit "F"** ("General

Electrical”), **Exhibit “G”** (“Electric Vehicle Supply Equipment”), **Exhibit “H”** (“Photovoltaic System”), **Exhibit “I”** (“Site Details”), **Exhibit “J”** (“Registered Subcontractors List”).

2. In the event of a conflict or ambiguity relating to the system, the scope of Work, or District or Contractor’s obligations under this Agreement, the language of this Agreement, including Exhibits hereto, shall control, then the language of the District’s Request for Proposals for Solar PV Project (RFP) dated June 6, 2024.

2.1. The Work will be performed at the following location:

- 3150 Granger Way Site, 3150 Granger Way, Redwood City, 94061.

The location is referenced as a “Site” and the systems to be installed at the Site are referenced as “System.”

3. Term and Critical Dates.

3.1. Contractor shall commence providing Services under this Agreement upon the District’s issuance of a Notice to Proceed with Design Services and will diligently perform such Services as required and will achieve “Final Completion” of the Work no later than 12/23/2025.

3.1.1. “Final Completion” occurs when all Work has been completed to the satisfaction of the District. The Work may only be accepted as complete by action of the governing board of the District.

3.1.1.1. District, at its sole option, may accept completion of the Contract and have the Notice of completion record when the entire Work shall have been completed to the satisfaction of the District, except for minor corrective items, as distinguished from incomplete items.

3.1.1.2. If Contractor fails to complete all minor corrective items within fifteen (15) days of the date of the District’s acceptance of completion, District shall withhold from the final payment one hundred percent (100%) of an estimate of the amount sufficient to complete the corrective items, as determined by the District until the item(s) are corrected.

3.1.1.3. At the end of the 15-day period, if there are any items remaining to be corrected, District may elect to proceed as provided herein related to adjustments to Contract Price and/or District’s right to perform the Work of the Contractor.

3.2. Critical Dates

3.2.1. Contractor shall conclude all “Completion of Disruptive Activities” no later than 09/26/2025.

3.2.1.1. “Completion of Disruptive Activities” means: (a) that all Site access and Work which would unduly disrupt, delay, or prevent students’ and staff’s ability to get to and from school and/or into and out of classrooms; or which would disturb or interfere with the educational programs or other activities onsite by distraction or noise or environmental pollution; or which would jeopardize the safety of the students or staff, are wholly completed. Examples of Disruptive Activities include, but are not limited to underground

work, demolition work, backfill, compaction, paving and striping, erection of canopy structures, and physical installation of modules.

3.2.2. Contractor shall achieve "PTO Ready" status no later than 10/16/2025.

3.2.2.1. "PTO Ready" status means: (a) that the Work is wholly installed and operational such that all requirements for Permission to Operate ("PTO") from the local utility company have been completed; (b) Contractor's heavy equipment and vehicles are no longer on-site; (c) DSA has provided sign off on the Work sufficient to achieve PTO; and (d) that PTO has been formally requested from the local utility company. PTO Ready state does not constitute Final Completion, acceptance, or beneficial use or occupancy.

3.2.3. Contractor shall achieve a "Commercial Operation Date" no later than 10/30/2025, assuming the local utility company grants PTO within 30 days of Contractor's initial request.

"Commercial Operation Date" ("COD") means the date when the Work and the System: is commissioned and wholly operational, having received PTO from the local utility company, and is capable of being commercially operated. COD shall not constitute Final Completion, acceptance, or beneficial use or occupancy.

4. Liquidated Damages. Time is of the essence for all Work under this Agreement. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that the District will sustain in the event of and by reason of Contractor's delay; therefore, Contractor agrees that it shall pay to the District the sum of FIVE HUNDRED DOLLARS (\$500) per day as liquidated damages for each and every day's delay beyond the Critical Dates outlined in Section 3 are not achieved. Such Liquidated Damages shall be the sole measure of damages due to solely to delay. Any assessment of LDs shall be capped at a maximum of ten percent (10%) of the Contractor's total contract value.

It is hereby understood and agreed that this amount is not a penalty.

In the event any portion of the liquidated damages is not paid to the District, the District may deduct that amount from any money due or that may become due the Contractor under this Agreement, the District may seek recovery of Liquidated Damages from the Contractor's Performance Bond Surety and/or the District may seek recovery of Liquidated Damages from the Contractor or the Performance Bond Surety without having exhausted remedies against the other.

5. Contract Documents. The following documents comprise the "Contract Documents" for the Work under this Agreement:

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|--|--|
| <input checked="" type="checkbox"/> Signed Agreement | <input checked="" type="checkbox"/> Performance Bond |
| <input checked="" type="checkbox"/> Request for Proposals and all addenda | <input checked="" type="checkbox"/> Payment Bond |
| <input checked="" type="checkbox"/> Contractor Proposal in response to RFP | <input checked="" type="checkbox"/> Plans |
| <input checked="" type="checkbox"/> Notices to Proceed | <input checked="" type="checkbox"/> Project Schedule |
| <input checked="" type="checkbox"/> Prevailing Wage Certification | <input checked="" type="checkbox"/> Exhibit "A" ("System Descriptions") |
| <input checked="" type="checkbox"/> Workers' Compensation Certification | <input checked="" type="checkbox"/> Exhibit "B" ("Scope of Work") |
| <input checked="" type="checkbox"/> Drug-Free Workplace Certification | <input checked="" type="checkbox"/> Exhibit "C" ("Supplementary Criteria") |
| <input checked="" type="checkbox"/> Tobacco-Free Environment Certification | <input checked="" type="checkbox"/> Exhibit "D" ("Design-Build Process And Submittals") |
| <input checked="" type="checkbox"/> Fingerprinting/Criminal Background Investigation Certification | <input checked="" type="checkbox"/> Exhibit "E" ("Solar Photovoltaic Canopy Structures") |
| <input checked="" type="checkbox"/> Asbestos & Other Hazardous Materials Certification | <input checked="" type="checkbox"/> Exhibit "F" ("General Electrical Specifications") |
| <input checked="" type="checkbox"/> Lead-Product(s) Certification | <input checked="" type="checkbox"/> Exhibit "G" ("Electric Vehicle Supply Equipment") |
| <input checked="" type="checkbox"/> Iran Contracting Act Certification | <input checked="" type="checkbox"/> Exhibit "H" ("Photovoltaic System") |
| <input checked="" type="checkbox"/> Off-Road Diesel-Fueled Fleet Certification | <input checked="" type="checkbox"/> Exhibit "I" ("Site Details") |
| <input checked="" type="checkbox"/> Insurance Certificates and Endorsements | <input checked="" type="checkbox"/> Exhibit "J" ("Registered Subcontractors List") |

The complete Agreement consists of all Contract Documents as defined above and incorporated herein by this reference. Any and all obligations of the District and Contractor are fully set forth and described in the Contract Documents. All Contract Documents are intended to cooperate so that any Work called for in one and not mentioned in the other or vice versa is to be executed the same as if mentioned in all Contract Documents.

Should any question arise concerning the intent or meaning of Contract Documents, including the Drawings or Specifications, the question shall be submitted to the District for interpretation. If a conflict exists in the Contract Documents, modifications, beginning with the most recent, shall control over this Agreement (if any). In no case shall a document calling for lower quality and/or quantity material or workmanship control. The decision of the District in the matter shall be final.

6. Submittal of Contract Documents. Those documents identified in the Notice of Award shall be presented to the District for approval within ten (10) business days after execution of the Agreement. Contractor shall not commence the Work under this Agreement until the Contractor has submitted and the District has approved the performance bond, payment (labor and material) bond, the certificate(s) and affidavit(s), and the endorsement(s) of insurance required and the District issues the Notice to Proceed with Services.

7. District Project Inspector. The project inspector on the Project is [To Be Determined] ("District Project Inspector"). Contractor hereby acknowledges that the Construction Manager, the Project Inspector, and the Division of the State Architect

("DSA") have authority to approve and/or stop Work if the Contractor's Work does not comply with the requirements of the Contract Documents, Title 24 of the California Code of Regulations, and all applicable laws. No work shall be carried on except with the knowledge and under the inspection of said Project Inspector. Project Inspector shall have free access to any or all parts of work at any time. Contractor shall furnish Project Inspector reasonable opportunities for obtaining such information as may be necessary to keep Project Inspector fully informed respecting progress, manner of work, and character of materials. The Contractor shall be liable for any delay caused by its non-compliant Work or its failure to provide proper notification for inspection.

Inspection and acceptance of the Work shall be performed by Martin Cervantes, Director of Facilities, upon the recommendation of the District Project Consultant, and Inspector of Record.

- 8. Compensation.** As compensation for the Work, the District shall pay to the Contractor an amount not to exceed Five Hundred Seventy-Five Thousand Seven Hundred Fifty-Three **Dollars (\$575,753.00)** ("Total Contract Price") allocated by Project Scope as follows:

Project Scope	Scope-Specific Compensation Not To Exceed
Solar PV System	Five Hundred Seventy-Five Thousand Seven Hundred Fifty-Three Dollars (\$575,753.00)
EVSE [If Applicable]	[SPELL OUT AMOUNT] Dollars (\$_____)

- 8.1.** The Total Contract Price and Scope-Specific Compensation shall not be increased without the express approval of the District's governing board.

- 9. Expenses.** District shall not be liable to Contractor for any unapproved costs or expenses paid or incurred by Contractor in performing Services for District and such approval shall not be unreasonably withheld.

- 10. Payment.** On a monthly basis, Contractor shall submit an application for payment based upon the estimated value for materials delivered or services performed under the Agreement as of the date of submission pursuant to a separate schedule of values to be agreed upon by the Parties for each Project Site ("Application for Payment"); each Payment Application shall include a separate schedule of values for each Project Site and site-specific backup documentation necessary to substantiate the total amount claimed in the Payment Application. Within thirty (30) days after District's approval of the Application for Payment, Contractor shall be paid a sum equal to ninety-five percent (95%) of the value of the Work performed (as verified by the District's designated representative and Inspector and certified by Contractor) up to the last day of the previous month, less the aggregate of previous payments and amount to be withheld. The District upon written notice may deduct from any payment an amount necessary to protect the District from loss because of: (a) any sums expended by the District in performing any of Contractor's obligations under the Agreement which Contractor has failed to perform or has performed inadequately; (b) defective Work not remedied; (c) stop payment notices as allowed by state law; (d) reasonable doubt that the Work can be completed for the unpaid balance of the Total Contract Price or by the scheduled completion date; (e) unsatisfactory prosecution of the Work by Contractor; (f) unauthorized deviations from the Agreement; (g) failure of the Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Agreement or by the District during the prosecution of the Work; (h) erroneous or false estimates by the Contractor of the value of the Work

performed; (i) cost of purchasing additional insurance due to Contractor's failure to maintain the required insurance coverage set forth herein; (j) any sums representing expenses, losses, or damages, as reasonably determined by the District, incurred by the District for which Contractor is liable under the Agreement; and (k) any other sums which the District is entitled to recover from Contractor under the terms of the Agreement or pursuant to state law, including section 1727 of the Labor Code. The failure by the District to deduct any of these sums from a progress payment shall not constitute a waiver of the District's right to such sums. The District shall retain 5% from all amounts owing as retention. Retention shall be paid pursuant to Public Contract Code sections 7107, 7200 and 7201.

10.1. Final Payment. Upon receipt and approval of a valid and final Application for Payment, the District will issue a final Certificate of Payment. The District shall thereupon jointly inspect the Work and either accept the Work as complete or notify Contractor in writing of reasons why the Work is not complete. Upon acceptance of the Work of the Contractor as fully complete by the Governing Board of the District (that, absent unusual circumstances, will occur when the Punch List items have been satisfactorily completed), the District shall record a Notice of Completion with the County Recorder, and the Contractor shall, upon receipt of final payment from the District, pay the amount due Subcontractors.

10.2. Prerequisites for Final Payment

The following conditions must be fulfilled prior to Final Payment:

10.2.1. A full release of all Stop Payment Notices served in connection with the Work shall be submitted by Contractor.

10.2.2. A duly completed and executed conditional waiver and release upon final payment compliant with Civil Code section 8136, from the Contractor and each subcontractor of any tier and supplier to be paid from the final payment.

10.2.3. A duly completed and executed unconditional waiver and release upon progress payment compliant with Civil Code section 8134, from the Contractor and each subcontractor of any tier and supplier that was paid from the previous progress payments.

10.2.4. A duly completed and executed "AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS" from the Contractor on the form provided by District.

10.2.5. The Contractor shall have made all corrections to the Work that are required to remedy any defects therein, to obtain compliance with the Contract Documents or any requirements of applicable codes and ordinances, or to fulfill any of the orders or directions of District required under the Contract Documents.

10.2.6. Each Subcontractor shall have delivered to the Contractor all written guarantees, warranties, applications, and bonds required by the Contract Documents for its portion of the Work.

10.2.7. Contractor must have completed all requirements set forth in this Agreement and the exhibits hereto, including without limitation, Exhibit B and Exhibit E.

10.2.8. District or its authorized representative shall have issued its written approval that final payment can be made.

10.2.9. The Contractor shall have delivered to the District all manuals and materials required by the Contract Documents, which must be approved by the District.

10.2.10. The Contractor shall have completed final clean-up as provided herein.

10.3. Retention

10.3.1. The retention, less any amounts disputed by the District or that the District has the right to withhold pursuant to provisions herein, shall be paid:

10.3.1.1. After approval by the District or its authorized representative of the Application and Certificate of Payment,

10.3.1.2. After the satisfaction of the conditions set forth herein, and

10.3.1.3. After forty-five (45) days after the recording of the Notice of Completion by District.

10.3.2. No interest shall be paid on any retention, or on any amounts withheld due to a failure of the Contractor to perform, in accordance with the terms and conditions of the Contract Documents, except as provided to the contrary in any Escrow Agreement between the District and the Contractor pursuant to Public Contract Code section 22300.

11. Independent Contractor. Contractor represents and warrants that Contractor is an independent contractor or business entity that is: (i) free from the control and direction of the District in connection with the performance of the Services, (ii) performing Services that are outside the usual course of the District's business, and (iii) customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the Services performed, District being interested only in the results obtained. Contractor understands and agrees that he and all of his employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Contractor's employees. Contractor 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.

12. Licensing. Contractor certifies that the design professional is properly certified or licensed under the laws and regulations of the State of California to provide the professional services that it has herein agreed to perform. Contractor and all Subcontractors shall be properly licensed and regulated by the Contractors State License Board throughout the duration of the Work. Contractor hereby acknowledges that it or its subcontractors performing the work hold valid B Classification Contractor's license.

13. Registration as Public Works Contractor: Contractor and all Subcontractors currently are registered as public works contractors with the Department of Industrial Relations, State of California, in accordance with Labor Code section 1771.4.

13.1. Submission Of Updated Registered Subcontractors List. Contractor further acknowledges and agrees that it shall timely submit updated Registered Subcontractors List, attached hereto as Exhibit "I," and as detailed further therein.

14. [RESERVED]

15. [RESERVED]

16. [RESERVED]

17. Standard of Care. Contractor's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of the industry and all applicable law, including the applicable provisions of California Code of Regulations, Title 24, the requirements of the DSA, and any applicable District Design Guides and Technical Specifications. Contractor represents and warrants that it is fully experienced in projects of the nature and scope of Work, and that it is properly qualified, licensed and equipped to supply and perform the Work. The Work completed herein must meet the approval of the District and shall be subject to District's general right of inspection and supervision to secure the satisfactory completion thereof.

18. Originality of Services. Contractor agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Contractor and shall not be copied in whole or in part from any other source, except that submitted to Contractor by District as a basis for such services.

19. Ownership of Data. Pursuant to Education Code section 17316, this Agreement creates a non-exclusive and perpetual license for the District to use, at its discretion, all plans including, but not limited to, record drawings, specifications, estimates and other documents that Contractor prepared or cause to be prepared pursuant to this Agreement. Contractor retains all rights to all copyrights over designs and other intellectual property embodied in the plans, record drawings, specifications, estimates, and other documents that Contractor prepares or cause to be prepared pursuant to this Agreement.

In the event the District changes or uses any fully or partially completed documents without Contractor's knowledge or participation or both, the District agrees to release Contractor of responsibility for such changes or use and shall hold Contractor harmless from and against any and all claims on account of any damages or losses to property or persons, or economic losses, arising out of that change or use. In the event that the District uses any fully or partially completed documents without the Contractor's full involvement, the District shall remove all title blocks and other information that might identify Contractor.

20. Notice to Proceed with Design. The District shall provide a Notice to Proceed with Design to Contractor at which time Contractor shall proceed with the applicable Work.

21. Notice to Proceed with Construction. After the design of the energy efficiency measures is approved by the District and by DSA, the District shall provide a Notice to Proceed to Contractor at which time Contractor shall proceed with the applicable Work.

22. Site Examination. Contractor has examined the Site and certifies that it accepts all measurements, specifications and visually apparent conditions affecting the Work to be performed at the Site. By submitting its quote, Contractor 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 Contractor's ability to protect existing surface and subsurface improvements. No claim for allowance of time or money will be allowed as to any other undiscovered condition on the Site after the completion of due diligence during the design phase or the Notice to Proceed with Construction, whichever is later.

23. Materials. Contractor shall furnish, at his own expense, all labor, materials, equipment, supplies and other items necessary to complete the Services to be provided pursuant to this Agreement. Contractor shall use all new components (photovoltaic panels and inverters) that have not been previously placed in service in any other location or for any other application. Rebuilt, refurbished, or relocated equipment is not acceptable under this Agreement.

23.1. Anti-Trust Claim. Contractor and its subcontractor(s) agree to assign to the District all rights, title, and interest in and to all causes of action they may have under section 4 of 15 U.S.C. Title 15 or under the Cartwright Act (commencing with section 16700 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Agreement or a subcontract. This assignment shall be made and become effective at the time the District tenders final payment to the Contractor, without further acknowledgment by the parties.

23.2. Substitutions. No substitutions of material from those specified in the Work Specifications shall be made without the prior written approval of the District.

23.3. Codes, Standards, and Methodologies. All products and components outlined in this Agreement must conform to all applicable codes, standards, and rating methodologies, including, without limitation, all applicable building and electrical codes.

23.4. [RESERVED]

23.5. [RESERVED]

24. Equipment and Labor. Contractor 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 Work specifications attached hereto.

25. Warranty/Quality. Unless a longer warranty is called for below, or elsewhere in this Agreement, the Contractor, manufacturer, or their assigned agents shall guarantee the workmanship, product or service performed against defective workmanship, defects or failures of materials for a period of one (1) year from filing the Notice of Completion with the county in which the Project is located. All workmanship and merchandise must be warranted to be in compliance with applicable California energy, conservation, environmental, and educational standards.

25.1. Contractor shall provide the following warranties, at a minimum:

- 25.1.1.** Any warranty required to qualify the PV System for NEM 2.0
- 25.1.2.** 5-year complete PV System warranty
- 25.1.3.** 25-year PV panel warranty
- 25.1.4.** 10-year inverter warranty
- 25.1.5.** 10-year roof and building penetration warranty

25.2. Contractor shall provide a copy of the installation and product warranties prior to installation. Upon completion of the Project, Contractor shall transfer and convey to the District, all warranty documentation and shall assist the District in completing any warranty or submittal forms which are required in order to effectuate coverage of the warranties required herein and all my otherwise be available to the District.

26. Correction of Errors. Contractor shall perform, at its own cost and expense and without reimbursement from the District, any work necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care required herein. Notwithstanding the expiration of the warranty period, Contractor may still have liability to District as allowed under California law for breach of the standard of care, or any latent or patent defect pursuant to California Code of Civil Procedure §§337.1 and 337.15.

27. Trench Shoring. If this Agreement is in excess of \$25,000 and is for the excavation of any trench deeper than five (5) feet, Contractor must submit and obtain District 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, the plan shall be prepared by a registered civil or structural engineer.

28. Excavations Over Four Feet. If this Agreement includes excavations over four (4) feet, Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any: (a) material that the Contractor 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; (b) subsurface or latent physical conditions at the site differing from those indicated; or (c) 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 Agreement. The District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work shall issue a change order under the procedures described in the Agreement. In the event that a dispute arises between the District and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Agreement, but shall proceed with all Work to be performed under the Agreement. Contractor shall retain any and all rights provided either by the Agreement or by law which pertain to the resolution of disputes and protests between the contracting parties.

29. 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. Contractor must execute the Lead- Based Paint Certification, if applicable.

30. Change in Scope of Work. Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted unless such change, addition, or deletion is approved in advance and in writing by a valid change order executed by the District and Contractor. Contractor specifically understands, acknowledges, and agrees that the District shall have the right to request any alterations, deviations, reductions, or additions to the Project and the cost thereof shall be added to

or deducted from the amount of the Total Contract Price by fair and reasonable valuations. Contractor also agrees to provide the District with all information requested to substantiate the cost of the change order and to inform the District whether the Work will be done by the Contractor or a subcontractor. In addition to any other information requested, Contractor shall submit, prior to approval of the change order, its request for a time extension (if any), as well as all information necessary to substantiate its belief that such change will delay the completion of the Work. If Contractor fails to submit its request for a time extension or the necessary supporting information, it shall be deemed to have waived its right to request such extension.

30.1. Labor. Contractor shall be compensated for the costs of labor actually and directly utilized in the performance of the Work. Such labor costs shall be the actual cost, use of any formulas (e.g. labor factors) is not allowed, not to exceed prevailing wage rates established by the bid advertisement date or when the Contract was awarded, whichever is applicable, in the locality of the Site and shall be in the labor classification(s) necessary for the performance of the Work, fully Burdened. Labor costs shall exclude costs incurred by the Contractor in preparing estimate(s) of the costs of the change in the Work, in the maintenance of records relating to the costs of the change in the Work, coordination and assembly of materials and information relating to the change in the Work or performance thereof, or the supervision and other overhead and general conditions costs associated with the change in the Work or performance thereof, including but not limited to the cost for the job superintendent. If applicable, District will pay Contractor the reasonable costs for room and board, supported with appropriate backup documentation, without markup for profit or overhead as provided by U.S. General Services Administration per diem rates for California lodging, meals and incidentals, <https://www.gsa.gov/travel/plan-book/per-diem-rates/per-diem-rates-lookup>.

30.2. Materials. Contractor shall be compensated for the costs of materials necessarily and actually used or consumed in connection with the performance of the change in the Work. Costs of materials may include reasonable costs of transportation from a source closest to the Site of the Work and delivery to the Site. If discounts by material suppliers are available for materials necessarily used in the performance of the change in the Work, they shall be credited to the District. If materials necessarily used in the performance of the change in the Work are obtained from a supplier or source owned in whole or in part by the Contractor, compensation therefor shall not exceed the current wholesale price for such materials. If, in the reasonable opinion of the District, the costs asserted by the Contractor for materials in connection with any change in the Work are excessive, or if the Contractor fails to provide satisfactory evidence of the actual costs of such materials from its supplier or vendor of the same, the costs of such materials and the District's obligation to pay for the same shall be limited to the then lowest wholesale price at which similar materials are available in the quantities required to perform the change in the Work. The District may elect to furnish materials for the change in the Work, in which event the Contractor shall not be compensated for the costs of furnishing such materials or any mark-up thereon.

30.3. Equipment. As a precondition to the District's duty to pay for Equipment rental or loading and transportation, Contractor shall provide satisfactory evidence of the actual costs of Equipment from the supplier, vendor or rental agency of same. Contractor shall be compensated for the actual cost of the necessary and direct use of Equipment in the performance of the change in the Work. Use of such Equipment in the performance of the change in the Work shall be compensated in increments of fifteen (15) minutes. Rental time for Equipment moved by its own power shall include time required to move such Equipment to the site of the Work from the

nearest available rental source of the same. If Equipment is not moved to the Site by its own power, Contractor will be compensated for the loading and transportation costs in lieu of rental time. The foregoing notwithstanding, neither moving time or loading and transportation time shall be allowed if the Equipment is used for performance of any portion of the Work other than the change in the Work. Unless prior approval in writing is obtained by the Contractor from the Architect, the Project Inspector and the District, no costs or compensation shall be allowed for time while Construction Equipment is inoperative, idle or on standby, for any reason. Contractor shall not be entitled to an allowance or any other compensation for Equipment or tools used in the performance of change in the Work where such Equipment or tools have a replacement value of \$500.00 or less. Equipment costs claimed by the Contractor in connection with the performance of any Work shall not exceed rental rates established by distributors or construction equipment rental agencies in the locality of the Site; any costs asserted which exceed such rental rates shall not be allowed or paid. Unless otherwise specifically approved in writing by the Architect, the Project Inspector and the District, the allowable rate for the use of Equipment in connection with the Work shall constitute full compensation to the Contractor for the cost of rental, fuel, power, oil, lubrication, supplies, necessary attachments, repairs or maintenance of any kind, depreciation, storage, insurance, labor (exclusive of labor costs of the Equipment operator), and any and all other costs incurred by the Contractor incidental to the use of such Equipment.

30.4. General Conditions Cost. The phrase "General Conditions Cost" shall mean, other than expressly limited or excluded herein, the costs of Contractor during the construction phase, including but not limited to: payroll costs for project manager for Work conducted at the Site, payroll costs for the superintendent and full-time general foremen, workers not included as direct labor costs engaged in support functions (e.g., loading/unloading, clean-up), costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses, utilities, fuel, sanitary facilities and telephone services at the Site, costs of consultants not in the direct employ of Contractor or Subcontractors, and fees for permits and licenses.

30.5. Overhead and Profit. The phrase "Overhead and Profit" shall include field and office supervisors and assistants, watchperson, use of small tools, consumable, insurance other than construction bonds and insurance required herein, general conditions costs and home office expenses.

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For all approved changes in the scope of work that result in a net increase in costs to Contractor, the following format shall be used, supported by attached documentation.

	WORK PERFORMED BY OTHER THAN CONTRACTOR:	ADD:
(a)	Material (attach itemized quantity & unit cost plus sales tax)	\$
(b)	Add Labor (attach itemized hours & rates, fully Burdened, and specify the hourly rate for each additional labor burden, e.g. payroll taxes, fringe benefit, etc.)	\$
(c)	Add Equipment (attach suppliers' invoice)	\$
(d)	Subtotal	\$
(e)	Add Overhead and Profit for any and all tiers of subcontractor, the total not to exceed 10% of item (d)	\$
(f)	Subtotal	\$
(g)	Add General Condition Cost (if Time is Compensable) (attach supporting documentation)	\$
(h)	Subtotal	\$
(i)	Add Overhead and Profit for Contractor, not to exceed 5% of Item (h)	\$
(j)	Subtotal	\$
(k)	Add Bond and Insurance, not to exceed 2.5% of Item (j)	\$
(l)	<u>TOTAL</u>	\$
(m)	Time (zero unless indicated; "TBD" not permitted)	___ Days

	WORK PERFORMED BY CONTRACTOR:	ADD:
(a)	Material (attach itemized quantity & unit cost plus sales tax)	
(b)	Add Labor (attach itemized hours & rates, fully encumbered)	
(c)	Add Equipment (attach suppliers' invoice)	
(d)	Add General Conditions Cost (if Time is Compensable) (attach supporting documentation)	
(e)	Subtotal	
(f)	Add Overhead and Profit for Contractor, not to exceed 15% of item (e).	
(g)	Subtotal	
(h)	Add Bond and Insurance, not to exceed 2.5% of Item (g)	
(i)	<u>TOTAL</u>	
(j)	Time (zero unless indicated; "TBD" not permitted)	___ Days

All deductive Change Order(s) must be prepared pursuant to the provisions herein. Where a portion of the Work is deleted from the scope of Work, the reasonable value of the deducted Work less the value of Work performed shall be considered the appropriate deduction. The amount submitted on the Application for Payment shall be used to calculate the credit amount unless the bid documentation is being held in escrow as part of the Contract Documents. Unit Prices, if any, may be used in District's discretion in calculating reasonable value. If Contractor offers a proposed amount for a deductive Change Order(s), Contractor shall include a minimum of five percent (5%) total profit and overhead to be deducted with the amount of the Work of the Change Order(s). If subcontractor work is involved, subcontractors shall also include a minimum of five percent (5%) profit and overhead to be deducted with the amount of its deducted work. Any deviation from this provision shall not be allowed.

- 31. Workers.** Contractor 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. The District may evaluate the Contractor in any manner which is permissible under the law. Any person in the employ of the Contractor or a subcontractor whom the District may deem incompetent or unfit shall be dismissed from the Project and shall not again be employed at Project without written consent from the District.
- 32. Contractor Supervision.** Contractor shall provide competent supervision of personnel employed on the job Site, use of equipment, and quality of workmanship.
- 33. Fingerprinting of Employees.** Pursuant to Education Code section 45125.2, District has determined, on the basis of scope of Work in this Agreement of this Project, that Contractor, subcontractors, and their employees will have only limited contact with pupils at most. Contractor shall promptly notify District in writing of any facts or circumstances which might reasonably lead District to determine that contact will be more than limited as defined by Education Code section 45125.1(d). If Contractor will have contact with any pupils, Contractor shall comply with the provisions of Education Code section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. Contractor shall not permit any employee to have any contact with District pupils until such time as the Contractor has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. Contractor's responsibility shall extend to all employees, subcontractors, agents, and employees or agents of subcontractors regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Contractor. Verification of compliance with this section and the Criminal Background Investigation Certification that may be required with this Agreement, shall be provided in writing to the District prior to each individual's commencement of employment or performing any portion of the Work and prior to permitting contact with any student.
- 34. Employee Identification.** At all times during the Project, while on District property, Contractor, and all of its individual employees, agents, consultants, suppliers and subcontractors shall wear a name badge with their name clearly written as well as the firm with whom they are employed. Contractor shall ensure that only those necessary individual employees, agents, consultants, suppliers and subcontractors possess the name badge and shall collect the name badge from its individual employees, agents, consultants, suppliers and subcontractors once their work has been completed.
- 35. Safety and Security.** Contractor is responsible for maintaining safety in the performance of this Agreement. Contractor 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.
- 36. Clean Up.** Debris shall be removed from the Site(s). The Site(s) shall be in order at all times when work is not actually being performed and shall be maintained in a reasonably clean condition.
- 37. Access to Work.** District representatives shall at all times have access to the Work wherever it is in preparation or in progress. Contractor shall provide safe and proper facilities for such access.
- 38. Protection of Work and Property.** Contractor 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, Contractor, without special instruction or authorization from District, is permitted to act at his discretion to prevent such threatened loss or injury.

39. Occupancy. District reserves the right to occupy the Site at any time before formal completion and such occupancy shall not constitute final acceptance or approval of any part of the Work covered by this Agreement, nor shall such occupancy extend the date specified for completion of the Work.

40. Continuous Electrical Service While School in Session. Contractor shall ensure that school facilities are not without power at any time while school or school-related activities are in session. All work must be closely coordinated with operations staff at the District to ensure continuity of service while the school facilities are in use.

41. Force Majeure. "Force Majeure" means any event or circumstance unknown at the time of contracting that is beyond the parties' control and makes performance of the contract impractical or impossible. The Party seeking to have its performance obligation(s) excused must demonstrate that there was such an insuperable interference occurring without the party's intervention as could not have been prevented by the exercise of prudence, diligence, and care, by providing prompt notice to the other Party, including full particulars of such event, of its inability to perform its obligations due to such event, following commencement of the claiming Party's inability to so perform its obligations. To the extent satisfying these conditions, Force Majeure events include the following: acts of God, war, civil unrest, epidemic, fire, smoke, volcanic eruption, earthquake, strike, unusually severe weather, flood, or shortage of transportation facilities, lock out, or commandeering of materials, product, plant, or facilities by the government. Force Majeure shall not be based on a Party's financial inability to perform under this Agreement unless there exists extreme and unreasonable difficulty, expense, injury, or loss involved. A Force Majeure event does not include an act of negligence or intentional wrongdoing by a Party. Any Party claiming a Force Majeure event shall use reasonable diligence to remove the condition that prevents performance and shall not be entitled to suspend performance of its obligations in any greater scope or for any longer duration than is required by the Force Majeure event. Each Party shall use its best efforts to mitigate the effects of such Force Majeure event, remedy its inability to perform, and resume full performance of its obligations hereunder.

42. Termination.

42.1. For Convenience by District. District may, at any time, with or without reason, terminate this Agreement and compensate Contractor only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Contractor. Notice shall be deemed given when received by the Contractor or no later than three (3) days after the day of mailing, whichever is sooner. In the event that District terminates this Agreement pursuant to this section, District shall compensate Contractor for work completed to date as a pro-rata amount of the full fees, costs, and expenses.

42.2. With Cause by District. District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

42.2.1. material violation of this Agreement by the Contractor; or

42.2.2. any act by Contractor exposing the District to liability to others for personal injury or property damage; or

42.2.3. Contractor is adjudged bankrupt, Contractor makes a general assignment for the benefit of creditors or a receiver is appointed on account of Contractor's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and unless within five (5) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the five (5) calendar days cease and terminate. In the event of this termination, the District may secure the required services from another Contractor. If the expense, fees, and costs to the District exceed the cost of providing the Service pursuant to this Agreement, Contractor shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expenses, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

42.3. Upon termination, Contractor shall provide the District with all documents produced maintained or collected by Contractor pursuant to this Agreement, whether or not such documents are final or draft documents.

43. Indemnification. To the furthest extent permitted by California law, Contractor shall indemnify and hold harmless the District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (the "Indemnified Parties") from any and all claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the Contractor. Contractor shall also, to the furthest extent permitted by California law, defend the Indemnified Parties at Contractor's own expense, including attorneys' fees and costs, from any and all Claim(s) and allegations relating thereto. The District shall have the right to accept or reject any legal representation that Contractor proposes to defend the indemnified parties. Such indemnity and defense obligations shall not apply to the active negligence or willful misconduct of District or others under their control.

44. Insurance.

44.1. The Contractor shall procure and maintain at all times it performs any portion of the Services the following insurance:

44.1.1. General Liability. One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate for bodily injury, personal injury and property damage in the form of Comprehensive General Liability and Contractual Liability. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to each project/location or the general aggregate limit shall be twice the required occurrence limit.

44.1.2. Automobile Liability Insurance. One Hundred Thousand Dollars (\$100,000) per person, Three Hundred Thousand Dollars (\$300,000) per accident, Fifty Thousand Dollars (\$50,000) in property damage, or One Million Dollars (\$1,000,000) combined single limit for any automobile that shall protect the Contractor and the District from all claims of bodily injury, property damage, personal injury, death, and medical payments arising performing any portion of the Services by Contractor.

44.1.3. Workers' Compensation and Employers' Liability Insurance. For all of the Contractor's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, Contractor shall keep

in full force and effect, a Workers' Compensation policy. That policy shall provide employers' liability coverage with minimum liability coverage of One Million Dollars (\$1,000,000) per accident for bodily injury or disease. Contractor shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.

44.1.4. Professional Liability (Errors and Omissions). Five Million Dollars (\$5,000,000) aggregate for errors and omissions as appropriate to profession of engineer designing energy efficiency measures, coverage to continue through completion of construction plus two (2) years thereafter.

44.1.5. Builder's Risk Insurance. On a replacement cost value basis, Contractor shall procure and maintain, during the life of this Agreement, Builder's Risk (Course of Construction), or similar first party property coverage to insure against all risks of accidental physical loss and shall include without limitation the perils of vandalism and/or malicious mischief (both without any limitation regarding vacancy or occupancy), sprinkler leakage, civil authority, theft, sonic disturbance, earthquake, flood, collapse, wind, fire, war, terrorism, lightning, smoke, and rioting. Coverage shall include debris removal, demolition, increased costs due to enforcement of all applicable ordinances and/or laws in the repair and replacement of damaged and undamaged portions of the property, and reasonable costs for engineering services and expenses required as a result of any insured loss upon the Work and Project, including completed Work and Work in progress, to the full insurable value thereof.

44.1.6. Umbrella or Excess Liability. Four Million Dollars (\$4,000,000) per occurrence to meet the policy limit requirements of the required policies if Contractor's underlying policy limits are less than required. There shall be no gap between the per occurrence amount of any underlying policy and the start of the coverage under the Umbrella Liability Insurance Policy. Any Umbrella Liability Insurance Policy shall protect Contractor, District, State, and Project Manager(s) in amounts, and that complies with all requirements for Commercial General Liability and Automobile Liability and Employers' Liability Insurance.

44.1.7. Other Insurance Provisions: The policies are to contain, or be endorsed to contain, the following provisions:

44.1.7.1. For the general liability and automobile liability policies:

44.1.7.1.1. The District, their representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered as additional insureds with respect to liability arising out of activities performed by or on behalf of Contractor; instruments of Service and completed operations of the Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.

44.1.7.1.2. For any claims related to the projects, Contractor's insurance coverage shall be primary insurance with respect to the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of the Contractor's insurance and shall not contribute with it.

44.1.7.1.3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.

44.1.7.2. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

44.1.7.3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either Party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.

44.1.7.4. Contractor shall furnish the District with Certificates of Insurance showing maintenance of the required insurance coverage and original endorsements affecting coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before Work commences. Contractor must provide updates on the insurance coverage throughout the term of the Agreement to ensure that there is no break in coverage during the performance of the Work. Failure to provide evidence of current coverage shall be grounds for termination for breach of contract.

44.1.8. 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.

45. Payment Bond and Performance Bond. Contractor 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 One Hundred Percent (100%) of the Total Contract Price issued by a surety admitted to issue bonds in the State of California and otherwise acceptable to the District.

46. Permits and Licenses. Contractor and all Contractor's employees or agents shall secure and maintain in force, at Contractor's sole cost and expense, such permits, licenses and registrations as are required by law in connection with the furnishing of materials, supplies, or services pursuant to this Agreement. Contractor is responsible for obtaining, on behalf of District and at Contractor's expense, permits and approvals (including CEC and DSA approval) required for the building, installation, and start-up of the Work hereunder which are required to complete the Project, and District shall provide reasonable assistance to Contractor regarding the same. District shall hire and pay for all inspectors, including DSA and other special inspectors, however, if Contractor requires overtime inspections, including but not limited to acceleration of the Work, Contractor

shall reimburse District for overtime and/or additional fees and expenses for inspectors, including DSA and other special inspectors.

47. Assignment. The rights, burdens, duties, or obligations of Contractor pursuant to this Agreement shall not be assigned by the Contractor without the prior written consent of the District.

48. Subcontractors. Subcontractors, if any, engaged by the Contractor for any Service or Work under this Agreement shall be subject to the approval of the District. Contractor agrees to bind every subcontractor by the terms of the Agreement as far as such terms are applicable to subcontractor's work, including, without limitation, all indemnification, insurance, bond, and warranty requirements. If Contractor shall subcontract any part of this Agreement, Contractor shall be fully responsible to the District for acts and omissions of its subcontractor(s) and of persons either directly or indirectly employed by it. Nothing contained in this Agreement shall create any contractual relations between any subcontractor and the District.

48.1. Prompt Payment of Subcontractors. Contractor will promptly pay, when due, all amounts payable for labor and materials furnished in the performance of the Agreement and will endeavor to prevent any lien or other claim under any provision of Applicable Law from arising against any District property, against Contractor's rights to payments hereunder, or against District.

49. Compliance with Laws. Contractor 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. Contractor shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Contractor observes that any of the Work required by this Agreement is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify the District, in writing, and any necessary changes to the scope of the Work shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Contractor shall bear all costs arising therefrom.

49.1. Contractor hereby acknowledges that the District's Project Consultant(s), the Project Inspector(s), and the Division of the State Architect have authority to approve and/or stop Work if the Contractor's Work does not comply with the requirements of the Contract Documents, Title 24 of the California Code of Regulations, and all applicable laws. Contractor shall be liable for any delay caused by its non-compliant Work.

49.2. Labor Code Requirements. Contractor shall familiarize itself with and comply with all applicable provisions of the Labor Code, sections 1720 through 1861. Contractor and its subcontractors shall pay all workers on all work performed not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the Department of Industrial Relations ("DIR") for the type of work performed and the locality in which the Work is to be performed within the boundaries of the Redwood City School District, pursuant to sections 1770, et seq., of the California Labor Code. In performing the Work, Contractor and its subcontractors shall comply with all applicable provisions of Division 2, Part 7, Chapter 1, of the California Labor Code and Title 8 of the California Code of Regulations, including, without limitation, the requirement that the contractor and all of its subcontractors shall maintain timely, complete, and accurate electronic certified payroll records as set forth herein. Contractor and its

subcontractors shall complete and submit the Prevailing Wage and Related Labor Requirements Certification attached hereto, and Contractor shall provide a copy of the Certification(s) to District prior to commencement of the Work. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts.

49.2.1. Certified Payroll Records. Contractor and its subcontractor(s) shall keep accurate certified payroll records ("CPRs") of workers and shall electronically submit certified payroll records directly to the Labor Commissioner using DIR's eCPR System by uploading the CPRs by electronic XML file or entering each record manually using the DIR's iForm (or current form) online on a weekly basis and within ten (10) days of any request by the District or the Labor Commissioner. (See <http://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html>).

49.2.2. Labor Compliance: Contractor shall perform the Work of the Project while complying with all the applicable regulations, including section 16000, et seq., of Title 8 of the California Code of Regulations and is subject to labor compliance monitoring and enforcement by the Department of Industrial Relations.

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51. Audit. Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Agreement. Contractor shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter. Contractor shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents.

52. 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, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decision-making, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of any person and therefore the Contractor 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. In addition, the Contractor agrees to require like compliance by all its subcontractors.

53. Environmental Attributes and 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. This ownership includes without limitation, all rights, credits (including tax credits), rebates, reporting rights, 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 energy efficiency measures and Project.

54. Limitation of District Liability. Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this 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 Agreement for the services performed in connection with this Agreement.

55. Confidentiality. Contractor and all Contractor's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services to the extent allowed by law. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

56. Claims & Disputes. In the event of any demand by Contractor for (A) a time extension, including, without limitation, for relief from damages or penalties for delay assessed by the District under the Agreement, (B) payment by the District of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Agreement and payment of which is not otherwise expressly provided for or to which Contractor is not otherwise entitled to, or (C) an amount of payment disputed by the District, the parties shall attempt to resolve the dispute by those procedures set forth in Public Contract Code section 9204 and/or Article 1.5 (commencing with section 20104) of Chapter 1, Part, 3, Division 2, of the Public Contract Code, if applicable, the provisions of which are each attached hereto and incorporated herein by this reference. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, the Contractor shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Contractor's right to bring a civil action against the District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the Contractor submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process. Pending resolution of the dispute, Contractor and its subcontractors shall continue to perform the Work under the Agreement and shall not cause a delay of the Work during any dispute, claim, negotiation, mediation, or arbitration proceeding, except by written agreement of the District.

57. Attorney Fees and Costs. Should litigation be necessary to enforce any terms or provisions of this Agreement, then each Party shall bear its own litigation and collection expenses, witness fees, court costs, and attorney's fees.

58. Notice. Any notice required or permitted to be given under this Agreement 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 email, addressed as follows:

To District:
Redwood City School District
750 Bradford Street
Redwood City, CA 94063
ATTN: Director of Facilities
Email: mcervantes@rcsdk8.net

To Contractor:
HOLT Renewables, LLC
1301 S Capital of Texas Hwy,
STE B-315
Austin, TX 78746
ATTN: Business Operations Manager
Email: casey.lilley@holtrenewables.com

Any notice personally given or sent by email 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.

- 59. Governing Law; Venue.** This 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 Agreement shall be maintained in the county in which the District's administrative offices are located.
- 60. Severability.** If any term, condition or provision of this 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.
- 61. Waiver.** The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
- 62. Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a Party because that Party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
- 63. Use of Pronouns.** All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, will include all other genders; the singular will include the plural and the plural will include the singular.
- 64. Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.
- 65. Cooperation.** The Parties hereby agree to execute all such other documents and to take all such other action as may be reasonably necessary to effect the purposes of this Agreement.
- 66. Binding Contract.** This Agreement 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.
- 67. Authority to Bind Parties.** Neither Party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
- 68. No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
- 69. Signature Authority.** Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement.
- 70. Counterparts.** This Agreement and all amendments to it may be executed in counterparts, each of which shall be deemed an original. A facsimile or electronic signature shall be deemed to be the equivalent of the actual original signature. All counterparts so executed shall constitute one document binding all the Parties.

71. Provisions Required By Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.

72. Entire Contract. This Agreement sets forth the entire contract between the parties hereto and fully supersedes any and all prior agreements, understanding, written or oral, between the parties hereto pertaining to the subject matter thereof. This Agreement may be modified only in writing upon mutual consent.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates indicated below.

Redwood City School District

Date: November 19, 20 24

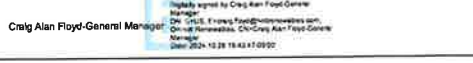
By: 

Print Name: John R. Baker, Ed.D.

Print Title: Superintendent

HOLT Renewables, LLC

Date: October 28, 2024

By: 

Print Name: Craig Alan Floyd

Print Title: General Manager

Digitally signed by Craig Alan Floyd, General Manager
DN: cn=Craig Alan Floyd, o=Holt Renewables, cn=Craig Alan Floyd, email=Craig.Alan.Floyd@holtrenewables.com, date=2024.10.28 16:43:17 -0500

Redwood City School District

Date: Nov 19, 20 24

By: 

Print Name: Rick Edson

Print Title: Chief Business Official

Information Regarding Contractor:

Proper Name: _____
License No.: _____
Registration No.: _____
Address: _____

Telephone: _____
Facsimile: _____
E-Mail: _____

Type of Business Entity:
 Individual
 Sole Proprietorship
 Partnership
 Limited Partnership
 Corporation, State: _____

 Limited Liability Company
 Other: _____

Employer Identification and/or Social Security Number

NOTE: Section 6041 of the Internal Revenue Code (26 U.S.C. 6041) and Section 1.6041-1 of Title 26 of the Code of Federal Regulations (26 C.F.R. 1.6041-1) requires the recipients of \$600.00 or more to furnish their taxpayer information to the payer. In order to comply with these requirements, the District requires the Contractor to furnish the information requested in this section.

Public Contract Code section 9204

(a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:

(1) "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the public entity.

(2) "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.

(3) (A) "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(B) "Public entity" shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Department of Transportation as to any project under the jurisdiction of that department.

(iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

(iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.

(v) The Military Department as to any project under the jurisdiction of that department.

(vi) The Department of General Services as to all other projects.

(vii) The High-Speed Rail Authority.

(4) "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(5) "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.

(d) (1) (A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2) (A) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(C) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

(4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on their own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

(e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

(g) This section applies to contracts entered into on or after January 1, 2017.

(h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

(i) This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2027, deletes or extends that date.

Public Contract Code sections 20104 – 20104.6

§ 20104.

(a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

(b) (1) "Public work" means "public works contract" as defined in Section 1101 but does not include any work or improvement contracted for by the state or the Regents of the University of California.

(2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

(c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.

(d) This article applies only to contracts entered into on or after January 1, 1991.

§ 20104.2.

For any claim subject to this article, the following requirements apply:

(a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

(b) (1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

(c) (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

(d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

(f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

§ 20104.4.

The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

(c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

§ 20104.6.

(a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

(b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]