Santa Ana Unified School District
1601 East Chestnut Avenue
Santa Ana, CA 92701

AMENDED MINUTES

Regular Board Meeting Held Telephonically
Santa Ana Board of Education

September 8, 2020

CALL TO ORDER

Dr. Rodriguez called the meeting to order at 4:45 p.m.

Other members participating were Ms. Amezcua, Mr. Palacio, and Ms. Torres

CLOSED SESSION PRESENTATIONS

Dr. Rodriguez asked Ms. Quiroz if there was anyone wishing to address the Board related to closed session items.

There was no one wishing to address the Board.

RECESS TO CLOSED SESSION

The Regular Board meeting recessed at 4:45 p.m. to discuss existing litigation, personnel matters, labor negotiations, and real property negotiations.

Dr. Alvarez joined the meeting at 5:09 p.m.

RECONVENE REGULAR MEETING

The Regular Board meeting reconvened at 6:45 p.m.

Cabinet members participating were Superintendent Almendarez, Ms. Barquin, Dr. Helguera, Dr. Llamas, Dr. Martinez, Mr. Roychowdhury, Mr. Williams, and Chief Smith.

PLEDGE OF ALLEGIANCE

Superintendent Almendarez led the Pledge of Allegiance.

REPORT OF ACTION TAKEN IN CLOSED SESSION:

By a vote of 5-0, the Board approved the appointment of Lorraine Perez, to the position of Deputy Superintendent, Educational Services.

Moved: Ms. Amezcua **Second: Mr. Palacio**
Ayes: Dr. Rodriguez, Ms. Amezcua, Dr. Alvarez, Mr. Palacio, Ms. Torres

By a vote of 5-0, the Board approved an employment agreement between the District and Dr. Perez which establishes, among other items, compensation and provision of health and other fringe benefits, a term of agreement through June 30, 2023, a description of duties and responsibilities, evaluation of performance and other provisions consistent with cabinet-level positions in the District.

Moved: Ms. Torres **Second: Ms. Amezcua**
Ayes: Dr. Rodriguez, Ms. Amezcua, Dr. Alvarez, Mr. Palacio, Ms. Torres

By a vote of 5-0, the Board approved the appointment of Amanda Corridan, to the position of Deputy Superintendent, Administrative Services.

Moved: Ms. Amezcua **Second: Mr. Palacio**
Ayes: Dr. Rodriguez, Ms. Amezcua, Dr. Alvarez, Mr. Palacio, Ms. Torres

By a vote of 5-0, the Board approved an employment agreement between the District and Dr. Corridan which establishes, among other items, compensation and provision of health and other fringe benefits, a term of

agreement through June 30, 2023, a description of duties and responsibilities, evaluation of performance and other provisions consistent with cabinet-level positions in the District.

Moved: Ms. Torres **Second: Ms. Amezcua**
Ayes: Dr. Rodriguez, Ms. Amezcua, Dr. Alvarez, Mr. Palacio, Ms. Torres

By a vote of 5-0, the Board took action to appoint Vivian Choi, to the position of Assistant Director, Support Services.

Moved: Ms. Amezcua **Second: Ms. Torres**
Ayes: Dr. Rodriguez, Ms. Amezcua, Dr. Alvarez, Mr. Palacio, Ms. Torres

By a vote of 5-0, the Board took action to appoint Griselda Maldonado, to the position of Principal, Romero-Cruz Academy.
Moved: Ms. Amezcua **Second: Ms. Torres**
Ayes: Dr. Rodriguez, Ms. Amezcua, Dr. Alvarez, Mr. Palacio, Ms. Torres

SUPERINTENDENT'S REPORT

Superintendent Almendarez congratulated the two new Deputies, Dr. Lorraine Perez, Deputy Superintendents of Educational Services, and Ms. Amanda Corridan, Deputy Superintendent of Administrative Services. Ms. Amanda Corridan and Dr. Lorraine Perez, thanked the Board and shared a little about themselves. Board members also took the time to congratulate and welcome the two new Deputies to the SAUSD family. Superintendent Almendarez gave a brief update on the COVID-19. He stated that the District remains in double digits but has developed a plan to re-enter tentatively should COVID-19 rates continue to decline. He added that there is also an opportunity from the State of California to allow small group of students on campus with few adults specifically for students who have the most need. The District is also looking at a plan to bring those students back as quickly as possible given a safe environment. He also stated that the District is still on stage one and will remain that way until the rates go down. Superintendent Almendarez, addressed the communities' concern regarding athletics. He shared that District staff met with Athletic Directors, site Principals, and have a four stage plan that will be shared with the community and rolled out in the weeks to come. The first stage is conditioning which is done virtually. The sites have been given the green light to begin that process. He added that as things get better the District will roll out stage two, three, and four.

PUBLIC PRESENTATIONS

Dr Rodriguez asked Ms. Quiroz if there were any public presentations. There were two emails sent to the Office of the Superintendent requesting to read comments out loud. Ms. Quiroz read the two emails out loud related to the Learning Continuity and Attendance Plan.

APPROVAL OF CONSENT CALENDAR

The following item was removed from the Consent Calendar for discussion and separate action:

7.11 Approval/Ratification of Listing of Grant Award Applications with Santa Ana Unified School District for 2020-21 School Year

Moved by Ms. Amezcua, second by Mr. Palacio, carried 5-0, to approve the remainder of the consent calendar as follows:

7.1 Approval of Regular Board Meeting Minutes - August 25, 2020

7.2 Acceptance of Gifts in Accordance with Board Policy (BP) 3290 - Gifts, Grants, and Bequests

7.3 Approval of Payment and Reimbursement of Costs Incurred for Student(s) with Disabilities for 2020-21 School Year

7.4 Approval of Piano/Keyboarding Course for Intermediate Schools

7.5 Authorization to Amend Renewal of Membership with California Interscholastic Federation (CIF) Southern Section for 2020-21 School Year

7.6 Approval of Membership for California State Athletic Directors Association for 2020-21 School Year

7.7 Approval of Membership for Association of California School Administrator's Educational Institution for School Board Members for 2020-21 School Year

7.8 Authorization to Amend Renewal of Membership with American Association of School Administrators for the 2020-21 School Year

7.9 Approval/Ratification of Listing of Agreements/Contracts with Santa Ana Unified School District for 2020-21 School Year

7.10 Approval/Ratification of Listing of No-Cost Community Partnership Agreements with Santa Ana Unified School District for 2020-21 School Year

7.12 Ratification of Expenditure Summary and Warrants Issued Over $25,000 for the Period of August 12, 2020 through August 25, 2020

7.13 Ratification of Purchase Order Summary and Listing of all Purchase Orders, for the Period of August 12, 2020 through August 25, 2020

7.14 Adoption of Resolution No. 20/21-3369 – Authorization of District Appropriations Limits for Fiscal Years 2019-20 and 2020-21

7.15 Approval of Personnel Calendar Including the Transition of Specific Staff Members with such Topics as: Hiring, Promotions, Transfers, Resignations, Retirements, and Leaves

ITEMS REMOVED FROM CONSENT CALENDAR FOR DISCUSSION AND SEPARATE ACTION

7.11 Approval/Ratification of Listing of Grant Award Applications with Santa Ana Unified School District for 2020-21 School Year

Motion by Dr. Alvarez, second by Ms. Amezcua
Final Resolution: Motion Carries
Yes: Dr. Rodriguez, Ms. Amezcua, Dr. Alvarez, Mr. Palacio, Ms. Torres

Approve/Ratify the Listing of Grant Award Applications with Santa Ana Unified School District for 2020-21 School Year.

PRESENTATIONS

8.1 District's Unaudited Actuals for 2019-20 School Year

Mr. Roychowdhury reviewed the unaudited actuals financial information for the 2019-20 fiscal year with the Board as required by Education Code 42100.

PUBLIC HEARINGS

9.1 Learning Continuity and Attendance Plan

Dr. Rodriguez opened the meeting to conduct a public hearing for the Learning Continuity and Attendance Plan. He asked Ms. Quiroz if anyone wished to address the subject. There was no one wishing to address the subject. After hearing no public comments, Dr. Rodriguez declared the public hearing closed.

9.2 Authorization to Award a Contract to Onyx Development Group LLC to Install Photovoltaic Systems with Battery Storage at Multiple Sites Through a Power Purchase Agreement

Dr. Rodriguez opened the meeting to conduct a public hearing for the Authorization to award a contract to Onyx Development Group LLC to install photovoltaic systems with battery storage at multiple sites through a power purchase agreement. He asked Ms. Quiroz if anyone wished to address the subject. There was no one wishing to address the subject. After hearing no public comments, Dr. Rodriguez declared the public hearing closed.

REGULAR AGENDA - ACTION ITEMS

10.1 Approval of District's Unaudited Actuals for 2019-20 School Year

Motion by Mr. Palacio, second by Dr. Rodriguez
Final Resolution: Motion Carries
Yes: Dr. Rodriguez, Ms. Amezcua, Dr. Alvarez, Mr. Palacio, Ms. Torres

Approve the District's Unaudited Actuals for 2019-20 school year.

10.2 Adoption of Resolution No. 20/21-3366 – to Make Certain Determinations and Findings Pursuant to Government Code section 4217.10, et seq. and for Authorization to Enter into Multiple Power Purchasing Agreements with Onyx Development Group LLC and License Agreements with Licensed Contactor

Motion by Mr. Palacio, second by Ms. Amezcua
Final Resolution: Motion Carries
Yes: Dr. Rodriguez, Ms. Amezcua, Dr. Alvarez, Mr. Palacio, Ms. Torres

Adopt Resolution No. 20/21-3366 - to Make Certain Determinations and Findings Pursuant to Government Code section 4217.10, et seq. and for Authorization to Enter into Multiple Power Purchasing Agreements with Onyx Development Group LLC, and License Agreements with Licensed Contractor.

10.3 Approval to Rename Roosevelt Elementary School and Walker Elementary School to Roosevelt Walker Academy

Item pulled, no action taken.

10.4 Approval to Retire and Discontinue Use of the School Names Roosevelt Elementary School and Walker Elementary School

Item pulled, no action taken.

10.5 Approval to Adjust the Previous Authorization for the Purchase and Installation of Division of State Architect (DSA) Approved Modular Buildings from Silver Creek Industries, Inc., Utilizing a Piggyback Bid No. CEPU #N15-2017-18 from Centralia School District

Motion by Mr. Palacio, second by Dr. Alvarez
Final Resolution: Motion Carries
Yes: Dr. Rodriguez, Ms. Amezcua, Dr. Alvarez, Mr. Palacio, Ms. Torres

Approve the adjustment to the previous authorization for the purchase and installation of DSA approved modular buildings from Silver Creek Industries, Inc., utilizing a piggyback bid no. CEPU #N15-2017-18 from Centralia School District.

BOARD REPORTS

- Superintendent to continue having conversations with employees and unions;
- Board encouraged everyone to continue being safe, and to take advantage of the free COVID testing at school sites and at Santa Ana College;
- Staff to look into using JFK to provide food for families;
- Board congratulated Jasmin Suarez, student at McFadden Intermediate, for winning the JFK art contest with her artwork that reads "Wear your mask, so I can wear my backpack," and asked for artwork to be displayed at the District office;
- Board thanked the School Police Department for putting together videos of School Resource Officers and asked staff to ensure videos are on the District website and all social media platforms;
- Request for an agenda item be added to the next Board meeting to rename a school after Rob Richardson;
- Request for a meeting regarding Special Education concerns;
- Request for a Special Board Meeting to discuss the budget;
- Request for updates on conversations with City Manager;
- Review recent athletics rulings and establish protocols;
- Future Environmental Justice Work presentation.

ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 9:30 p.m.

The next Regular Meeting of the Board of Education will be held on Tuesday, September 22, 2020 at 6:00 p.m.

ATTEST: _____
Superintendent

RESOLUTION NO. 20/21-3369

BOARD OF EDUCATION

SANTA ANA UNIFIED SCHOOL DISTRICT

ORANGE COUNTY, CALIFORNIA

Appropriations Limits for Fiscal Years 2019-20 and 2020-21

WHEREAS, Article XIII B of the California Constitution provides certain limitations and controls on the total annual appropriations of any school district; and,

WHEREAS, Division 9, (commencing with Section 7900) of Title 1 of the Government Code provides for the implementation of Article XIII B; and,

WHEREAS, Education Code Section 42132 provides that the governing body of each school district shall annually adopt a resolution to identify the estimated appropriations limit for the district for the current fiscal year and the actual appropriations limit for the district for the preceding fiscal year on or before September 15 of each year; and,

WHEREAS, the documentation used in determining the appropriations limits for fiscal years 2019-20 and 2020-21 is available for public inspection in the Office of the Deputy Superintendent, Operations.

NOW, THEREFORE, BE IT RESOLVED: That the Board of Education hereby declares as follows:

1. The actual appropriations limit for 2019-20 was $341,580,841.44, and the appropriations in the 2019-20 budget did not exceed the limitations imposed by Article XIII B of the California Constitution.

2. The appropriations limit for 2020-21 is estimated to be $345,003,143.31 and the appropriations in the 2020-21 budget do not exceed the limitations imposed by Article XIII B of the California Constitution.

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Upon motion of Member _____Amezcua_____ and duly seconded, the foregoing Resolution was adopted by the following vote:

AYES: Rodriguez, Amezcua, Alvarez, Palacio, Torres

NOES:

ABSENT

STATE OF CALIFORNIA)

) SS:

COUNTY OF ORANGE)

I, Alfonso Alvarez, Ed.D., Clerk of the Board of Education of the Santa Ana Unified School District of Orange County, California, hereby certify that the above and foregoing Resolution was duly adopted by the said Board at a regular meeting thereof held on the 8th day of September, 2020, and passed by a vote of ____5-0____ of said Board.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of September, 2020.

Alfonso Alvarez, Ed.D.

Clerk of the Board of Education

Santa Ana Unified School District

CERTIFICATED PERSONNEL CALENDAR

Personnel Calendar
Board Meeting - September 8, 2020

LAST NAME	POSITION	SITE	EFF. DATE	COMMENTS
RETIREMENTS				
Coombs, Susan	Teacher	Jackson	August 14, 2020	
Fenwick, Randolph	Teacher	Segerstrom	August 14, 2020	
Lewis, Gary	Teacher	Pio Pico	May 29, 2020	
Olivar, Gerardo	Teacher	Washington	August 14, 2020	
Oslanker, Rebecca	Teacher	Washington	August 14, 2020	
Waters, Lori	Speech and Language Pathologist	Speech Department	August 12, 2020	
Wence, Denise	Teacher	Wilson	August 14, 2020	
Winchester, Edward	Director of Secondary Student Achievement/Charter Schools	District Office	September 30, 2020	
RESIGNATIONS				
Dionicio, Perla	Teacher - Education Specialist: Moderate/Severe Instruction Credential	Madison	August 9, 2020	
Vela, Eddie	Teacher - Single Subject: Social Science	Segerstrom	August 12, 2020	
NEW HIRES/RE-HIRES				
Aguirre, Victoria	Teacher	Diamond	August 10, 2020	New Hire - Intern
Arciga-Gonzalez, Evelina	Teacher	Mitchell	August 10, 2020	New Hire - Probationary I
Arndt, Adrienne	Speech and Language Pathologist	Speech Department	August 10, 2020	New Hire - Probationary I
Baier, Brian	Teacher	Santa Ana	August 10, 2020	Rehire - Probationary II
Belida, Christine	Teacher	Esqueda	August 10, 2020	New Hire - Probationary I
Cruz, Luis Jr.	Teacher	Santa Ana	August 10, 2020	Rehire - Temporary 44909
Cuellar, Rachael	Teacher	Mitchell	August 13, 2020	New Hire - Intern

CERTIFICATED PERSONNEL CALENDAR

Personnel Calendar
Board Meeting - September 8, 2020

LAST NAME	POSITION	SITE	EFF. DATE	COMMENTS
NEW HIRES/RE-HIRES (Continued)				
Flores, Marissa	Teacher	Lathrop	August 10, 2020	New Hire - Probationary I
Gonzalez, Rebecca	Counselor	Advanced Learning Academy	August 10, 2020	New Hire - Probationary I
Hernandez, Rachel	Teacher	Carr	August 10, 2020	New Hire - Probationary I
Ignacio, Michelle	Teacher	Jefferson	August 10, 2020	New Hire - Probationary I
Johnson, Elise	Teacher	Advanced Learning Academy	August 10, 2020	New Hire - Temporary 44909
Koopman, Edlira	Psychologist	Psychological Services	August 7, 2020	Rehire - Probationary I
Lopez, Jessica	Teacher	Valley	August 10, 2020	New Hire - Probationary I
Martinez, Yobany	Teacher	Valley	August 10, 2020	Rehire - Probationary II
Mitcheltree, Cody	Teacher	Advanced Learning Academy	August 10, 2020	New Hire - Temporary 44909
Moreno, Krystal	Teacher	Santa Ana	August 10, 2020	New Hire - Temporary 44909
Nguyen, Diana	Teacher	Mitchell	August 10, 2020	New Hire - Probationary I
Ortega, Taylor	Teacher	Mitchell	August 10, 2020	New Hire - Probationary I
Park, Alicia	Nurse	Support Services	August 11, 2020	New Hire - Probationary I
Pettyjohn, Maria	Teacher	Santa Ana	August 10, 2020	Rehire - Temporary 44909
Ponce, Diana	Teacher	Century	August 10, 2020	New Hire - Probationary I
Ramos, Nora	Psychologist	Psychological Services	August 7, 2020	New Hire - Probationary I
Roberto, Caitlin	Teacher	Santa Ana	August 10, 2020	New Hire - Temporary 44909
Roberts, Desiree	Teacher	Franklin	August 10, 2020	Rehire - Probationary II
Rodriguez, Christian	Teacher	Santiago	August 10, 2020	Rehire - Probationary II
Rodriguez, Eric	Teacher	Santa Ana	August 11, 2020	New Hire - Probationary I
Rusk, Timothy	Teacher	Roosevelt-Walker	August 10, 2020	New Hire - Probationary I
Santana, Daniel	Teacher	Willard	August 10, 2020	New Hire - Probationary I

CERTIFICATED PERSONNEL CALENDAR

Personnel Calendar
Board Meeting - September 8, 2020

LAST NAME	POSITION	SITE	EFF. DATE	COMMENTS
NEW HIRES/RE-HIRES (Continued)				
Steagall, Daniel	Teacher	Transition Programs	August 10, 2020	New Hire - Probationary I
OFFER OF EMPLOYMENT				
Gonzalez, Julian	ROP Instructor - Building Trades/Construction	Career Technical Education	August 10, 2020 - June 4, 2021	New Hire - 44910
Holland, Cynthia	ROP Instructor - Business	Career Technical Education	August 5, 2020 - May 27, 2021	Rehire - 44910
CHANGE IN STATUS				
Vergara, Lloyd	Teacher	Madison	August 10, 2020	From Intern to Probationary II
CHANGE IN LENGTH OF SERVICE 2020-21				
Corell, Julie	Speech and Language Pathologist	Speech Department	August 10, 2020	From 80% to 100%
LEAVE (21 duty days or more) - Without Pay and Without Benefits				
Rocha, Alejandra	Teacher	Pio Pico	August 10, 2020 - June 4, 2021	Education
Weisman, Patricia	Teacher	Diamond	August 11, 2020 - June 4, 2021	Personal

INFORMED K12 EXTRA DUTY

Title of Activity or Addendum to Activity	Employee Name(s)	Site/Dept	Funding Source	Total Amount Not to Exceed	Total Hours Not to Exceed	Date Service From
Planning for Fall 2020 Reopening Workshop	Gutierrez, Fernando Hammer, Heather	Lathrop Intermediate School	013010 IASA:Title I Basic Grants Low-Income and Neglected, Part A	$796.08 $796.08		July 13, 2020 Received from Site/ Department: July 20, 2020
6th Grade/New Student Summer Bridge	Garcia, Anna Heuberger, Terri Jimenez, Ludin Murrieta, Amanda Nadalet, James Phillips, Nicole Tomala, Wendy Warffuel, Mark	Lathrop Intermediate School	013090 Title I, Core Set Aside	$492.49 $954.24 $492.49 $719.67 $549.85 $821.75 $821.75 $869.07		July 27, 2020 Received from Site/ Department: July 24, 2020
Preparation for Newcomers Summer Bridge Program	Garcia, Anna Heuberger, Terri Jimenez, Ludin Murrieta, Amanda Nadalet, James Phillips, Nicole Tomala, Wendy Warffuel, Mark	Lathrop Intermediate School	010725 Dashboard Support Schools	$318.43 $318.43 $318.43 $318.43 $318.43 $318.43 $318.43 $318.43		July 24, 2020 Received from Site/ Department: July 24, 2020
RISE Intervention	Anaya, Felipe Armstrong, Mark Banuelos, Jeanette Benavente, Viridiana Boullon, Caroline Boyer, Gregory Brambila, Martha Caffrey, Jamie	McFadden Intermediate School	013010 IASA:Title I Basic Grants Low-Income and Neglected, Part A	$212.29 $212.29 $212.29 $212.29 $212.29 $212.29 $212.29 $212.29		July 1, 2020 Received from Site/ Department: July 20, 2020

INFORMED K12 EXTRA DUTY

	Camacho, Graciela			$212.29		
	Cano, Michelle			$212.29		
	Chapman, Shahin			$212.29		
	Chavez, Jaime			$212.29		
	Covey, Richard			$212.29		
	Czaja, Gregory			$212.29		
	Diaz, David			$212.29		
	Diaz, Javier			$212.29		
	Dowd, Arica			$212.29		
	Ellis, Gregory			$212.29		
	Fitzpatrick, Jessica			$212.29		
	Gallegos, Kim			$212.29		
	Gamboa, Melinda			$212.29		
	Gassner, Nicole			$212.29		
	Gipson, Nancy			$212.29		
	Gonzalez, Araceli			$212.29		
	Gutierrez, Rene			$212.29		
	Hetherington-Schwartz, Tami			$212.29		
	Holden, Susanna			$212.29		
	Holte, Matthew			$212.29		
	Jackson, Nicole			$212.29		
	Kennison, Barbara			$212.29		
	Kirkby, William			$212.29		
	Kiwan, Evelyn			$212.29		
	Larios, Andres			$212.29		
	Lomeli, Norma			$212.29		
	McDonald-Van Dyke, Jennifer			$212.29		
	Mehl, Stephana			$212.29		
	Morris, Thomas IV			$212.29		
	Napier, Rodney			$212.29		
	Nguyen, Han			$212.29		
	Ochoa Ceja, Maritza			$212.29		
	Onofre, Danelia			$212.29		

INFORMED K12 EXTRA DUTY

	Ramirez, Angelica			$212.29		
	Sohner, Kelly			$212.29		
	Stanley, Michelle			$212.29		
	Vazquez-Knox, Joyce			$212.29		
	Worthington, Stephanie			$212.29		
	Yusi, Christopher			$212.29		
Before/After School Tutoring	Anaya, Felipe	McFadden Intermediate School	093091 Fund 09 - Title I, Targeted Intervention	$667.97		August 10, 2020
	Armstrong, Mark			$651.90		
	Banuelos, Jeanette			$575.23		Received from Site/ Department: July 24, 2020
	Benavente, Viridiana			$503.77		
	Boullon, Caroline			$651.90		
	Boyer, Gregory			$667.97		
	Brambila, Martha			$667.97		
	Caffrey, Jamie			$575.23		
	Camacho, Graciela			$575.23		
	Cano, Michelle			$667.97		
	Chapman, Shahin			$667.97		
	Chavez, Jaime			$575.23		
	Covey, Richard			$541.60		
	Czaja, Gregory			$667.97		
	Diaz, David			$386.84		
	Diaz, Javier			$461.33		
	Dowd, Arica			$575.23		
	Ellis, Gregory			$667.97		
	Fitzpatrick, Jessica			$575.23		
	Gallegos, Kim			$667.97		
	Gamboa, Melinda			$344.74		
	Gassner, Nicole			$482.09		
	Gipson, Nancy			$667.97		
	Gonzalez, Araceli			$371.60		
	Gutierrez, Rene			$667.97		
	Hetherington-Schwartz, Tami			$541.60		
	Holden, Susanna			$360.63		

INFORMED K12 EXTRA DUTY

	Holte, Matthew			$575.23		
	Jackson, Nicole			$366.60		
	Kennison, Barbara			$575.23		
	Kirkby, William			$651.90		
	Kiwan, Evelyn			$667.97		
	Larios, Andres			$344.74		
	Lomeli, Norma			$575.23		
	McDonald-Van Dyke, Jennifer			$608.35		
	Mehl, Stephana			$541.60		
	Morris, Thomas IV			$575.23		
	Napier, Rodney			$667.97		
	Nguyen, Han			$575.23		
	Ochoa Ceja, Maritza			$526.45		
	Onofre, Danelia			$503.77		
	Ramirez, Angelica			$575.23		
	Sohner, Kelly			$526.45		
	Stanley, Michelle			$541.60		
	Vazquez-Knox, Joyce			$526.45		
	Worthington, Stephanie			$550.17		
	Yusi, Christopher			$651.90		
Teacher Training/Program	Camacho, Octavio	Middle College	013091 Title I, Targeted Intervention	$796.08		August 3, 2020
	Curtis, Matthew			$796.08		
	Gerstman, Clifford			$796.08		Received from Site/ Department: July 20, 2020
	Groff, Susan			$796.08		
	Holte, Amy			$796.08		
	Kaneko, Norio			$796.08		
	Nguyen, Thu			$796.08		
	Peterson, Kathleen			$796.08		
	Ramos, Rafael			$796.08		
	Silverstein, Cassandra			$796.08		
	Storms, Tamara			$796.08		
	Valenzuela, Edward			$796.08		
	Van Dusen, Kathy			$796.08		

INFORMED K12 EXTRA DUTY

	You, Hahnbuel			$796.08		
Curriculum Planning	Alvarado, Dulce	Jackson Elementary School	013010 IASA:Title I Basic Grants Low-Income and Neglected, Part A	$53.07		July 29, 2020
	Coombs, Susan			$159.22		
	Eddow, Elaine			$106.14		Received from Site/ Department: July 16, 2020
	Escobar-Valencia, Melby			$159.22		
	Espinosa De Elena, Catherine			$185.75		
	Estrada, Lani			$238.82		
	Freshour, Deann			$477.65		
	Gourdine, Teresa			$106.14		
	Guzman, Allison			$371.50		
	Hill, Lisa			$265.36		
	Juarez, Crystal			$185.75		
	Lochner, Jessica			$159.22		
	Mc Devitt, Melinda			$106.14		
	Mejia-Jung, Marisela			$159.22		
	Penman, Jennifer			$424.58		
	Ray, Laura			$106.14		
	Sanchez, Maria			$318.43		
	Sieber, Stacie			$212.29		
	Troutt, Rock			$159.22		
	Wroblewski, Keith			$318.43		
Program Planning	Barragan, Ruby	Lincoln Elementary School	013010 IASA:Title I Basic Grants Low-Income and Neglected, Part A	$106.14		August 10, 2020
	Carrozza, Royanne			$530.72		
	Castellanos, Xavier			$106.14		Received from Site/ Department: July 21, 2020
	Cerri, Amy			$106.14		
	Delgado, Maria			$106.14		
	Dominguez, Nieves			$106.14		
	Gonzalez, Maria			$106.14		
	Guerrero-Duenas, Maria			$106.14		
	Jimenez, Maria			$530.72		
	Johnson, Leslie			$106.14		
	Joslin, Kim			$106.14		
	Kruse, Tracy			$106.14		

INFORMED K12 EXTRA DUTY

	Lopez, Edith			$530.72		
	Lopez, Marcela			$106.14		
	Martinez, Juliana			$530.72		
	Martinez, Luz			$530.72		
	Mendoza, Stephanie			$106.14		
	Miller, Amy			$106.14		
	Newman, Heather			$106.14		
	Perez, Albert			$106.14		
	Perez, Janette			$106.14		
	Quintero, Rebecca			$106.14		
	Renzas, Ellen			$530.72		
	Roberts, Wade			$106.14		
	Romeo, Angelica			$530.72		
	Villaverde, Elaine			$106.14		
	Vique, Elaine			$106.14		
	Wagstaff, Veronica			$106.14		
	Waters, Lori			$106.14		
	Yussof, Ismat			$106.14		
Staff Developing Planning and Collaboration	Amado, Jazmina	Monroe Elementary School	013010 IASA:Title I Basic Grants Low-Income and Neglected, Part A	$265.36		July 29, 2020
	Caceres De Lopez, Maritza			$265.36		
	Colombo, Anna			$265.36		Received from Site/ Department: July 23, 2020
	Gonzalez, Guadalupe			$265.36		
	Hernandez, Laura			$265.36		
	Mejia-Bazulto, Raquel			$265.36		
	Quezada-Cano, Alvaro			$265.36		
	Rossano, Cecilia			$265.36		
	Silva, Jesus			$265.36		
	Smith, Sheryl			$265.36		
	Soto, Cristina			$265.36		
	Yost, Stephanie			$265.36		

INFORMED K12 EXTRA DUTY

Tutoring Before/After School Learning	Cavner, Elizabeth	Adams Elementary School	013010 IASA:Title I Basic Grants Low-Income and Neglected, Part A	$1,908.48		August 10, 2020
	Galindo-Werner, Lisa			$1,547.42		
	Han, Diana			$1,207.06		Received from Site/ Department: July 24, 2020
	Hunter, Mark			$1,908.48		
	Ingebrigtsen, Kortni			$1,738.14		
	Kirby, Angela			$984.98		
	Landa, Monica			$1,862.58		
	Lathrop, Joe			$1,862.58		
	Lazar, Sarah			$1,643.50		
	Ledon, Karla			$1,862.58		
	Moreno, Claudia			$1,547.42		
	Newland, Taia			$1,862.58		
	Ontiveros, Cassandra			$1,318.08		
	Pratt, Sharon			$1,862.58		
	Rodriguez, Susan			$1,908.48		
	Schumacher, Julie			$1,738.14		
	Smith, Carolann			$1,318.08		
	Soave, Michael			$1,439.34		
	Strobel, Isabel			$1,862.58		
	Van De Merghel, Laura			$1,862.58		
	Vega, Betsy			$1,862.58		
	Wright, Jennifer			$1,738.14		
2020-2021 Summer Bridge Program - Planning	Arroyo, Hazelle	Mendez Fundamental	013090 Title I, Core Set Aside	$159.22		July 24, 2020
	Bennett, Christine			$159.22		
	Covey, Michael			$159.22		Received from Site/ Department: July 27, 2020
	Delgado, Denise			$159.22		
	Diaz, Jose			$689.94		
	Garcia, Teresa			$159.22		
	Garrett, Harold			$159.22		
	Hyatt, Erin			$530.72		
	McDonald, Charles			$159.22		
	McEntee, Jeffrey			$159.22		
	Mello, Anjum			$159.22		

INFORMED K12 EXTRA DUTY

	Miraglia, Christian			$796.08		
	Nguyen, Lien			$159.22		
	Rubio, Sandra			$159.22		
	Salas, April			$955.30		
	Tran, Tiffany			$159.22		
	Zavala, Nidia			$159.22		
2020-2021 Summer Bridge Program - Instruction	Arroyo, Hazelle	Mendez Fundamental	013090 Title I, Core Set Aside	$752.07		July 27, 2020
	Bennett, Christine			$931.29		
	Covey, Michael			$577.35		Received from Site/ Department: July 27, 2020
	Delgado, Denise			$821.75		
	Diaz, Jose			$931.29		
	Garcia, Teresa			$238.56		
	Garrett, Harold			$954.24		
	Hyatt, Erin			$1,210.68		
	McDonald, Charles			$785.95		
	McEntee, Jeffrey			$954.24		
	Mello, Anjum			$954.24		
	Miraglia, Christian			$1,001.95		
	Nguyen, Lien			$869.07		
	Rubio, Sandra			$773.71		
	Salas, April			$821.75		
	Tran, Tiffany			$688.70		
	Zavala, Nidia			$821.75		
Summer Bridge	Barber, Cristina	MacArthur Fundamental	013090 Title I, Core Set Aside	$796.08		July 28, 2020
	Boyd, Peter			$796.08		
	Celestino, Gregory			$2,388.24		Received from Site/ Department: July 29, 2020
	Czaja, Elizabeth			$796.08		
	Flores, Esther			$796.08		
	Fredericksen, Timothy			$796.08		
	Garcia, Ranithi			$796.08		
	Manske, Tammy			$796.08		
	Palmer, Sandi			$796.08		
	Trejo, Kevin			$796.08		

INFORMED K12 EXTRA DUTY

	Tristan, Laurie Vicario, Maria			$796.08 $796.08		
Staff Development, Planning and Collaboration	Amado, Jazmina Caceres De Lopez, Maritza Colombo, Anna Gonzalez, Guadalupe Hernandez, Laura Mejia-Bazulto, Raquel Quezada-Cano, Alvaro Rossano, Cecilia Silva, Jesus Smith, Sheryl Soto, Cristina Yost, Stephanie	Monroe Elementary School	013010 IASA:Title I Basic Grants Low-Income and Neglected, Part A	$2,653.60 $2,653.60 $2,653.60 $2,653.60 $2,653.60 $2,653.60 $2,653.60 $2,653.60 $2,653.60 $2,653.60 $2,653.60 $2,653.60		August 12, 2020 Received from Site/ Department: July 28, 2020

CLASSIFIED PERSONNEL CALENDAR

Personnel Calendar
Board Meeting - September 8, 2020

LAST NAME	POSITION	SITE	EFF. DATE	COMMENTS
RETIREMENTS				
Clifton, Diana	Autism Paraprofessional	Saddleback	May 30, 2020	
Rios-Olivar, Claudia	Student Support Paraprofessional Special Education	Valley	August 13, 2020	
RESIGNATIONS				
Castrejon, Jovanee	After School Instructional Provider	Jefferson	May 28, 2020	
Cruz, Angelica	After School Instructional Provider	Fremont	May 28, 2020	
Kusinsky, Melissa	After School Instructional Provider	Willard	July 9, 2020	
Lopez Gaxiola, Manuel	Autism Paraprofessional	Willard	August 13, 2020	
Miller, Taylor	Student Support Paraprofessional Special Education	Villa	July 1, 2020	
Navarro, John	Student Support Paraprofessional Special Education	Saddleback	August 16, 2020	
Nguyen, Kevin Tien	After School Instructional Provider	Davis	August 24, 2020	
Olvera, Lizbeth	Instructional Assistant Biliterate	Davis	August 7, 2020	
Perez, Delma	Autism Paraprofessional	Mitchell	August 11, 2020	
Soto, Marlene	Student Support Paraprofessional Special Education	Jefferson	August 10, 2020	
Uribe, Lizbeth	After School Instructional Provider	Greenville	May 28, 2020	

CLASSIFIED PERSONNEL CALENDAR

Personnel Calendar
Board Meeting - September 8, 2020

LAST NAME	POSITION	SITE	EFF. DATE	COMMENTS
VOLUNTARY DEMOTION				
Colin, Nancy	Site Clerk	Hoover	August 14, 2020	From Sch. Off. Mgr. Int. Grade/Step 28/6 to Grade/Step 24/6
Elizarraras, Ithzel	Site Clerk	Building Services	July 27, 2020	From Secretary Grade/Step 25/6 to Grade/Step 24/6
LEAVE (21 duty days or more) - Without Pay				
Ruiz, Miranda	Autism Paraprofessional	Mitchell	August 14, 2020 - August 13, 2021	Personal
PROBATIONARY APPOINTMENTS				
Arellano, Julissa	Student Support Paraprofessional Special Education	Romero-Cruz Academy	August 20, 2020	Grade/Step 19/1
Bennett, Shanelle	Autism Paraprofessional	Esqueda	August 20, 2020	Grade/Step 24/1
Caires, Robin	Student Support Paraprofessional Special Education	Santa Ana	August 14, 2020	Grade/Step 19/1
Chavez, Laura	Autism Paraprofessional	Heroes	August 14, 2020	Grade/Step 24/1
De Leon, Ruth	Licensed Vocational Nurse	Support Services	August 17, 2020	Grade/Step 24/1
Dunkle, Whitney	Autism Paraprofessional	Jefferson	August 20, 2020	Grade/Step 24/1
Hernandez, Jannet	Autism Paraprofessional	Mitchell	August 21, 2020	Grade/Step 24/1
Leon Lopez, Marisol	Autism Paraprofessional	MacArthur	August 14, 2020	Grade/Step 24/1

CLASSIFIED PERSONNEL CALENDAR

Personnel Calendar
Board Meeting - September 8, 2020

LAST NAME	POSITION	SITE	EFF. DATE	COMMENTS
PROBATIONARY APPOINTMENTS (Continued)				
Lopez, Alyssa	Student Support Paraprofessional Special Education	Saddleback	August 14, 2020	Grade/Step 19/1
Maldonado Moreno, Irvin	Instructional Assistant Severely Disabled	Adult Transition	August 14, 2020	Grade/Step 20/1
Natera, Adriana	Autism Paraprofessional	MacArthur	August 14, 2020	Grade/Step 24/1
Nunez, Ana	Autism Paraprofessional	Jefferson	August 14, 2020	Grade/Step 24/1
Ortiz, Veronica	Student Support Paraprofessional Special Education	McFadden	August 24, 2020	Grade/Step 19/1
Ponce, Marlene	Autism Paraprofessional	Hoover	August 14, 2020	Grade/Step 24/1
Zul, Cynthia	Autism Paraprofessional	Mitchell	August 27, 2020	Grade/Step 24/1
PROMOTIONAL APPOINTMENTS				
Leal, Ada	Computer Technician II	Santiago	August 3, 2020	From Computer Tech. I Grade/Step 28/6 to Grade/Step 33/5
Morales, Cindy	Autism Paraprofessional	Godinez	August 14, 2020	From Instr. Asst. Sev. Dis. Grade/Step 20/6 to Grade/Step 24/5

CLASSIFIED PERSONNEL CALENDAR

Personnel Calendar
Board Meeting - September 8, 2020

LAST NAME	POSITION	SITE	EFF. DATE	COMMENTS
PROMOTIONAL APPOINTMENTS (Continued)				
Morris, Lewston	Site Clerk	Hoover	August 5, 2020	From Activity Monitor Grade/Step 10/2 to Grade/Step 24/1
Rico, Joe	Computer Technician I	Santiago	August 3, 2020	From Site Coordinator $26.01 hourly rate to Grade/Step 33/5
REASSIGNMENTS (Change of Site)				
Abantao, Felicia	After School Instructional Provider	Martin	August 27, 2020	From Carver
Alejandres, Luz	Instructional Assistant Severely Disabled	Adult Transition	August 14, 2020	From Willard
Barrera, Emily	After School Instructional Provider	Davis	August 14, 2020	From Itinerant
Beaman, Amy	After School Instructional Provider	Jefferson	August 14, 2020	From Itinerant
Canseco Santos, Sandra	After School Instructional Provider	Lowell	August 27, 2020	From Itinerant
Cazales, Miguel	After School Instructional Provider	Fremont	August 14, 2020	From Itinerant
Chavarria, Liana	After School Instructional Provider	Monroe	August 27, 2020	From Itinerant
Duarte, Kaylee	After School Instructional Provider	Diamond	August 14, 2020	From Itinerant
Eichel, Kimberly	After School Instructional Provider	Adams	August 14, 2020	From Itinerant
Espinoza, Raquel	After School Instructional Provider	Villa	August 27, 2020	From Itinerant
Hermosillo, Anthony	After School Instructional Provider	Advanced Learning Academy	August 27, 2020	From Itinerant
Hernandez, Yesenia	After School Instructional Provider	Lowell	August 27, 2020	From Itinerant

CLASSIFIED PERSONNEL CALENDAR

Personnel Calendar
Board Meeting - September 8, 2020

LAST NAME	POSITION	SITE	EFF. DATE	COMMENTS
REASSIGNMENTS (Change of Site) (Continued)				
Lopez, Angelica	After School Instructional Provider	Franklin	August 27, 2020	From Jefferson
Lopez, Araceli	After School Instructional Provider	Fremont	August 14, 2020	From Santiago
Lopez, Kimberly	After School Instructional Provider	Carr	August 14, 2020	From Itinerant
Lua, Claudia	After School Instructional Provider	Edison	August 27, 2020	From Lowell
Luviano Prado, Yuliana	After School Instructional Provider	Wilson	August 14, 2020	From Itinerant
Macias, Jacqueline	After School Instructional Provider	Hoover	August 14, 2020	From Heninger
Marin, Erick	After School Instructional Provider	Diamond	August 27, 2020	From Itinerant
Menchaca, Ailyn	After School Instructional Provider	King	August 14, 2020	From Itinerant
Mendoza Belman, Zulema	After School Instructional Provider	King	August 14, 2020	From Itinerant
Paz Ortiz, Emerlyn	After School Instructional Provider	Santiago	August 14, 2020	From Fremont
Ponce, Kathy	Student Support Paraprofessional Special Education	Sepulveda	August 14, 2020	From Charter Schools
Reyes, Jannete	After School Instructional Provider	Diamond	August 14, 2020	From Itinerant
Rojas, Brandee	After School Instructional Provider	Carver	August 14, 2020	From Itinerant
Rosales, Fatima	After School Instructional Provider	King	August 14, 2020	From Itinerant
Ruiz, Vanessa	After School Instructional Provider	Romero-Cruz Academy	August 14, 2020	From Itinerant
Sanchez, Andrea	After School Instructional Provider	Wilson	August 14, 2020	From Itinerant
Santana, Daisy Angelica	After School Instructional Provider	Monte Vista	August 14, 2020	From Itinerant
Torres, Genoveva	After School Instructional Provider	Fremont	August 14, 2020	From Villa
Trecroce, Armand	After School Instructional Provider	Willard	August 27, 2020	From Itinerant
Uribe, Julio	After School Instructional Provider	Kennedy	August 27, 2020	From Itinerant
REAPPOINTMENT (Returned from LOA)				
Curiel, Alejandro	Instructional Assistant Severely Disabled	Taft	August 18, 2020	Grade/Step 20/6 + Bilingual

CLASSIFIED PERSONNEL CALENDAR

Personnel Calendar
Board Meeting - September 8, 2020

LAST NAME	POSITION	SITE	EFF. DATE	COMMENTS
TEMPORARY ASSIGNMENTS				
Mares, Richard	Roving Lead Custodian	Lincoln/Sepulveda	August 10, 2020 - August 24, 2020	Grade/Step 28/2 + Shift
Perez, Samuel	Manager of Custodial Services	Building Services	August 17, 2020 - August 25, 2020	Level/Step 22/1
Ramirez, Marcos	Manager of Grounds	Building Services	August 14, 2020 - August 24, 2020	Grade/Step 34/6 + $10 a day
Reyes, Jose	Plant Custodian Elementary	Esqueda	August 3, 2020 - August 14, 2020	Grade/Step 28/5

INFORMED K12 EXTR DUTY

Title of Activity	Employee Name(s)	Site/Dept	Funding Source	Total Amount Not to Excced	Total Hours Not to Exceed	Date Service From
Maintenance (Trades) Overtime 2020-2021	Aguilar, Humberto	Building Services	018150 Ongoing & Major Maintenance Account	$160.09	3.66	July 1, 2020
	Alonso Jr., Neftali			$232.17	3.66	
	Alvarado, Rick			$163.88	3.66	
	Arambula, Jesus			$185.89	3.66	
	Avila, Mark			$232.17	3.66	
	Betancourt, Andres			$199.78	3.66	
	Boyd III, James			$264.89	3.66	
	Burton Jr., Clyde			$220.86	3.66	
	Castro, Rodolfo			$168.16	3.66	
	Clayton, Richard			$215.21	3.66	
	Cortez, Fernando			$177.00	3.66	
	Fournier, Reed			$204.94	3.66	
	Gallardo, Charles			$185.51	3.66	
	Garcia, John			$213.40	3.66	
	Gurnee, Jeffrey			$209.99	3.66	
	Henry, Michael			$209.99	3.66	
	Hibbs, Jason			$194.84	3.66	
	Kelly, Michael			$195.44	3.66	
	Kusinsky, James			$199.78	3.66	

INFORMED K12 EXTR DUTY

	Lacy, Ronald			$189.95	3.66	
	Leeds, Glen			$209.99	3.66	
	Leon, Salvador			$199.78	3.66	
	Lopez, Jason			$205.16	3.66	
	Marroquin, Johnny			$152.46	3.66	
	Martinez, Miguel			$233.16	3.66	
	Martinez, Ricardo			$167.94	3.66	
	Moreno Alba, Tomas			$167.94	3.66	
	Offenback, David			$243.81	3.66	
	Osorio, Elias			$131.32	3.66	
	Pecharich, Joseph			$204.94	3.66	
	Pulido, Daniel			$159.70	3.66	
	Quintero Rodelo, Roberto			$180.73	3.66	
	Reyes, Cruz Raul			$237.72	3.66	
	Rodriguez, Jose			$160.25	3.66	
	Salazar, Frankie			$160.25	3.66	
	Saldana, Aldo			$243.81	3.66	
	Sharp, Marvin			$226.35	3.66	
	Sierra, Matthew			$167.94	3.66	
	Simich, John			$185.51	3.66	
	St.Clair, Phil			$194.84	3.66	
	Tran, Binh			$242.71	3.66	
	Viramontes, Esteban			$152.07	3.66	
	Vizcaino, Hector			$245.51	3.66	
	Zuniga Murillo, Cesar			$144.99	3.66	

INFORMED K12 EXTR DUTY

School Wide Events	Pinedo, David Salcido, Arturo	Carr Intermediate School	010030 Unrestricted Discretionary Accounts	$517.11 $517.11	$517.11 $517.11	July 1, 2020
2020-2021 Computer Technician - Extra Duties	Escalante, Jason	Mendez Fundamental	010030 Unrestricted Discretionary Accounts	$10,000.00	304	July 1, 2020
2020-2021 D.S.O. Extra Duties	Boonmag, Nicholas Sarkisyan, Sevan	Mendez Fundamental	010030 Unrestricted Discretionary Accounts	$529.76 $487.80	12 12	July 1, 2020

INFORMED K12 EXTR DUTY

2020/2021 Instructional Provider	Arana, Stephanie De Jesus, Roberto Garcia Mireles, Gabriela Ibarra, Rosendo Martinez, Estefani Ortega, Salvador Perez, Genesis Perez, Nallely Segura, Kevin Zelaya, Alexis	Century High School	013010 IASA:Title I Basic Grants Low-Income and Neglected, Part A	$9,593.20 $9,593.20 $9,593.20 $9,593.20 $9,593.20 $9,593.20 $9,593.20 $9,593.20 $9,593.20 $9,593.20	580 580 580 580 580 580 580 580 580 580	July 1, 2020
2020-21 District-Wide Events & Community Engagement Projects - District Safety Officers	Gonzales, Freddie Velarde, Mauricio	Community Relations	010704 Dept. SC-LCFF-Supplemental Concentration	$324.74 $327.80	6 6	July 1, 2020
Custodial- Graduation Support Plan REACH Academy Night School	Guerrero, Juan	Reach Academy	010074 Graduation Support Plan (ongoing)	$30,000.00	720	August 10, 2020

INFORMED K12 EXTR DUTY

Clerical - Graduation Support Plan REACH Academy Night School (Overtime)	Costa, Tina Luvianos, Marlin Villa, Rosa	Reach Academy	010074 Graduation Support Plan (ongoing)	$11,868.75 $5,885.28 $14,370.75	300 120 300	August 10, 2020
(231) Elementary: Teaching & Learning Classified Overtime 2020-21	Gonzalez, Mayra	K-12 Teaching & Learning	010300 Department Unrestricted Discretionary Accounts	$5,000.00	200	July 1, 2020
Extra Duty for Computer Technician	Koh, Augustine	Construction Department	229059 Fund 22 Measure I Series A 2018 GO Bond, Series A	$1,500.00	25	June 1, 2020
Computer Tech Extra Duty	Tena, David	Valley High School	010030 Unrestricted Discretionary Accounts	$2,737.98	80	July 1, 2020

INFORMED K12 EXTR DUTY

Office Extra Duty	Buckley, Karen Castro, Anthony Enriquez, Ana	Lincoln Elementary School	010030 Unrestricted Discretionary Accounts	$1,318.75 $716.97 $1,005.00	50 30 30	July 27, 2020

INFORMED K12 EXTR DUTY

Maintenance (Trades) Overtime 2020-2021 (August 2020)	Aguilar, Humberto	Building Services	018150 Ongoing & Major Maintenance Account	$160.09	3.66	August 1, 2020
	Alonso Jr., Neftali			$232.17	3.66	
	Alvarado, Rick			$163.88	3.66	
	Arambula, Jesus			$185.89	3.66	
	Avila, Mark			$232.17	3.66	
	Betancourt, Andres			$199.78	3.66	
	Boyd III, James			$264.89	3.66	
	Burton Jr., Clyde			$220.86	3.66	
	Castro, Rodolfo			$168.16	3.66	
	Clayton, Richard			$215.21	3.66	
	Cortez, Fernando			$177.00	3.66	
	Fournier, Reed			$204.94	3.66	
	Gallardo, Charles			$185.51	3.66	
	Garcia, John			$213.40	3.66	
	Gurnee, Jeffrey			$209.99	3.66	
	Henry, Michael			$209.99	3.66	
	Hibbs, Jason			$194.84	3.66	
	Kelly, Michael			$195.44	3.66	
	Kusinsky, James			$199.78	3.66	
	Lacy, Ronald			$189.95	3.66	
	Leeds, Glen			$209.99	3.66	
	Leon, Salvador			$199.78	3.66	
	Lopez, Jason			$205.16	3.66	
	Marroquin, Johnny			$152.46	3.66	
	Martinez, Miguel			$233.16	3.66	
	Martinez, Ricardo			$167.94	3.66	
	Moreno Alba, Tomas			$167.94	3.66	

INFORMED K12 EXTR DUTY

	Offenback, David Osorio, Elias Pecharich, Joseph Pulido, Daniel Quintero Rodelo, Roberto Reyes, Cruz Raul Rodriguez, Jose Salazar, Frankie Saldana, Aldo Sharp, Marvin Sierra, Matthew Simich, John St. Clair, Phil Tran, Binh Viramontes, Esteban Vizcaino, Hector Zuniga Murillo, Cesar			$243.81 $131.32 $204.94 $159.70 $180.73 $237.72 $160.25 $243.81 $226.35 $167.94 $185.51 $194.84 $243.81 $242.71 $152.07 $245.51 $144.99	3.66 3.66 3.66 3.66 3.66 3.66 3.66 3.66 3.66 3.66 3.66 3.66 3.66 3.66 3.66 3.66 3.66	
Computer Tech Change in First Reporting Day	Santana, Juan	Career Technical Education	010808 Unrestricted - Regional Occupational Center Prog (ROC/P 6350)	$1,949.00	40	July 27, 2020
Library Media Technician	Reyna, Zoila	Lincoln Elementary School	010030 Unrestricted Discretionary Accounts	$1,200.00	51	September 8, 2020

INFORMED K12 EXTR DUTY

Computer I/A	Quezada, Elida	Heninger Elementary School	010030 Unrestricted Discretionary Accounts	$5,009.01	166	July 27, 2020
1 Extra Week for Computer Tech	Berber-Chavez, Patricia	Adams Elementary School	013010 IASA:Title I Basic Grants Low-Income and Neglected, Part A	$2,091.56	40	July 27, 2020
Computer Tech II	Duran, Edward	Lathrop Intermediate School	013010 IASA:Title I Basic Grants Low-Income and Neglected, Part A	$1,495.00	40	July 27, 2020
Classified Computer Technician	Torres, Edmundo	Sierra Preparatory Academy	010030 Unrestricted Discretionary Accounts	$1,316.40	30	July 27, 2020

INFORMED K12 EXTR DUTY

CSEA-Computer Techs Reporting Day Changed	Wolfe, Corey	Godinez Fundamental	010030 Unrestricted Discretionary Accounts	$1,550.00	40	July 27, 2020
2020/2021 AVID Tutors	Briseno, Adrian Diaz, Karina Dominguez, Katherine Linares, Josue Perez, Wendy Portillo, Cristabel Reyna, Maria Rojas, Maria Torres, Ramon Zamora, Rosemary	Century High School	010705 SC-LCFF-Supplemental Concentration (School Personnel)	$4,812.09 $4,812.09 $4,812.09 $4,812.09 $4,812.09 $4,812.09 $4,812.09 $4,812.09 $4,812.09 $4,812.09	290 290 290 290 290 290 290 290 290 290	August 26, 2020
Clerical- Extra Assigments	Santiago, Esther	Jackson Elementary School	010030 Unrestricted Discretionary Accounts	$2,243.51	67	July 1, 2020

INFORMED K12 EXTR DUTY

EL Tutor	Becerra, Eliza Bedoya, Olga Herrera Bello, Maria Mendez, Ana Vargas Leal, Juliana Zana, Julian	Santa Ana High School	013010 IASA:Title I Basic Grants Low-Income and Neglected, Part A	$3,307.20 $3,307.20 $3,307.20 $3,307.20 $3,307.20 $3,307.20	200 200 200 200 200 200	August 17, 2020
Nutrition Services - Extra Duty	Menera, Fernando Nevarez Pena, Victor Solano, John Vaca, Rolando	Nutrition Services	135310 Child Nutrition: School Programs	$2,493.00 $2,489.00 $2,881.00 $2,315.00	60 60 60 60	August 7, 2020
Computer Technician Extra Duty	Lara, Eric	McFadden Intermediate School	010030 Unrestricted Discretionary Accounts	$3,246.75	60	July 1, 2020

INFORMED K12 EXTR DUTY

Nutrition Services - Extra Duty	Alcantar, Jose	Nutrition Services	135310 Child Nutrition: School Programs	$3,490.00	80	August 7, 2020
	Cabrera, Ricardo			$3,406.00	80	
	Carrillo, Fidel			$2,599.00	80	
	Garcia, Luis			$3,239.00	80	
	Lopez Rodriguez, Miguel			$2,867.00	80	
	Mendez Herrera, Jose			$2,730.00	80	
	Rodriguez, Jesus			$3,324.00	80	
	Vest, Joshua			$2,730.00	80	
Nutrition Services - Extra Duty	Chavez, Jennifer	Nutrition Services	135310 Child Nutrition: School Programs	$370.00	5	August 7, 2020
	Chavez, Pureza			$5,689.00	115	
	Cregut-Gonzalez, Shanee			$5,855.00	124	
	Doan, Lynn Thi			$6,589.00	150	
	Garcia, Edward			$3,006.00	58	
	Gaxiola, Lisa			$3,755.00	58	
	Gil-Mejia, Sury			$3,803.00	83	
	Gutierrez, Hector			$3,315.00	58	
	Jimenez, Anabel			$3,761.00	90	
	Juarez, Mara			$3,895.00	83	
	Lara, Adelina			$3,895.00	83	
	Mojarra, Maria			$5,186.00	113	
	Montano Silva, Gilberto			$2,970.00	83	
	Moran, Tamara			$3,587.00	90	
	Nieto, Ricardo			$3,059.00	58	
	Rojas, Alicia			$3,895.00	83	
	Rojas, Jacob			$2,727.00	58	
	Torres, Gloria			$3,993.00	83	
	Vargas, Celina			$3,622.00	83	
	Vazquez, Martha			$6,063.00	100	
	Velazquez, Ana			$9,751.00	270	
	Zoleta, Tracey			$361.00	5	
	Zuniga, Luis			$7,732.00	150	

INFORMED K12 EXTR DUTY

Nutrition Services - Extra Duty	Cervantes, Jesus	Nutrition Services	135310 Child Nutrition: School Programs	$873.00	20	August 10, 2020
	Dang, Nam			$333.00	5	
	Guzman, Yulismairi			$683.00	20	
	Johnson, Jessica			$217.00	10	
	Kendall, Joann			$253.00	5	
	Lara, Paola			$132.00	5	
	Maldonado, Melissa			$604.00	12	
	Malijian, Christine			$218.00	5	
	Mendoza, Angel			$325.00	5	
	Milton, Lee			$247.00	5	
	Ngo, Kathleen			$236.00	5	
	Paredones, Monica			$603.00	12	
	Rojas, Andrea			$940.00	20	
	Terry, Milagros			$240.00	5	

RESOLUTION NO. 20/21-3366

BOARD OF EDUCATION
OF THE SANTA ANA UNIFIED SCHOOL DISTRICT
ORANGE COUNTY, CALIFORNIA

TO MAKE CERTAIN DETERMINATIONS AND FINDINGS PURSUANT TO GOVERNMENT CODE SECTION 4217.10, ET SEQ. AND FOR AUTHORIZATION TO ENTER INTO MULTIPLE POWER PURCHASING AGREEMENTS WITH ONYX DEVELOPMENT GROUP LLC AND LICENSE AGREEMENTS WITH LICENSED CONTRACTOR

WHEREAS, Onyx Development Group LLC ("Onyx") conducted an evaluation of certain District facilities in need of cost efficient production of solar energy, and solar energy storage, as identified in **Attachment A** attached hereto (individually a "Facility", or collectively "Facilities"), identified Energy Conservation Measures (as herein defined) for the District at each Facility as identified in **Attachment A** attached hereto, and prepared an analysis demonstrating savings that the District could realize with the installation of the Energy Conservation Measures at the Facilities attached hereto in **Attachment A** ("Onyx Analysis"); and

WHEREAS, Onyx represented to the District that Onyx can and will design, pay a third party contractor to construct, and maintain certain "conservation measures" as defined in Government Code section 4217.11 in the form of solar/photovoltaic systems and, to the extent applicable, solar energy storage at the Facilities (collectively, "Energy Conservation Measures"); and

WHEREAS, Onyx has analyzed the energy needs at the Facilities and has concluded, as supported by the Onyx Analysis, that the installation and construction of the Energy Conservation Measures at the Facilities will result in an anticipated reduction in energy consumption or demand; more specifically it will result in net cost savings to the District of $32,648,940 from the reduction in electrical energy purchases resulting from the Energy Conservation Measures at the Facilities; and

WHEREAS, Onyx has represented to the District that Onyx can design, cause a third-party contractor to construct, operate, and maintain those Energy Conservation Measures at the Facilities; and

WHEREAS, based upon the Onyx Analysis attached in **Attachment A**, and presentation by District staff, the cost to the District for Onyx to design, construct, and maintain the Energy Conservation Measures at each 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 District in the absence of the Energy Conservation Measures; and

WHEREAS, Government Code section 4217.12 (a) authorizes a public agency to enter

into an energy services contract if the determination is made at a regularly scheduled public hearing, public notice of which is given at least two weeks in advance, and if the governing body finds that the anticipated cost to the public agency for thermal or electrical energy or conservation services provided by the energy conservation facility under the contract will be less than the anticipated marginal cost to the public agency of thermal, electrical, or other energy that would have been consumed by the public agency in the absence of those purchases, is anticipated to be offset by below-market energy purchases or other benefits provided under the energy service contract; and

WHEREAS, on this date, pursuant to Government Code section 4217.10 *et seq*., this Governing Board held a public hearing with respect to the District entering into solar power purchasing agreements with Onyx to design, pay a third party contractor to construct, and maintain Energy Conservation Measures at each Facility, one form of which will be for solar/photovoltaic systems only ("Solar PPA"), and the other for both solar/photovoltaic systems and solar batteries ("Solar/Battery PPA"). A copy of the form of Solar PPA is attached hereto as **Attachment B** and incorporated herein by reference, and a copy of the Solar/Battery PPA is attached hereto as **Attachment C** and incorporated herein by reference. Both the Solar PPA and Solar/Battery PPA include a form of EPC Contractor License Agreement attached as **Exhibit 13** attached thereto ("License Agreement") that permits the EPC Contractor to enter the District sites and construct the Facilities pursuant to the terms and conditions therein; and

WHEREAS, the Governing Board has determined that the anticipated cost to the District for thermal or electrical energy or conservation services pursuant to the Solar PPA and Solar/Battery PPA for each Facility as applicable and identified in **Attachment A** to design, construct, and maintain the Energy Conservation Measures will be less than the anticipated marginal cost to the District of thermal, electrical, or other energy that would have been consumed by the District in the absence of those Energy Conservation Measures; and

WHEREAS, the Governing Board has determined that it is in the best interest of the District to enter into a Solar PPA attached hereto as **Attachment B** and Solar/Battery PPA attached hereto as **Exhibit C** for each Facility based on the Energy Conservation Measures identified in **Attachment A** to design, construct, and maintain the Energy Conservation Measures (collectively, "PPAs"), and desires to retain Onyx to design, pay a third party contractor to construct, and maintain the Energy Conservation Measures pursuant to the terms and conditions of the PPAs.

NOW, THEREFORE, BE IT RESOLVED, for good and sufficient cause based on the entire record of proceedings, the Santa Ana Unified School District Board of Education ("Board") hereby resolves, determines, and finds the following:

A. That the District held a public hearing at a regularly scheduled meeting of the Governing Board.

B. Based upon reports of staff, reviewed by the Governing Board in connection herewith, and pursuant to Government Code section 4217.12, the anticipated cost to the District for the Energy Conservation Measures provided pursuant to the PPAs to design, provide, install and construct the Energy Conservation Measures at each Facility will be less than the anticipated marginal costs to

the District of thermal, electrical or other energy that would have been consumed by the District in the absence of such purchases.

C. It is in the best interests of the District to enter into a Solar PPA attached hereto as **Attachment B** and Solar/Battery PPA attached hereto as **Exhibit C** for each Facility based on the Energy Conservation Measures identified in **Attachment A**, subject to minor revisions approved by staff and legal counsel that do not alter or reduce the best interests approved in this Resolution.

D. That the License Agreement is approved for each Facility as identified in **Exhibit 13** to **Attachment B** and **Attachment C**.

E. That the District's Superintendent or designee is authorized to enter into a Solar PPA attached hereto as **Attachment B**, Solar/Battery PPA attached hereto as **Exhibit C**, and the License Agreement for each Facility based on the Energy Conservation Measures identified in **Exhibit 13** to **Attachment A** and **Attachment B,** subject to minor revisions approved by staff and legal counsel that do not alter or reduce the best interests approved in this Resolution, and to take all steps and perform all actions necessary to execute and implement that Contract and to take any actions deemed necessary to best protect the interests of the District.

The foregoing resolution was considered, passed, and adopted by the Board at the District's regular Board meeting of September 8, 2020.

AYES IN FAVOR OF THIS RESOLUTION:	**NOES AGAINST THIS RESOLUTION:**
Rodriguez	
Amezcua	
Alvarez	
Palacio	
Torres	

ABSTAINED:	**ABSENT:**

Dated: September 8, 2020 By: _____

Rigo Rodriguez, Ph.D.
President, Board of Education
Santa Ana Unified School District

Attest:

_____
Alfonso Alvarez, Ed.D.
Clerk, Board of Education
Santa Ana Unified School District

I, Alfonso Alvarez, the Clerk of the Board of Education of the Santa Ana Unified School District of Orange County, California, hereby certify that the foregoing is a true and correct copy of Resolution No. 20/21-3366 which was duly adopted by said Board at a regular meeting thereof held on the 8th day of September 2020, and that it was so adopted by the vote indicated above.

ATTACHMENT A

FACILITY LIST AND ENERGY ANALYSIS

Onyx will design, construct, and maintain Energy Conservation Measures at the following District sites:

District Site	Address	Type of Energy Conservation Measures
Romero-Cruz Academy	2701 W. Fifth St. Santa Ana, CA 92703	solar/photovoltaic system and solar energy storage
Gonzalo and Felicitas Mendez Fundamental Intermediate School	2000 N. Bristol St. Santa Ana, CA 92706	solar/photovoltaic system and solar energy storage
Thomas Jefferson Elementary School	1522 W. Adams St. Santa Ana, CA 92704	solar/photovoltaic system and solar energy storage
Abraham Lincoln Elementary School	425 S. Sullivan St. Santa Ana, CA 92704	solar/photovoltaic system and solar energy storage
Glenn L. Martin Elementary School	939 W. Wilshire Ave. Santa Ana, CA 92707	solar/photovoltaic system and solar energy storage
Adeline C. Walker Elementary School	811 E. Bishop St. Santa Ana, CA 92701	solar/photovoltaic system and solar energy storage
Spurgeon Administration Building	1601 E. Chestnut Ave. Santa Ana, CA 92701	solar/photovoltaic system and solar energy storage
Raymond A. Villa Fundamental Intermediate School	1441 E. Chestnut Ave. Santa Ana, CA 92701	solar/photovoltaic system
John Muir Fundamental Elementary School	1951 Mabury St. Santa Ana, CA 92705	solar/photovoltaic systems and solar energy storage
Sierra Preparatory Academy	2021 N. Grand Ave. Santa Ana, CA 92705	solar/photovoltaic system and solar energy storage
Fairview Facilities Building	720 N. Fairview St. Santa Ana, CA 92703	solar/photovoltaic system
Wallace R. Davis Elementary School	1405 French St. Santa Ana, CA 92701	solar/photovoltaic system
Roosevelt Elementary School	501 Halladay St. Santa Ana, CA 92701	solar/photovoltaic system
James Russell Lowell Elementary School	700 S. Flower St. Santa Ana, CA 92703	solar/photovoltaic system
Pio Pico Elementary School	931 W. Highland St. Santa Ana, CA 92703	solar/photovoltaic system
John F. Kennedy Elementary School	1300 E. McFadden Ave. Santa Ana, CA 92705	solar/photovoltaic system
Julia C. Lathrop Technology Magnet Intermediate School	1111 S. Broadway Santa Ana, CA 92707	solar/photovoltaic system
Manuel Esqueda Elementary	2240 S. Main St. Santa Ana,	solar/photovoltaic system

School	CA 92707	
Santiago Elementary School	2212 N. Baker St. Santa Ana, CA 92706	solar/photovoltaic system
James Madison Elementary School	1124 Hobart St. Santa Ana, CA 92707	solar/photovoltaic system
James Monroe Elementary School	417 E. Central Ave. Santa Ana, CA 92707	solar/photovoltaic system
Diamond Elementary School	1450 S. Center St. Santa Ana, CA 92704	solar/photovoltaic system
Thomas A. Edison Elementary School	2063 Orange Ave. Santa Ana, CA 92707	solar/photovoltaic system
Heroes Elementary School	1111 W. Civic Center Dr. Santa Ana, CA 92703	solar/photovoltaic system
Greenville	3600 S. Raitt St. Santa Ana, CA 92704	solar/photovoltaic system
John Adams Elementary School	2130 S. Raitt St. Santa Ana, CA 92704	solar/photovoltaic system
Andrew Jackson Elementary School	1143 S. Nakoma Dr. Santa Ana, CA 92704	solar/photovoltaic system
Jose A. Sepulveda Elementary School	1801 S. Poplar St. Santa Ana, CA 92704	solar/photovoltaic system
Herbert Hoover Elementary School	408 E. Santa Clara Ave. Santa Ana, CA 92706	solar/photovoltaic system
Woodrow Wilson Elementary School	1317 N. Baker St. Santa Ana, CA 92706	solar/photovoltaic system
John C. Fremont Elementary School	1930 W. Tenth St. Santa Ana, CA 92703	solar/photovoltaic system

ATTACHMENT B

FORM SOLAR PPA

ATTACHMENT C

FORM SOLAR/BATTERY PPA

ATTACHMENT 1

Energy Conservation Measures will be constructed at the following District sites:

District Site	**Address**	**Type of Energy Conservation Measures**
Romero-Cruz Academy	2701 W. Fifth St. Santa Ana, CA 92703	solar/photovoltaic system and solar energy storage
Gonzalo and Felicitas Mendez Fundamental Intermediate School	2000 N. Bristol St. Santa Ana, CA 92706	solar/photovoltaic system and solar energy storage
Thomas Jefferson Elementary School	1522 W. Adams St. Santa Ana, CA 92704	solar/photovoltaic system and solar energy storage
Abraham Lincoln Elementary School	425 S. Sullivan St. Santa Ana, CA 92704	solar/photovoltaic system and solar energy storage
Glenn L. Martin Elementary School	939 W. Wilshire Ave. Santa Ana, CA 92707	solar/photovoltaic system and solar energy storage
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Roosevelt Elementary School	501 Halladay St. Santa Ana, CA 92701	solar/photovoltaic system
James Russell Lowell Elementary School	700 S. Flower St. Santa Ana, CA 92703	solar/photovoltaic system
Pio Pico Elementary School	931 W. Highland St. Santa Ana, CA 92703	solar/photovoltaic system
John F. Kennedy Elementary School	1300 E. McFadden Ave. Santa Ana, CA 92705	solar/photovoltaic system
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James Madison Elementary School	1124 Hobart St. Santa Ana, CA 92707	solar/photovoltaic system
James Monroe Elementary School	417 E. Central Ave. Santa Ana, CA 92707	solar/photovoltaic system
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Greenville	3600 S. Raitt St. Santa Ana, CA 92704	solar/photovoltaic system
John Adams Elementary School	2130 S. Raitt St. Santa Ana, CA 92704	solar/photovoltaic system
Andrew Jackson Elementary School	1143 S. Nakoma Dr. Santa Ana, CA 92704	solar/photovoltaic system
Jose A. Sepulveda Elementary School	1801 S. Poplar St. Santa Ana, CA 92704	solar/photovoltaic system
Herbert Hoover Elementary School	408 E. Santa Clara Ave. Santa Ana, CA 92706	solar/photovoltaic system
Woodrow Wilson Elementary School	1317 N. Baker St. Santa Ana, CA 92706	solar/photovoltaic system
John C. Fremont Elementary School	1930 W. Tenth St. Santa Ana, CA 92703	solar/photovoltaic system

Onyx Renewables - Commericial Solar Program

Total Electric Savings

Contact Information

Onyx Business Development Manager	David Brian
Email	dbrian@onyxrenewables.com
Office Phone	
Mobile Phone	

System Details

System size:	18.617 MW
Annual production:	15,770,683 kWh
System type:	Mixed
System location:	Santa Ana Unified School District

Power Purchase Agreement

Initial PPA Price:	$0.135 $/kWh
Contract Escalator:	0.0%

Utility Cost Details

2009 Variable Power Price:	$0.168 $/kWh
Local Utility Escalator:	3.0%

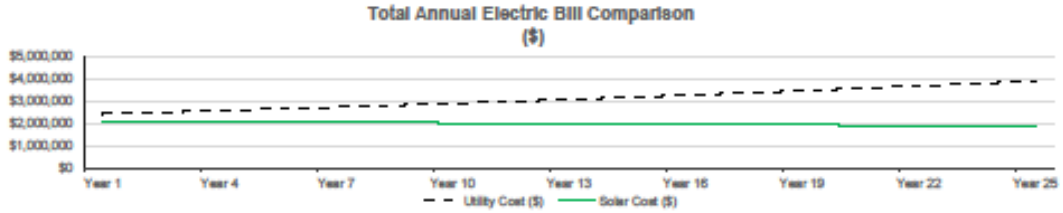
Savings Summary ($)

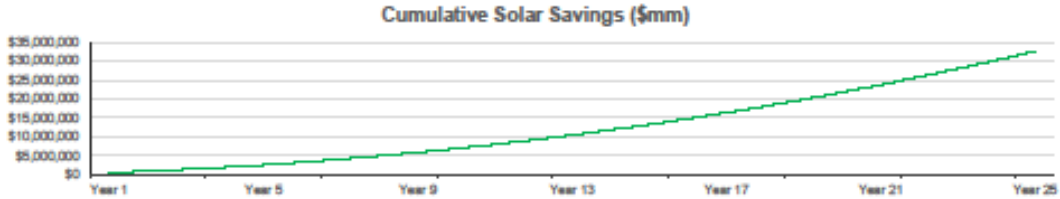
Total Nominal Savings over 25 Years	$32,648,940
Average Annual Savings	$1,086,206
Year 1 Discount to Retail Rate	20%
Average Discount to Retail Rate	17%

Annual Utility Savings Analysis

	Annual Utility Usage (kWh)	Annual Solar Output (kWh)	Utility Rate ($/kWh)	Utility Cost ($)	Solar Rate ($/kWh)	Solar Cost ($)	RES-BCT Avoided Cost ($)	Total Projected Savings ($)
Year 1	14,528,865	15,770,683	$0.168	$2,440,369	$0.135	$2,130,122	$15,196	$315,923
Year 2	14,528,865	15,699,790	$0.171	$2,489,666	$0.135	$2,119,472	$18,859	$409,054
Year 3	14,528,865	15,621,291	$0.175	$2,539,460	$0.135	$2,108,874	$52,487	$483,072
Year 4	14,528,865	15,543,184	$0.178	$2,590,369	$0.135	$2,098,330	$66,075	$557,992
Year 5	14,528,865	15,465,468	$0.182	$2,642,054	$0.135	$2,087,838	$79,618	$633,834
Year 6	14,528,865	15,388,141	$0.185	$2,694,895	$0.135	$2,077,399	$93,119	$710,615
Year 7	14,528,865	15,311,200	$0.189	$2,748,793	$0.135	$2,067,012	$106,575	$788,355
Year 8	14,528,865	15,234,644	$0.193	$2,803,769	$0.135	$2,056,677	$119,982	$867,074
Year 9	14,528,865	15,158,471	$0.197	$2,859,864	$0.135	$2,046,394	$133,341	$946,791
Year 10	14,528,865	15,082,679	$0.201	$2,917,061	$0.135	$2,036,162	$146,648	$1,027,527
Year 11	14,528,865	15,007,265	$0.205	$2,975,382	$0.135	$2,025,981	$159,901	$1,109,302
Year 12	14,528,865	14,932,229	$0.209	$3,034,889	$0.135	$2,015,851	$173,134	$1,192,173
Year 13	14,528,865	14,857,568	$0.213	$3,095,587	$0.135	$2,005,772	$186,425	$1,276,240
Year 14	14,528,865	14,783,280	$0.217	$3,157,499	$0.135	$1,995,743	$199,698	$1,361,454
Year 15	14,528,865	14,709,364	$0.222	$3,220,649	$0.135	$1,985,764	$212,936	$1,447,821
Year 16	14,528,865	14,635,817	$0.226	$3,285,062	$0.135	$1,975,835	$226,137	$1,535,363
Year 17	14,528,865	14,562,638	$0.231	$3,350,763	$0.135	$1,965,956	$239,299	$1,624,105
Year 18	14,528,865	14,489,824	$0.235	$3,417,778	$0.135	$1,956,126	$252,445	$1,714,097
Year 19	14,528,865	14,417,375	$0.240	$3,486,134	$0.135	$1,946,346	$265,591	$1,805,380
Year 20	14,528,865	14,345,288	$0.245	$3,555,857	$0.135	$1,936,614	$278,701	$1,897,944
Year 21	14,528,865	14,273,562	$0.250	$3,626,974	$0.135	$1,926,931	$291,771	$1,990,814
Year 22	14,528,865	14,202,194	$0.255	$3,699,513	$0.135	$1,917,296	$304,800	$2,087,017
Year 23	14,528,865	14,131,183	$0.260	$3,773,503	$0.135	$1,907,710	$317,785	$2,183,579
Year 24	14,528,865	14,060,527	$0.265	$3,848,973	$0.135	$1,898,171	$330,724	$2,281,526
Year 25	14,528,865	13,990,225	$0.270	$3,925,953	$0.135	$1,888,680	$343,615	$2,380,887
Total / Average	363,221,625	371,681,890	$0.215	$78,181,135	$0.135	$50,177,055	$4,644,860	$32,648,940

Savings Summary





Attachment A

Solar Power Purchase and Energy Services Agreement

Santa Ana Unified School District: Solar + Storage Portfolio

This Solar Power Purchase and Energy Services Agreement (this "**Agreement**") is entered into by the parties listed below (each a "**Party**" and collectively the "**Parties**") as of the date signed by Seller below (the "**Effective Date**").

Purchaser or District	Santa Ana Unified School District	**Seller**	Onyx Development Group LLC
Name and Address	Santa Ana Unified School District 1601 East Chestnut Ave. Santa Ana, CA 92701 Attention: Orin Williams, Assistant Superintendent	**Name and Address**	Onyx Development Group LLC 230 Park Avenue, Suite 845 New York, NY 10169
Phone	(714) 480-5356	**Phone**	646-217-0713
Fax	(714) 558-5610	**Fax**	646-736-6877
E-mail	Orin.Williams@SAUSD.US	**E-mail**	OASG@onyxrenewables.com
Premises Ownership	Purchaser is Fee Owner	**Additional Seller Information**	Additional Notice: legal@onyxrenewables.com

This Agreement sets forth the terms and conditions between Purchaser and Seller related to the energy and other related services provided by, and the design and construction – by a third party contractor – of, Seller's solar photovoltaic generating system (and associated equipment) described in **Exhibit 3** (the "**Solar System**") and battery energy storage system described in **Exhibit 4** (the "**Storage System**" and, together with the Solar System, collectively the "**System**") to be installed at those certain District sites as further described in **Exhibit 3** and **Exhibit 4** (the "**Premises**"). Pursuant to Government Code section 4217, et seq., Seller shall design, pay for the construction by an EPC Contractor (as defined in **Exhibit 3**), own, operate and maintain energy conservation measures in the form of the System at the Premises, and Purchaser shall purchase solar energy delivered by the System, which will result in a net cost savings purchase in the purchase and consumption of energy to the District at the Premises. It is an express condition of this Agreement that District shall not be charged by Seller for any costs for the design, development, or construction of the System unless this Agreement specifically requires that a certain cost be borne by the District.

The exhibits listed below are incorporated by reference and made part of this Agreement.

Exhibit 1	Basic Terms and Conditions
Exhibit 2	General Terms and Conditions
Exhibit 3	Solar Panel System Description, Delivery Point and Premises
Exhibit 4	Storage System Description and Operating Parameters
Exhibit 5	Energy Rate Schedule
Exhibit 6	Solar and Storage Estimated Annual Production
Exhibit 7	Seller Certifications
Exhibit 8	RESERVED
Exhibit 9	RESERVED
Exhibit 10	RESERVED
Exhibit 11	Plans and Specifications
Exhibit 12	Community Workforce Agreement
Exhibit 13	EPC Contractor License Agreement

Purchaser	**Seller**
Signature: _____	Signature: _____
Printed Name:	Printed Name: Ja Kao
Title:	Title: Authorized Signatory
Date: _____	Date: _____

Exhibit 1
Basic Terms and Conditions

1. **Initial Term**: Twenty-five (25) years, beginning on the Commercial Operation Date (as defined in **Exhibit 3**) (the "**Initial Term**").

2. **Additional Term**: One (1) additional term of five (5) years, upon mutual agreement of the Parties within the ninety (90) day period preceding the expiration of the Initial Term, commencing upon the end of the Initial Term (the "**Additional Term**").

3. **Environmental Attributes; Environmental Incentives**: All Environmental Attributes, including any Renewable Energy Credits associated with the System, will accrue to the benefit of Seller. All Environmental Incentives associated with the System will accrue to the benefit of Seller.

4. **Conditions Satisfaction Date:** 12/31/2022

5. **Guaranteed Commercial Operation Date:** 12/31/2022

6. **Tax Attributes**: All such tax incentives, attributes and benefits, including the federal Investment Tax Credit, will accrue to the benefit of Seller.

7. **Energy Rate**:

   Commencing on the Commercial Operation Date, Purchaser shall pay to Seller on a monthly basis an amount equal to $0.135 for each kilowatt hour ("**kWh**") of electricity delivered by the System to the Delivery Point. Beginning on the first (1st) anniversary of the Commercial Operation Date and on each subsequent anniversary of the Commercial Operation Date thereafter, the Energy Rate in effect during the immediately preceding twelve (12) month period shall be increased in accordance with **Exhibit 5**.

   If the Parties opt to exercise the Additional Term, the price for each kWh of electricity will be set at a price to be agreed upon by the Parties.

   Unless provided by this Agreement or otherwise agreed in writing by the Parties, the Energy Rate shall not be adjusted.

8. **Energy Rate Inclusions and Exclusions:**

   Included:

   Installation of the System by Seller and the EPC Contractor (includes: design, engineering, permitting, installation by the EPC Contractor, monitoring, rebate application and paperwork processing for the System); soil testing (geotechnical only) and soil removal (as necessary); all Division of the State Architect ("**DSA**") Inspector of Record ("**IOR**") lab costs and expenses; prevailing wage construction and costs to comply with the CWA (as defined below) by the EPC Contractor; tree removal and tree trimming necessitated by the construction of the System; and all ADA work/costs necessitated by the construction of the System, or otherwise required by an authority having jurisdiction over the Project (as defined below).

   Excluded:

   Unforeseen adverse soil conditions (including, but not limited to, hard dig, rock drilling or soil removal from the site, excavation/circumvention of underground obstacles); road improvements, repaving and restriping parking lot; hazardous materials or artifact removal and containment; upgrades or repair to customer or utility electrical infrastructure; battery energy storage system replacement at end of useful life; mowing and any landscape improvements or ongoing weed abatement; decorative enhancements to solar support structures (including: painting, paint matching, hot galvanized steel, masonry/stone work, and any lighting not required to meet the minimum code compliance); structural upgrades to the Premises; irrigation relocation; with respect to lighting for the Systems, costs due to low lighting levels in areas not meeting Illuminating Engineering Society of North America standards immediately prior to commencement of installation; and costs incurred by any Purchaser-directed phasing of the Project.

9. **Energy Rate Based on Portfolio Pricing**.

   The Parties acknowledge and agree that the Energy Rate set forth above is based on portfolio pricing consisting of multiple solar photovoltaic generating systems and/or battery energy storage systems to be owned by Seller and to be installed by the

EPC Contractor (as defined in **Exhibit 3**) at various Purchaser sites by December 31, 2022 (the "**Portfolio**"). As of the Effective Date, (i) the anticipated production of the Portfolio over a twenty-five (25) year period is 371,681,890 kWhs (the "**Estimated Portfolio Production**") and (ii) the anticipated installed capacity of the Portfolio is 10.617 MW DC (the "**Estimated Installed Capacity**"), as each are more clearly set forth in the Portfolio summary attached hereto as Schedule A. If, after the Effective Date, the (A) aggregate anticipated production of the Portfolio decreases by three percent (3%) or more than the Estimated Portfolio Production or (B) the aggregate constructed Portfolio has an aggregate installed capacity that is less than 10 MW DC, Seller may request from Purchaser a reasonable and equitable adjustment to the Energy Rate across the Portfolio to compensate for such reduction in Estimated Portfolio Production or Estimated Installed Capacity, with such adjustment not to exceed $0.137 per kilowatt hour; provided, that Seller reasonably substantiates such adjustment. Purchaser shall (without delay or condition) grant such adjustment to the Energy Rate across the Portfolio unless Purchaser reasonably believes that Seller's need is unsubstantiated. In such case, Seller and Purchaser shall meet and confer and shall in good faith negotiate an equitable adjustment to the Energy Rate for the Portfolio, with such adjustment not to exceed $0.137 per kilowatt hour. If the Parties fail to reach an agreement, then Seller may either (A) terminate this Agreement and Seller shall have no further liabilities or obligations hereunder or (B) pursue resolution of such dispute through the process identified in Section 19 of **Exhibit 3**. If Seller elects to terminate this Agreement, Seller shall provide Purchaser with thirty (30) days' notice of Seller's intent to terminate pursuant to this Section 9. During the thirty (30) day notice period, the District may agree in writing with Seller to the reasonable and equitable adjustment to the Energy Rate for the Portfolio. Upon the District's agreement within the thirty (30) day notice period, Seller's notice termination shall cease to be effective and this Agreement shall remain in full force and effect.

10. **Purchaser Options to Purchase System**: As set forth in Section 16.b of the **Exhibit 2**, Purchaser may purchase the System at the end of the Initial Term.

Schedule A to Exhibit 1

See Portfolio Summary attached.

ONYX

Blackstone Portfolio Company

Onyx Renewables - Commericial Solar Program

Total Electric Savings

Contact Information

Onyx Business Development Manager	David Brian
Email	dbrian@onyxrenewables.com
Office Phone	
Mobile Phone	

System Details

System size:	10.617 MW
Annual production:	15,778,683 kWh
System type:	Mixed
System location:	Santa Ana Unified School District

Power Purchase Agreement

Initial PPA Price:	$0.135 $/kWh
Contract Escalation:	0.0%

Utility Cost Details

2019 Variable Power Price:	$0.168 $/kWh
Local Utility Escalator:	2.0%

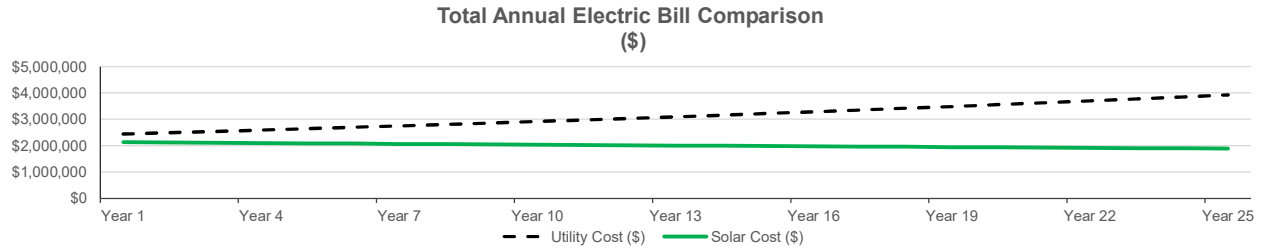
Savings Summary ($)

Total Nominal Savings over 25 Years	$32,648,940
Average Annual Savings	$1,086,206
Year 1 Discount to Retail Rate	20%
Average Discount to Retail Rate	37%

Annual Utility Savings Analysis

	Annual Utility Usage (kWh)	Annual Solar Output (kWh)	Utillity Rate ($/kWh)	Utility Cost ($)	Solar Rate ($/kWh)	Solar Cost ($)	RES-BCT Avoided Cost ($)	Total Projected Savings ($)
Year 1	14,528,865	15,778,683	$0.168	$2,440,849	$0.135	$2,130,122	$25,196	$335,923
Year 2	14,528,865	15,699,790	$0.171	$2,489,666	$0.135	$2,119,472	$38,859	$409,054
Year 3	14,528,865	15,621,291	$0.175	$2,539,460	$0.135	$2,108,874	$52,487	$483,072
Year 4	14,528,865	15,543,184	$0.178	$2,590,249	$0.135	$2,098,330	$66,073	$557,992
Year 5	14,528,865	15,465,468	$0.182	$2,642,054	$0.135	$2,087,838	$79,618	$633,834
Year 6	14,528,865	15,388,141	$0.185	$2,694,895	$0.135	$2,077,399	$93,119	$710,615
Year 7	14,528,865	15,311,200	$0.189	$2,748,793	$0.135	$2,067,012	$106,575	$788,355
Year 8	14,528,865	15,234,644	$0.193	$2,803,769	$0.135	$2,056,677	$119,982	$867,074
Year 9	14,528,865	15,158,471	$0.197	$2,859,844	$0.135	$2,046,394	$133,341	$946,791
Year 10	14,528,865	15,082,679	$0.201	$2,917,041	$0.135	$2,036,162	$146,648	$1,027,527
Year 11	14,528,865	15,007,265	$0.205	$2,975,382	$0.135	$2,025,981	$159,901	$1,109,302
Year 12	14,528,865	14,932,229	$0.209	$3,034,889	$0.135	$2,015,851	$173,134	$1,192,173
Year 13	14,528,865	14,857,568	$0.213	$3,095,587	$0.135	$2,005,772	$186,425	$1,276,240
Year 14	14,528,865	14,783,280	$0.217	$3,157,499	$0.135	$1,995,743	$199,698	$1,361,454
Year 15	14,528,865	14,709,364	$0.222	$3,220,649	$0.135	$1,985,764	$212,936	$1,447,821
Year 16	14,528,865	14,635,817	$0.226	$3,285,062	$0.135	$1,975,835	$226,137	$1,535,363
Year 17	14,528,865	14,562,638	$0.231	$3,350,763	$0.135	$1,965,956	$239,299	$1,624,105
Year 18	14,528,865	14,489,824	$0.235	$3,417,778	$0.135	$1,956,126	$252,445	$1,714,097
Year 19	14,528,865	14,417,375	$0.240	$3,486,134	$0.135	$1,946,346	$265,591	$1,805,380
Year 20	14,528,865	14,345,288	$0.245	$3,555,857	$0.135	$1,936,614	$278,701	$1,897,944
Year 21	14,528,865	14,273,562	$0.250	$3,626,974	$0.135	$1,926,931	$291,771	$1,991,814
Year 22	14,528,865	14,202,194	$0.255	$3,699,513	$0.135	$1,917,296	$304,800	$2,087,017
Year 23	14,528,865	14,131,183	$0.260	$3,773,503	$0.135	$1,907,710	$317,785	$2,183,579
Year 24	14,528,865	14,060,527	$0.265	$3,848,973	$0.135	$1,898,171	$330,724	$2,281,526
Year 25	14,528,865	13,990,225	$0.270	$3,925,953	$0.135	$1,888,680	$343,615	$2,380,887
Total / Average	363,221,625	371,681,890	$0.215	$78,181,135	$0.135	$50,177,055	$4,644,860	$32,648,940

Savings Summary



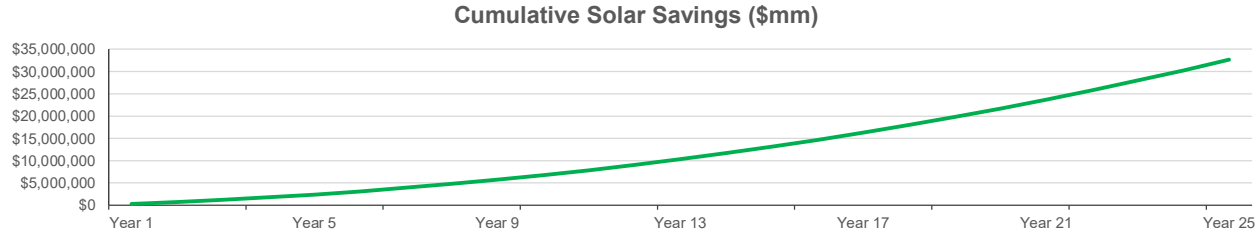


Exhibit 2
Solar Power Purchase and Energy Services Agreement
General Terms and Conditions

1. **Definitions and Interpretation**. Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (c) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; (d) the words "include," "includes" and "including" mean include, includes and including "without limitation;" and (e) the word "person" means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement. The following definitions shall apply to this Agreement:

"**Affiliate**" means with respect to any entity, such entity's general partner or manager, employee, or any other entity that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such entity. For purposes of this definition, "control" (including, with its correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any such person or entity, means the possession, directly or indirectly, of the power to director or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities or by contract or otherwise.

"**Applicable Law**" means, any constitutional provision, law (including Environmental Laws), statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, holding, injunction, registration, permit, authorization, or regulation of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

"**Delivery Point**" means the interconnection points on Purchaser's Premises behind the meters installed by Purchaser's Serving Utility and before the electrical systems serving Purchaser's Premises. No other Delivery Points are permitted under this Agreement without the permission of the Purchaser.

"**Environmental Laws**" means any applicable federal, state, county, municipal, or local law and any amendments thereto (whether common law, public law, ordinance, rule, order, regulation, or otherwise), order, permit, directive, judgment, decree or other enforceable requirement of a Governmental Authority relating to protection of the environment, natural resources, or to any Hazardous Substance, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Hazardous Materials Transportation Act, 42 U.S.C. § 1801 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Safe Drinking Water Act, 42 U.S.C. § 300f et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11001 et seq., and all regulations, orders, decisions, and decrees now or hereafter promulgated concerning the foregoing.

"**EPC Contract**" shall mean that certain engineering, procurement and construction agreement for the System by and between Seller and EPC Contractor.

"EPC Contractor" means that certain contractor(s) licensed in the State of California that will construct and install the System at the Premises in accordance with the EPC Contract and EPC Contractor License Agreement.

"**EPC Contractor License Agreement**" shall mean that certain license agreement to be executed by the Seller, Purchaser, and the EPC Contractor in substantially the form attached hereto as **Exhibit 13**.

"**Governmental Authority**" means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including the Federal Energy Regulatory Commission or any state public utility commission with jurisdiction).

"**Plans and Specifications"** means the technical specifications and drawings attached hereto as **Exhibit 11** and incorporated herein by reference.

"**Project**" means the installation (by the EPC Contractor) of the System on the Premises as contemplated hereunder.

"**Purchaser's Serving Utility**" means the utility with whom interconnection applications will be sent and from whom permission to operate will be obtained.

2. **Purchase and Sale of Electricity**.

a. **Purchase Requirement**. Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electric energy produced by the System during the Initial Term and the Additional Term (each as defined in **Exhibit 1**, and collectively the "**Term**") for electrical consumption by the Purchaser's Premises. Electric energy generated by the System will be delivered to Purchaser at the Delivery Point. Seller shall be responsible for all distribution lines and equipment necessary for the collection and routing of power from the System to the Delivery Point. The Parties acknowledge that Purchaser's electric energy requirements at the Premises may exceed the output of the System, and in such event, Purchaser may purchase electric energy for the Premises from other sources.

b. **Title to the Energy/Risk of Loss**. Purchaser shall take title to the electric energy generated by the System at the Delivery Point, and risk of loss will pass from Seller to Purchaser at the Delivery Point.

c. **Sale Prior to Commercial Operation Date**. Any purchase, sale and/or delivery of electric energy generated by the System prior to the Commercial Operation Date shall be treated as a purchase, sale and/or delivery of limited amounts of test energy only and shall not indicate that the System has been put in commercial operation by the purchase, sale and/or delivery of such test energy. Purchaser may not resell any of the electrical energy generated by the System. For purposes of this Agreement, engaging in net metering is not deemed to be resale of energy. Neither Party shall waive any rights that they might have if any purchase, sale and/or delivery of electric energy occurs before the Commercial Operation Date.

d. **Performance Guaranties**.

i. Performance Guaranty – Solar System. The annual estimated production for the Solar System, measured in kWh on an annual basis, shall be the amount set forth in **Exhibit 6** (the "**Solar Estimated Annual Production**"), subject to downward adjustment for weather conditions[1]. If the average electric energy produced by the Solar System as measured and recorded by Seller (the "**Solar Actual Production**") during a Guaranty Period (as defined below) is less than ninety percent (90%) of the average Solar Estimated Annual Production for such Guaranty Period, for reasons other than as set forth in Section 2.d.v below, then Seller shall pay to Purchaser an amount equal to (A) the amount of such Solar Actual Production shortfall in kWh (below 90%), multiplied by (B) the positive difference, if any, between the then-applicable rate charged by the Purchaser's Serving Utility and the then-applicable Energy Rate (the "**Solar Performance Guaranty**").

ii. Performance Guaranty – Storage System. The annual estimated production for the Storage System, measured in kWh on an annual basis, shall be the amount set forth in **Exhibit 6** (the "**Storage Estimated Annual Production**"), subject to downward adjustment for weather conditions[2]. If the average electric energy produced by the Storage System as measured and recorded by Seller (the "**Storage Actual Production**") during a Guaranty Period is less than ninety percent (90%) of the average Storage Estimated Annual Production for such Guaranty Period, for reasons other than as set forth in Section 2.d.v below, then Seller shall pay to Purchaser an amount equal to (A) the amount of such Storage Actual Production shortfall in kWh (below 90%), multiplied by (B) the positive difference, if any, between the then-applicable rate charged by the Purchaser's Serving Utility and the then-applicable Energy Rate (the "**Storage Performance Guaranty**").

iii. Measurement; Guaranty Period. The first measurement of the Solar Performance Guaranty and Storage Performance Guaranty shall occur on the fifth (5th) anniversary of the Commercial Operation Date and shall be calculated based on the average Solar Actual Production and average Storage Actual Production, respectively, for the preceding three (3) Contract Years (such three (3) year period, a "**Guaranty Period**"). On each successive Contract Year, the Solar Performance Guaranty and Storage Performance Guaranty shall be calculated based on the historical rolling three (3) year average of Solar Actual Production and Storage Actual Production, respectively, for the relevant Guaranty Period. By way of illustration, the first Guaranty

[1] The downward adjustment for weather conditions shall be based on "actual irradiance" vs. "predicted irradiance". For example, in order to determine if a production shortfall exists, Seller will use the following formula: Solar Actual Production Shortfall = ((Actual Irradiance / Predicted Irradiance) * Solar Estimated Annual Production) - Solar Actual Production.

[2] Same formula as in footnote 1 above, except using Storage Estimated Annual Production and Storage Actual Production values.

Period shall consist of Contract Years 3, 4 and 5, the second Guaranty Period shall consist of Contract Years 4, 5 and 6, and so on.

iv. Estimations. The Parties acknowledge and agree that the Solar Estimated Annual Production and Storage Estimated Annual Production are based on estimated size, output and capabilities of the Solar System and Storage System as designed as of the Effective Date, and that the size, output and capabilities of the Solar System and Storage System may be modified prior to the Commercial Operation Date due to engineering, governmental or utility requirements, or site conditions. As such, any adjustment to the size, output and/or capabilities of the Solar System and Storage System shall result in a modification of the applicable Solar Estimated Annual Production and Storage Estimated Annual Production, in each case, as reasonably determined by Seller.

v. Exclusions. Seller shall not be required to meet the Solar Performance Guaranty and/or Storage Performance Guaranty to the extent the failure to meet such guaranty arises out of or results from: (i) a person other than Seller or its approved service providers installing, removing, or repairing the Solar System and/or Storage System; (ii) destruction, damage, modification, or alteration to the Solar System and/or Storage System or its ability to produce/discharge energy not caused by Seller or its employees, contractors or agents; (iii) Purchaser's failure to perform, or a breach of, its obligations under this Agreement; (iv) an event of Force Majeure; (v) a power or voltage surge caused by a person other than Seller; (vi) any Solar System and/or Storage System failure not caused by a Solar System and/or Storage System defect; (vii) any Solar System and/or Storage System generation stoppage or reduction to accommodate Purchaser's activities or otherwise responsive to the action or inaction of Purchaser or its employees, contractors or agents; or (viii) a System loss in accordance with further provisions of this Agreement.

3. Term and Termination.

a. Initial Term. This Agreement is effective as of the Effective Date. The initial term ("**Initial Term**") of this Agreement shall commence on the Commercial Operation Date and continue for the length of time specified in **Exhibit 1,** unless earlier terminated as provided for in this Agreement. "**Commercial Operation Date**" means the date Seller gives Purchaser written notice that the System at the Premises: (i) is mechanically complete, (ii) has received permission to operate from Purchaser's Serving Utility, and (iii) has commenced delivery of electric energy to the Delivery Point. Notice by Seller as required in this provision shall be deemed effective unless Purchaser reasonably objects within five (5) days of the date of such notice. Upon Purchaser's reasonable request, Seller and/or the EPC Contractor shall give Purchaser copies of certificates of completion or similar documentation from the EPC Contractor and the interconnection or similar agreement with Purchaser's Serving Utility. If the Commercial Operation Date for the System does not occur on or before the Guaranteed Commercial Operation Date (as defined on **Exhibit 1**), Seller shall pay Purchaser liquidated damages for each day following the Guaranteed Commercial Operation Date in the amount of **One Thousand Dollars ($1,000.00)** per MW-DC per day for each and every calendar day of delay beyond the Guaranteed Commercial Operation Date; provided that the Guaranteed Commercial Operation Date shall be automatically extended on a day for day basis for each day of Force Majeure or any other delay caused by the Purchaser or any third party. These liquidated damages apply only to the construction portion of this Agreement and not to apply to any operations and maintenance, or performance guarantee obligations.

b. Additional Term. If within ninety (90) days of the end of the Initial Term, Purchaser (i) has not notified Seller of its intent to exercise its option to purchase the System in accordance with Section 16 and (ii) desires to extend this Agreement on the terms and conditions set forth herein, Purchaser shall notify Seller prior to the expiration of the Initial Term of its desire to extend this Agreement for the Additional Term specified in **Exhibit 1** (such notice, an "**Extension Notice**"). Seller shall determine an Energy Rate for such Additional Term. If Purchaser agrees in writing to the Energy Rate proposed by Seller, the Additional Term shall begin immediately upon the conclusion of the Initial Term on the same terms and conditions as set forth in this Agreement, except at the new agreed upon Energy Rate. If Purchaser does not agree to the Energy Rate determined by Seller within thirty (30) days of Seller proposing the Energy Rate, this Agreement shall expire at the end of the Initial Term.

4. Billing and Payment.

a. Monthly Charges. Purchaser shall pay Seller for the electric energy generated by the System that is delivered to the Delivery Point at the rate for the applicable Contract Year (as defined below) as shown in **Exhibit 5** (the "**Energy Rate**"). Purchaser shall make monthly payments equal to the applicable Energy Rate multiplied by the number of kWh of energy delivered by the System during the applicable month as measured by the Seller Meter. "**Contract Year**" means the twelve-month period beginning at 12:00 AM on the Commercial Operation Date or on any anniversary of the Commercial Operation Date and ending at 11:59 PM on the day immediately preceding the next

anniversary of the Commercial Operation Date, provided that the first Contract Year shall begin on the Commercial Operation Date.

b. **Monthly Invoices**. Seller shall invoice Purchaser monthly on or before the 10th of each calendar month and provide for payment by Purchaser either manually or through Automated Clearing House ("**ACH**"), as determined by Seller. Such monthly invoices shall state:

i. the amount of electric energy produced by the System and delivered to the Delivery Point;

ii. the rates applicable to, and charges incurred by, Purchaser under this Agreement; and

iii. the total amount due from Purchaser.

c. **Taxes**. Purchaser shall either pay or reimburse Seller for any and all Taxes (as defined below) assessed on the generation, sale, delivery or consumption of electric energy produced by the System or the interconnection of the System to Purchaser's Serving Utility's electric distribution system, including property taxes on the System. Purchaser shall be responsible for and pay all Taxes which are assessed, levied, charged or imposed by any public authority against or relating to (i) the Premises and all improvements thereon (including the System), and/or (ii) the License and other rights of use granted to Seller pursuant to the License. For purposes of this Section 4.c, "**Taxes**" means any federal, state and local ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges, but shall not include any income taxes or similar taxes imposed on Seller's revenues due to the sale of energy under this Agreement, which shall be Seller's responsibility.

d. **Payment Terms**.

i. All amounts due under this Agreement shall be due and payable net forty-five (45) days from receipt of invoice. Any undisputed portion of any invoice amount not paid within the forty-five (45) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) over the Prime Rate (but not to exceed the maximum rate permitted by law). "**Prime Rate**" shall mean the rate of interest per annum publicly quoted from time to time by The Wall Street Journal as the U.S. "Prime Rate".

ii. Purchaser may dispute a portion of the invoice amount (the "**Disputed Invoice**") by providing Seller written notice of the disputed portion of the invoice and the basis for such dispute (the "**Disputed Invoice Notice**").

iii. The Parties shall cooperate in good faith to resolve any Disputed Invoice; provided, however, if Purchaser and Seller cannot resolve any Disputed Invoice within fifteen (15) days after Seller's receipt of the Disputed Invoice Notice, the Disputed Invoice shall be resolved pursuant to Section 19 of this Agreement. Under no circumstances will a dispute over an invoice amount be considered a default under this Agreement.

5. **Environmental Attributes, Environmental Incentives and Tax Attributes**.

Unless otherwise specified on **Exhibit 1**, Seller is the owner, and entitled to the benefit, of all Environmental Attributes, Tax Attributes and Environmental Incentives (each as defined below). Purchaser's purchase of electricity under this Agreement shall not include the right to Environmental Attributes, Tax Attributes, Environmental Incentives or any other attributes of ownership and operation of the System all of which shall be retained by Seller. Purchaser shall cooperate with Seller in obtaining, securing and transferring all Environmental Attributes, Environmental Incentives and the benefit of all Tax Attributes to Seller, including by using the electric energy generated by the System in a manner necessary to qualify for such available Environmental Attributes, Environmental Incentives and Tax Attributes. Purchaser shall not be obligated to incur any out–of–pocket costs or expenses in connection with such actions for the benefit of Seller unless reimbursed by Seller. If any Environmental Incentives, Environmental Attributes or Tax Attributes are paid directly to Purchaser, Purchaser shall immediately pay such amounts over to Seller. Purchaser shall be entitled to participate in and retain any benefits from any net metering program of Purchaser's Serving Utility.

"**Environmental Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to

contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (c) the reporting rights to any Governmental Authority related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Tax Attributes. Purchaser and Seller shall file all tax returns in a manner consistent with this Section 5. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, investment credits, emissions allowances, green tags, tradeable renewable credits and Green-e® products.

"**Environmental Incentives**" means any and all credits, rebates, subsidies, payments or other incentives (including SGIP) that relate to self–generation of electricity, electric generation capacity, the use of technology incorporated into the System, environmental benefits of using the System, or other similar programs available from Purchaser's Serving Utility, any other regulated entity, the manufacturer of any part of the System or any Governmental Authority.

"**Tax Attributes**" means any and all (a) depreciation benefits, (b) investment tax credits, (c) production tax credits and (d) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of energy from the System.

6. Conditions to Obligations.

a. Conditions to Seller's Obligations.

Seller's obligations under this Agreement are conditioned on the completion of the following conditions to Seller's satisfaction on or before the Conditions Satisfaction Date (as set forth on **Exhibit 1**), with respect to which Seller shall use commercially reasonable efforts to achieve before such date:

i. Seller shall have received financing sufficient to enable it to purchase, pay for construction, operate and maintain the System as required by this Agreement on terms acceptable to the Seller in its sole discretion;

ii. Seller shall have: (1) completed an inspection of the Premises and each of the properties upon which the System will be located including, if applicable, geotechnical work, structural engineering review, environmental studies, and real estate due diligence (e.g., title and encumbrance review) and (2) received all necessary curative documents, in each case, to confirm the suitability of the Premises for the System;

iii. Confirmation that Seller will obtain all applicable Environmental Attributes, Environmental Incentives and Tax Benefits identified by Seller to the Purchaser for the System;

iv. Seller shall have received all necessary permits, licenses, authorizations, consents and approvals required by any Governmental Authority or other third party, including zoning, land use, environmental, building, DSA approval and other permits for the installation and operation of the System by the EPC Contractor;

v. Seller shall have executed (or received) all necessary agreements with Purchaser's Serving Utility for interconnection of the System to the Premises electrical system and/or Purchaser's Serving Utility's electric distribution system;

vi. Seller shall have received proof of insurance for all insurance required to be maintained by Purchaser under this Agreement; and

vii. Confirmation that there is no material adverse change in the regulatory environment, incentive program or federal or state tax code (including expiration of any incentive program or tax incentives in effect as of the Effective Date) that could reasonably be expected to result in a significantly adverse effect on the economics of the installation for Seller and its Financing Parties (as defined below).

b. Conditions Precedent to Commencement of Construction.

Prior to the EPC Contractor's commencement of construction and installation of the System (the "**Work**"), the following conditions must be completed to Purchaser's reasonable satisfaction:

i. (1) Seller, Purchaser, and the EPC Contractor shall have entered into the EPC Contractor License Agreement; (2) the EPC Contractor shall have provided all documents to Seller and the District required of the EPC Contractor under the EPC Contractor License Agreement; and (3) Seller shall have executed and delivered to the District those certifications attached as **Exhibit 7** hereto. The District's approval shall be contained in a written notice(s) to proceed ("**NTP**") issued to Seller and the EPC Contractor, which approval and issuance shall not be unreasonably withheld, conditioned or delayed.

ii. **CEQA.** The Purchaser's Board of Education approves the Project under the California Environmental Quality Act ("**CEQA**") and/or exempts the Project from CEQA. The Parties acknowledge that Seller is not obligated to commence any portion of the Work under an NTP unless and until this condition precedent has been satisfied or waived; provided, that, if the District cannot comply with CEQA, the District will compensate Seller for undisputed and substantiated design and/or planning services performed by Seller to date authorized by a District-issued NTP.

c. **Failure of Conditions**. If any of the conditions listed in subsections (a) or (b) above are not satisfied by the Conditions Satisfaction Date, the Parties shall attempt in good faith to negotiate new dates for the satisfaction of the failed conditions. If the Parties are unable to negotiate new dates or a Party is unable to satisfy a condition (whether due to impossibility or material adverse impact on the System) regardless of an extension of time, then either Party may terminate this Agreement upon ten (10) days written notice to the other Party. Such termination shall be at no cost or obligation to the other Party, unless specifically stated otherwise herein.

d. **Adjustment to Location and Size of System**. At all times under this Agreement, Seller shall have the option to revise **Exhibits 3** and **4** to reflect the addition or removal of any portion of the System, provided that Seller (i) shall use commercially reasonable efforts to identify a substitute location at the Premises for such additional portion of the System of equivalent size upon removal of such portion of the System; and (ii) shall not install the System with a capacity that will materially exceed the total System size set forth on **Exhibits 3** and **4** without written approval of Purchaser.

e. **Commencement of Construction**. Seller shall ensure that the EPC Contractor commences construction and installation of the System within ninety (90) days of the satisfaction or written waiver of all of the conditions set forth in Section 6.a and the District's issuance of a NTP to Seller and the EPC Contractor.

7. **Seller's Rights and Obligations**.

a. **System Design and Finalization**. Seller shall design and engineer the System consistent with its obligations in **Exhibits 3** and **4**. If solar energy panels and other System assets documented in **Exhibits 3** and **4** (such panels and System assets, "**System Equipment**") are not readily available when Seller installs the System, Seller may make substitutions of such System Equipment at Seller's sole discretion and in compliance with DSA-approved designs; provided Seller shall obtain Purchaser's prior consent for System Equipment substitutions that would ***materially affect*** the capacity of the System, or require a change to the Energy Rate. Purchaser shall have the right to review the System design prior to the commencement of construction by the EPC Contractor.

b. **Charging and Discharging of Storage System**. As between the Parties, Seller shall be solely responsible for all decisions related to the Storage System, including decisions related to charging, dispatching and discharging of the Storage System, so to achieve the Storage System operating parameters set forth on **Exhibit 4** (the "**Storage System Operating Parameters**").

i. Without limiting the generality of the foregoing, during the Term:

(1) the Storage System shall only be charged using electricity from the Solar System and neither Seller nor Purchaser shall issue any instruction, order, or other communication requesting or requiring the Storage System to be charged from any source other than the Solar System; and

(2) the Storage System shall be fully cycled each day (i.e. from a fully charged state to a fully discharged state).

c. **Permits and Approvals**. Seller shall use commercially reasonable efforts to obtain, at its sole cost and expense, any agreements and approvals from Purchaser's Serving Utility necessary to interconnect the System to the Premises' electrical system and/or Purchaser's Serving Utility's electric distribution system as well as all governmental approvals, including zoning, land use, building permits and DSA approvals required for the EPC Contractor to

construct and install the System, and for Seller to operate and maintain the System. Purchaser shall cooperate with Seller's reasonable requests to assist Seller in obtaining such agreements, permits and approvals.

d. **System Construction, Installation, Repair and Maintenance**.

i. The Seller and Purchaser agree that Seller shall **not** be acting in the capacity of a general contractor under this Agreement, nor shall Seller perform any work under this Agreement that shall require that Seller maintain a contractor's license; provided, however, that Seller may at any time after the execution of this Agreement provide evidence satisfactory to Purchaser that Seller has received a contractor's license enabling Seller to perform such work.

ii. Seller shall provide notice to Purchaser when the conditions to Seller's obligations set forth in Section 6.a have been satisfied or waived by Seller and Seller is prepared to authorize the EPC Contractor to commence constructing and installing the System. Seller and EPC Contractor shall enter into an EPC Contract for the EPC Contractor to construct and install the System at the Premises in accordance with **Exhibits 3** and **4**, consistent with the terms of this Agreement, the EPC Contractor License Agreement, and Good Industry Practices (as defined below). The Parties acknowledge and agree that Purchaser shall not be required to in anyway pay for construction of the System. Inconsistent provisions in **Exhibits 3** and **4**, and the EPC Contractor License Agreement shall prevail in any dispute over what is considered Good Industry Practices.

iii. Seller recognizes that the District may obtain the services of a construction manager for this Project. The construction manager, if any, would be authorized to give Seller and the EPC Contractor Work authorizations, provide notice to the EPC Contractor of violations of the EPC Contractor License Agreement, and issue written approvals and NTP(s), on behalf of District. The District reserves the right to designate a different construction manager at any time. The District shall provide forty-eight (48) hour notice to Seller and the EPC Contractor if District designates a different construction manager. Any task, including, but not limited to, reviews or approvals that the District may perform pursuant to this Agreement may be performed by the construction manager, unless that task indicates it shall be performed by the governing board of the District.

iv. Seller hereby acknowledges that DSA and the IOR have authority to approve and/or stop Work if the EPC Contractor's Work does not comply with the requirements of this Agreement, Title 24 of the California Code of Regulations, EPC Contractor License Agreement and all Applicable Law. Seller shall be liable for any delay caused and extra work required by its EPC Contractor's non-compliant Work. Seller shall not be liable for delay caused solely by the District or solely by a third party, such as Purchaser's Serving Utility. The Assistant Superintendent of the District, and/or his/her designee shall have authority to inspect (but not approve) the Work.

v. If the IOR issues any notice of correction, or in any way identifies any other non-conforming or deficient Work performed by the EPC Contractor, Seller shall ensure that any appropriate orders to correct the non-conforming or deficient Work are issued to the EPC Contractor under the EPC Contract. Unless otherwise provided by this Agreement, any corrective work performed by EPC Contractor at the direction of the IOR shall not entitle Seller to an increase to the Energy Rate or to an extension of time to achieve the Commercial Operation Date.

vi. When the Seller believes that the EPC Contractor has completed the Work except for minor corrective items, it shall so notify the District. Promptly thereafter, the District and Seller shall schedule a final walk-through of the Project by the Seller, the EPC Contractor, the IOR and the District to determine whether and to what extent the Work is complete. If the District or IOR determines that further corrective work is necessary, Seller shall require the EPC Contractor to perform such corrective work with no adjustment to the Energy Rate. The Work may only be accepted as complete by an action of the District's School Board, which acceptance and action shall not be unreasonably withheld, conditioned or delayed. Seller shall enter into an agreement with the Inspector selected by the District, and Seller shall pay all costs to the Inspector for and in connection with the Project.

vii. During the Term, Seller shall be responsible for the operation and performance of all routine and emergency repairs to, and maintenance and/or replacement (as may be required to maintain the System) of, all or portions of the System at its sole cost and expense, in accordance with Good Industry Practices, except for any repairs or maintenance resulting from Purchaser's negligence, willful misconduct, or breach of this Agreement. Seller shall (A) have the appropriate experience, licenses and ability to operate and maintain photovoltaic solar systems and the financial capability to do same (an "**Operator**"); or (B) enter into a contract with an

Operator, pursuant to which such Operator shall be responsible for System operation and maintenance under this Agreement. Purchaser shall be responsible for any damage caused by it, its agents, invitees (e.g., students and guests), employees or contractors to the System. Seller shall not be responsible for any work done by parties not engaged or hired by Seller on any part of the System unless Seller authorizes that work in advance, in writing. Seller shall not be responsible for any loss, damage, cost or expense arising out of or resulting from improper environmental controls or improper operation or maintenance of the System by anyone other than Seller or Seller's contractors. If the System requires repairs for which Purchaser is responsible, Purchaser shall pay Seller for diagnosing and correcting the problem at Seller or Seller's contractors' then current standard rates. In addition, if any such repairs causes or requires an interruption or disconnection to the System, Purchaser shall pay Seller an amount equal to the sum of payments that Purchaser would have made to Seller for electric energy that would have been produced by the System during such disconnection or removal; (ii) revenues that Seller would have received with respect to that System under any rebate program and any other assistance program with respect to electric energy that would have been produced during such disconnection or removal; and (iii) lost or recaptured Tax Attributes, Environmental Attributes and Environmental Incentives of Seller (or, if Seller is a pass-through entity for tax purposes, Seller's owners). Seller shall provide Purchaser with reasonable notice (at least 48-hours) prior to accessing the Premises to perform routine maintenance and/or make standard repairs; provided that in the case of an emergency or an imminent danger that could cause damage or harm to persons or property, Seller can enter the Premises immediately to address the emergency and mitigate the potential damage or harm. Except as expressly provided in this Agreement, Purchaser shall not cause, or allow any person or entity under Purchaser's control to cause, any System equipment to be disconnected or shut down, temporarily or otherwise, unless in the case of emergency or as a result of an event of Force Majeure.

viii. "**Good Industry Practices**" means, with respect to the services being provided by the EPC Contractor, Seller's agents, third-party Operator(s), or any of their Affiliates, or any other contractor or subcontractor pursuant to this Agreement, those practices, methods, equipment, specifications and standards of safety and performance, of which there may be more than one, and as the same may change from time to time, as are commonly provided for commercial and industrial solar energy and battery storage systems, including those utilizing storage management services, of a type and size similar to the System and in the same geographic region as the System that, at a particular time, in the exercise of reasonable judgment in light of the facts known at the time a decision was made, would be expected to accomplish the desired result in a manner consistent with law, regulations, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection and expedition.

e. **Net Metering**. The provisions in this Section 7.e only apply if net metering is permitted by Purchaser's Serving Utility at the Premises. Prior to the delivery to Purchaser of any electrical energy, Seller shall cooperate with Purchaser to make arrangements for Purchaser's delivery and resale to Purchaser's Serving Utility of electrical energy through net metering, in accordance with Applicable Laws.

f. **Costs Due to Unexpected Site or Premises Conditions**.

i. The District has provided or will provide to Seller all information available to it to the extent the information relates to the Project. This information includes, without limitation:

(1) Physical characteristics;

(2) Legal limitations and utility locations for the Premises;

(3) Written legal description(s) of the Premises;

(4) Grades and lines of streets, alleys, pavements, and adjoining property and structures;

(5) Adjacent drainage;

(6) Rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, and boundaries and contours of the Premises;

(7) Locations, dimensions and necessary data with respect to existing buildings, other improvements and trees;

(8) Information concerning available utility services and lines, mechanical and other services, both public and private, above and below grade, including inverts and depths;

(9) Surveys, reports, as-built drawings;

(10) Subsoil data, chemical data, and other data logs of borings;

(11) DSA Numbers for all buildings, as necessary to obtain DSA approval of plans to be submitted by Designer/Builder under the contracted scope of work.

(12) The location and physical characteristics of existing utility lines, telephone, water, sewage, storm drains and other lines on or around or relating to the Project.

ii. To the extent Seller has received such information prior to commencement of construction, Seller has Visually Verified (as defined below) the existence of the conditions identified by such information to the extent determinable by the documents provided by the District (such verification, a "**Site Examination**"). Seller has relied, in part, on its Site Examination in defining the scope of Work of the EPC Contractor and in setting the Energy Rate.

(1) "**Visually Verified**" means confirmed by diligent physical inspection without any destructive or invasive action.

iii. Notwithstanding the achievement of the conditions precedent set forth in Section 6.a or Seller's Site Examination, if Seller incurs material additional costs to re-design, pay for construction and installation, operate or maintain the System due to (i) unforeseen conditions at the Premises, (ii) unforeseen groundwork at the Premises (including, but not limited to, excavation/circumvention of underground obstacles), (iii) Hazardous Substances (as defined in Section 17.c.i) at the Premises, or (iv) the inaccuracy of any information provided by Purchaser and relied upon by Seller, then Seller may request from Purchaser a reasonable and equitable adjustment to the Energy Rate, schedule and other terms of this Agreement to compensate for any work in excess of normally expected work required to be performed by Seller arising from such conditions; provided, that Seller reasonably substantiates the need for the adjustment to the Energy Rate. Purchaser shall (without delay or condition) grant such adjustment to the Energy Rate unless Purchaser reasonably believes that Seller's need is either not justified by the occurrence of an event herein identified, or unsubstantiated. In such case, Seller and Purchaser shall meet and confer and shall in good faith negotiate an equitable adjustment to the Energy Rate. If the Parties fail to reach an agreement, then Seller may either (A) terminate this Agreement and Seller shall have no further liabilities or obligations hereunder or (B) pursue resolution of such dispute through the process identified in Section 19. If Seller elects to terminate this Agreement, Seller shall provide Purchaser with thirty (30) days' notice of Seller's intent to terminate pursuant to this Section 7.f. During the thirty (30) day notice period, the District may agree in writing with Seller to the reasonable and equitable adjustment to the Energy Rate. Upon the District's agreement within the thirty (30) day notice period, Seller's notice termination shall cease to be effective and this Agreement shall remain in full force and effect.

g. **Breakdown Notice**. Seller shall promptly notify Purchaser following Seller's discovery of (i) any material malfunction in the operation of the System or (ii) an interruption in the supply of electrical energy from the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Purchaser shall notify Seller immediately upon the discovery of any emergency condition affecting any part of the System.

h. **Suspension**. Notwithstanding anything to the contrary herein (and without limiting Seller's remedies under Section 13.b.i), Seller shall be entitled, in its sole discretion, to suspend delivery of electricity from the System to the Delivery Point (i) in the event of an emergency, including the presence of Hazardous Substances, (ii) for the purpose of maintaining and repairing the System or (iii) at the request of Purchaser's Serving Utility and, in each case of (i) through (iii) above, (A) such suspension of service shall not constitute a breach of this Agreement, (B) Seller shall have no liability for Purchaser to obtain electricity from other sources for the duration of such suspension, and (C) Seller shall use commercially reasonable efforts to minimize any interruption in service to Purchaser; provided, however, that Seller shall deliver prior written notice to Purchaser of any anticipated suspension in excess of forty-eight (48) day light hours (i.e. the hours between sunrise and sunset in the area where the System is located). Seller shall not be entitled to suspend the delivery of electricity for a period in excess of forty-eight (48) day light hours without providing notice as provided herein.

i. **Use of Contractors and Subcontractors**.

i. Except as otherwise provided herein, Seller shall be permitted to use contractors and subcontractors to perform its obligations under this Agreement, provided, however, that such contractors and subcontractors shall (i) be duly licensed in the State of California and (ii) perform such obligations in accordance with this Agreement, Good Industry Practices, and those standards of safety and performance that are expected of entities providing similar services to California public entities purchasing solar generated electrical power

from independent, private power providers. Notwithstanding the foregoing, Seller shall continue to be responsible for any obligations performed by its contractors and subcontractors. Nothing contained in the Agreement shall create any contractual relations between any subcontractor and the District.

ii. The District shall have the right to issue notices of violation, stop work notices, and/or a revocation of a right to enter the Premises to the EPC Contractor (with a copy of such notice to Seller) if the District reasonably determines that the EPC Contractor has violated a material term of the EPC Contractor License Agreement. The EPC Contractor shall not be permitted to continue any Work on the Premises, until it cures such breach. The District shall have the right to demand that Seller remove and replace the EPC Contractor if: (1) the District reasonably determines the EPC Contractor is unfit pursuant to the terms of the EPC Contractor License Agreement; (2) the EPC Contractor persistently breaches material terms of the EPC Contractor License Agreement; (3) any material breach of the EPC Contractor License Agreement remains uncured; and/or (4) any material breach of the EPC Contractor License Agreement which results in liability or damage to the District or would reasonably expose the District to liability or damages.

iii. In the event Purchaser requires the removal of a contractor or subcontractor of Seller, whether due to being deemed unfit as provided in the EPC Contractor License Agreement or as a result of a breach of the terms of, or certifications submitted in connection with, the EPC Contractor License Agreement, Seller shall have the right replace such contractor and/or subcontractor (including the EPC Contractor); provided that such replacement contractor or subcontractor submits equivalent certifications to Purchaser's reasonable satisfaction. For the avoidance of doubt, no such removal by Purchaser shall be deemed a breach by Seller of this Agreement, but Seller shall not be granted any extension to achieve the Commercial Operation Date unless otherwise provided for herein.

j. **Liens and Payment of Contractors and Suppliers**. Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement and shall keep the Premises free and clear of any liens related to such charges, except for those liens which Seller is permitted by law to place on the Premises following non-payment by Purchaser of amounts due under this Agreement. Seller shall indemnify Purchaser for all claims, losses, damages, liabilities and expenses resulting from any liens filed against the Premises or any portion thereof in connection with such charges; provided, however, that Seller shall have the right to contest any such lien, so long as it provides a statutory bond or other reasonable assurances of payment that either remove such lien from title to the Premises or that assure that any adverse judgment with respect to such lien will be paid without affecting title to the Premises. Notwithstanding any provision to the contrary, Seller shall remove any liens on any portion of the Premises if upon the Purchaser's thirty (30) day notification to Seller that the lien is negatively impacting the Purchaser's need to utilize the Premises for collateral, justification, or any other demonstrated need to have the lien removed; provided, however, that Seller's customary fixture filing (see Section 16(a)) or Consent (see Section 16(e)) shall not be considered liens.

k. **Warranty Disclaimer**.

i. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NO WARRANTY OR REMEDY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, SHALL APPLY.

ii. The remedies set forth in this Agreement shall be Purchaser's sole and exclusive remedies for any claim or liability arising out of or in connection with this Agreement, whether arising in contract, tort (including negligence), strict liability or otherwise.

8. **Purchaser's Rights and Obligations**.

a. **System Design and Finalization**. In accordance with Section 7.a, Purchaser shall have the right to review and approve System equipment substitutions that would materially affect the capacity of the System or require a change to the Energy Rate. With respect to the preceding sentence, Purchaser shall promptly review the applicable information and respond to Seller without delay and not unreasonably withhold its consent to such changes.

b. **Cooperation**. Purchaser shall (i) provide Seller, the EPC Contractor and their subcontractors, consultants, agents and representatives with reasonable access to the Premises for the purpose of designing the System, including conducting related inspections and studies, and accessing relevant documents, materials and records of Purchaser in conjunction with such activities, (ii) cooperate with Seller's and EPC Contractor's reasonable requests for information and access to the Premises for purposes of designing and installing the System and (iii) cooperate with all of Seller's and EPC

Contractor's requests to assist Seller in obtaining any necessary agreements, permits and approvals pursuant to Section 7.bc. Purchaser's failure to provide such cooperation shall be a default under this Agreement subject to Section 13.a.ii.

c. **Permits and Approvals**. Purchaser shall comply with any requirements applicable to Purchaser in connection with the agreements, permits and approvals obtained by Seller pursuant to Section 7.bc.

d. **Premises Access Rights.** Purchaser grants to Seller and to Seller's agents, employees, contractors and assignees an irrevocable license running with the Premises (the "**License**") for access to, on, over, under and across the Premises solely for the purposes of (i) installing, constructing, operating, owning, maintaining, accessing, removing and replacing the System; (ii) performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement; and (iii) installing, using and maintaining electric lines and equipment, including inverters and meters necessary to interconnect the System to Purchaser's electric system at the Premises, to the local electric distribution system, if any, or for any other purpose that may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance or repair of the System. Seller shall notify Purchaser prior to entering the Premises except in situations where there is imminent risk of damage to persons or property. The term of the License shall continue until the date that is one hundred and twenty (120) days following the date of expiration or termination of this Agreement (the "**License Term**"). During the License Term, Purchaser shall ensure that Seller's rights under the License and Seller's access to the Premises and the Premises are preserved and protected. Purchaser shall not unreasonably interfere with nor shall permit any third parties to unreasonably interfere with such rights or access. Seller shall exercise, and shall cause its agents, employees and contractors to exercise, due care any time Seller, its agents, employees or contractors enters the Premises. Seller shall be responsible for any damage caused by it, its agents, employees or contractors to the Premises or to any persons or property thereon. At the option of Purchaser, Seller or Purchaser shall repair such damage. If Purchaser repairs such damage, Seller shall reimburse Purchaser for reasonable expenses incurred to repair such damage within thirty (30) days after demand by Purchaser.

e. **RESERVED.**

f. **RESERVED.**

g. **Maintenance of Premises**. Purchaser shall, at all times at Purchaser's sole cost and expense, maintain the Premises outside the footprint of the System in good condition and repair and in a manner sufficient to support the System. Regardless of whether maintenance and repairs are made in the ordinary course or in an emergency, all maintenance and repairs shall be carried out in a manner that minimizes the impact on the System. Purchaser is fully responsible for the maintenance and repair of the Premises' electrical system (except for the System, which will be maintained by Seller) and of all of Purchaser's equipment that utilizes the System's outputs, and Purchaser's failure to maintain such electrical system shall not excuse Purchaser from its obligation to purchase the electric energy produced by the System, or that would have been produced by the System absent a failure in Purchaser's electrical system. Purchaser shall properly maintain in full working order all of Purchaser's electric supply or generation equipment that Purchaser may shut down while utilizing the System. Purchaser shall promptly notify Seller of any matters of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System.

h. **No Alteration of Premises**. Purchaser shall not make any alterations or repairs to the Premises which could adversely affect the operation and maintenance of the System without Seller's prior written consent. To the extent that temporary disconnection or removal of the System is necessary to perform such alterations or repairs, such work and any replacement of the System after completion of Purchaser's alterations and repairs, shall be done by Seller or its contractors at Purchaser's cost in accordance with Section 7(d)(ii) above. Determination of the amount of energy that would have been produced during any disconnection or removal shall be determined by Seller on a commercially reasonable basis. All of Purchaser's alterations and repairs shall be done in a good and workmanlike manner and in compliance with all Applicable Laws, codes and permits.

i. **Interconnection and Net Metering**. Purchaser shall ensure that the Premises remains interconnected to the local utility grid at all times. If net metering is permitted by Purchaser's Serving Utility at the Premises, Purchaser shall be entitled to participate in and retain any benefits from any net metering program of Purchaser's Serving Utility. In such case, Purchaser shall (i) sign all documentation required for net metering, (ii) ensure that the Premises remains interconnected to the local utility grid at all times to maintain net metering, (iii) not take any action, or fail to take any action, which prevents net metering, and (iv) comply with all Applicable Laws required for net metering.

j. **Outages**. Purchaser shall be permitted to be offline for a total of forty-eight (48) daylight hours (each, a "**Scheduled Outage**") within each calendar year during the Term, during which days Purchaser shall not be obligated to accept or pay for electricity from the System or reimburse Seller for lost or recaptured Environmental Attributes, Environmental

Incentives or Tax Attributes; provided, however, that (i) Purchaser shall use best efforts to minimize System downtime during daylight hours and (ii) Purchaser must notify Seller in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of a Scheduled Outage. In the event that Scheduled Outages exceed a total of forty-eight (48) day light hours (i.e. the hours between sunrise and sunset in the area where the System is located) per calendar year or there are unscheduled outages, in each case for a reason other than outages caused by Seller or a Force Majeure event, Purchaser shall pay Seller an amount equal to the sum of (A) payments that Purchaser would have made to Seller hereunder for electric energy that would have been produced by the System during the outage; (B) revenues that Seller would have received with respect to each such System under any rebate program and any other assistance program with respect to electric energy that would have been produced during the outage; and (C) lost or recaptured Tax Attributes, Environmental Attributes and Environmental Incentives of Seller (or, if Seller is a pass-through entity for tax purposes, Seller's owners). Determination of the amount of energy that would have been produced during the outage shall be determined by Seller on a commercially reasonable basis. Seller will provide Purchaser a point of contact for notification of a Scheduled Outage.

k. **Liens**. Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. Purchaser shall immediately notify Seller in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, shall promptly cause the same to be discharged and released of record without cost to Seller, and shall indemnify Seller against all costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim.

l. **Security**. Purchaser shall be responsible for using commercially reasonable efforts to maintain the physical security of the Premises and the System against known risks and risks that should have been known by Purchaser. Purchaser shall not conduct activities on, in or about the Premises that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.

m. **RESERVED.**

n. **Insolation**. Purchaser understands that unobstructed access to sunlight ("**Insolation**") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not in any way cause and, where possible, shall not in any way permit any interference with the System's Insolation and shall not construct or install, or knowingly permit to be constructed or installed, any alterations, modifications or improvement to the Premises or any other property owned or controlled by Purchaser or an Affiliate of Purchaser that interferes with or blocks the System's Insolation. In addition to the foregoing, Purchaser shall not permit the growth of foliage that interferes with or blocks System's Insolation. If Purchaser becomes aware of any activity or condition that could diminish the Insolation of the System, Purchaser shall notify Seller immediately and shall cooperate with Seller in preserving the System's existing Insolation levels. The Parties agree that (i) reducing Insolation would irreparably injure Seller, (ii) such injury may not be adequately compensated by an award of money damages, and (iii) Seller is entitled to seek specific enforcement of this Section 8.n against Purchaser.

o. **Data Line**. The Parties will reasonably cooperate regarding the installation and maintenance of high speed data lines and other communications portals to enable Seller to record the data regarding the electric energy generated by the System. Purchaser shall, at no cost to Seller, provide Seller with internet access and Seller shall install and maintain any required extensions to existing high speed data lines and all other required communications equipment at its sole cost and expense, and in accordance with the Good Industry Practice.

p. **Breakdown Notice**. Purchaser shall notify Seller within twenty-four (24) hours following the discovery by Purchaser of (i) any material malfunction in the operation of the System; or (ii) any occurrences that could reasonably be expected to adversely affect the System. Purchaser shall notify Seller immediately upon (i) an interruption in the supply of electrical energy from the System; or (ii) the discovery of an emergency condition respecting the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.

9. **Change in Law**.

"**Change in Law**" means (a) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any Applicable Law or regulation; (b) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date of this Agreement (notwithstanding the general requirements contained in any applicable permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation); or (c) a

change in any utility rate schedule or tariff approved by any Governmental Authority which, in the case of any of (a), (b) or (c), establishes requirements affecting owning, supplying, constructing, installing, operating or maintaining the System, or other performance of Seller's obligations hereunder and which has a material adverse effect on the cost to Seller of performing such obligations.

If any Change in Law occurs that (i) generally affects electric generating facilities or affects the balance of the System and (ii) materially increases the capital or operating and maintenance costs of the System to make the operation of the System commercially unreasonable, or otherwise has a material adverse effect on the cost to Seller of performing its obligations under this Agreement, then Seller may make a reasonable and equitable adjustment to the Energy Rate to compensate Seller for such increased costs over the remainder of the Term upon written notice to the Purchaser justifying and substantiating the adjustment to the Energy Rate. If the Purchaser reasonably disagrees with Seller's notice, it shall have five (5) business days to give notice to Seller of such disagreement. The Parties shall meet and confer to negotiate an equitable adjustment to the Energy Rate. If the Parties fail to reach an agreement, then any dispute arising therefrom shall be resolved through the process identified in Section 19.

10. Relocation of System.

a. If (i) Purchaser ceases to conduct business operations at and/or vacates the Premises, (ii) Seller is prevented from operating the System at the Premises (through no fault of Seller) or (iii) the System is otherwise prevented from delivering electricity (through no fault of Seller), in each case prior to the expiration of the Term, Purchaser shall have the option to provide Seller with a mutually agreeable substitute premises located within the same Purchaser's Serving Utility district as the terminated System (or portion thereof) and with similar utility rates and Insolation (a "**Substitution**"), in each case reasonably acceptable to Seller. Purchaser shall provide written notice to Seller at least sixty (60) days but not more than one hundred eighty (180) days prior to the date that it wants to make a Substitution. If Purchaser is unable to provide a substitute premises and to relocate the System (or portion thereof) as provided herein, the above events shall each be treated as a Default Event by Purchaser.

b. In connection with such Substitution, Purchaser and Seller shall in good faith negotiate and execute an amended agreement that shall have all of the same terms as this Agreement except for the (i) Effective Date; (ii) License, which will be amended to grant rights in the real property(ies) where the System (or portion thereof) is relocated to; (iii) the Premises description; (iv) the Energy Rate, as provided in subsections (e) and (d) below; (v) the System details, description and specifications, as set forth on **Exhibits 3** and **4**; (vi) the Solar and Storage Estimated Annual Production values, as set forth on **Exhibit 6**; (vii) Term, which will be the remainder of the Term of this Agreement; and (viii) such other terms that reasonably require modification as a result of the Substitution, and such amended agreement shall be deemed to be a continuation of this Agreement without termination. Purchaser shall also provide any new Purchaser, owner, lessor or mortgagee consents or releases required by Seller or Seller's Financing Parties in connection with the substitute premises. Purchaser and Seller agree that, unless Seller is licensed as a general contractor under the laws of the State of California at the time of any Substitution(s), Purchaser and Seller shall enter into a contractor license agreement for the Substitution with a licensed general contractor in a form substantially similar to **Exhibit 13**,

c. In connection with such Substitution, Purchaser shall pay all reasonable costs associated with relocation of the System (or portion thereof), including all costs and expenses incurred by or on behalf of Seller in connection with removal of the System (or portion thereof) from the Premises and the design, engineering, installation and testing of the System (or portion thereof) at the substitute premises and all applicable interconnection fees and expenses at the substitute premises, as well as costs of new title search and other out-of-pocket expenses connected to preserving and refiling the security interests of Seller's Financing Parties in the System (or portion thereof).

d. Seller shall calculate the amount of electricity that would have been delivered to Purchaser during the period of time the System (or portion thereof) is not in operation due to the relocation (the "**Relocation Period**") and shall invoice Purchaser for such amount and any associated lost or recaptured Environmental Incentives and lost sales (and penalties payments associated with the same) of associated Environmental Attributes. Alternatively, at the District's written request, the Parties may negotiate an equitable adjustment to the Energy Rate for the remainder of the Term, subject to reasonable and objectively justifiable bases for such adjustment. Seller shall remove the System (or portion thereof) from the vacated Premises prior to the termination of Purchaser's ownership, lease or other rights to use such Premises. At the District's request and reasonable expense, Seller shall restore the vacated Premises to its prior condition except for normal wear and tear.

e. If the substitute premises has inferior Insolation as compared to the original Premises, Seller shall have the right to make an equitable adjustment to the Energy Rate such that Purchaser's payments to Seller are the same as if the System (or portion thereof) were located at the original Premises.

11. Removal of System at Expiration of Term.

Upon the expiration of the Term of this Agreement (provided Purchaser does not exercise its purchase option), Seller shall, at its expense, remove all of its tangible property comprising the System from the Premises on a mutually convenient date, but in no event later than one hundred and twenty (120) days after the expiration of the Term. Purchaser may submit to Seller no later than ninety (90) days prior to expiration of the Term a written demand for a decommissioning bond for the anticipated cost to remove the System from the Premises as contemplated herein. Seller's failure to provide Purchaser with such decommissioning bond within thirty (30) days of Purchaser's written demand shall constitute a breach of this Agreement and, as its sole remedy for such breach, the District may withhold payment under this Agreement for the anticipated cost the District will incur to remove the System from the Premises as contemplated herein. Upon Seller's performance of the removal of the System from the Premises as contemplated herein, any such decommissioning bond shall terminate and be rendered null and void. Purchaser and Seller agree that, if Seller is not licensed as a general contractor under the laws of the State of California at the time of removal and such license is required for removal, Seller shall have an appropriately licensed contractor remove the System from the Premises. Excluding ordinary wear and tear, the Premises shall be returned to its original condition including the removal of the System; provided, however, Seller shall not be required to remove (a) any supports, canopies, anchors, penetrations, conduits or other similar ancillary equipment which were installed by Seller if, in Seller's reasonable judgment, the removal of such supports, anchors, penetrations, conduits or other similar ancillary equipment would cause harm and damage to the Premises, and (b) any underground foundations or underground or buried conduits and cabling installed by Seller on or about the Premises. Seller shall leave the Premises in neat and clean order. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser shall have the right, at its option, to remove the System to a public warehouse and restore the Premises to its original condition (other than ordinary wear and tear) at Seller's cost. Purchaser shall provide sufficient space at no expense to Seller for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during System removal.

12. Metering, Measurement and Ownership of Data.

a. Metering and Measurement. Seller shall install one or more revenue grade meter(s) (collectively, the "**Seller Meter**"), as Seller deems appropriate, at or immediately before the Delivery Point to measure the output of the System. Seller Meter shall (i) meet the general commercial standards of the industry or the required standard of Purchaser's Serving Utility and (ii) provide and preserve a continuous flow of data to Seller twenty-four (24) hours per day through the data line provided by Purchaser pursuant to Section 8.o. Seller shall maintain the Seller Meter in accordance with Good Industry Practices. If any Seller Meter's operation is interrupted at any time for any reason, or is found to be inaccurate and/or in need of repair or replacement, the measurement of energy output for such period of interruption or inaccuracy (which shall be the period from the last date the affected Seller Meter was operating properly through the date upon which the Seller Meter is corrected) will be estimated by Seller, acting in its reasonable judgment, based upon inverter data or past energy output delivery during a similar period and under similar conditions if such information is available (and if such information is not available, based upon any other relevant information or bases which may reasonably be used for such purpose in the circumstances), and Purchaser shall pay invoices during such period based on the estimated measurement. Seller shall own all data generated by the Seller Meter (the "**Meter Data**").

b. Purchaser Utility Data. Purchaser acknowledges that, throughout the Term, Seller (or Seller's contractors and agents, as Seller may designate) may require Purchaser's utility data for the Premises (including, but not limited to, usage data from Purchaser's Serving Utility) for purposes of Seller performing its obligations under this Agreement. Purchaser shall reasonably cooperate to provide Seller (or Seller's contractors and agents, as Seller may designate) with the authority necessary to request and receive utility data for the Premises, and shall endeavor, but not guarantee, to provide Seller with such utility data within five (5) business days of Seller's written request therefor. Any utility data provided hereunder shall be kept in confidence by Seller (or Seller's contractors and agents, as Seller may designate).

13. Default, Remedies and Damages.

a. Default. Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below shall be deemed a "**Defaulting Party**", the other Party shall be deemed a "**Non-Defaulting Party**" and each event of default shall be a "**Default Event**":

i. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith Dispute (as defined below), within five (5) days' following receipt of written notice from the Non-Defaulting Party of such failure to pay;

ii. failure of a Party to substantially perform any material obligation under this Agreement within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that such thirty (30) day cure period shall be extended (but not beyond an aggregate cure period of ninety (90) days) if and to the extent reasonably necessary to cure the Default Event, if (A) the Defaulting Party initiates such cure within the thirty (30) day period and continues such cure to completion and (B) there is no material adverse effect on the Non-Defaulting Party resulting from the failure to cure the Default Event within the initial thirty (30) day period;

iii. if any representation or warranty of a Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;

iv. Purchaser (i) loses its rights to occupy the Premises and the real property thereupon or (ii) ceases to conduct business operations at the Premises, in either case, unless Purchaser and Seller agree on terms of a relocation of the System pursuant to Section 10;

v. a Party, or its guarantor (if any), admits in writing its inability to pay its debts generally as they become due, becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect, or, if any such bankruptcy or other proceedings were initiated by a third party, if such proceedings have not been dismissed within sixty (60) days following receipt of a written notice from the Non-Defaulting Party demanding such cure;

vi. Purchaser prevents or delays Seller from installing the System or Purchaser otherwise performs or fails to perform in a way that prevents the delivery of electric energy from the System. Such Default Event shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement; or

vii. with respect to Purchaser only, Seller otherwise loses its rights to occupy, access and/or quietly enjoy the Premises as provided under this Agreement (other than as a result of a Default Event by Seller).

b. Remedies.

i. **Remedies for Payment Default Event**. If a Default Event occurs with respect to a Party's payment obligations hereunder (a "**Payment Default**"), the Non-Defaulting Party may suspend performance of its obligations under this Agreement. Further, the Non-Defaulting Party may pursue any remedy under this Agreement, at law or in equity, including terminating this Agreement and an action for damages, upon five (5) days prior written notice to the Defaulting Party following the Payment Default.

ii. **Remedies for Other Default Events**. On the occurrence of a Default Event other than a Payment Default, the Non-Defaulting Party may pursue any remedy under this Agreement, at law or in equity, including terminating this Agreement and an action for damages, upon five (5) days prior written notice to the Defaulting Party following the occurrence of the Default Event. Nothing herein shall limit either Party's right to collect damages upon the occurrence of a breach or a default by the other Party that does not become a Default Event.

iii. **Damages Upon Termination by Default**. Upon a termination of this Agreement by the Non-Defaulting Party as a result of a Default Event by the Defaulting Party the Defaulting Party shall pay a termination payment to the Non-Defaulting Party determined as follows (the "**Termination Payment**"):

(1) Termination by Seller. If Seller terminates this Agreement for a Default Event by Purchaser, the Termination Payment payable to Seller shall be equal to the sum of (i) the loss or recapture of Tax Attributes, Environmental Attributes and Environmental Incentives that would have accrued or would otherwise have been assigned to Seller during the remainder of the Term pursuant to the terms of this Agreement; (ii) the net present value (using a discount rate of 4% per annum) of the projected payments of the Energy Rate over the Term post-termination, had the Term remained effective for the full Initial Term; (iii) development costs incurred by Seller; and (iv) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Seller. The Termination Payment shall not be less than zero (0).

(2) Termination by Purchaser. If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser will be equal to the sum of (i) the net present value (using a discount rate of 4% per annum) of the excess, if any, of the reasonably expected cost of electricity from Purchaser's Serving Utility over the Energy Rate for the reasonably expected production of the System for the remainder of the Initial Term or the then current Additional Term, as applicable; (ii) all costs reasonably incurred by Purchaser in re-converting its electric supply to service from Purchaser's Serving Utility; (iii) any System removal costs incurred by Purchaser; and (iv) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser. The Termination Payment shall not be less than zero (0).

iv. **Liquidated Damages**. The Parties agree that, if Seller terminates this Agreement prior to the expiration of the Term pursuant to Section 13.b.ii, actual damages would be difficult to ascertain, and the Termination Payment determined in accordance with Section 13.b.iii.(1) is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement and is not a penalty.

c. Obligations Following Termination for Default.

i. **Reservation of Rights**. Except in the case of a termination under Section 13.b.ii and payment of a Termination Payment, if any, determined pursuant to Section 13.b.iii, nothing in this Section 13 limits either Party's right to pursue any remedy under this Agreement, at law or in equity, including with respect to the pursuit of an action for damages by reason of a breach or Default Event under this Agreement.

ii. **Mitigation Obligation**. The Non-Defaulting Party must make commercially reasonable efforts to mitigate its damages as the result of such Default Event; provided that such obligation shall not reduce Purchaser's obligation to pay the full Termination Payment set forth in Section 13.b.iii following a Default Event by Purchaser.

iii. **No Limitation on Payments**. Nothing in this Section 13 excuses a Party's obligation to make any payment when due under this Agreement, including with respect to payments for electricity that would have been delivered to Purchaser but for a Purchaser breach or Default Event.

iv. **Removal of System**. If Purchaser terminates this Agreement pursuant to Section 13.b.ii, then following such termination, Seller shall remove the equipment constituting the System in compliance with Section 11 above at the sole cost and expense of Seller.

14. Representations, Warranties, and Covenants.

a. General Representations, Warranties, and Covenants. Each Party represents, warrants and covenants to the other the following as of the Effective Date and the Conditions Satisfaction Date:

i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have each been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and shall not violate any law; and this Agreement is the valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).

ii. Such Party has obtained all permits, licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws (including Environmental Laws) that relate to this Agreement in all material respects.

iii. During the Term, both Parties will work together in good faith to undertake to conform with any reasonable interconnection requirements of Purchaser's Serving Utility (if applicable).

iv. Subject to any agreement with and requirements of Purchaser's Serving Utility (if applicable), during the Term, (1) Purchaser shall ensure that the Premises remains interconnected to the local utility grid at all times, (2) Seller will keep the System interconnected and in service in accordance with this Agreement and Purchaser will not interfere with same except as expressly permitted hereunder and (3) neither Party will take

any action that it knows will void, invalidate, impair or make unavailable any Environmental Attributes, Environmental Incentives or Tax Attributes.

v. Neither Party is subject to regulation as a public utility as that term is defined under Applicable Law with respect to the transactions that are the subject of this Agreement, except as would not have a material adverse effect on the performance by either of the Parties of its obligations under this Agreement.

b. **Seller's Representations, Warranties and Covenants**. Seller represents, warrants and covenants to Purchaser the following as of the Effective Date and the Conditions Satisfaction Date:

i. Compliance with Applicable Law. Seller's performance of this Agreement complies with all Applicable Law, rules, regulations and orders of any Governmental Authority in all material respects.

ii. Third Party Rights. Seller shall use commercially reasonable efforts to ensure that neither the System nor any of Seller's services hereunder infringe upon any third party's intellectual property rights or other proprietary rights.

iii. Roof Installations. If a System penetrates, or is placed on, any portion of the Premises' roof, including through any Substitution, Seller shall warrant roof damage directly caused by such penetration and/or placement. This roof warranty will run the longer of (A) two (2) years following the completion of the System installation; and (B) the length of any existing installer warranty on the Premises' roof.

iv. Maintenance of System. During the Term, if determined necessary by Seller in its sole direction, Seller will cause a licensed contractor to repair or replace any defective part, material or component of the System or correct any defective workmanship in the System, at no cost or expense to Purchaser (including all labor costs) except to the extent such repair, replacement or correction is the direct result of any act or omission of Purchaser or its employees, contractors, invitees (e.g., students and guests) or agents. Seller may use new or reconditioned parts when making such repairs, replacements or corrections.

c. **Purchaser's Representations, Warranties and Covenants**. Purchaser represents, warrants and covenants to Seller the following as of the Effective Date and the Conditions Satisfaction Date:

i. Ownership of Premises. Purchaser is the fee owner of the Premises.

ii. No Conflicts. Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser or the Premises is bound.

iii. Accuracy of Information. To the best of Purchaser's knowledge, information provided by Purchaser to Seller, as it pertains to the Premises physical configuration, Purchaser's planned use of the Premises, and Purchaser's estimated electricity requirements, is accurate in all material respects.

iv. Hazardous Substances. Except as disclosed to Seller, there are no Hazardous Substances that exist in the areas on or near the Premises where Seller or its subcontractors will undertake to install, operate, maintain or repair the System.

v. Purchaser Status. Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.

vi. Swimming Pool. No electricity provided by the System will be used to hear a swimming pool.

15. **System and Premises Damage and Insurance**.

a. **System and Premises Damage**.

i. Seller's Obligations. If the System is damaged or destroyed other than by Force Majeure (as defined in Section 20.a) or Purchaser's negligence or willful misconduct, Seller shall promptly repair and restore the System to its pre-existing condition; provided, however, that if more than fifty percent (50%) of the System is destroyed during the last five (5) years of the Initial Term or during the Additional Term, Seller shall not

be required to restore the System, but may instead terminate this Agreement, unless Purchaser agrees (A) to pay for the cost of such restoration of the System or (B) to purchase the System "AS-IS" at the Fair Market Value (as defined in Section 16.c) of the System in its then damaged or destroyed condition.

ii. Purchaser's Obligations. If the Premises is damaged or destroyed by casualty of any kind or any other occurrence other than Seller's negligence or willful misconduct, such that the operation of the System and/or Purchaser's ability to accept the electric energy produced by the System are materially impaired or prevented, Purchaser shall promptly repair and restore the Premises to its pre-existing condition; provided, however, that if more than fifty percent (50%) of the Premises is destroyed during the last five (5) years of the Initial Term or during the Additional Term, Purchaser may elect either (A) to restore the Premises or (B) to pay the Purchaser's Termination Payment and all other costs previously accrued but unpaid under this Agreement and thereupon terminate this Agreement.

b. **Insurance Coverage**. At all times during the Term, Seller and Purchaser shall maintain the following insurance:

i. Seller's Insurance. Seller shall maintain (A) property insurance on the System for the replacement cost thereof subject to sublimits in accordance with industry practice, (B) commercial general liability insurance with coverage of at least $1,000,000 per occurrence and $2,000,000 annual aggregate, (C) employer's liability insurance with coverage of at least $1,000,000, (D) workers' compensation insurance as required by Applicable Law, but in no event less than $1,000,000, and (E) umbrella or excess liability insurance with a limit of $5,000,000 per occurrence and in the annual aggregate in excess of the limits of insurance provided in clauses (A) through (D) immediately above.

ii. Purchaser's Insurance. Purchaser shall maintain, either through insurance policies or acceptable self-insured retentions, (A) property insurance on the Premises covering "All Risks" perils in an amount equal to the full replacement cost of the Premises, (B) commercial general liability insurance for the Premises with coverage of at least $1,000,000 per occurrence and $2,000,000 annual aggregate, (C) employers' liability insurance with coverage of at least $1,000,000, (D) workers' compensation insurance as required by Applicable Law, but in no event less than $1,000,000, and (E) umbrella or excess liability insurance with a limit of $5,000,000 per occurrence and in the annual aggregate in excess of the limits of insurance provided in clauses (A) through (D) immediately above.

c. **Policy Provisions**. All insurance policies provided hereunder shall (i) contain a provision whereby the insurer agrees to give the Party not providing the insurance (A) not less than ten (10) days written notice before the insurance is cancelled or terminated as a result of non-payment of premiums, or (B) not less than thirty (30) days written notice before the insurance is otherwise cancelled or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other Party. Each Party shall name the other Party as additional insured as respects commercial general liability and employers' liability, to the extent applicable. Each Party shall waive its rights of subrogation against the other party on all required policies including workers compensation where allowable by law and to the extent applicable.

d. **Certificates**. Upon a Party's written request, each Party shall deliver to the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.

e. **Deductibles**. Unless and to the extent that a claim is covered by an indemnity set forth in this Agreement, each Party shall be responsible for the payment of its own deductibles.

16. **Ownership; Option to Purchase**.

a. **Ownership of System**. Seller shall be the legal and beneficial owner of the System at all times. Each of Seller and Purchaser agree that Seller (or the designated assignee of Seller permitted under Section 21) is the tax owner of the System and all tax filings and reports will be filed in a manner consistent with this Agreement. The System shall at all times retain the legal status of personal property of Seller as defined under Article 9 of the Uniform Commercial Code and shall not attach to or be deemed a part of, or fixture to, the Premises notwithstanding that certain portions of the System may otherwise qualify as fixtures due to the manner of installation of the System. Purchaser covenants that it shall use commercially reasonable efforts to place all parties having an interest in or a mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the System as a fixture

of the Premises, Purchaser shall obtain a Consent (as defined below) from such lienholder in accordance with Section 16.e below. If Purchaser is the fee owner of the Premises, Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Premises is located. If Purchaser is not the fee owner, Purchaser shall obtain such consent from such owner. Without limiting the generality of the foregoing, Purchaser hereby waives any statutory or common law lien that it might otherwise have in or to the System or any part thereof and agrees that, notwithstanding the occurrence of a Default Event by Purchaser under this Agreement beyond all applicable notice and cure periods (including those granted to Financing Parties), Seller or any Financing Party (or its designee) shall own and may remove the System from the Premises at any time.

b. **Option to Purchase**. At the end of the Initial Term or the Additional Term (each such date a "**Purchase Option Date**"), so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from Seller for a purchase price equal to the Fair Market Value (as defined in Section 16.c) of the System as of the Purchase Option Date. Purchaser must provide a notification to Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the Purchase Option Date, and the purchase shall be completed on or before the Purchase Option Date.

c. **Determination of Fair Market Value**. "**Fair Market Value**" means, in Seller's reasonable determination, the amount that would be paid in an arm's length (as determined by the Parties), free market transaction, for cash, between an informed, willing seller and an informed willing buyer, neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age, condition and performance of the System and advances in solar technology, provided that installed equipment shall be valued on an installed basis, shall not be valued as scrap if it is functioning and in good condition and costs of removal from a current location shall not be a deduction from the valuation, taking into account the present value of all associated future income streams expected to arise from the operation of the System for the remaining useful life of the System, including but not limited to the expected price of electricity, Environmental Attributes, Environmental Incentives and Tax Attributes and factoring in future avoided costs and expenses associated with the System and assuming the System is able to generate revenue for the then-remaining term of the Agreement at a price equal to the then-applicable Energy Rate and thereafter for the remaining useful life of the System at a price equal to the then fair market price for energy. Seller shall determine Fair Market Value within thirty (30) days after Purchaser has exercised its option to Purchase the System. Seller shall give written notice to Purchaser of such determination, along with a full explanation of the calculation of Fair Market Value, including without limitation, an explanation of all assumptions, figures and values used in such calculation and factual support for such assumptions, figures and values. If Purchaser reasonably objects to Seller's determination of Fair Market Value within thirty (30) days after Seller has provided written notice of such determination, the Parties shall select a mutually acceptable nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System based on the formulation set forth herein and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. Upon purchase of the System, Purchaser shall assume complete responsibility for the operation and maintenance of the System and liability for the performance of the System, and Seller shall have no further liabilities or obligations hereunder.

d. **RESERVED**

e. **Subordination, Non-Disturbance and Attornment**. The Parties recognize that protecting the interests of Purchaser and Seller in the Premises and System, respectively, are necessary to the operation of this Agreement. Therefore, in the event there exists a mortgage, lien or other encumbrance over the Premises, Seller and Purchaser shall cooperate in good faith to execute and record (as necessary) a customary (i) consent, (ii) waiver or (iii) subordination, non-disturbance and attornment agreement, as applicable, each in form and substance reasonably satisfactory to Seller (each, a "**Consent**"). Purchaser further agrees to obtain lienholder's signature on the Consent and Seller agrees to cooperate with reasonable requests to provide any documents necessary to obtain such lienholder's signature.

17. **Indemnification**.

a. **General**. Each Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party and the directors, officers, shareholders, partners, members, agents and employees of such other Party, and the respective Affiliates of each thereof (collectively, the "**Indemnified Parties**"), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "**Liabilities**") resulting from any third party actions relating to (i) the Indemnifying Party's breach of a material term of this Agreement or any representation, warranty or covenant set forth in Section 14, (ii) injury to or death of persons, (iii) claims for

money, and (iv) damage to or loss of property, in each case of clause (ii), (iii), and (iv), to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees); provided, however, that nothing herein shall require the Indemnifying Party to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising from the acts or omissions of any person other than the Indemnifying Party (or its contractors, agents or employees); provided further, however, that nothing in this Section 17 is intended to modify the limitations of Seller's liability set forth in Section 18. This Section 17.a however, shall not apply to liability arising from any form of Hazardous Substances or other environmental contamination, such matters being addressed exclusively by Section 17.c. For the avoidance of doubt, Purchaser shall not be required to defend, indemnify, or hold harmless the Seller from any Liabilities that arise from the Work of the EPC Contractor performed pursuant to the EPC Contract and EPC Contractor License Agreement.

b. **Notice and Participation in Third Party Claims**. The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a "**Claim**"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this Section 17.b unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall have no liability under this Section 17.b for any Claim for which such notice is not provided if that the failure to give notice prejudices the Indemnifying Party.

c. **Environmental Indemnification**. Seller shall indemnify, defend and hold harmless all of Purchaser's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined below) to the extent deposited, spilled or otherwise caused by Seller, the EPC Contractor, or any of its contractors or agents. Purchaser shall indemnify, defend and hold harmless all of Seller's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Seller or any of its contractors or agents. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises generally or any deposit, spill or release of any Hazardous Substance.

i. "**Hazardous Substance**" means any chemical, waste or other substance (A) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any Environmental Laws, (B) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (C) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (D) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (E) for which remediation or cleanup is required by any Governmental Authority.

18. Limitations of Liability

a. EXCEPT WITH RESPECT TO PAYMENT OF A TERMINATION PAYMENT, OR IN CONNECTION WITH THIRD-PARTY INDEMNIFICATION CLAIMS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT.

b. **Actual Damages**. Notwithstanding any to the contrary in this Agreement, Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed the total monthly payments made by Purchaser to Seller under this Agreement in the one (1) year prior to a claim. The provisions of this Section 18.b shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise. Any action against Seller must be brought within one (1) year after the cause of action accrues.

19. **Dispute Resolution**. Disputes between the parties arising out of this Agreement shall be resolved by the following processes:

a. **Negotiation.** The Parties shall first attempt in good faith to resolve any dispute arising out of or relating to this Agreement by negotiation. The Parties' meet and confer process for a Disputed Invoice as detailed above, shall satisfy this negotiation requirement.

b. **Mediation.** Within fifteen (15) days following the receipt of written notice by one Party from the other Party of a demand for mediation, the Parties shall submit the dispute to non-binding mediation administered by the American Arbitration Association under its Commercial Arbitration Rules and Mediation Procedures (or other agreed upon rules), unless waived by mutual stipulation of both Parties.

c. **Civil Action / Venue.** If the Parties are not able to resolve a dispute by, or waive, mediation, then either Party may file a civil action in the Superior Court of California. The Venue for any such action shall be in the County in which the District. The Parties acknowledge and agree that any such action may be adjudicated by way of trial by judge; provided, that neither Party waives any rights they may have to demand a trial by jury during any such action.

20. **Force Majeure**.

a. "**Force Majeure**" means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; epidemic, pandemic, diseases, quarantines or travel bans; the binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); unavailability of equipment, supplies, products, or electricity from the utility grid (but not to the extent that any such unavailability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence); and failure of equipment not utilized by or under the control of the Party claiming Force Majeure.

b. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations (including, with respect to Seller, its EPC Contractor's obligations under the EPC Contractor License Agreement and/or the EPC Contract) under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure event gives the other Party written notice thereof; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. The Term shall be extended day for day for each day performance is suspended due to a Force Majeure event.

c. If a Force Majeure event continues for a period of one hundred (180) days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, then the Parties shall, within thirty (30) days following receipt by the other Party of notice of such Force Majeure event, meet and attempt in good faith to negotiate amendments to this Agreement (the "**Force Majeure Amendment Period**"). If the Parties are unable to agree upon such amendments within the Force Majeure Amendment Period, then the Party not claiming Force Majeure shall have the right to terminate this Agreement without either Party having further liability under this Agreement except with respect to System removal, payment of amounts accrued prior to termination and actions or omissions that occur prior to termination. Notwithstanding the above, to the extent that a Change in Law amounts to a Force Majeure event and such event occurs after the fifth (5th) anniversary of the Commercial Operation Date, Purchaser shall have the option to purchase the System from Seller pursuant to Section 15(b) prior to the expiration of the Force Majeure Amendment Period; provided, however, that if Purchaser does not purchase the System at the end of the Force Majeure Amendment Period, then Seller shall have the right to terminate this Agreement without either Party having further liability under this Agreement except with respect to System removal, payment of amounts accrued prior to termination and actions or omissions that occur prior to termination.

d. Seller is aware that at the time of the execution of the Agreement, and for the foreseeable future, the performance of construction at the Premises has been impacted and may be impacted by the COVID-19 pandemic. Any disruption or delay in the EPC Contractor's performance of construction under this Agreement on Seller's behalf in any way related to COVID-19, including, without limitation, a future federal, state, and/or local statute, order, rule, regulation,

ordinance, and/or directive relating to site safety in connection with COVID-19, shall not be considered a Force Majeure event unless it renders the EPC Contractor's performance of construction impossible or illegal or is otherwise prohibited by such future federal, state, and/or local statute, order, rule, regulation, ordinance, and/or directive. For the purposes of this Agreement, the Parties agree that it is foreseeable at the time of execution of the Agreement that federal, state, or local authorities having jurisdiction over the Work may institute and/or adopt a statute, order, rule, regulation, ordinance, and/or directive relating to construction site safety in connection with COVID-19 that may delay, but not prevent, performance of construction of the System.

e. Seller is aware that governmental agencies and utilities, including, without limitation, the Division of the State Architect, the Department of General Services, gas companies, electrical utility companies, water districts, and other agencies (collectively, the "**Review Agencies**") may have to approve Seller's prepared drawings or approve a proposed installation. Seller and the EPC Contractor have included in the construction schedule to the EPC Contractor License Agreement, which is incorporated herein by reference (the "**Construction Schedule**"), time for possible review of its drawings and for reasonable delays caused by such agencies. Seller and the EPC Contractor are entitled to additional time in the Construction Schedule for review of Seller's drawings or other approvals from the Review Agencies if all of the following conditions have been satisfied:

i. The time for this review is in excess of the time expressly allocated for this review in the Construction Schedule;

ii. Seller has diligently pursued review/approval from the Review Agencies;

iii. Seller's drawings and proposed installation are consistent with IR 16-8 in effect as of the date of this Agreement; and

iv. Seller's drawings and proposed installation are consistent with Seller's pre-check(ed) ("**PC**") design as of the date of this Agreement, where applicable, except as modified at the Purchaser's request.

21. Assignment and Financing.

a. Assignment. This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party. Notwithstanding the foregoing, Seller may, without the prior written consent of Purchaser, directly or indirectly (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party, (ii) assign this Agreement and the System to an Affiliate or subsidiary of Seller, (iii) assign this Agreement and the System to any entity through which Seller is obtaining financing or capital for the System, (iv) assign this Agreement and the System to any person succeeding to all or substantially all of the assets of Seller and (v) assign this Agreement and the System to any assignee that (A) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to those contemplated by this Agreement, or will contract with parties who have such experience and (B) has the financial capability to maintain the System and provide the services contemplated by this Agreement in the manner required by this Agreement. In the event of any such permitted assignment, Seller shall be released from all its liabilities and other obligations under this Agreement. Notwithstanding the foregoing, any assignment of Seller's rights and/or obligations under this Agreement shall not materially impact Purchaser's rights and obligations under this Agreement. This Agreement shall be binding on and inure to the benefit of a Party's successors and permitted assignees.

b. Financing. The Parties acknowledge that Seller may obtain construction and long-term financing or other credit support from one or more Financing Parties. "**Financing Parties**" means a person or persons providing construction or permanent financing to Seller or an Affiliate of Seller in connection with construction, ownership, operation and maintenance of the System or, if applicable, any person to whom Seller has transferred the ownership interest in the System. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties; provided, that such changes do not alter the fundamental economic terms of this Agreement. In connection with an assignment pursuant to Section 21.a and within five (5) business days after receipt of a written request by Seller, Purchaser agrees to execute any consent, estoppel or acknowledgement in form and substance reasonably acceptable to such Financing Parties.

c. Successor Servicing. The Parties further acknowledge that in connection with any construction or long term financing or other credit support provided to Seller or its Affiliates by Financing Parties, that such Financing Parties may require that Seller or its Affiliates appoint a third party to act as backup or successor provider of operation and maintenance services with respect to the System and/or administrative services with respect to this Agreement (the "**Successor**

Seller"). Purchaser agrees to accept performance from any Successor Seller so appointed so long as such Successor Seller is duly licensed and performs in accordance with the terms of this Agreement.

d. **Purchaser Acknowledgement**. Purchaser acknowledges that Seller shall have the right to finance the System with financing accommodations from a Financing Party and that Seller's obligations may be secured by, among other collateral, a pledge or collateral assignment of this Agreement and a first security interest in the System. In order to facilitate such necessary financing, Purchaser agrees as set forth below.

i. Financing Party's Right to Cure.

(1) Upon receipt of the name and notice address of a Financing Party, Purchaser will not exercise any right to terminate this Agreement unless Purchaser has given the Financing Party prior written notice at the address provided to Purchaser in writing of any event giving rise to Purchaser's right to terminate this Agreement. Purchaser's notice of intent to terminate this Agreement must specify the condition giving rise to such right. Notwithstanding any contrary term or provision in this Agreement, Financing Party shall have forty-five (45) days beyond the cure period provided to Seller pursuant to this Agreement to cure the condition. Purchaser's and Seller's obligations under this Agreement will otherwise remain in effect and are required to be fully performed during any cure period.

(2) If the Financing Party or its assignee has commenced and is diligently pursuing judicial proceedings to acquire title to or control of the System, or has acquired title to or taken control of the System, and in either event cures all existing Default Events of Seller that are capable of being cured by Financing Party or its assignee subject to and within the time allowed by Section 13 and assumes in writing the obligations of Seller hereunder, then this Agreement will continue in full force and effect.

ii. Notice of Default Events. Upon and at any relevant time after receipt of the notice provided for in Section 21.d.i, Purchaser agrees to deliver to the Financing Party a copy of any notice of a Default Event by Seller simultaneously with the delivery of such notice by Purchaser to Seller.

22. **Confidentiality**.

a. **Confidentiality**. Subject to the requirements of the California Public Records Act and/or the Freedom of Information Act, if either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the System or of Purchaser's business (collectively, "**Confidential Information**") to the other Party or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other Party, the receiving Party shall (i) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (ii) refrain from using such Confidential Information, except in the negotiation and performance of this Agreement, including but not limited to obtaining financing for the System. Notwithstanding the above, a Party may provide such Confidential Information to its Affiliates, and its and its Affiliates' officers, directors, members, managers, employees, agents, contractors, consultants, lenders, potential lenders, counsel to a Party or its lenders or potential lenders, and potential assignees (collectively, "**Representatives**") of this Agreement (provided and on condition that such Representatives be bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information), in each case whose access is reasonably necessary to the negotiation, financing, enforcement, performance and/or assignment of this Agreement. Any recipient of Confidential Information as set forth herein above shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for a breach of this provision by its Representatives. The terms of this Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Section 22.a, except as set forth in Section 22.b. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party agrees that the disclosing Party may be irreparably injured by a breach of this Section 22.a by the receiving Party or its Representatives and that the disclosing Party may be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of a breach of this Section 22.a. To the fullest extent permitted by Applicable Law,

such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 22.a, but shall be in addition to all other remedies available at law or in equity.

b. **Permitted Disclosures**. Subject to the requirements of the California Public Records Act and/or the Freedom of Information Act and notwithstanding any other provision in this Agreement, neither Party shall be required to hold confidential any information that (i) becomes publicly available other than through the receiving Party, (ii) is independently developed by the receiving Party or its Representatives without reference to, reliance on, or use of Confidential Information or (iii) is already known, made available or becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of Confidential Information is required by a Governmental Authority under Applicable Law or pursuant to a validly issued subpoena, the receiving Party shall be permitted to disclose that portion (and only that portion) of the Confidential Information that it is legally required to disclose; provided, that, to the extent permitted by Applicable Law, it notifies the disclosing Party of such required disclosure promptly upon becoming aware of such required disclosure and cooperates with the disclosing Party in efforts to limit the disclosure to the maximum extent permitted by law.

23. **Goodwill and Publicity**. Neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon and approve any publicity materials, press releases or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement. Neither Party shall make any press release or public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law) without the specific prior written consent of the other Party. Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and Environmental Incentives and any related reporting rights. Notwithstanding the foregoing, Seller may, without Purchaser's consent, issue promotional or advertising materials regarding the System that do not identify Purchaser.

24. **Miscellaneous Provisions**.

a. **Choice of Law**. This Agreement shall be governed by the laws of the State of California without giving effect to conflict of laws principles.

b. **Notices**. All notices under this Agreement shall be in writing and shall be by personal delivery, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either Party may specify in writing. Each Party shall deem a document sent in PDF form to it as an original document.

c. **Further Assurances**. Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

d. **Right of Waiver**. Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time (other than with respect to and/or relating to the obligation to make any payment due under this Agreement); provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.

e. **Non-Dedication of Facilities; Seller Not A Utility**. Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that

would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this agreement. Purchaser acknowledges and agrees that, for purposes of this Agreement, Seller is not a "utility" as such term is used in Section 366 of the United States Bankruptcy Code and Purchaser agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein Purchaser is a debtor. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller shall have the right to terminate this Agreement without further liability, and Seller shall remove the System in accordance with Section 11 of this Agreement.

f. **Service Contract**. The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser shall not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.

g. **No Partnership**. No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.

h. **Independent Contractor Status**. While engaged in carrying out the performance of this Agreement, the Seller is an independent contractor, and not an officer, employee, agent, partner, or joint venture of the District. Seller shall be solely responsible for its own Worker's Compensation insurance, taxes, and other similar charges or obligations. Seller 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.

i. **Full Agreement, Modification, Invalidity, Counterparts, Captions**. This Agreement, together with any Exhibits, completely and exclusively states the agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. No extrinsic evidence whatsoever shall be admissible to modify or supplement, explain, or vary the terms of this completely integrated writing agreement. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of Applicable Law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.

j. **Forward Contract**. The transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

k. **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 the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of such person, and therefore the Seller agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment Practice Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Seller agrees to require like compliance by all its subcontractor(s).

l. **No Third-Party Beneficiaries**. Except for assignees, Financing Parties, and Successor Sellers permitted under Section 21, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person.

m. **Compliance with Laws**: Seller shall require its EPC Contractor to give all notices and comply with all laws, ordinance, rules and regulations bearing on conduct of the Work as indicated or specified herein. If Seller observes that any of the Work required by this Agreement is at variance with any such laws, ordinance, rules or regulations, Seller shall notify the District in writing and the District shall determine if there are any necessary changes to the scope of the Work and this Agreement shall be appropriately amended in writing. If the EPC Contractor performs any Work that Seller knows is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Seller shall bear all costs arising therefrom.

n. **Right to Audit**: District retains the right to reasonably review and audit, and the reasonable right of access to Seller's premises to review and audit, Seller's compliance with the provisions of this Agreement ("Audit Right"). The Audit Right includes the right to reasonably inspect, photocopy, and to retain copies, outside of the Seller's premises, of any and all Project-related records and other information with appropriate safeguards, if such retention is required by applicable law or demanded from a Department of Division of the State of California or other local or governmental authority with applicable oversight jurisdiction over the District. The Seller shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. Upon District's request, the Seller shall submit exact duplicates of originals of all requested records to the District within thirty (30) days and Seller shall retain all Project-related records and other information with appropriate safeguards during the Term of this Agreement and for a minimum of seven (7) years thereafter. The District shall keep this information confidential, as allowed by applicable law and return all confidential and proprietary information after the audit has been completed.

o. **Labor Code Requirements and Compliance with Community Workforce Agreement**

i. Seller acknowledges that the EPC Contractor and all other contractors and laborers performing labor on the Premises pursuant to this Agreement and the EPC Contract shall be subject to that certain June 27, 2017 Community Workforce Agreement (the "**CWA**") by and between the Santa Ana Unified School District, the Los Angeles and Orange Counties Building and Construction Trades Council and the Signatory Craft Councils and Unions, attached hereto as **Exhibit 12**.

ii. Seller, to the extent applicable, and all other contractors, including the EPC Contractor, and laborers performing labor on the Premises pursuant to this Agreement and the EPC Contract shall comply with all applicable provisions of the California Labor Code, Division 3, Part 7, Chapter 1, Articles 1-5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars ($1,000). Copies of the prevailing rate of per diem wages are on file with the District.

iii. Seller specifically acknowledges and understands that the District and/or the State of California monitors and enforces compliance with Labor Code and the CWA requirements through statutorily-authorized programs and the Seller shall require the EPC Contractor to perform the Work while complying with all the applicable provisions of those programs at no cost to the District, except as expressly provided herein.

iv. Seller, to the extent applicable, and all other contractors, including the EPC Contractor, and laborers performing labor on the Premises pursuant to this Agreement and the EPC Contract shall comply with Chapter 1 of Division 2, Part 7 of the California Labor Code, beginning with Section 1720, and including Section 1735, 1777.5 and 1777.6, forbidding discrimination, and Sections 1776, 1777.5 and 1777.6 concerning the employment of apprentices by EPC Contractor or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts.

p. **Registration:** Seller, to the extent applicable, and all other contractors, including the EPC Contractor, and laborers performing labor on the Premises pursuant to this Agreement and the EPC Contract shall comply with the applicable registration and qualification requirements pursuant to sections 1725.5 and 1771.1 of the California Labor Code.

q. **Certified Payroll Records**: Seller, to the extent applicable, and all other contractors, including the EPC Contractor, and laborers performing labor on the Premises pursuant to this Agreement and the EPC Contract shall keep accurate certified payroll records of employees performing labor on the Premises and shall make them available to the District as required by Applicable Law.

r. **Survival**. Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, Section 7.kk (Warranty Disclaimer), Section 8.d (Premises Access Rights), Section 11 (Removal of System at Expiration of Term), Section 13.a.vii (Remedies), Section 13.a.vii (Obligations Following Termination for Default), Section 14 (Representations, Warranties, and Covenants), Section 15.b (Insurance Coverage), Section 17 (Indemnification), Section 18 (Limitations of Liability), Section 19 (Dispute Resolution), Section 22 (Confidentiality), Section 223 (Goodwill and Publicity), Section 24.a (Choice of Law), Section 24.b (Notices), Section 24.e (Non-Dedication of Facilities; Seller Not A Utility), Section 24.f (Service Contract), Section 24.g (No Partnership), Section 24.i (Full Agreement, Modification, Invalidity, Counterparts, Captions), Section 24.gj (Forward Contract), Section 24.l (No Third Party Beneficiaries), and this Section 24.l (Survival). Notwithstanding anything to the contrary herein, Purchaser acknowledges and agrees that, except in the case of a Default Event by Seller, the early termination of this Agreement (whether pursuant to the terms thereof or otherwise) shall not affect the rights of Seller under the License or otherwise result in a termination of the License, and (i) Seller shall nonetheless have the right to maintain the System

at the Premises, and (ii) Seller shall have the right to sell the power produced by the System, or any portion of such power, directly to the grid, and Purchaser shall, if requested by Seller or any utility provider to which Seller grants the right to construct, own, operate and maintain such utility at the Premises as provided under the License, execute a utility interconnection agreement or other documents to permit Seller to interconnect the System to the electrical system of the Premises and transmit power to the utility or utilities either directly or through the electrical system of the Premises, and sell such power to the utility provider or a third party; provided, however, that (A) Purchaser's failure to execute any such agreement shall not invalidate or void any rights granted by Seller to such utility pursuant to the preceding sentence, and (B) in furtherance of the foregoing obligations of Purchaser, Purchaser hereby appoints Seller as Purchaser's true and lawful attorney-in-fact, in its name or in Seller's name, with full power and authority to enter into any such agreement for and on behalf of Purchaser and to bind Purchaser to the terms of any such agreement, which power of attorney is coupled with an interest and shall be irrevocable. The Parties acknowledge that if the License continues to be in full force and effect after the early termination of this Agreement, the provisions of this Agreement that are cross-referenced in the License shall survive termination of this Agreement.

Exhibit 3

Solar System Description, Delivery Point and Premises

1. **Solar System Location:** See below. Final site selection, system sizes and locations to be determined.

	Site Name	Site Address
1	Administration Building (Spurgeon)	1601 E. Chestnut Ave.
2	Thomas Jefferson Elementary School	1522 W. Adams St.
3	Abraham Lincoln Elementary School	425 S. Sullivan St.
4	Glenn L. Martin Elementary School	939 W. Wilshire Ave.
5	Gonzalo Felicitas Mendez Fundamental Intermediate	2000 N. Bristol St.
6	John Muir Fundamental Elementary School	1951 Mabury St.
7	Sierra Preparatory Academy	2021 N. Grand Ave.
8	Romero-Cruz Academy (Grades K-8)	2701 W. Fifth St.
9	Adeline C. Walker Elementary School	811 E. Bishop St.

2. **Solar System Size (DC kW):** 3,599.1 Portfolio

3. **Solar Estimated Annual Production (kWh/year):** As set forth in **Exhibit 6.**

4. **Expected Structure:** Carport / Canopy

5. **Delivery Point and Premises:** Preliminary solar drawings are attached hereto as Schedule A to this **Exhibit 3**, which contain images of the:

   (i) Premises;
   (ii) System;
   (iii) Delivery Points; and
   (iv) Access points needed for Seller to install and service the System (e.g., building access, electrical room, stairs etc.)

6. **Additional Considerations:**

   (i) Seller will work with Purchaser throughout planned modernizations (i.e., parking lot upgrades including paving and striping) to ensure System installations can be completed as contemplated herein.

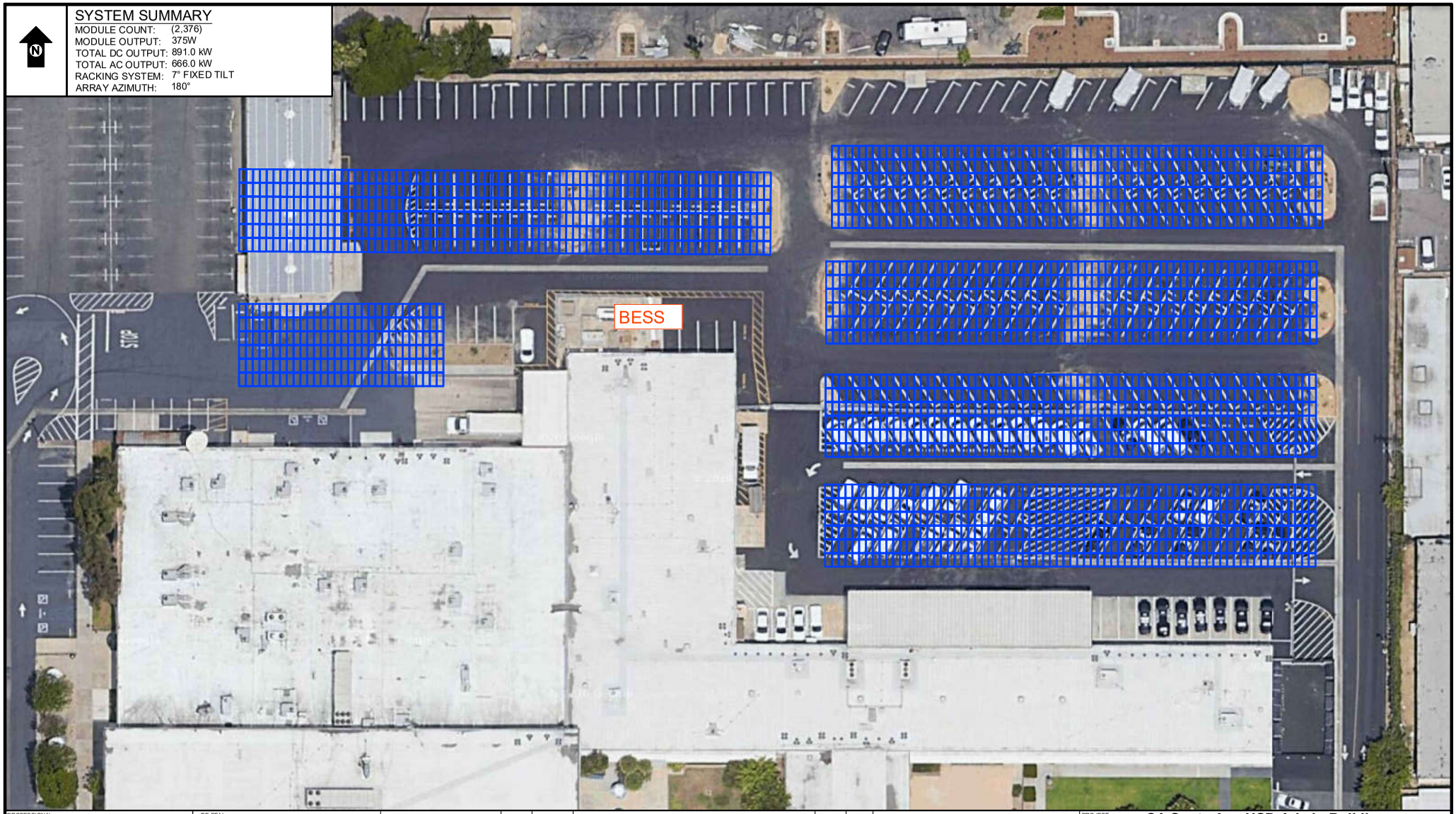
The above Solar System Description is based on known conditions as of the Effective Date and determined by the Parties in good faith. The final Solar System Description may vary from the initial description set forth above and, following final completion of the Solar System, the above details will be updated to reflect the Solar System Description of the as-built Solar System. The Parties hereby acknowledge and agree that such adjustments to the Solar System Description shall be memorialized in a signed amendment to this Agreement.

Schedule A to Exhibit 3

See drawings attached.

SYSTEM SUMMARY

MODULE COUNT:	(2,376)
MODULE OUTPUT:	375W
TOTAL DC OUTPUT:	891.0 kW
TOTAL AC OUTPUT:	666.0 kW
RACKING SYSTEM:	7° FIXED TILT
ARRAY AZIMUTH:	180°



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NO.	DATE	REVISIONS	BY	APP
0	08/06/20	CONCEPTUAL DESIGN	MG	JW

PRELIMINARY DRAWING

ONYX
Onyx Renewable Partners L.P.
230 Park Avenue, Suite 845
New York, NY 10169

PROJECT TITLE: **CA Santa Ana USD Admin Building**

PROJECT ADDRESS: **1601 E Chestnut Ave. Santa Ana, CA**

DRAWING NO.: **C-101**

SHEET NAME: **CONCEPTUAL LAYOUT**

SCALE	PROJECT NO	PLOT DATE	SHEET SIZE
1" = 20'		08/06/2020	ARCH D 36" X 24"

SYSTEM SUMMARY

MODULE COUNT:	(810)
MODULE OUTPUT:	375W
TOTAL DC OUTPUT:	303.8 kW
TOTAL AC OUTPUT:	240.6 kW
RACKING SYSTEM:	7° FIXED TILT
ARRAY AZIMUTH:	180°

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NO.	DATE	REVISIONS	BY	APP
0	08/06/20	CONCEPTUAL DESIGN	MG	JW

PRELIMINARY DRAWING

Onyx Renewable Partners L.P.
230 Park Avenue, Suite 845
New York, NY 10169

PROJECT TITLE	CA Santa Ana USD Jefferson
PROJECT ADDRESS	1522 W Adams St. Santa Ana, CA
DRAWING NO.	C-101
SHEET NAME	CONCEPTUAL LAYOUT
SCALE	1" = 20'
PROJECT NO	
PLOT DATE	08/06/2020
SHEET SIZE	ARCH D 36" X 24"

SYSTEM SUMMARY

MODULE COUNT:	(684)
MODULE OUTPUT:	375W
TOTAL DC OUTPUT:	256.5 kW
TOTAL AC OUTPUT:	200.0 kW
RACKING SYSTEM:	7° FIXED TILT
ARRAY AZIMUTH:	180°

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NO.	DATE	REVISIONS	BY	APP
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PRELIMINARY DRAWING

ONYX
Onyx Renewable Partners L.P.
230 Park Avenue, Suite 845
New York, NY 10169

PROJECT TITLE	CA Santa Ana USD Lincoln
PROJECT ADDRESS	425 S Sullivan St. Santa Ana, CA
DRAWING NO.	C-101
SHEET NAME	CONCEPTUAL LAYOUT
SCALE	1" = 20'
PROJECT NO	
PLOT DATE	08/06/2020
SHEET SIZE	ARCH D 36" X 24"

SYSTEM SUMMARY

MODULE COUNT:	(846)
MODULE OUTPUT:	375W
TOTAL DC OUTPUT:	317.3 kW
TOTAL AC OUTPUT:	233.1 kW
RACKING SYSTEM:	7° FIXED TILT
ARRAY AZIMUTH:	180°, 90°

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PRELIMINARY DRAWING

ONYX
Onyx Renewable Partners L.P.
230 Park Avenue, Suite 845
New York, NY 10169

PROJECT TITLE: **CA Santa Ana USD Martin**

PROJECT ADDRESS: **939 W Wilshire Ave Santa Ana, CA**

DRAWING NO.: **C-101**

SHEET NAME: **CONCEPTUAL LAYOUT**

SCALE	PROJECT NO	PLOT DATE	SHEET SIZE
1" = 20'		08/06/2020	ARCH D 36" X 24"

SYSTEM SUMMARY

MODULE COUNT:	(1,026)
MODULE OUTPUT:	375W
TOTAL DC OUTPUT:	348.8 kW
TOTAL AC OUTPUT:	299.7 kW
RACKING SYSTEM:	7° FIXED TILT
ARRAY AZIMUTH:	180°

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NO.	DATE	REVISIONS	BY	APP
0	08/06/20	CONCEPTUAL DESIGN	MG	JW

PRELIMINARY DRAWING

ONYX
Onyx Renewable Partners L.P.
230 Park Avenue, Suite 845
New York, NY 10169

PROJECT TITLE: **CA Santa Ana USD Mendez**

PROJECT ADDRESS: **2000 N Bristol St. Santa Ana,CA**

DRAWING NO.: **C-101**

SHEET NAME: **CONCEPTUAL LAYOUT**

SCALE: 1" = 20'

PROJECT NO:

PLOT DATE: 08/06/2020

SHEET SIZE: ARCH D 36" X 24"

SYSTEM SUMMARY

MODULE COUNT:	(1260)
MODULE OUTPUT:	375W
TOTAL DC OUTPUT:	472.5 kW
TOTAL AC OUTPUT:	350.0 kW
RACKING SYSTEM:	7° FIXED TILT
ARRAY AZIMUTH:	180°, 90°

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NO.	DATE	REVISIONS	BY	APP
0	08/06/20	CONCEPTUAL DESIGN	MG	JW

PRELIMINARY DRAWING

ONYX
Onyx Renewable Partners L.P.
230 Park Avenue, Suite 845
New York, NY 10169

PROJECT TITLE: **CA Santa Ana USD Muir**

PROJECT ADDRESS: **1951 Madbury St. Santa Ana, CA**

DRAWING NO.: **C-101**

SHEET NAME: **CONCEPTUAL LAYOUT**

SCALE: 1" = 30'

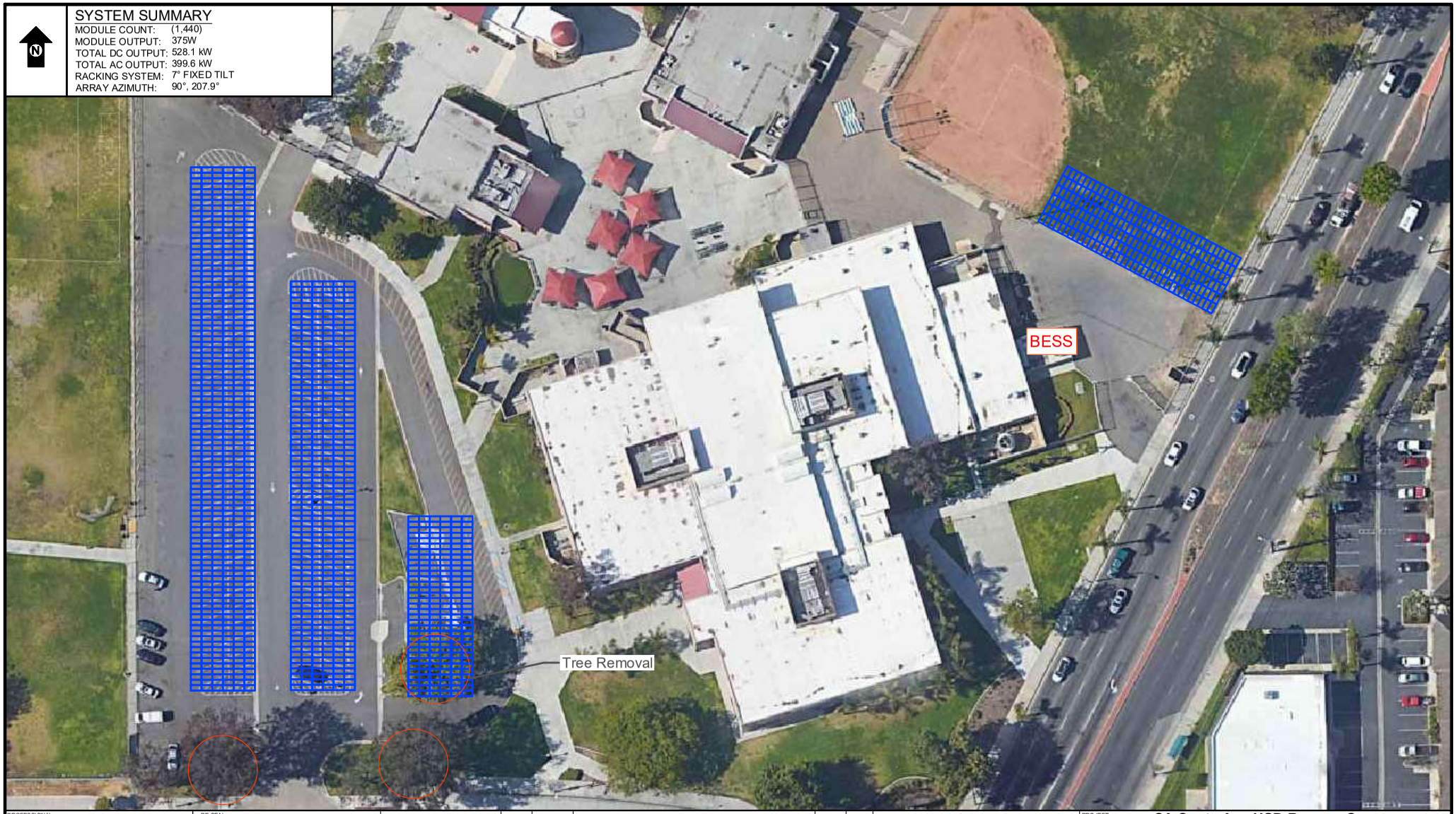
PROJECT NO:

PLOT DATE: 08/06/2020

SHEET SIZE: ARCH D 36" X 24"

SYSTEM SUMMARY

MODULE COUNT:	(1,440)
MODULE OUTPUT:	375W
TOTAL DC OUTPUT:	528.1 kW
TOTAL AC OUTPUT:	399.6 kW
RACKING SYSTEM:	7° FIXED TILT
ARRAY AZIMUTH:	90°, 207.9°



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NO.	DATE	REVISIONS	BY	APP
0	08/06/20	CONCEPTUAL DESIGN	MG	JW

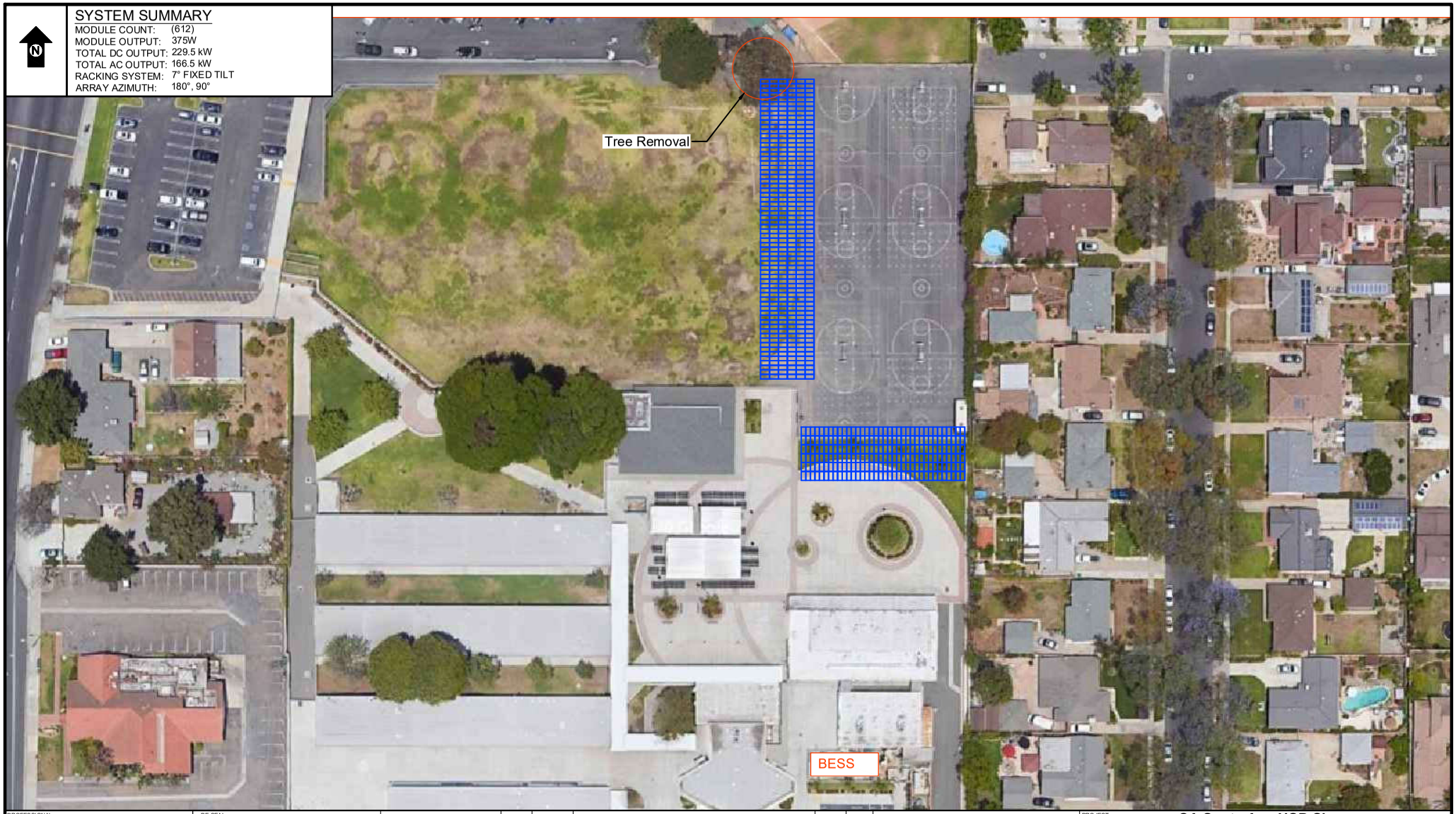
PRELIMINARY DRAWING

Onyx Renewable Partners L.P.
230 Park Avenue, Suite 845
New York, NY 10169

PROJECT TITLE	CA Santa Ana USD Romero Cruz
PROJECT ADDRESS	2701 W 5th St Santa Ana, CA
DRAWING NO.	C-101
SHEET NAME	CONCEPTUAL LAYOUT
SCALE	1" = 25'
PROJECT NO	
PLOT DATE	08/06/2020
SHEET SIZE	ARCH D 36" X 24"

SYSTEM SUMMARY

MODULE COUNT:	(612)
MODULE OUTPUT:	375W
TOTAL DC OUTPUT:	229.5 kW
TOTAL AC OUTPUT:	166.5 kW
RACKING SYSTEM:	7° FIXED TILT
ARRAY AZIMUTH:	180°, 90°



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NO.	DATE	REVISIONS	BY	APP
0	08/06/20	CONCEPTUAL DESIGN	MG	JW

PRELIMINARY DRAWING

ONYX
Onyx Renewable Partners L.P.
230 Park Avenue, Suite 845
New York, NY 10169

PROJECT TITLE: **CA Santa Ana USD Sierra**

PROJECT ADDRESS: **2021 N Grand Ave. Santa Ana, CA**

DRAWING NO.: **C-101**

SHEET NAME: **CONCEPTUAL LAYOUT**

SCALE: 1" = 30'

PROJECT NO:

PLOT DATE: 08/06/2020

SHEET SIZE: ARCH D 36" X 24"

SYSTEM SUMMARY

MODULE COUNT:	(576)
MODULE OUTPUT:	375W
TOTAL DC OUTPUT:	216.0 kW
TOTAL AC OUTPUT:	166.5 kW
RACKING SYSTEM:	7° FIXED TILT
ARRAY AZIMUTH:	164°, 90°

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NO.	DATE	REVISIONS	BY	APP
0	08/06/20	CONCEPTUAL DESIGN	MG	JW

PRELIMINARY DRAWING

ONYX
Onyx Renewable Partners L.P.
230 Park Avenue, Suite 845
New York, NY 10169

PROJECT TITLE	**CA Santa Ana USD Walker**
PROJECT ADDRESS	**811 E Bishop St Santa Ana, CA**
DRAWING NO.	**C-101**
SHEET NAME	**CONCEPTUAL LAYOUT**
SCALE	1" = 30'
PROJECT NO	
PLOT DATE	08/06/2020
SHEET SIZE	ARCH D 36" X 24"

Exhibit 4

Storage System Description and Operating Parameters

1. **Storage System Location**: See below. Final locations to be determined upon design.

	Site Name	Site Address
1	Administration Building (Spurgeon)	1601 E. Chestnut Ave.
2	Thomas Jefferson Elementary School	1522 W. Adams St.
3	Abraham Lincoln Elementary School	425 S. Sullivan St.
4	Glenn L. Martin Elementary School	939 W. Wilshire Ave.
5	Gonzalo Felicitas Mendez Fundamental Intermediate	2000 N. Bristol St.
6	John Muir Fundamental Elementary School	1951 Mabury St.
7	Sierra Preparatory Academy	2021 N. Grand Ave.
8	Romero-Cruz Academy (Grades K-8)	2701 W. Fifth St.
9	Adeline C. Walker Elementary School	811 E. Bishop St.

2. **Storage System Size (DC kW):** 870 kW / 3,480 kWh Battery Energy Storage System with 4 hour duration

3. **Storage Estimated Annual Production (kWh/year)**: As set forth in **Exhibit 6**.

4. **Manufacturer:** Tesla

5. **Storage System Operating Parameters**:

   a. The Storage System will be used specifically for storing and deferring deliveries of output from the Solar System to the Delivery Point, which operation is expected to contribute to usage peak shaving, demand charge reduction, utility user tax reduction, and energy arbitrage for the production of billing credits for Purchaser vis a vis Purchaser's Serving Utility, subject to emergency shut off requirements from Purchaser's Serving Utility.

   b. The Solar System will directly charge the Storage System, which will be discharged according to algorithms programmed into the STEM BESS Athena software (for example, upon peak demand, targeting reduction in demand charges or avoidance of high time-of-use rates under Purchaser's Serving Utility's applicable tariff).

The above Storage System Description and Operating Parameters is based on known conditions as of the Effective Date and determined by the Parties in good faith. The final Storage System Description and Operating Parameters may vary from the initial description set forth above and, following final completion of the Storage System, the above details will be updated to reflect the Storage System Description and Operating Parameters of the as-built Storage System. The Parties hereby acknowledge and agree that such adjustments to the Storage System Description and Operating Parameters Description shall be memorialized in a signed amendment to this Agreement.

Exhibit 5

Energy Rate Schedule

Contract Year	Energy Rate ($/kWh)
Year 1	$0.135
Year 2	$0.135
Year 3	$0.135
Year 4	$0.135
Year 5	$0.135
Year 6	$0.135
Year 7	$0.135
Year 8	$0.135
Year 9	$0.135
Year 10	$0.135
Year 11	$0.135
Year 12	$0.135
Year 13	$0.135
Year 15	$0.135
Year 16	$0.135
Year 17	$0.135
Year 18	$0.135
Year 19	$0.135
Year 20	$0.135
Year 21	$0.135
Year 22	$0.135
Year 23	$0.135
Year 24	$0.135
Year 25	$0.135

Exhibit 6

Solar System

Contract Year	Solar Estimated Annual Production (kWh/year)
Year 1	5,241,927
Year 2	5,215,717
Year 3	5,189,639
Year 4	5,163,691
Year 5	5,137,872
Year 6	5,112,183
Year 7	5,086,622
Year 8	5,061,189
Year 9	5,035,883
Year 10	5,010,703
Year 11	4,985,650
Year 12	4,960,722
Year 13	4,935,918
Year 14	4,911,238
Year 15	4,886,682
Year 16	4,862,249
Year 17	4,837,938
Year 18	4,813,748
Year 19	4,789,679
Year 20	4,765,731
Year 21	4,741,902
Year 22	4,718,193
Year 23	4,694,602
Year 24	4,671,129
Year 25	4,647,773

The above Solar Estimated Annual Production is based on known conditions as of the Effective Date and are made in good faith by the Parties. The final Solar Estimated Annual Production may vary from the initial description set forth above and, following final completion of the Solar System, the above details will be updated to reflect the Solar Estimated Annual Production of the as-built Solar System. The Parties hereby acknowledge and agree that such adjustments to the Solar Estimated Annual Production shall be memorialized in a signed amendment to this Agreement.

Storage System

** To be populated upon final design.*

Contract Year	Storage Estimated Annual Savings ($/year)
Year 1	$67,304.60
Year 2	$68,058.45
Year 3	$68,831.45
Year 4	$69,623.90
Year 5	$70,436.11
Year 6	$71,268.39
Year 7	$72,121.06
Year 8	$72,994.44
Year 9	$73,888.86
Year 10	$74,804.66

The above Storage Estimated Annual Production [Savings] is based on known conditions as of the Effective Date and are made in good faith by the Parties. The final Storage Estimated Annual Production may vary from the initial description set forth above and, following final completion of the Storage System, the above details will be updated to reflect the Storage Estimated Annual Production of the as-built Storage System. The Parties hereby acknowledge and agree that such adjustments to the Storage Estimated Annual Production shall be memorialized in a signed amendment to this Agreement.

Exhibit 7

Seller Certifications
(see attached)

PREVAILING WAGE CERTIFICATION

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

Date: _____
Proper Name of Seller: _____
Signature: _____
Print Name: _____
Title: _____

WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700 in relevant part provides:

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

a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.

b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before permitting any employees to perform any labor on the Premises pursuant to this Agreement.

Date: _____
Proper Name of Seller: _____
Signature: _____
Print Name: _____
Title: _____

(In accordance with Article 5 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to permitting any employees to perform any labor on the Premises pursuant to this Agreement.)

FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

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

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

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

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

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

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

Name: _____

Title: _____

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

Date: _____
Proper Name of Seller: _____
Signature: _____
Print Name: _____
Title: _____

IRAN CONTRACTING ACT CERTIFICATION
(Public Contract Code § 2204)

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

Seller shall complete **ONLY ONE** of the following two paragraphs. s

☐ 1. Seller's Agreement is less than one million dollars ($1,000,000).

OR

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

OR

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

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

Date: _____
Proper Name of Seller: _____
Signature: _____
Print Name: _____
Title: _____

Exhibit 8

RESERVED

Exhibit 9

RESERVED

Exhibit 10

RESERVED

Exhibit 11

Final List of Plans, Specifications and Drawings for School Sites

If any information in this Exhibit is in conflict with the terms of the Agreement or Exhibits 1 to 4, the terms of the Agreement and Exhibits 1 to 4 shall control.

The Parties shall develop a List of Plans, Specifications and Drawings, which shall supersede and replace this Exhibit upon its adoption by the Parties. No List of Plans, Specifications and Drawings shall be effective in the absence of the Parties mutual prior written approval thereof. It is noted, all Specifications shall be placed on the Drawings and no separate Specifications shall be prepared.

PLANS / DRAWINGS – To be determined once designs are finalized.

Sheet number	File number	Description

Exhibit 12

Community Workforce Agreement

Exhibit 13

EPC Contractor License Agreement

THIS EPC CONTRACTOR LICENSE AGREEMENT is made and entered into on _____, 2020 ("**License Agreement**"), by and between _____ ("**Contractor**"), **Onyx Development Group LLC** ("**Onyx**") and **Santa Ana Unified School District** ("**District**"). Contractor, Onyx and District may be referred to herein individually as a "**Party**" or collectively as the "**Parties**."

RECITALS

WHEREAS, on [Insert Date] the District and Onyx entered into a Solar Power Purchase and Energy Services Agreement (as amended, restated, supplemented or other modified from time to time, the "**PPA**"), which is incorporated herein by reference, pursuant to Government Code section 4217.10, et seq. in which Onyx agreed to design, pay for the construction and installation of, own, operate and maintain a solar photovoltaic system ("**Solar System**") and an energy storage system ("**Storage System**") (collectively, the "**System**") at [Insert School Name and Address] ("**Premises**") and the District agreed to purchase solar electricity for the Premises delivered by the System; and

WHEREAS, the terms of the PPA requires that Onyx, the District, and the EPC Contractor (as defined in the PPA) enter into this License Agreement to permit the Contractor to perform the Work (as defined below) and to set forth the obligations of Contractor while performing the Work at the Premises; and

WHEREAS, on [Insert Date] Onyx and Contractor entered into that certain Engineering, Procurement and Construction Agreement (as amended, restated, supplemented or other modified from time to time, the "**EPC Contract**") in which Contractor will, *inter alia*, perform the scope of work attached hereto as **Annex A** and incorporated herein by reference, on the Premises (the "**Work**" or "**Project**") and Onyx will pay Contractor for such Work; and

WHEREAS, pursuant to the terms of the PPA, the District and Onyx agreed to enter into this License Agreement with Contractor to memorialize Contractor's obligations and responsibilities while performing the Work at the Premises.

WITNESSETH, that for and in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

AGREEMENT

1. **Work.** The Parties acknowledge and agree that (i) Onyx shall not be acting in the capacity of a general contractor with respect to the Work and (ii) all such Work shall be performed by Contractor pursuant to the terms of the EPC Contract and the Plans and Specifications as more specifically described in Exhibit 11 of the PPA.

2. **License**.

   2.1 **Scope.** The District grants to Contractor and to Contractor's agents, employees, contractors and assignees, a license running with the Premises (the "**License**") for access to, on, over, under and across the Premises solely for the purposes of performing the Work consistent with the terms of the PPA. The Licenses shall be confined solely to the areas upon which Contractor is performing the Work, or which are reasonably necessary for Contractor to perform the Work, including staging areas. Contractor shall provide to the District a schedule of its intended access to the Premises prior to the performance of the Work. The District shall have the right to approve or reject the Contractor's schedule of intended access to the Premises. The term of the License shall continue until the Work is deemed complete by Onyx pursuant to the terms of the EPC Contract, except that the License shall be deemed terminated two (2) years after the execution of this License Agreement, unless extended by the District in writing executed by the Parties ("**License Term**"). Contractor shall be responsible to the District for any and all types of damage caused by it, its agents, employees or contractors to the Premises or to any persons or property thereon, including as a result of any breach of the Terms and Conditions to License Agreement attached hereto as **Annex E**. At the option of the District, the District or Contractor shall repair any such property damage. If the District repairs such damage, the Contractor shall reimburse District for reasonable expenses incurred to repair such damage within thirty (30) days after demand by District.

   2.2 **EPC Contract Termination.** If Onyx or the Contractor terminate the EPC Contract for any reasons, this License Agreement and the License Term shall terminate effective the date of any such termination.

3. **Payment.** Onyx shall be solely responsible for all payments due to Contractor for the Work. Contractor agrees that the District shall not be in any way be liable directly to Contractor for any payment for the Work, and forever releases and holds the District harmless for any payments or compensation due from Onyx to Contractor for the Work.

4. **Construction Schedule.** Subject to the EPC Contract, Contractor shall endeavor to complete the Work pursuant to the Construction Schedule attached hereto as **Annex B** and incorporated herein by reference. Any rights and obligations with respect to liquidated damages concerning any portion of the Work not completed by Contractor within the Construction Schedule shall be governed by the terms of the EPC Contract. Any rights and obligations with respect to liquidated damages concerning the System failing to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date (as each are defined in the PPA) shall be governed by the terms of the PPA. The District acknowledges that it shall have no right to recover any liquidated damages from Contractor. Any changes to the Construction Schedule shall not require an amendment to this License Agreement; provided, that Onyx and/or Contractor provide District's project representative with written notice (email being sufficient) of such changes promptly after such changes are made under the EPC Contract; provided further, that unless otherwise provided for in the PPA, Onyx shall not be granted an extension of time to achieve the Commercial Operation Date for the System as provided for the in the PPA.

5. **Bonds & Insurance.**

6.1. **Payment Bond & Performance Bond:** Contractor shall not commence the Work until it has provided to the District and Onyx, a Payment (Labor and Material) Bond and a Performance Bond, in substantially the forms attached hereto as **Annex C**, each in an amount equivalent to one hundred percent (100%) of the EPC Contract price issued by a surety admitted to issue bonds in the State of California and otherwise acceptable to the District and Onyx.

6.2. **Insurance:** Contractor and its subcontractors shall have and maintain in force during the performance of the Work, with the minimum indicated limits, the following insurance:

Commercial General Liability	Includes: Personal & Advertising Injury, Product Liability and Completed Operations	$1,000,000 each occurrence; $2,000,000 general aggregate
Automobile Liability – Any Auto	Combined Single Limit	$2,000,000 per occurrence
Excess Liability (or Umbrella Policy)		$6,000,000 per occurrence; $6,000,000 aggregate
Workers Compensation		Statutory limits pursuant to State law
Employers' Liability		$2,000,000 each accident, each disease; $2,000,000 policy limit
Builder's Risk (Course of Construction)		Issued for the value and scope of work under the EPC Contract.
Property of Others	Combined Single Limit General Aggregate	Issued for the value and scope of work under the EPC Contract.

Contractor shall provide to the District and Onyx certificate(s) of insurance and endorsements satisfactory to the District and Onyx. The policy(ies) shall not be amended or modified and the coverage amounts shall not be reduced without thirty (30) days written notice to the District and Onyx prior to cancellation. Except for worker's compensation insurance, the District, Onyx, and their subconsultants and agents shall be named as an additional insured on all policies. Contractor's policy(ies) shall be primary; any insurance carried by the District and Onyx shall only be secondary and supplemental. Contractor shall not allow any subcontractor, employee, or agent to commence Work on the Premises until the insurance required of Contractor, subcontractor, or agent has been obtained.

6. **Project Oversight.** Onyx shall retain project management responsibilities, and shall inspect and accept the Work. The District shall appoint a project representative who may inspect and correspond with Onyx and the Contractor, and who may evaluate Contractor's performance and compliance with this License Agreement. The District shall also retain a DSA approved Inspector of Record whose fees and costs shall be fully compensated by Onyx.

7. **Community Workforce Agreement**. Contractor acknowledges and agrees that its and its contractors' performance of the Work on the Premises is subject to that certain June 27, 2017 Community Workforce Agreement by and between the Santa Ana Unified School District, the Los Angeles and Orange Counties Building and Construction Trades Council and the Signatory Craft Councils and Unions, attached hereto as **Annex D**.

8. **Terms & Conditions of License Agreement**. The Contractor agrees that its performance of the Work is subject to the Terms and Conditions attached hereto as **Annex E**.

9. **Contractor Deliverables**. Prior to accessing the Premises and commencing any Work on the Premises, Contractor shall deliver to Onyx and the District completed and executed copies of the following:

   - X Noncollusion Declaration (Annex F)
   - X Prevailing Wage Certification (Annex F)
   - X Workers' Compensation Certification (Annex F)
   - X Finger Printing / Criminal Background Investigation Certification (Annex F)
   - X Drug-Free Workplace / Tobacco-Free Environment Certification (Annex F)
   - X Asbestos & Other Hazardous Materials Certification (Annex F)
   - X Lead-Product(s) Certification (Annex F)
   - X Roofing Contract Financial Interest Certification (Annex F)
   - X Iran Contracting Act Certification (Annex F)
   - X Insurance Certificates and Endorsements
   - X Performance Bond (Annex C)
   - X Payment Bond (Annex C)

10. **Notice**. Any notice required or permitted to be given under this License Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or sent by overnight delivery service addressed as follows:

Santa Ana Unified School District
1601 East Chestnut Ave.
Santa Ana, CA 92701
Attn: Orin Williams, Assistant Superintendent

Onyx Development Group LLC
230 Park Avenue, Suite 845
New York, NY 10169
Attn: Legal Department

[Insert Name of Contractor]
_____
_____
Attn: _____

Any notice personally given 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.

[Signature Page Follows]

ACCEPTED AND AGREED on the date indicated below. By signing this License Agreement, Contractor certifies, under penalty of perjury, that all the information provided herein and pursuant to this License Agreement is true, complete, and correct:

Dated: _____, 20___

Santa Ana Unified School District

Signature: _____

Print Name: _____

Print Title: _____

Dated: _____, 20___

[Insert Name of Contractor]

Signature: _____

Print Name: _____

Print Title: _____

CSLB No. _____

Dated: _____, 20___

Onyx Development Group LLC

Signature: _____

Print Name: _____

Print Title: _____

ANNEX A

WORK

The District agrees that the License Agreement shall cover the following Work at the Premises:

1. **Site Preparation**: The Project area will be prepared to accept the construction of the System.
    a. Parking Area Solar Canopies (the "Solar Support Structure(s)")
        i. Removal of parking blocks in direct interference of support structure foundations
        ii. Removal of light posts in direct interference of support structures and foundations
        iii. Soils testing (geotechnical only)
        iv. Site survey
        v. Scan for existing utilities (USA, Digalert or equivalent)

2. **Temporary Facilities**: Temporary facilities may be placed on site as needed for the duration of the Work and will be removed in a timely manner after the Work is completed. The following facilities may be placed on site in a location mutually agreed upon by the District and Contractor.
    a. Temporary workspace for the use of Contractor employees and contractors
    b. Toilet facilities for field staff
    c. Storage containers
    d. Scaffolding
    e. Heavy equipment including but not limited to forklifts, cranes, boom lifts, front end loaders, generators, trucks etc.
    f. Water facilities
    g. Lay down areas for oversized materials
    h. 120V power source, temporary poles, temporary connections and extensions to work area (single main connection point provided by District)
    i. Temporary chain link fence around staging areas (bare wire, 6' fence)

3. **Safety**: Appropriate safety measures will be applied in accordance with OSHA requirements. Contractor is responsible for maintaining safety in the performance of the Work. Prior to commencement of the Work, the District shall provide to Contractor all applicable rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.

4. **PV Solar System Installation**: Installation of a fully functional PV Solar power system to include:
    a. Mounting System
        i. Parking area Solar Support Structure installation
            1. Excavation for support structure foundations
            2. Pouring of concrete and placement of support structure foundations
            3. Erection of support structures
            4. Replacement of asphalt and concrete removed during underground excavation work.
            5. Removal of spoils and broom clean.
    b. AC Wiring and interconnection to be performed per NEC code, DSA approved plans, local jurisdiction rules and Onyx's specifications as noted in construction drawings.
        i. Installation of AC wire and conduit. Conduit to be located (run) underground to main service panel.
        ii. Interconnection of AC equipment to electrical service.
        iii. Interconnection of PV system to utility grid.
        iv. Installation and wiring of required AC disconnecting means.
    c. DC wiring to be performed per NEC code, DSA approved plans, local jurisdiction rules and Onyx's design specifications as noted in construction drawings.
        i. Module to module, combiner, home run, and recombiner DC conduit and wiring
        ii. Grounding of electrical components
        iii. Installation and wiring of required DC disconnecting means
    d. Inverter installation
        i. Installation of inverter foundation or wall mount / column mount as required. Foundations poured to Onyx's and DSA specifications, if applicable.

ii. Wiring and testing of inverter per manufacturer specifications

e. Monitoring hardware
   i. Installation of monitoring gateway and Current Transducers
   ii. Physical connection of monitoring hardware to network Global System for Mobile Communication (GSM)

f. System commissioning
   i. Electrical
      1. Inspection and testing of AC electrical continuity, operating voltage, amperage and phasing
      2. Inspection and testing of DC electrical continuity, voltage and polarity
      3. Inspection and testing of system and component grounding
      4. Inspection of wire strain relief and wire management
      5. Verify torque connection tightness
      6. Verify inverter function
   ii. Construction
      1. Verify correct installation of safety placards
      2. Verify component installation vs. design documents
      3. Verify condition and proper installation of PV modules
      4. Verify installation in accordance with DSA pre-check

5. **Lighting for Solar Structures**: Lighting under Solar Support Structures will be installed by the Contractor. Lighting materials will be to NEC code, DSA approved plans, local jurisdiction and Onyx LED specifications. Lighting levels under the arrays will meet or exceed minimum Illuminating Engineering Society of North America (IESNA) standards. Existing lighting circuits are assumed to have sufficient amperage for lighting under support structures.

6. **Site Access**: Contractor and approved District personnel, will have unrestricted access to the construction area. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy of the Premises. Contractor shall not cause any unnecessary hindrance or delay (i) to the use, and/or school operation(s), of the Premises and/or (ii) to the District or any other contractor working on the Project.

7. **Trenching/Boring**
   a. Underground conduit and conductor banks will be installed per minimum guidelines set forth in National Electric Code (NEC) code and Onyx design specifications.
   b. Concrete and asphalt removed by cutting or excavation will be replaced.
   c. Landscaping directly impacted by excavation activity will be restored to their prior condition immediately before commencement of installation. (Does not include Relocation of landscaping and vegetation outside the excavation area.)

8. **Materials**: All materials will be provided in accordance with Onyx's approved DSA-precheck design. Materials will be new and specifications will be to Onyx's design standards. Materials will meet NEC code, DSA and local jurisdiction requirements. Materials may be substituted subject to the limitations in the EPC Contract so long as such substitution(s) is in compliance with the DSA-approved designs. Supplied materials may include:

   a. PV Solar Modules
   b. Inverter and inverter mounting hardware
   c. Racking System
   d. Racking foundations
   e. Solar Support Structures
   f. Conduit
   g. Paint
   h. Wire
   i. LED lights under canopies
   j. Combiner boxes
   k. Fuses
   l. Disconnecting means
   m. Transformers

n. Monitoring equipment, including GSM communication network materials
o. As built drawings will be provided upon file DSA close- out.

ANNEX B

CONSTRUCTION SCHEDULE

Contractor shall endeavor to complete the Work pursuant to the Construction Schedule below:

**Final schedule to be determined. Anticipated construction from January 2021 – December 2022.*

[Insert Construction Schedule / Milestones]

ANNEX C

PERFORMANCE BOND

PERFORMANCE BOND (100% of EPC Contract Price)
(Note: Principal must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("Board") of the **Santa Ana Unified School District** ("District") and **Onyx Development Group LLC (**"Seller") have entered into that certain Solar Power Purchase and Energy Services Agreement, dated as of _____ (as amended, restated, supplemented or otherwise modified from time to time), regarding the installation, operation and maintenance of a solar canopy system and battery storage system (together, the "System") at _____[add site address].

WHEREAS, Seller and _____ ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to construct, install and commission the System ("Project"), which contract is dated as of _____, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "Contract"), and all of the Contract documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

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

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

- Perform all the work required under the Contract; and

- Pay to Seller and the District all damages Seller and/or the District incur as a result of the Principal's failure to perform all the work required under the Contract.

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

As a condition precedent to the satisfactory completion of the Contract, the above obligation shall hold good for two (2) years from the completion date of the work required under the Contract, during which time Surety's obligation shall continue if Principal shall fail to make full, complete, and satisfactory repair, replace, and totally protect Seller and the District from loss or damage resulting from or caused by defective materials or faulty workmanship. Nothing herein shall limit Seller's or the District's rights or the Principal's or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15 during the bond term.

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

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

_____

_____

Attention: _____

Telephone No.: (_____) _____-_____

Fax No.: (_____) _____-_____

E-mail Address: _____

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

Principal	**Surety**
_____	_____
(Name of Principal)	(Name of Surety)
_____	_____
(Signature of Person with Authority)	(Signature of Person with Authority)
_____	_____
(Print Name)	(Print Name)
	_____
	(Name of California Agent of Surety)
	_____
	(Address of California Agent of Surety)
	_____
	(Telephone Number of California Agent of Surety)

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

PAYMENT BOND

Principal's Labor & Material Bond (100% of EPC Contract Price)
(Note: Principal must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("Board") of the **Santa Ana Unified School District** ("District") and **Onyx Development Group LLC (**"Seller") have entered into that certain Solar Power Purchase and Energy Services Agreement, dated as of _____ (as amended, restated, supplemented or otherwise modified from time to time), regarding the installation, operation and maintenance of a solar canopy system and battery storage system (together, the "System") at _____[add site address].

WHEREAS, Seller and _____ ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to construct, install and commission the System ("Project"), which contract is dated as of _____, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "Contract"), and all of the Contract documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

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

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

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

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

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

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

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

Principal	**Surety**
_____	_____
(Name of Principal)	(Name of Surety)
_____	_____
(Signature of Person with Authority)	(Signature of Person with Authority)
_____	_____
(Print Name)	(Print Name)
	_____
	(Name of California Agent of Surety)
	_____
	(Address of California Agent of Surety)
	_____
	(Telephone Number of California Agent of Surety)

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

ANNEX D

Community Workforce Agreement

(see attached)

ANNEX E

TERMS AND CONDITIONS TO LICENSE AGREEMENT

1. ORDER OF INTERPRETATION: The Parties enter into this License Agreement concurrently with the EPC Contract. If there is any conflict between the terms of this License Agreement and the EPC Contract, then the terms of this License Agreement shall prevail over the conflicting terms of the EPC Contract to the extent necessary to eliminate such conflict.

2. EQUIPMENT LABOR. Contractor shall be responsible at its sole cost and expense for providing all equipment and labor necessary to comply with any obligations in this License Agreement.

3. SUBCONTRACTORS: Contractor shall comply with the Subletting and Subcontracting Fair Practices Act (Public Contract Code, section 4100 et. Seq.). Contractor shall identify by name and location of the place of business of each subcontractor who will perform the Work or a portion thereof in an amount in excess of one-half of 1 percent of the EPC Contract price or ten thousand dollars ($10,000) whichever is greater. Contractor agrees to bind every subcontractor, if any, by the terms of this License Agreement as far as such terms are applicable to subcontractor's work. If Contractor subcontracts any part of the Work, Contractor shall be fully responsible for acts and omissions of its subcontractor and of persons either directly or indirectly employed by itself. Nothing contained in the herein shall create any contractual relations between any subcontractor and the District.

4. SAFETY AND SECURITY: Contractor is responsible for maintaining safety in the performance of the Work. Contractor shall be responsible for complying with the District's the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.

5. TRENCH SHORING: If the Work is in excess of $25,000 and includes the excavation of any trench deeper than five (5) feet, Contractor must submit and obtain District's approval and 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.

6. EXCAVATIONS OVER FOUR FEET: If Work includes excavations over four (4) feet, Contractor shall promptly, and before the following conditions are disturbed, notify the District and Onyx, in writing, of any: (1) 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; (2) Subsurface or latent physical conditions at the Premises differing from those indicated; or (3) Unknown physical conditions at the Premises of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Work. The District and Onyx 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, Onyx shall issue a change order under the procedures described in the EPC Contract. In the event that a dispute arises between Onyx and the Contractor regarding 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 EPC Contract, but shall proceed with all Work. Contractor shall retain any and all rights provided either by the EPC Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

7. 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.

8. DRUG-FREE / TOBACCO FREE / SMOKE FREE POLICY: No drugs, alcohol, tobacco, and/or smoking are allowed at any time in any buildings and/or grounds on District property. No students, staff, visitors, consultants or contractors are to use drugs on these sites.

9. FINGERPRINTING: Contractor shall comply at all times with the provisions of Education Code section 45125.2 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees, its subcontractor(s), and its subcontractors' employees. Contractor shall not permit any employee to have any contact with District pupils until such time as Contractor has verified in writing to the governing board of the District, that such employee has not been convicted of a felony, as defined in Education Code section 45122.1. Contractor at all times shall fully complete and perform all tasks required pursuant to the Criminal Background Investigation/ Fingerprinting Certification.

10. CONTRACTOR SUPERVISION: Contractor shall provide competent supervision of personnel employed on the Premises, use of equipment, and quality of workmanship including but not limited to the following:

10.1. During progress of the Work, Contractor shall keep on the Premises, and at all other locations where any Work is being performed, a competent project manager and construction superintendent who are employees of the Contractor, to whom the District and

Onyx do not object and at least one of whom shall be fluent in English, written and verbal.

10.2. Before commencing the Work, Contractor shall give written notice to the District and Onyx of the name of its project manager and construction superintendent. Neither the Contractor's project manager nor construction superintendent shall be changed except with prior written notice to Onyx and the District, unless the Contractor's project manager and/or construction superintendent proves to be unsatisfactory to Contractor, Onyx, District, or any of the District's employees, agents, in which case, Contractor shall notify District in writing. The District and Onyx retain the right to reasonably refuse Contractor's replacement personnel. The Contractor's project manager and construction superintendent shall each represent Contractor, and all directions given to Contractor's project manager and/or construction superintendent shall be as binding as if given to Contractor.

10.3. All persons working for Contractor and subcontractor(s) shall refrain from using profane or vulgar language, or any other language that is inappropriate on the job site.

10.4. Contractor shall at all times enforce strict discipline and good order among Contractor's employees, and shall not employ on the Project any unfit person or anyone not skilled in the task assigned.

11. DUTY TO PROVIDE FIT WORKERS:

11.1. Contractor and its subcontractor(s) shall at all times enforce strict discipline and good order among their employees and shall not employ or work any unfit person or anyone not skilled in the Work or portion thereof assigned to that person. It shall be the responsibility of Contractor to ensure compliance with this requirement. Onyx and/or the District may require Contractor to permanently remove unfit persons from the Premises. Any person in the employ of Contractor or its subcontractor(s) whom Onyx and/or the District may deem incompetent or unfit shall be excluded from working on the Project and shall not again be employed on the Project except with the prior written consent of Onyx and the District. The Contractor shall furnish labor that can work in harmony with all other elements of labor employed or to be employed in the Work. If Contractor intends to make any change in the name or legal nature of the Contractor's entity, Contractor must first notify Onyx and the District. Onyx and the District shall determine if Contractor's intended change is permissible.

11.2. If Contractor or any subcontractor on the Premises fails to comply with any provision herein, Onyx and/or the District may have the offending person(s) immediately removed from the Premises, and the person(s) shall be replaced within three (3) days, at no additional expense to Onyx. Contractor, on behalf of it and its subcontractors, hereby waives any claim that the provisions of this paragraph or the enforcement thereof interferes, or has the potential to interfere, with its right to control the means and methods of its performance and duties under the EPC Contract.

12. PERSONNEL: The Contractor shall employ a full-time superintendent and necessary assistants who shall have complete authority to represent and act on behalf on the Contractor on all matters pertaining to the Work. The superintendent shall be competent and have a minimum of five (5) years' experience in construction supervision on projects of similar scale and complexity. The superintendent shall be satisfactory to Onyx and the District and, if not satisfactory, shall be replaced by the Contractor with one that is acceptable to Onyx and the District. The superintendent shall not be changed without the written consent of Onyx and the District unless the superintendent ceases to be employed by the Contractor.

13. CLEAN UP: Debris shall be removed from the Premises. The Premises shall be in order at all times when Work is not actually being performed and shall be maintained in a reasonably clean condition. Should the Contractor fail to perform the required clean-up, or should the clean-up be deemed unsatisfactory by Onyx and/or the District, Onyx and/or the District will then perform the clean-up. Onyx and/or the District may invoice Contractor for the costs of any clean-up which shall be paid to Onyx and/or the District within thirty (30) days.

14. NOISE AND DUST CONTROL:

14.1. Contractor shall comply with the requirements of the city and county having jurisdiction with regard to noise ordinances governing construction sites and activities. Construction equipment noise at the Premises shall be limited as required by applicable law, rule or regulation. If classes are in session at any point during the progress of the Work, and, in the District's reasonable discretion, the noise from any Work disrupts or disturbs the students or faculty or the normal operation of the school at the Premises, at the District's request, the Contractor shall schedule the performance of that Work around normal school hours or make other arrangements so that the Work does not cause disruption or disturbance.

14.2. The Contractor shall be fully and solely responsible for maintaining and upkeeping all areas of the Premises and adjoining areas, outdoors and indoors, free from flying debris, grinding powder, sawdust, dirt and dust as well as any other product, product waste or work waste, that by becoming airborne may cause respiratory inconveniences to persons, particularly to students and District personnel. Additionally, the Contractor shall take specific care to avoid deposits of airborne dust or airborne elements. Those protection devices, systems or methods shall be in accordance with the regulations set forth by the EPA and OSHA, and other applicable law, rule or regulation. Additionally, the Contractor shall be responsible to regularly and routinely clean up and remove any and all deposits of dust and other elements. Damage and/or any liability derived from the Contractor's failure to comply with these requirements shall be exclusively at the cost of the Contractor, including, without limitation, any and all penalties that may be incurred for violations of

applicable law, rule or regulation, and any amounts expended by Onyx and/or the District to pay such damages shall be due and payable to Onyx and/or the District on demand. Contractor shall replace any damaged property or part thereof and professionally clean any and all items that become covered or partially covered to any degree by dust or other airborne elements. If classes are in session at any point during the progress of Work, and, in the District's reasonable discretion, flying debris, grinding powder, sawdust, dirt or dust from any Work disrupts or disturbs the students or faculty or the normal operation of the school, at the District's request, the Contractor shall schedule the performance of all that Work around normal school hours and make other arrangements so that the Work does not cause disruption or disturbance.

14.3. If the Contractor fails to comply with the requirements for dust control, noise control, or any other maintenance or clean up requirement herein, the District, or Onyx, shall notify the Contractor in writing and the Contractor shall take immediate action. Should the Contractor fail to respond with immediate and responsive action and not later than twenty-four (24) hours from that notification, Onyx and/or the District shall have the absolute right to proceed as it may deem necessary to remedy such matter. Any and all costs incurred by Onyx and/or the District in connection with those actions shall be the sole responsibility of, and be borne by, the Contractor. Onyx and/or the District may invoice Contractor for the costs which shall be paid to Onyx and/or the District within thirty (30) days.

15. ACCESS TO WORK: District representatives shall at all time have access to the Work wherever it is in preparation or in progress. Contractor shall provide safe and proper facilities for such access.

16. EVENINGS AND WEEKENDS. If Onyx and Contractor agree that Contractor shall perform weekend Work, Contractor shall give the District seventy-two (72) hours' notice prior to performing any evening and/or weekend Work. Contractor shall perform all evening and/or weekend Work only upon District's written approval and in compliance with all applicable rules, regulations, laws, and local ordinances including, without limitation, all noise and light limitations.

17. 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 Onyx or the District, is permitted to act at his discretion to prevent such threatened loss or injury.

18. ASSIGNMENT OF CONTRACT: Contractor shall not assign or transfer in any way any or all of its rights, burdens, duties, or obligations under this License Agreement without the prior written consent of the District and Onyx.

19. INDEMNIFICATION / HOLD HARMLESS CLAUSE: To the furthest extent permitted by California law, Contractor shall defend, indemnify, and hold free and harmless the District, Onyx, and their agents, representatives, officers, Contractors, employees, trustees, and volunteers ("the indemnified parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, including without limitation the payment of all consequential damages, arising out of, pertaining to or relating to, in whole or in part, the negligence, recklessness, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, Contractors, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Work or from any activity, work, or thing done, permitted, or suffered by the Contractor in conjunction with this License Agreement, unless the claims are caused wholly by the sole negligence or willful misconduct of the indemnified parties. The District and Onyx shall have the right to accept or reject any legal representation that Contractor proposes to defend the indemnified parties. The District and Onyx have the absolute discretion to reject any counsel proposed for concurrent representation of the Onyx and District if either party reasonably believes that concurrent representation of the District and Onyx would create a conflict of interest.

20. PERMITS AND LICENSES: Contractor and all of its employees, agents, and subcontractors shall secure and maintain in force, at Contractor's sole cost and expense, all licenses and permits as are required by law, in connection with performing the Work.

21. ANTI-DISCRIMINATION: It is the policy of the District that in connection with all work performed on the Premises there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, or religious creed, and therefore the Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment Practice Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).

22. COMPLIANCE WITH LAWS: Contractor shall give all notices and comply with all laws, ordinance, rules and regulations bearing on conduct of the Work as indicated or specified. If Contractor observes that any of the Work is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify the District and Onyx, in writing, and, at the sole option of Onyx and the District, any necessary changes to the scope of the Work shall be made and the EPC Contract shall be appropriately amended in writing. If Contractor performs any Work that is in violation of any laws, ordinances, rules or regulations, without first notifying Onyx and the District of the violation, Contractor shall bear all costs arising therefrom.

23. DISPUTES AND CLAIMS BETWEEN DISTRICT AND CONTRACTOR.

DISPUTES/CLAIMS: To the extent any Claims (as defined below) arise between the District and the Contractor, such

Claims shall be resolved in accordance with the procedures established in Public Contract Code § 9204. Claims between Onyx and the Contractor shall be resolved pursuant to the terms of the EPC Contract.

23.1. Claim. The term "Claim" means a written demand by the Contractor sent by registered mail or certified mail with return receipt requested for:

23.1.1. An extension of time or additional compensation related to the work, including relief from damages or penalties;

23.1.2. Payment of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the License Agreement and payment that is not otherwise expressly provided for in the License Agreement or to which the Contractor is not otherwise entitled; or

23.1.3. Payment of an amount that is disputed by the District.

23.2. Submission of Claim. The Contractor shall submit the Claim by registered mail or certified mail with return receipt to the District representative identified in the "Notice" provisions of the License Agreement, with a copy to the any project/construction manager, if applicable. The Contractor shall submit its Claim in writing, together with all Supporting Documentation no later than the earlier of either: (1) thirty (30) days after the date the Claim arises; or (2) sixty (60) days after the date of Completion. It is the intent of the District to evaluate and resolve Claims with the Contractor as close to the events giving rise to such Claims as possible and to avoid stale or late Claims, including late notice and documenting of Claims, and to timely mitigate the issue, event, condition, circumstance and/or cause of the Claim and any adverse impacts or damages related thereto. Should the Contractor fail to submit a Claim by the deadline set forth in this Article, Contractor waives and releases such Claim, including all rights and remedies in connection therewith.

23.3. Contents of Claim. A Claim must include all Supporting Documentation and a statement identifying it as a Claim signed by an authorized agent or officer of the Contractor under penalty of perjury and including the following language immediately above or before the Contractor's signature: "I declare under penalty of perjury under the laws of the State of California that the information provided and statements made in this Claim are true and correct, substantiated and of merit." The Contractor recognizes and acknowledges that this requirement is not a mere formality but is intended to ensure that the Contractor only submits Claims that it believes are true and correct, substantiated and have merit. Should Contractor fail to submit the foregoing written statement signed under penalty of perjury, Contractor waives and releases its Claim, including all rights and remedies in connection thereto.

23.4. Subcontractor Claims. Pursuant to Public Contract Code § 9204(d)(5), a Subcontractor may request in writing, either on its own behalf or on behalf of a lower tier Subcontractor, that the Contractor submit to the District 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 submitted to the District shall furnish reasonable documentation to support the claim. Regardless of whether or not the Contractor decides to submit the Subcontractor's claim to the District, Contractor shall provide a copy of the Subcontractor's written request, including all supporting documentation, to the District or project/construction manager, if applicable, within ten (10) days of Contractor's receipt of the request. In the event the Contractor agrees to submit a Subcontractor's claim to the District, the Contractor shall submit such claim, unless such claim was previously submitted to the District. Within forty-five (45) days of receipt of the Subcontractor's written request, the Contractor shall notify the Subcontractor in writing as to whether the Contractor submitted the claim to the District and, if the Contractor did not submit the claim, the Contractor shall provide the Subcontractor with a written statement of the reasons for not having done so and shall concurrently provide a copy of such written statement to District and/or the project/construction manager, if applicable. In the event the Contractor includes supporting documentation with such written statement, the Contractor shall concurrently provide a copy of such supporting documentation to the project/construction manager, if applicable. If the Contractor submits a Claim on behalf of a Subcontractor, the Claim shall include a statement in writing and signed by an authorized agent or officer of the Contractor under penalty of perjury that includes the following language immediately above or before the Contractor's signature: "I declare under penalty of perjury under the laws of the State of California that [insert name of Contractor] has thoroughly evaluated the claim of [insert name of Subcontractor] and determined that the information provided and statements made in the claim are true and correct, substantiated and of merit."

23.5. District Review of Claim. Upon receipt of a Claim, the District shall review the Claim and, within a period not to exceed forty-five (45) days, shall provide Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Upon receipt of a Claim, the District and the Contractor may, by mutual written agreement, extend the forty-five (45) day time period. The District shall process and make payment of any undisputed portion of a Claim within sixty (60) days after the District issues its written statement. Failure by the District to provide a written statement in response to a Claim from the Contractor within the forty-five (45) day time period, or within an agreed upon extended time period, shall result in the Claim being deemed rejected in its entirety. A Claim that is rejected by reason of the District's failure to respond, or failure to timely respond, to the Claim shall not constitute an adverse finding regarding the merits of the Claim or the claimant's responsibility or qualifications.

23.6. Meet and Confer Meeting. If the Contractor disputes the District's written response, or if the District fails to respond within the time frame prescribed above, the Contractor, within fifteen (15) days of the District's written response or, if the District fails to respond, within fifteen (15) days after the District's response was due, may demand, in a writing sent to the District's Superintendent by registered mail or certified mail, return receipt requested, with a copy to the District representative identified in the "Notice" provision of the License Agreement, and project/construction manager, if applicable, an informal conference to meet and confer for settlement of the issues in dispute. The District shall schedule a meet and confer conference within thirty (30) days of its receipt of the Contractor's written demand.

23.7. Mediation. Within ten (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 District shall provide the Contractor 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 sixty (60) days after the District issues its written statement. Any disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation. The expenses and fees of the mediator and the administrative fees shall be divided among the parties equally. Each party shall pay its own legal fees, witness fees, and other expenses. The District and the Contractor shall mutually agree to a mediator within ten (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. The foregoing notwithstanding, pursuant to Public Contract Code § 9204(f), the parties may mutually agree in writing to waive mediation.

23.8. Pending resolution of the dispute, Contractor agrees it will neither rescind the Contract nor stop the progress of the Work, but will allow determination by the court of the State of California, in the county in which the District's administration office is located, having competent jurisdiction of the dispute.

23.9. Nothing in this Article shall prevent the Parties from resolving any disputes or claims pursuant to Public Contract Code section 20104, et seq., if applicable.

23.10. Nothing in this Contract, waives, modifies or tolls the Contractor's obligation to present a timely claim under Government Code § 910, et seq. Therefore, in addition to complying with the contractual Claims procedures, the Contractor is required to present claims to the District pursuant to Government Code § 910, et seq.

24. LABOR CODE REQUIREMENTS: Provided that the cost of the Work is more than $1,000, and the Work is a "public works" under the Labor Code, the parties agree as follows:

24.1. The Work is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

24.2. District hereby provides notice of the requirements described in Labor Code § 1771.1(a) that a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code § 1725.5.

24.3. Contractor acknowledges that all or a portion of the Work are a public work, and that it and its subcontractors have complied with Labor Code § 1725.5, including, without limitation, the registration requirements thereof.

24.4. Contractor shall post all required job site notices and shall comply with all applicable requirements prescribed thereby, including but not limited to Labor Code § 1771.4.

24.5. Contractor shall comply with all applicable provisions of the Labor Code, Division 3, Part 7, Chapter 1, Articles 1-5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars ($1,000).

24.6. Copies of the prevailing rate of per diem wages are on file with the District.

24.7. Contractor and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the Labor Code, beginning with § 1720, and including §§ 1735, 1777.5 and 1777.6, forbidding discrimination, and §§ 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Contractor or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts. Contractor shall comply with Labor Code § 1777.5 pertaining to prevailing wage compensation to apprentices for preemployment activities.

25. PAYROLL RECORDS: Contractor and its subcontractor(s) shall keep accurate certified payroll records of employees and make them available to Onyx and the District immediately upon request.

26. 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 with respect to the Work. Contractor shall retain these books, records, and systems of account for the duration of the EPC Contract. Contractor shall permit Onyx and the District, their 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 Work. Audit(s) may be performed at any time, provided that Onyx and/or the District shall give reasonable prior notice to

Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents.

27. GOVERNING LAW: This License Agreement shall be governed by and construed in accordance with the laws of the State of California with venue of any action in a in the county in which the District's administration office is located.

28. PROVISIONS REQUIRED BY LAW DEEMED INSERTED: Each and every provision of law and clause required by law to be inserted in this License Agreement shall be deemed to be inserted herein and this Contract shall be read and enforced as though it were included therein.

29. BINDING CONTRACT: This License Agreement shall be binding upon the Parties hereto and upon their successors and assigns, and shall inure to the benefit of the Parties and their successors and assigns.

30. DISTRICT WAIVER: District's waiver of any term, condition, covenant or waiver of a breach of any term, condition or covenant shall not constitute the waiver of any other term, condition or covenant or the waiver of a breach of any other term, condition or covenant.

31. INVALID TERM: If any provision of this License Agreement is declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining parts, terms and provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term or provision will be deemed not to be a part of this License Agreement.

32. ENTIRE AGREEMENT: This License Agreement sets forth the entire agreement 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 License Agreement may be modified only by a writing evidencing the Parties' mutual consent.

33. CLOSEOUT AND CORRECTION OF ERRORS: Contractor acknowledges and agrees that it will be subject to those obligations regarding Closeout and Correction of IOR identified errors in the Work as identified in Section 7(d) of the PPA and incorporated herein by reference.

ANNEX F

CERTIFICATIONS TO BE COMPLETED BY CONTRACTOR

NONCOLLUSION DECLARATION

(Public Contract Code § 7106)

The undersigned declares:

I am the _____ **[PRINT YOUR TITLE]**

of _____ **[PRINT FIRM NAME],**

the party making the foregoing EPC Contractor License Agreement ("Contract").

The Contract is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The Contract is genuine and not collusive or sham. The Contractor has not directly or indirectly induced or solicited any other entity to put in a false or sham bid or proposal. The Contractor has not directly or indirectly colluded, conspired, connived, or agreed with any other Contractor or anyone else to put in a sham bid or proposal, or to refrain from proposing. The Contractor has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the price of construction of the Contractor or any other entity, or to fix any overhead, profit, or cost element of the price of construction, or of that of any other entity. All statements contained in the Contract are true. The Contractor has not, directly or indirectly, submitted his or her construction cost or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid or proposal, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Contractor that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Contractor.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on the following date:

Date: _____
Proper Name of Contractor: _____
Signature: _____
Print Name: _____
Title: _____

PREVAILING WAGE CERTIFICATION

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

Date: _____
Proper Name of Contractor: _____
Signature: _____
Print Name: _____
Title: _____

WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700 in relevant part provides:

> Every employer except the State shall secure the payment of compensation in one or more of the following ways:
>
> c. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
>
> d. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

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

Date: _____
Proper Name of Contractor: _____
Signature: _____
Print Name: _____
Title: _____

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

FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

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

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

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

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

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

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

Name: _____

Title: _____

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

Date: _____
Proper Name of Contractor: _____
Signature: _____
Print Name: _____
Title: _____

DRUG-FREE WORKPLACE / TOBACCO-FREE ENVIRONMENT CERTIFICATION

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

1 Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying actions which will be taken against employees for violations of the prohibition;

2 Establishing a drug-free awareness program to inform employees about all of the following:
   a. The dangers of drug abuse in the workplace.
   b. The person's or organization's policy of maintaining a drug-free workplace.
   c. The availability of drug counseling, rehabilitation, and employee-assistance programs.
   d. The penalties that may be imposed upon employees for drug abuse violations.

3 Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required above, and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

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

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

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

Date: _____
Proper Name of Contractor: _____
Signature: _____
Print Name: _____
Title: _____

ASBESTOS & OTHER HAZARDOUS MATERIALS CERTIFICATION

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

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

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

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

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

Date: _____
Proper Name of Contractor: _____
Signature: _____
Print Name: _____
Title: _____

LEAD-PRODUCT(S) CERTIFICATION

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

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

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

The California Education Code also prohibits the use or import of lead-containing paint, lead plumbing and solders, or other potential sources of lead contamination in the construction of any new school facility or in the modernization or renovation of any existing school facility. The Contractor shall provide the District with any sample results prior to beginning Work, during the Work, and after the completion of the Work. If failure to comply with these laws, rules, and regulations results in a site or worker contamination, the Contractor will be held solely responsible for all costs involved in any required corrective actions, and shall defend, indemnify and hold harmless the District, pursuant to the indemnification provisions of the Agreement, for all damages and other claims arising therefrom. If lead disturbance is anticipated in the Work, only persons with appropriate accreditation, registrations, licenses and training shall conduct this Work and, prior to the commencement of such Work, the lead training records of such persons may be examined by the District upon request.

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

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

Date: _____
Proper Name of Contractor: _____
Signature: _____
Print Name: _____
Title: _____

ROOFING CONTRACT FINANCIAL INTEREST CERTIFICATION
(Public Contract Code § 3006)

I, _____, _____
Name Name of Contractor

certify that I have not offered, given, or agreed to give, received, accepted, or agreed to accept, any gift, contribution, or any financial incentive whatsoever to or from any person in connection with any roof project contract or subcontract with respect to the Project. As used in this certification, "person" means any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

Furthermore, I _____, _____
Name Name of Contractor

certify that I do not have, and throughout the duration of the Work, I will not have, any financial relationship in connection with the performance of the Work with any architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor that is not disclosed below.

I, _____, _____
Name Name of Contractor

have the following financial relationships with an architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor, or other person in connection with the following roof project contract or subcontract with respect to the Project:

Name of Contractor ("Firm"): _____

Mailing address: _____

Address of branch office used for this Project: _____

If subsidiary, name and address of parent company: _____

I certify that to the best of my knowledge, the contents of this disclosure are true, or are believed to be true.

Date: _____
Proper Name of Contractor: _____
Signature: _____
Print Name: _____
Title: _____

IRAN CONTRACTING ACT CERTIFICATION
(Public Contract Code § 2204)

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

Contractor shall complete **ONLY ONE** of the following two paragraphs. s

☐ 1. Contractor's Agreement is less than one million dollars ($1,000,000).

OR

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

OR

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

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

Date: _____
Proper Name of Contractor: _____
Signature: _____
Print Name: _____
Title: _____

Attachment B

Solar Power Purchase Agreement

Santa Ana Unified School District: Solar-Only Portfolio

This Solar Power Purchase Agreement (this "**Agreement**") is entered into by the parties listed below (each a "**Party**" and collectively the "**Parties**") as of the date signed by Seller below (the "**Effective Date**").

Purchaser or District	Santa Ana Unified School District	**Seller**	Onyx Development Group LLC
Name and Address	Santa Ana Unified School District 1601 East Chestnut Ave. Santa Ana, CA 92701 Attention: Orin Williams, Assistant Superintendent	**Name and Address**	Onyx Development Group LLC 230 Park Avenue, Suite 845 New York, NY 10169
Phone	(714) 480-5356	**Phone**	646-217-0713
Fax	(714) 558-5610	**Fax**	646-736-6877
E-mail	Orin.Williams@SAUSD.US	**E-mail**	OASG@onyxrenewables.com
Premises Ownership	Purchaser is Fee Owner	**Additional Seller Information**	Additional Notice: legal@onyxrenewables.com

This Agreement sets forth the terms and conditions between Purchaser and Seller related to the energy and other related services provided by, and the design and construction – by a third party contractor – of, Seller's solar photovoltaic generating system (and associated equipment) described in **Exhibit 3** (the "**System**") to be installed at those certain District sites as further described in **Exhibit 3** (the "**Premises**"). Pursuant to Government Code section 4217, et seq., Seller shall design, pay for the construction by an EPC Contractor (as defined in **Exhibit 3**), own, operate and maintain energy conservation measures in the form of the System at the Premises, and Purchaser shall purchase solar energy delivered by the System, which will result in a net cost savings purchase in the purchase and consumption of energy to the District at the Premises. It is an express condition of this Agreement that District shall not be charged by Seller for any costs for the design, development, or construction of the System unless this Agreement specifically requires that a certain cost be borne by the District.

The exhibits listed below are incorporated by reference and made part of this Agreement.

Exhibit 1	Basic Terms and Conditions
Exhibit 2	General Terms and Conditions
Exhibit 3	System Description, Delivery Point and Premises
Exhibit 4	RESERVED
Exhibit 5	Energy Rate Schedule
Exhibit 6	Estimated Annual Production
Exhibit 7	Seller Certifications
Exhibit 8	RESERVED
Exhibit 9	RESERVED
Exhibit 10	RESERVED
Exhibit 11	Plans and Specifications
Exhibit 12	Community Workforce Agreement
Exhibit 13	EPC Contractor License Agreement

Purchaser

Signature: _____

Printed Name:

Title:

Date: _____

Seller

Signature: _____

Printed Name: Ja Kao

Title: Authorized Signatory

Date: _____

Exhibit 1
Basic Terms and Conditions

1. **Initial Term**: Twenty-five (25) years, beginning on the Commercial Operation Date (as defined in **Exhibit 3**) (the "**Initial Term**").

2. **Additional Term**: One (1) additional term of five (5) years, upon mutual agreement of the Parties within the ninety (90) day period preceding the expiration of the Initial Term, commencing upon the end of the Initial Term (the "**Additional Term**").

3. **Environmental Attributes; Environmental Incentives**: All Environmental Attributes, including any Renewable Energy Credits associated with the System, will accrue to the benefit of Seller. All Environmental Incentives associated with the System will accrue to the benefit of Seller.

4. **Conditions Satisfaction Date:** 12/31/2022

5. **Guaranteed Commercial Operation Date:** 12/31/2022

6. **Tax Attributes**: All such tax incentives, attributes and benefits, including the federal Investment Tax Credit, will accrue to the benefit of Seller.

7. **Energy Rate**:

   Commencing on the Commercial Operation Date, Purchaser shall pay to Seller on a monthly basis an amount equal to $0.135 for each kilowatt hour ("**kWh**") of electricity delivered by the System to the Delivery Point. Beginning on the first (1st) anniversary of the Commercial Operation Date and on each subsequent anniversary of the Commercial Operation Date thereafter, the Energy Rate in effect during the immediately preceding twelve (12) month period shall be increased in accordance with **Exhibit 5**.

   If the Parties opt to exercise the Additional Term, the price for each kWh of electricity will be set at a price to be agreed upon by the Parties.

   Unless provided by this Agreement or otherwise agreed in writing by the Parties, the Energy Rate shall not be adjusted.

8. **Energy Rate Inclusions and Exclusions:**

   Included:

   Installation of the System by Seller and the EPC Contractor (includes: design, engineering, permitting, installation by the EPC Contractor, monitoring, rebate application and paperwork processing for the System); soil testing (geotechnical only) and soil removal (as necessary); all Division of the State Architect ("**DSA**") Inspector of Record ("**IOR**") lab costs and expenses; prevailing wage construction and costs to comply with the CWA (as defined below) by the EPC Contractor; tree removal and tree trimming necessitated by the construction of the System; and all ADA work/costs necessitated by the construction of the System, or otherwise required by an authority having jurisdiction over the Project (as defined below).

   Excluded:

   Unforeseen adverse soil conditions (including, but not limited to, hard dig, rock drilling or soil removal from the site, excavation/circumvention of underground obstacles); road improvements, repaving and restriping parking lot; hazardous materials or artifact removal and containment; upgrades or repair to customer or utility electrical infrastructure; mowing and any landscape improvements or ongoing weed abatement; decorative enhancements to solar support structures (including: painting, paint matching, hot galvanized steel, masonry/stone work, and any lighting not required to meet the minimum code compliance); structural upgrades to the Premises; irrigation relocation; with respect to lighting for the Systems, costs due to low lighting levels in areas not meeting Illuminating Engineering Society of North America standards immediately prior to commencement of installation; and costs incurred by any Purchaser-directed phasing of the Project.

9. **Energy Rate Based on Portfolio Pricing**.

   The Parties acknowledge and agree that the Energy Rate set forth above is based on portfolio pricing consisting of multiple solar photovoltaic generating systems and/or battery energy storage systems to be owned by Seller and to be installed by the EPC Contractor (as defined in **Exhibit 3**) at various Purchaser sites by December 31, 2022 (the "**Portfolio**"). As of the Effective

Date, (i) the anticipated production of the Portfolio over a twenty-five (25) year period is 371,681,890 kWhs (the "**Estimated Portfolio Production**") and (ii) the anticipated installed capacity of the Portfolio is 10.617 MW DC (the "**Estimated Installed Capacity**"), as each are more clearly set forth in the Portfolio summary attached hereto as Schedule A. If, after the Effective Date, the (A) aggregate anticipated production of the Portfolio decreases by three percent (3%) or more than the Estimated Portfolio Production or (B) the aggregate constructed Portfolio has an aggregate installed capacity that is less than 10 MW DC, Seller may request from Purchaser a reasonable and equitable adjustment to the Energy Rate across the Portfolio to compensate for such reduction in Estimated Portfolio Production or Estimated Installed Capacity, with such adjustment not to exceed $0.137 per kilowatt hour; provided, that Seller reasonably substantiates such adjustment. Purchaser shall (without delay or condition) grant such adjustment to the Energy Rate across the Portfolio unless Purchaser reasonably believes that Seller's need is unsubstantiated. In such case, Seller and Purchaser shall meet and confer and shall in good faith negotiate an equitable adjustment to the Energy Rate for the Portfolio, with such adjustment not to exceed $0.137 per kilowatt hour. If the Parties fail to reach an agreement, then Seller may either (A) terminate this Agreement and Seller shall have no further liabilities or obligations hereunder or (B) pursue resolution of such dispute through the process identified in Section 19 of **Exhibit 3**. If Seller elects to terminate this Agreement, Seller shall provide Purchaser with thirty (30) days' notice of Seller's intent to terminate pursuant to this Section 9. During the thirty (30) day notice period, the District may agree in writing with Seller to the reasonable and equitable adjustment to the Energy Rate for the Portfolio. Upon the District's agreement within the thirty (30) day notice period, Seller's notice termination shall cease to be effective and this Agreement shall remain in full force and effect.

10. **Purchaser Options to Purchase System**: As set forth in Section 16.b of the **Exhibit 2**, Purchaser may purchase the System at the end of the Initial Term.

Schedule A to Exhibit 1

See Portfolio Summary attached.

ONYX

Blackstone Portfolio Company

Onyx Renewables - Commericial Solar Program

Total Electric Savings

Contact Information

Onyx Business Development Manager	David Brian
Email	dbrian@onyxrenewables.com
Office Phone	
Mobile Phone	

System Details

System size:	10.617 MW
Annual production:	15,778,683 kWh
System type:	Mixed
System location:	Santa Ana Unified School District

Power Purchase Agreement

Initial PPA Price:	$0.135 $/kWh
Contract Escalation:	0.0%

Utility Cost Details

2019 Variable Power Price:	$0.168 $/kWh
Local Utility Escalator:	2.0%

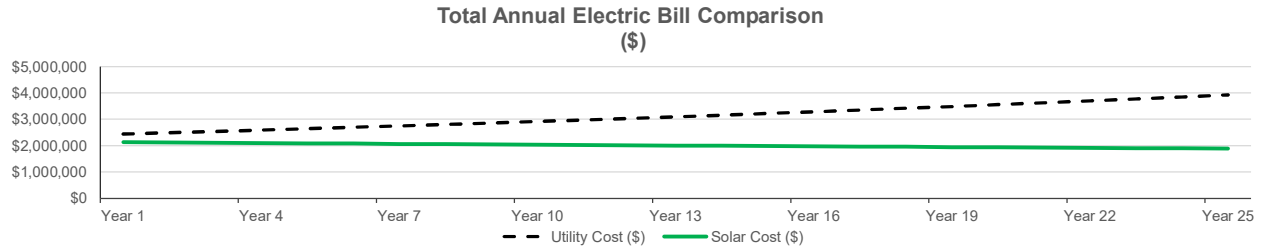
Savings Summary ($)

Total Nominal Savings over 25 Years	$32,648,940
Average Annual Savings	$1,086,206
Year 1 Discount to Retail Rate	20%
Average Discount to Retail Rate	37%

Annual Utility Savings Analysis

	Annual Utility Usage (kWh)	Annual Solar Output (kWh)	Utillity Rate ($/kWh)	Utility Cost ($)	Solar Rate ($/kWh)	Solar Cost ($)	RES-BCT Avoided Cost ($)	Total Projected Savings ($)
Year 1	14,528,865	15,778,683	$0.168	$2,440,849	$0.135	$2,130,122	$25,196	$335,923
Year 2	14,528,865	15,699,790	$0.171	$2,489,666	$0.135	$2,119,472	$38,859	$409,054
Year 3	14,528,865	15,621,291	$0.175	$2,539,460	$0.135	$2,108,874	$52,487	$483,072
Year 4	14,528,865	15,543,184	$0.178	$2,590,249	$0.135	$2,098,330	$66,073	$557,992
Year 5	14,528,865	15,465,468	$0.182	$2,642,054	$0.135	$2,087,838	$79,618	$633,834
Year 6	14,528,865	15,388,141	$0.185	$2,694,895	$0.135	$2,077,399	$93,119	$710,615
Year 7	14,528,865	15,311,200	$0.189	$2,748,793	$0.135	$2,067,012	$106,575	$788,355
Year 8	14,528,865	15,234,644	$0.193	$2,803,769	$0.135	$2,056,677	$119,982	$867,074
Year 9	14,528,865	15,158,471	$0.197	$2,859,844	$0.135	$2,046,394	$133,341	$946,791
Year 10	14,528,865	15,082,679	$0.201	$2,917,041	$0.135	$2,036,162	$146,648	$1,027,527
Year 11	14,528,865	15,007,265	$0.205	$2,975,382	$0.135	$2,025,981	$159,901	$1,109,302
Year 12	14,528,865	14,932,229	$0.209	$3,034,889	$0.135	$2,015,851	$173,134	$1,192,173
Year 13	14,528,865	14,857,568	$0.213	$3,095,587	$0.135	$2,005,772	$186,425	$1,276,240
Year 14	14,528,865	14,783,280	$0.217	$3,157,499	$0.135	$1,995,743	$199,698	$1,361,454
Year 15	14,528,865	14,709,364	$0.222	$3,220,649	$0.135	$1,985,764	$212,936	$1,447,821
Year 16	14,528,865	14,635,817	$0.226	$3,285,062	$0.135	$1,975,835	$226,137	$1,535,363
Year 17	14,528,865	14,562,638	$0.231	$3,350,763	$0.135	$1,965,956	$239,299	$1,624,105
Year 18	14,528,865	14,489,824	$0.235	$3,417,778	$0.135	$1,956,126	$252,445	$1,714,097
Year 19	14,528,865	14,417,375	$0.240	$3,486,134	$0.135	$1,946,346	$265,591	$1,805,380
Year 20	14,528,865	14,345,288	$0.245	$3,555,857	$0.135	$1,936,614	$278,701	$1,897,944
Year 21	14,528,865	14,273,562	$0.250	$3,626,974	$0.135	$1,926,931	$291,771	$1,991,814
Year 22	14,528,865	14,202,194	$0.255	$3,699,513	$0.135	$1,917,296	$304,800	$2,087,017
Year 23	14,528,865	14,131,183	$0.260	$3,773,503	$0.135	$1,907,710	$317,785	$2,183,579
Year 24	14,528,865	14,060,527	$0.265	$3,848,973	$0.135	$1,898,171	$330,724	$2,281,526
Year 25	14,528,865	13,990,225	$0.270	$3,925,953	$0.135	$1,888,680	$343,615	$2,380,887
Total / Average	363,221,625	371,681,890	$0.215	$78,181,135	$0.135	$50,177,055	$4,644,860	$32,648,940

Savings Summary



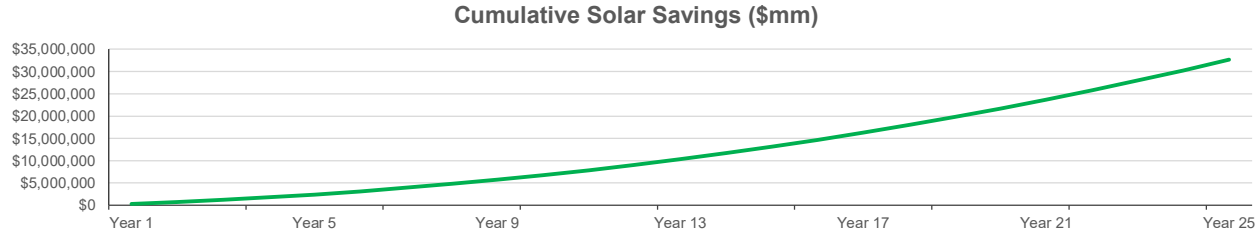


Exhibit 2
Solar Power Purchase Agreement
General Terms and Conditions

1. **Definitions and Interpretation**. Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (c) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; (d) the words "include," "includes" and "including" mean include, includes and including "without limitation;" and (e) the word "person" means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement. The following definitions shall apply to this Agreement:

"**Affiliate**" means with respect to any entity, such entity's general partner or manager, employee, or any other entity that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such entity. For purposes of this definition, "control" (including, with its correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any such person or entity, means the possession, directly or indirectly, of the power to director or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities or by contract or otherwise.

"**Applicable Law**" means, any constitutional provision, law (including Environmental Laws), statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, holding, injunction, registration, permit, authorization, or regulation of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

"**Delivery Point**" means the interconnection points on Purchaser's Premises behind the meters installed by Purchaser's Serving Utility and before the electrical systems serving Purchaser's Premises. No other Delivery Points are permitted under this Agreement without the permission of the Purchaser.

"**Environmental Laws**" means any applicable federal, state, county, municipal, or local law and any amendments thereto (whether common law, public law, ordinance, rule, order, regulation, or otherwise), order, permit, directive, judgment, decree or other enforceable requirement of a Governmental Authority relating to protection of the environment, natural resources, or to any Hazardous Substance, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Hazardous Materials Transportation Act, 42 U.S.C. § 1801 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Safe Drinking Water Act, 42 U.S.C. § 300f et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11001 et seq., and all regulations, orders, decisions, and decrees now or hereafter promulgated concerning the foregoing.

"**EPC Contract**" shall mean that certain engineering, procurement and construction agreement for the System by and between Seller and EPC Contractor.

"EPC Contractor" means that certain contractor(s) licensed in the State of California that will construct and install the System at the Premises in accordance with the EPC Contract and EPC Contractor License Agreement.

"**EPC Contractor License Agreement**" shall mean that certain license agreement to be executed by the Seller, Purchaser, and the EPC Contractor in substantially the form attached hereto as **Exhibit 13**.

"**Governmental Authority**" means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including the Federal Energy Regulatory Commission or any state public utility commission with jurisdiction).

"**Plans and Specifications"** means the technical specifications and drawings attached hereto as **Exhibit 11** and incorporated herein by reference.

"**Project**" means the installation (by the EPC Contractor) of the System on the Premises as contemplated hereunder.

"**Purchaser's Serving Utility**" means the utility with whom interconnection applications will be sent and from whom permission to operate will be obtained.

2. Purchase and Sale of Electricity.

a. Purchase Requirement. Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electric energy produced by the System during the Initial Term and the Additional Term (each as defined in **Exhibit 1**, and collectively the "**Term**") for electrical consumption by the Purchaser's Premises. Electric energy generated by the System will be delivered to Purchaser at the Delivery Point. Seller shall be responsible for all distribution lines and equipment necessary for the collection and routing of power from the System to the Delivery Point. The Parties acknowledge that Purchaser's electric energy requirements at the Premises may exceed the output of the System, and in such event, Purchaser may purchase electric energy for the Premises from other sources.

b. Title to the Energy/Risk of Loss. Purchaser shall take title to the electric energy generated by the System at the Delivery Point, and risk of loss will pass from Seller to Purchaser at the Delivery Point.

c. Sale Prior to Commercial Operation Date. Any purchase, sale and/or delivery of electric energy generated by the System prior to the Commercial Operation Date shall be treated as a purchase, sale and/or delivery of limited amounts of test energy only and shall not indicate that the System has been put in commercial operation by the purchase, sale and/or delivery of such test energy. Purchaser may not resell any of the electrical energy generated by the System. For purposes of this Agreement, engaging in net metering is not deemed to be resale of energy. Neither Party shall waive any rights that they might have if any purchase, sale and/or delivery of electric energy occurs before the Commercial Operation Date.

d. Performance Guaranty.

i. Performance Guaranty. The annual estimated production for the System, measured in kWh on an annual basis, shall be the amount set forth in **Exhibit 6** (the "**Estimated Annual Production**"), subject to downward adjustment for weather conditions[1]. If the average electric energy produced by the System as measured and recorded by Seller (the "**Actual Production**") during a Guaranty Period (as defined below) is less than ninety percent (90%) of the average Estimated Annual Production for such Guaranty Period, for reasons other than as set forth in Section 2.d.v below, then Seller shall pay to Purchaser an amount equal to (A) the amount of such Actual Production shortfall in kWh (below 90%), multiplied by (B) the positive difference, if any, between the then-applicable rate charged by the Purchaser's Serving Utility and the then-applicable Energy Rate (the "**Performance Guaranty**").

ii. RESERVED.

iii. Measurement; Guaranty Period. The first measurement of the Performance Guaranty shall occur on the fifth (5th) anniversary of the Commercial Operation Date and shall be calculated based on the average Actual Production for the preceding three (3) Contract Years (such three (3) year period, a "**Guaranty Period**"). On each successive Contract Year, the Performance Guaranty shall be calculated based on the historical rolling three (3) year average of Actual Production for the relevant Guaranty Period. By way of illustration, the first Guaranty Period shall consist of Contract Years 3, 4 and 5, the second Guaranty Period shall consist of Contract Years 4, 5 and 6, and so on.

iv. Estimations. The Parties acknowledge and agree that the Estimated Annual Production are based on estimated size, output and capabilities of the System as designed as of the Effective Date, and that the size, output and capabilities of the System may be modified prior to the Commercial Operation Date due to engineering, governmental or utility requirements, or site conditions. As such, any adjustment to the size, output and/or capabilities of the System shall result in a modification of the applicable Estimated Annual Production, in each case, as reasonably determined by Seller.

v. Exclusions. Seller shall not be required to meet the Performance Guaranty to the extent the failure to meet such guaranty arises out of or results from: (i) a person other than Seller or its approved service providers installing, removing, or repairing the System; (ii) destruction, damage, modification, or alteration to the System or its ability to produce/discharge energy not caused by Seller or its employees, contractors or agents;

[1] The downward adjustment for weather conditions shall be based on "actual irradiance" vs. "predicted irradiance". For example, in order to determine if a production shortfall exists, Seller will use the following formula: Actual Production Shortfall = ((Actual Irradiance / Predicted Irradiance) * Estimated Annual Production) - Actual Production.

(iii) Purchaser's failure to perform, or a breach of, its obligations under this Agreement; (iv) an event of Force Majeure; (v) a power or voltage surge caused by a person other than Seller; (vi) any System failure not caused by a System defect; (vii) any System generation stoppage or reduction to accommodate Purchaser's activities or otherwise responsive to the action or inaction of Purchaser or its employees, contractors or agents; or (viii) a System loss in accordance with further provisions of this Agreement.

3. Term and Termination.

a. Initial Term. This Agreement is effective as of the Effective Date. The initial term ("**Initial Term**") of this Agreement shall commence on the Commercial Operation Date and continue for the length of time specified in **Exhibit 1,** unless earlier terminated as provided for in this Agreement. "**Commercial Operation Date**" means the date Seller gives Purchaser written notice that the System at the Premises: (i) is mechanically complete, (ii) has received permission to operate from Purchaser's Serving Utility, and (iii) has commenced delivery of electric energy to the Delivery Point. Notice by Seller as required in this provision shall be deemed effective unless Purchaser reasonably objects within five (5) days of the date of such notice. Upon Purchaser's reasonable request, Seller and/or the EPC Contractor shall give Purchaser copies of certificates of completion or similar documentation from the EPC Contractor and the interconnection or similar agreement with Purchaser's Serving Utility. If the Commercial Operation Date for the System does not occur on or before the Guaranteed Commercial Operation Date (as defined on **Exhibit 1**), Seller shall pay Purchaser liquidated damages for each day following the Guaranteed Commercial Operation Date in the amount of **One Thousand Dollars ($1,000.00)** per MW-DC per day for each and every calendar day of delay beyond the Guaranteed Commercial Operation Date; provided that the Guaranteed Commercial Operation Date shall be automatically extended on a day for day basis for each day of Force Majeure or any other delay caused by the Purchaser or any third party. These liquidated damages apply only to the construction portion of this Agreement and not to apply to any operations and maintenance, or performance guarantee obligations.

b. Additional Term. If within ninety (90) days of the end of the Initial Term, Purchaser (i) has not notified Seller of its intent to exercise its option to purchase the System in accordance with Section 16 and (ii) desires to extend this Agreement on the terms and conditions set forth herein, Purchaser shall notify Seller prior to the expiration of the Initial Term of its desire to extend this Agreement for the Additional Term specified in **Exhibit 1** (such notice, an "**Extension Notice**"). Seller shall determine an Energy Rate for such Additional Term. If Purchaser agrees in writing to the Energy Rate proposed by Seller, the Additional Term shall begin immediately upon the conclusion of the Initial Term on the same terms and conditions as set forth in this Agreement, except at the new agreed upon Energy Rate. If Purchaser does not agree to the Energy Rate determined by Seller within thirty (30) days of Seller proposing the Energy Rate, this Agreement shall expire at the end of the Initial Term.

4. Billing and Payment.

a. Monthly Charges. Purchaser shall pay Seller for the electric energy generated by the System that is delivered to the Delivery Point at the rate for the applicable Contract Year (as defined below) as shown in **Exhibit 5** (the "**Energy Rate**"). Purchaser shall make monthly payments equal to the applicable Energy Rate multiplied by the number of kWh of energy delivered by the System during the applicable month as measured by the Seller Meter. "**Contract Year**" means the twelve-month period beginning at 12:00 AM on the Commercial Operation Date or on any anniversary of the Commercial Operation Date and ending at 11:59 PM on the day immediately preceding the next anniversary of the Commercial Operation Date, provided that the first Contract Year shall begin on the Commercial Operation Date.

b. Monthly Invoices. Seller shall invoice Purchaser monthly on or before the 10th of each calendar month and provide for payment by Purchaser either manually or through Automated Clearing House ("**ACH**"), as determined by Seller. Such monthly invoices shall state:

i. the amount of electric energy produced by the System and delivered to the Delivery Point;

ii. the rates applicable to, and charges incurred by, Purchaser under this Agreement; and

iii. the total amount due from Purchaser.

c. Taxes. Purchaser shall either pay or reimburse Seller for any and all Taxes (as defined below) assessed on the generation, sale, delivery or consumption of electric energy produced by the System or the interconnection of the System to Purchaser's Serving Utility's electric distribution system, including property taxes on the System. Purchaser shall be responsible for and pay all Taxes which are assessed, levied, charged or imposed by any public authority against or relating to (i) the Premises and all improvements thereon (including the System), and/or (ii) the

License and other rights of use granted to Seller pursuant to the License. For purposes of this Section 4.c, "**Taxes**" means any federal, state and local ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges, but shall not include any income taxes or similar taxes imposed on Seller's revenues due to the sale of energy under this Agreement, which shall be Seller's responsibility.

d. Payment Terms.

i. All amounts due under this Agreement shall be due and payable net forty-five (45) days from receipt of invoice. Any undisputed portion of any invoice amount not paid within the forty-five (45) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) over the Prime Rate (but not to exceed the maximum rate permitted by law). "**Prime Rate**" shall mean the rate of interest per annum publicly quoted from time to time by The Wall Street Journal as the U.S. "Prime Rate".

ii. Purchaser may dispute a portion of the invoice amount (the "**Disputed Invoice**") by providing Seller written notice of the disputed portion of the invoice and the basis for such dispute (the "**Disputed Invoice Notice**").

iii. The Parties shall cooperate in good faith to resolve any Disputed Invoice; provided, however, if Purchaser and Seller cannot resolve any Disputed Invoice within fifteen (15) days after Seller's receipt of the Disputed Invoice Notice, the Disputed Invoice shall be resolved pursuant to Section 19 of this Agreement. Under no circumstances will a dispute over an invoice amount be considered a default under this Agreement.

5. Environmental Attributes, Environmental Incentives and Tax Attributes.

Unless otherwise specified on **Exhibit 1**, Seller is the owner, and entitled to the benefit, of all Environmental Attributes, Tax Attributes and Environmental Incentives (each as defined below). Purchaser's purchase of electricity under this Agreement shall not include the right to Environmental Attributes, Tax Attributes, Environmental Incentives or any other attributes of ownership and operation of the System all of which shall be retained by Seller. Purchaser shall cooperate with Seller in obtaining, securing and transferring all Environmental Attributes, Environmental Incentives and the benefit of all Tax Attributes to Seller, including by using the electric energy generated by the System in a manner necessary to qualify for such available Environmental Attributes, Environmental Incentives and Tax Attributes. Purchaser shall not be obligated to incur any out–of–pocket costs or expenses in connection with such actions for the benefit of Seller unless reimbursed by Seller. If any Environmental Incentives, Environmental Attributes or Tax Attributes are paid directly to Purchaser, Purchaser shall immediately pay such amounts over to Seller. Purchaser shall be entitled to participate in and retain any benefits from any net metering program of Purchaser's Serving Utility.

"**Environmental Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (c) the reporting rights to any Governmental Authority related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Tax Attributes. Purchaser and Seller shall file all tax returns in a manner consistent with this Section 5. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, investment credits, emissions allowances, green tags, tradeable renewable credits and Green-e® products.

"**Environmental Incentives**" means any and all credits, rebates, subsidies, payments or other incentives (including SGIP) that relate to self–generation of electricity, electric generation capacity, the use of technology incorporated into the System, environmental benefits of using the System, or other similar programs available from Purchaser's Serving Utility, any other regulated entity, the manufacturer of any part of the System or any Governmental Authority.

"**Tax Attributes**" means any and all (a) depreciation benefits, (b) investment tax credits, (c) production tax credits and (d) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of energy from the System.

6. Conditions to Obligations.

a. Conditions to Seller's Obligations.

Seller's obligations under this Agreement are conditioned on the completion of the following conditions to Seller's satisfaction on or before the Conditions Satisfaction Date (as set forth on **Exhibit 1**), with respect to which Seller shall use commercially reasonable efforts to achieve before such date:

i. Seller shall have received financing sufficient to enable it to purchase, pay for construction, operate and maintain the System as required by this Agreement on terms acceptable to the Seller in its sole discretion;

ii. Seller shall have: (1) completed an inspection of the Premises and each of the properties upon which the System will be located including, if applicable, geotechnical work, structural engineering review, environmental studies, and real estate due diligence (e.g., title and encumbrance review) and (2) received all necessary curative documents, in each case, to confirm the suitability of the Premises for the System;

iii. Confirmation that Seller will obtain all applicable Environmental Attributes, Environmental Incentives and Tax Benefits identified by Seller to the Purchaser for the System;

iv. Seller shall have received all necessary permits, licenses, authorizations, consents and approvals required by any Governmental Authority or other third party, including zoning, land use, environmental, building, DSA approval and other permits for the installation and operation of the System by the EPC Contractor;

v. Seller shall have executed (or received) all necessary agreements with Purchaser's Serving Utility for interconnection of the System to the Premises electrical system and/or Purchaser's Serving Utility's electric distribution system;

vi. Seller shall have received proof of insurance for all insurance required to be maintained by Purchaser under this Agreement; and

vii. Confirmation that there is no material adverse change in the regulatory environment, incentive program or federal or state tax code (including expiration of any incentive program or tax incentives in effect as of the Effective Date) that could reasonably be expected to result in a significantly adverse effect on the economics of the installation for Seller and its Financing Parties (as defined below).

b. Conditions Precedent to Commencement of Construction.

Prior to the EPC Contractor's commencement of construction and installation of the System (the "**Work**"), the following conditions must be completed to Purchaser's reasonable satisfaction:

i. (1) Seller, Purchaser, and the EPC Contractor shall have entered into the EPC Contractor License Agreement; (2) the EPC Contractor shall have provided all documents to Seller and the District required of the EPC Contractor under the EPC Contractor License Agreement; and (3) Seller shall have executed and delivered to the District those certifications attached as **Exhibit 7** hereto. The District's approval shall be contained in a written notice(s) to proceed ("**NTP**") issued to Seller and the EPC Contractor, which approval and issuance shall not be unreasonably withheld, conditioned or delayed.

ii. **CEQA.** The Purchaser's Board of Education approves the Project under the California Environmental Quality Act ("**CEQA**") and/or exempts the Project from CEQA. The Parties acknowledge that Seller is not obligated to commence any portion of the Work under an NTP unless and until this condition precedent has been satisfied or waived; provided, that, if the District cannot comply with CEQA, the District will compensate Seller for undisputed and substantiated design and/or planning services performed by Seller to date authorized by a District-issued NTP.

c. Failure of Conditions. If any of the conditions listed in subsections (a) or (b) above are not satisfied by the Conditions Satisfaction Date, the Parties shall attempt in good faith to negotiate new dates for the satisfaction of the failed conditions. If the Parties are unable to negotiate new dates or a Party is unable to satisfy a condition (whether due to impossibility or material adverse impact on the System) regardless of an extension of time, then either Party may terminate this Agreement upon ten (10) days written notice to the other Party. Such termination shall be at no cost or obligation to the other Party, unless specifically stated otherwise herein.

d. **Adjustment to Location and Size of System**. At all times under this Agreement, Seller shall have the option to revise **Exhibits 3** and **4** to reflect the addition or removal of any portion of the System, provided that Seller (i) shall use commercially reasonable efforts to identify a substitute location at the Premises for such additional portion of the System of equivalent size upon removal of such portion of the System; and (ii) shall not install the System with a capacity that will materially exceed the total System size set forth on **Exhibits 3** and **4** without written approval of Purchaser.

e. **Commencement of Construction**. Seller shall ensure that the EPC Contractor commences construction and installation of the System within ninety (90) days of the satisfaction or written waiver of all of the conditions set forth in Section 6.a and the District's issuance of a NTP to Seller and the EPC Contractor.

7. **Seller's Rights and Obligations**.

a. **System Design and Finalization**. Seller shall design and engineer the System consistent with its obligations in **Exhibits 3** and **4**. If solar energy panels and other System assets documented in **Exhibits 3** and **4** (such panels and System assets, "**System Equipment**") are not readily available when Seller installs the System, Seller may make substitutions of such System Equipment at Seller's sole discretion and in compliance with DSA-approved designs; provided Seller shall obtain Purchaser's prior consent for System Equipment substitutions that would ***materially affect*** the capacity of the System, or require a change to the Energy Rate. Purchaser shall have the right to review the System design prior to the commencement of construction by the EPC Contractor.

b. **RESERVED**.

c. **Permits and Approvals**. Seller shall use commercially reasonable efforts to obtain, at its sole cost and expense, any agreements and approvals from Purchaser's Serving Utility necessary to interconnect the System to the Premises' electrical system and/or Purchaser's Serving Utility's electric distribution system as well as all governmental approvals, including zoning, land use, building permits and DSA approvals required for the EPC Contractor to construct and install the System, and for Seller to operate and maintain the System. Purchaser shall cooperate with Seller's reasonable requests to assist Seller in obtaining such agreements, permits and approvals.

d. **System Construction, Installation, Repair and Maintenance**.

i. The Seller and Purchaser agree that Seller shall **not** be acting in the capacity of a general contractor under this Agreement, nor shall Seller perform any work under this Agreement that shall require that Seller maintain a contractor's license; provided, however, that Seller may at any time after the execution of this Agreement provide evidence satisfactory to Purchaser that Seller has received a contractor's license enabling Seller to perform such work.

ii. Seller shall provide notice to Purchaser when the conditions to Seller's obligations set forth in Section 6.a have been satisfied or waived by Seller and Seller is prepared to authorize the EPC Contractor to commence constructing and installing the System. Seller and EPC Contractor shall enter into an EPC Contract for the EPC Contractor to construct and install the System at the Premises in accordance with **Exhibits 3** and **4**, consistent with the terms of this Agreement, the EPC Contractor License Agreement, and Good Industry Practices (as defined below). The Parties acknowledge and agree that Purchaser shall not be required to in anyway pay for construction of the System. Inconsistent provisions in **Exhibits 3** and **4**, and the EPC Contractor License Agreement shall prevail in any dispute over what is considered Good Industry Practices.

iii. Seller recognizes that the District may obtain the services of a construction manager for this Project. The construction manager, if any, would be authorized to give Seller and the EPC Contractor Work authorizations, provide notice to the EPC Contractor of violations of the EPC Contractor License Agreement, and issue written approvals and NTP(s), on behalf of District. The District reserves the right to designate a different construction manager at any time. The District shall provide forty-eight (48) hour notice to Seller and the EPC Contractor if District designates a different construction manager. Any task, including, but not limited to, reviews or approvals that the District may perform pursuant to this Agreement may be performed by the construction manager, unless that task indicates it shall be performed by the governing board of the District.

iv. Seller hereby acknowledges that DSA and the IOR have authority to approve and/or stop Work if the EPC Contractor's Work does not comply with the requirements of this Agreement, Title 24 of the California Code of Regulations, EPC Contractor License Agreement and all Applicable Law. Seller shall be liable for any delay caused and extra work required by its EPC Contractor's non-compliant Work. Seller shall not be liable

for delay caused solely by the District or solely by a third party, such as Purchaser's Serving Utility. The Assistant Superintendent of the District, and/or his/her designee shall have authority to inspect (but not approve) the Work.

v. If the IOR issues any notice of correction, or in any way identifies any other non-conforming or deficient Work performed by the EPC Contractor, Seller shall ensure that any appropriate orders to correct the non-conforming or deficient Work are issued to the EPC Contractor under the EPC Contract. Unless otherwise provided by this Agreement, any corrective work performed by EPC Contractor at the direction of the IOR shall not entitle Seller to an increase to the Energy Rate or to an extension of time to achieve the Commercial Operation Date.

vi. When the Seller believes that the EPC Contractor has completed the Work except for minor corrective items, it shall so notify the District. Promptly thereafter, the District and Seller shall schedule a final walk-through of the Project by the Seller, the EPC Contractor, the IOR and the District to determine whether and to what extent the Work is complete. If the District or IOR determines that further corrective work is necessary, Seller shall require the EPC Contractor to perform such corrective work with no adjustment to the Energy Rate. The Work may only be accepted as complete by an action of the District's School Board, which acceptance and action shall not be unreasonably withheld, conditioned or delayed. Seller shall enter into an agreement with the Inspector selected by the District, and Seller shall pay all costs to the Inspector for and in connection with the Project.

vii. During the Term, Seller shall be responsible for the operation and performance of all routine and emergency repairs to, and maintenance and/or replacement (as may be required to maintain the System) of, all or portions of the System at its sole cost and expense, in accordance with Good Industry Practices, except for any repairs or maintenance resulting from Purchaser's negligence, willful misconduct, or breach of this Agreement. Seller shall (A) have the appropriate experience, licenses and ability to operate and maintain photovoltaic solar systems and the financial capability to do same (an "**Operator**"); or (B) enter into a contract with an Operator, pursuant to which such Operator shall be responsible for System operation and maintenance under this Agreement. Purchaser shall be responsible for any damage caused by it, its agents, invitees (e.g., students and guests), employees or contractors to the System. Seller shall not be responsible for any work done by parties not engaged or hired by Seller on any part of the System unless Seller authorizes that work in advance, in writing. Seller shall not be responsible for any loss, damage, cost or expense arising out of or resulting from improper environmental controls or improper operation or maintenance of the System by anyone other than Seller or Seller's contractors. If the System requires repairs for which Purchaser is responsible, Purchaser shall pay Seller for diagnosing and correcting the problem at Seller or Seller's contractors' then current standard rates. In addition, if any such repairs causes or requires an interruption or disconnection to the System, Purchaser shall pay Seller an amount equal to the sum of payments that Purchaser would have made to Seller for electric energy that would have been produced by the System during such disconnection or removal; (ii) revenues that Seller would have received with respect to that System under any rebate program and any other assistance program with respect to electric energy that would have been produced during such disconnection or removal; and (iii) lost or recaptured Tax Attributes, Environmental Attributes and Environmental Incentives of Seller (or, if Seller is a pass-through entity for tax purposes, Seller's owners). Seller shall provide Purchaser with reasonable notice (at least 48-hours) prior to accessing the Premises to perform routine maintenance and/or make standard repairs; provided that in the case of an emergency or an imminent danger that could cause damage or harm to persons or property, Seller can enter the Premises immediately to address the emergency and mitigate the potential damage or harm. Except as expressly provided in this Agreement, Purchaser shall not cause, or allow any person or entity under Purchaser's control to cause, any System equipment to be disconnected or shut down, temporarily or otherwise, unless in the case of emergency or as a result of an event of Force Majeure.

viii. "**Good Industry Practices**" means, with respect to the services being provided by the EPC Contractor, Seller's agents, third-party Operator(s), or any of their Affiliates, or any other contractor or subcontractor pursuant to this Agreement, those practices, methods, equipment, specifications and standards of safety and performance, of which there may be more than one, and as the same may change from time to time, as are commonly provided for commercial and industrial solar energy systems of a type and size similar to the System and in the same geographic region as the System that, at a particular time, in the exercise of reasonable judgment in light of the facts known at the time a decision was made, would be expected to accomplish the desired result in a manner consistent with law, regulations, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection and expedition.

e. **Net Metering**. The provisions in this Section 7.e only apply if net metering is permitted by Purchaser's Serving Utility at the Premises. Prior to the delivery to Purchaser of any electrical energy, Seller shall cooperate with Purchaser to make arrangements for Purchaser's delivery and resale to Purchaser's Serving Utility of electrical energy through net metering, in accordance with Applicable Laws.

f. **Costs Due to Unexpected Site or Premises Conditions**.

i. The District has provided or will provide to Seller all information available to it to the extent the information relates to the Project. This information includes, without limitation:

(1) Physical characteristics;

(2) Legal limitations and utility locations for the Premises;

(3) Written legal description(s) of the Premises;

(4) Grades and lines of streets, alleys, pavements, and adjoining property and structures;

(5) Adjacent drainage;

(6) Rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, and boundaries and contours of the Premises;

(7) Locations, dimensions and necessary data with respect to existing buildings, other improvements and trees;

(8) Information concerning available utility services and lines, mechanical and other services, both public and private, above and below grade, including inverts and depths;

(9) Surveys, reports, as-built drawings;

(10) Subsoil data, chemical data, and other data logs of borings;

(11) DSA Numbers for all buildings, as necessary to obtain DSA approval of plans to be submitted by Designer/Builder under the contracted scope of work.

(12) The location and physical characteristics of existing utility lines, telephone, water, sewage, storm drains and other lines on or around or relating to the Project.

ii. To the extent Seller has received such information prior to commencement of construction, Seller has Visually Verified (as defined below) the existence of the conditions identified by such information to the extent determinable by the documents provided by the District (such verification, a "**Site Examination**"). Seller has relied, in part, on its Site Examination in defining the scope of Work of the EPC Contractor and in setting the Energy Rate.

(1) "**Visually Verified**" means confirmed by diligent physical inspection without any destructive or invasive action.

iii. Notwithstanding the achievement of the conditions precedent set forth in Section 6.a or Seller's Site Examination, if Seller incurs material additional costs to re-design, pay for construction and installation, operate or maintain the System due to (i) unforeseen conditions at the Premises, (ii) unforeseen groundwork at the Premises (including, but not limited to, excavation/circumvention of underground obstacles), (iii) Hazardous Substances (as defined in Section 17.c.i) at the Premises, or (iv) the inaccuracy of any information provided by Purchaser and relied upon by Seller, then Seller may request from Purchaser a reasonable and equitable adjustment to the Energy Rate, schedule and other terms of this Agreement to compensate for any work in excess of normally expected work required to be performed by Seller arising from such conditions; provided, that Seller reasonably substantiates the need for the adjustment to the Energy Rate. Purchaser shall (without delay or condition) grant such adjustment to the Energy Rate unless Purchaser reasonably believes that Seller's need is either not justified by the occurrence of an event herein identified, or unsubstantiated. In such case, Seller and Purchaser shall meet and confer and shall in good faith negotiate an equitable adjustment to the Energy Rate. If the Parties fail to reach an agreement, then Seller may either (A) terminate this Agreement and Seller shall have no further liabilities or obligations hereunder or (B) pursue resolution of such dispute through the process identified in Section 19. If Seller elects to terminate this Agreement, Seller shall provide Purchaser with thirty (30) days' notice of Seller's intent to terminate pursuant to this Section 7.f. During the thirty (30) day notice period, the District may agree in writing with Seller to the reasonable and equitable adjustment to the Energy Rate. Upon the District's agreement within the thirty (30) day notice period, Seller's notice termination shall cease to be effective and this Agreement shall remain in full force and effect.

g. **Breakdown Notice**. Seller shall promptly notify Purchaser following Seller's discovery of (i) any material malfunction in the operation of the System or (ii) an interruption in the supply of electrical energy from the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Purchaser shall notify Seller immediately upon the discovery of any emergency condition affecting any part of the System.

h. **Suspension**. Notwithstanding anything to the contrary herein (and without limiting Seller's remedies under Section 13.b.i), Seller shall be entitled, in its sole discretion, to suspend delivery of electricity from the System to the Delivery Point (i) in the event of an emergency, including the presence of Hazardous Substances, (ii) for the purpose of maintaining and repairing the System or (iii) at the request of Purchaser's Serving Utility and, in each case of (i) through (iii) above, (A) such suspension of service shall not constitute a breach of this Agreement, (B) Seller shall have no liability for Purchaser to obtain electricity from other sources for the duration of such suspension, and (C) Seller shall use commercially reasonable efforts to minimize any interruption in service to Purchaser; provided, however, that Seller shall deliver prior written notice to Purchaser of any anticipated suspension in excess of forty-eight (48) day light hours (i.e. the hours between sunrise and sunset in the area where the System is located). Seller shall not be entitled to suspend the delivery of electricity for a period in excess of forty-eight (48) day light hours without providing notice as provided herein.

i. **Use of Contractors and Subcontractors**.

i. Except as otherwise provided herein, Seller shall be permitted to use contractors and subcontractors to perform its obligations under this Agreement, provided, however, that such contractors and subcontractors shall (i) be duly licensed in the State of California and (ii) perform such obligations in accordance with this Agreement, Good Industry Practices, and those standards of safety and performance that are expected of entities providing similar services to California public entities purchasing solar generated electrical power from independent, private power providers. Notwithstanding the foregoing, Seller shall continue to be responsible for any obligations performed by its contractors and subcontractors. Nothing contained in the Agreement shall create any contractual relations between any subcontractor and the District.

ii. The District shall have the right to issue notices of violation, stop work notices, and/or a revocation of a right to enter the Premises to the EPC Contractor (with a copy of such notice to Seller) if the District reasonably determines that the EPC Contractor has violated a material term of the EPC Contractor License Agreement. The EPC Contractor shall not be permitted to continue any Work on the Premises, until it cures such breach. The District shall have the right to demand that Seller remove and replace the EPC Contractor if: (1) the District reasonably determines the EPC Contractor is unfit pursuant to the terms of the EPC Contractor License Agreement; (2) the EPC Contractor persistently breaches material terms of the EPC Contractor License Agreement; (3) any material breach of the EPC Contractor License Agreement remains uncured; and/or (4) any material breach of the EPC Contractor License Agreement which results in liability or damage to the District or would reasonably expose the District to liability or damages.

iii. In the event Purchaser requires the removal of a contractor or subcontractor of Seller, whether due to being deemed unfit as provided in the EPC Contractor License Agreement or as a result of a breach of the terms of, or certifications submitted in connection with, the EPC Contractor License Agreement, Seller shall have the right replace such contractor and/or subcontractor (including the EPC Contractor); provided that such replacement contractor or subcontractor submits equivalent certifications to Purchaser's reasonable satisfaction. For the avoidance of doubt, no such removal by Purchaser shall be deemed a breach by Seller of this Agreement, but Seller shall not be granted any extension to achieve the Commercial Operation Date unless otherwise provided for herein.

j. **Liens and Payment of Contractors and Suppliers**. Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement and shall keep the Premises free and clear of any liens related to such charges, except for those liens which Seller is permitted by law to place on the Premises following non-payment by Purchaser of amounts due under this Agreement. Seller shall indemnify Purchaser for all claims, losses, damages, liabilities and expenses resulting from any liens filed against the Premises or any portion thereof in connection with such charges; provided, however, that Seller shall have the right to contest any such lien, so long as it provides a statutory bond or other reasonable assurances of payment that either remove such lien from title to the Premises or that assure that any adverse judgment with respect to such lien will be paid without affecting title to the Premises. Notwithstanding any provision to the contrary, Seller shall remove any liens on any portion of the Premises if upon the Purchaser's thirty (30) day notification to Seller that the lien is negatively impacting the Purchaser's need to utilize the Premises for collateral, justification, or any other demonstrated need to

have the lien removed; provided, however, that Seller's customary fixture filing (see Section 16(a)) or Consent (see Section 16(e)) shall not be considered liens.

k. **Warranty Disclaimer**.

i. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NO WARRANTY OR REMEDY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, SHALL APPLY.

ii. The remedies set forth in this Agreement shall be Purchaser's sole and exclusive remedies for any claim or liability arising out of or in connection with this Agreement, whether arising in contract, tort (including negligence), strict liability or otherwise.

8. **Purchaser's Rights and Obligations**.

a. **System Design and Finalization**. In accordance with Section 7.a, Purchaser shall have the right to review and approve System equipment substitutions that would materially affect the capacity of the System or require a change to the Energy Rate. With respect to the preceding sentence, Purchaser shall promptly review the applicable information and respond to Seller without delay and not unreasonably withhold its consent to such changes.

b. **Cooperation**. Purchaser shall (i) provide Seller, the EPC Contractor and their subcontractors, consultants, agents and representatives with reasonable access to the Premises for the purpose of designing the System, including conducting related inspections and studies, and accessing relevant documents, materials and records of Purchaser in conjunction with such activities, (ii) cooperate with Seller's and EPC Contractor's reasonable requests for information and access to the Premises for purposes of designing and installing the System and (iii) cooperate with all of Seller's and EPC Contractor's requests to assist Seller in obtaining any necessary agreements, permits and approvals pursuant to Section 7.bc. Purchaser's failure to provide such cooperation shall be a default under this Agreement subject to Section 13.a.ii.

c. **Permits and Approvals**. Purchaser shall comply with any requirements applicable to Purchaser in connection with the agreements, permits and approvals obtained by Seller pursuant to Section 7.bc.

d. **Premises Access Rights.** Purchaser grants to Seller and to Seller's agents, employees, contractors and assignees an irrevocable license running with the Premises (the "**License**") for access to, on, over, under and across the Premises solely for the purposes of (i) installing, constructing, operating, owning, maintaining, accessing, removing and replacing the System; (ii) performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement; and (iii) installing, using and maintaining electric lines and equipment, including inverters and meters necessary to interconnect the System to Purchaser's electric system at the Premises, to the local electric distribution system, if any, or for any other purpose that may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance or repair of the System. Seller shall notify Purchaser prior to entering the Premises except in situations where there is imminent risk of damage to persons or property. The term of the License shall continue until the date that is one hundred and twenty (120) days following the date of expiration or termination of this Agreement (the "**License Term**"). During the License Term, Purchaser shall ensure that Seller's rights under the License and Seller's access to the Premises and the Premises are preserved and protected. Purchaser shall not unreasonably interfere with nor shall permit any third parties to unreasonably interfere with such rights or access. Seller shall exercise, and shall cause its agents, employees and contractors to exercise, due care any time Seller, its agents, employees or contractors enters the Premises. Seller shall be responsible for any damage caused by it, its agents, employees or contractors to the Premises or to any persons or property thereon. At the option of Purchaser, Seller or Purchaser shall repair such damage. If Purchaser repairs such damage, Seller shall reimburse Purchaser for reasonable expenses incurred to repair such damage within thirty (30) days after demand by Purchaser.

e. **RESERVED.**

f. **RESERVED.**

g. **Maintenance of Premises**. Purchaser shall, at all times at Purchaser's sole cost and expense, maintain the Premises outside the footprint of the System in good condition and repair and in a manner sufficient to support the System. Regardless of whether maintenance and repairs are made in the ordinary course or in an emergency, all maintenance and repairs shall be carried out in a manner that minimizes the impact on the System. Purchaser is fully responsible for the maintenance and repair of the Premises' electrical system (except for the System, which will be maintained by Seller) and of all of Purchaser's equipment that utilizes the System's outputs, and Purchaser's failure to maintain such

electrical system shall not excuse Purchaser from its obligation to purchase the electric energy produced by the System, or that would have been produced by the System absent a failure in Purchaser's electrical system. Purchaser shall properly maintain in full working order all of Purchaser's electric supply or generation equipment that Purchaser may shut down while utilizing the System. Purchaser shall promptly notify Seller of any matters of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System.

h. **No Alteration of Premises**. Purchaser shall not make any alterations or repairs to the Premises which could adversely affect the operation and maintenance of the System without Seller's prior written consent. To the extent that temporary disconnection or removal of the System is necessary to perform such alterations or repairs, such work and any replacement of the System after completion of Purchaser's alterations and repairs, shall be done by Seller or its contractors at Purchaser's cost in accordance with Section 7(d)(ii) above. Determination of the amount of energy that would have been produced during any disconnection or removal shall be determined by Seller on a commercially reasonable basis. All of Purchaser's alterations and repairs shall be done in a good and workmanlike manner and in compliance with all Applicable Laws, codes and permits.

i. **Interconnection and Net Metering**. Purchaser shall ensure that the Premises remains interconnected to the local utility grid at all times. If net metering is permitted by Purchaser's Serving Utility at the Premises, Purchaser shall be entitled to participate in and retain any benefits from any net metering program of Purchaser's Serving Utility. In such case, Purchaser shall (i) sign all documentation required for net metering, (ii) ensure that the Premises remains interconnected to the local utility grid at all times to maintain net metering, (iii) not take any action, or fail to take any action, which prevents net metering, and (iv) comply with all Applicable Laws required for net metering.

j. **Outages**. Purchaser shall be permitted to be offline for a total of forty-eight (48) daylight hours (each, a "**Scheduled Outage**") within each calendar year during the Term, during which days Purchaser shall not be obligated to accept or pay for electricity from the System or reimburse Seller for lost or recaptured Environmental Attributes, Environmental Incentives or Tax Attributes; provided, however, that (i) Purchaser shall use best efforts to minimize System downtime during daylight hours and (ii) Purchaser must notify Seller in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of a Scheduled Outage. In the event that Scheduled Outages exceed a total of forty-eight (48) day light hours (i.e. the hours between sunrise and sunset in the area where the System is located) per calendar year or there are unscheduled outages, in each case for a reason other than outages caused by Seller or a Force Majeure event, Purchaser shall pay Seller an amount equal to the sum of (A) payments that Purchaser would have made to Seller hereunder for electric energy that would have been produced by the System during the outage; (B) revenues that Seller would have received with respect to each such System under any rebate program and any other assistance program with respect to electric energy that would have been produced during the outage; and (C) lost or recaptured Tax Attributes, Environmental Attributes and Environmental Incentives of Seller (or, if Seller is a pass-through entity for tax purposes, Seller's owners). Determination of the amount of energy that would have been produced during the outage shall be determined by Seller on a commercially reasonable basis. Seller will provide Purchaser a point of contact for notification of a Scheduled Outage.

k. **Liens**. Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. Purchaser shall immediately notify Seller in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, shall promptly cause the same to be discharged and released of record without cost to Seller, and shall indemnify Seller against all costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim.

l. **Security**. Purchaser shall be responsible for using commercially reasonable efforts to maintain the physical security of the Premises and the System against known risks and risks that should have been known by Purchaser. Purchaser shall not conduct activities on, in or about the Premises that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.

m. **RESERVED.**

n. **Insolation**. Purchaser understands that unobstructed access to sunlight ("**Insolation**") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not in any way cause and, where possible, shall not in any way permit any interference with the System's Insolation and shall not construct or install, or knowingly permit to be constructed or installed, any alterations, modifications or improvement to the Premises or any other property owned or controlled by Purchaser or an Affiliate of Purchaser that interferes with or blocks the System's Insolation. In addition to the foregoing, Purchaser shall not permit the growth of foliage that interferes with

or blocks System's Insolation. If Purchaser becomes aware of any activity or condition that could diminish the Insolation of the System, Purchaser shall notify Seller immediately and shall cooperate with Seller in preserving the System's existing Insolation levels. The Parties agree that (i) reducing Insolation would irreparably injure Seller, (ii) such injury may not be adequately compensated by an award of money damages, and (iii) Seller is entitled to seek specific enforcement of this Section 8.n against Purchaser.

o. **Data Line**. The Parties will reasonably cooperate regarding the installation and maintenance of high speed data lines and other communications portals to enable Seller to record the data regarding the electric energy generated by the System. Purchaser shall, at no cost to Seller, provide Seller with internet access and Seller shall install and maintain any required extensions to existing high speed data lines and all other required communications equipment at its sole cost and expense, and in accordance with the Good Industry Practice.

p. **Breakdown Notice**. Purchaser shall notify Seller within twenty-four (24) hours following the discovery by Purchaser of (i) any material malfunction in the operation of the System; or (ii) any occurrences that could reasonably be expected to adversely affect the System. Purchaser shall notify Seller immediately upon (i) an interruption in the supply of electrical energy from the System; or (ii) the discovery of an emergency condition respecting the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.

9. **Change in Law**.

"**Change in Law**" means (a) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any Applicable Law or regulation; (b) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date of this Agreement (notwithstanding the general requirements contained in any applicable permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation); or (c) a change in any utility rate schedule or tariff approved by any Governmental Authority which, in the case of any of (a), (b) or (c), establishes requirements affecting owning, supplying, constructing, installing, operating or maintaining the System, or other performance of Seller's obligations hereunder and which has a material adverse effect on the cost to Seller of performing such obligations.

If any Change in Law occurs that (i) generally affects electric generating facilities or affects the balance of the System and (ii) materially increases the capital or operating and maintenance costs of the System to make the operation of the System commercially unreasonable, or otherwise has a material adverse effect on the cost to Seller of performing its obligations under this Agreement, then Seller may make a reasonable and equitable adjustment to the Energy Rate to compensate Seller for such increased costs over the remainder of the Term upon written notice to the Purchaser justifying and substantiating the adjustment to the Energy Rate. If the Purchaser reasonably disagrees with Seller's notice, it shall have five (5) business days to give notice to Seller of such disagreement. The Parties shall meet and confer to negotiate an equitable adjustment to the Energy Rate. If the Parties fail to reach an agreement, then any dispute arising therefrom shall be resolved through the process identified in Section 19.

10. **Relocation of System**.

a. If (i) Purchaser ceases to conduct business operations at and/or vacates the Premises, (ii) Seller is prevented from operating the System at the Premises (through no fault of Seller) or (iii) the System is otherwise prevented from delivering electricity (through no fault of Seller), in each case prior to the expiration of the Term, Purchaser shall have the option to provide Seller with a mutually agreeable substitute premises located within the same Purchaser's Serving Utility district as the terminated System (or portion thereof) and with similar utility rates and Insolation (a "**Substitution**"), in each case reasonably acceptable to Seller. Purchaser shall provide written notice to Seller at least sixty (60) days but not more than one hundred eighty (180) days prior to the date that it wants to make a Substitution. If Purchaser is unable to provide a substitute premises and to relocate the System (or portion thereof) as provided herein, the above events shall each be treated as a Default Event by Purchaser.

b. In connection with such Substitution, Purchaser and Seller shall in good faith negotiate and execute an amended agreement that shall have all of the same terms as this Agreement except for the (i) Effective Date; (ii) License, which will be amended to grant rights in the real property(ies) where the System (or portion thereof) is relocated to; (iii) the Premises description; (iv) the Energy Rate, as provided in subsections (e) and (d) below; (v) the System details, description and specifications, as set forth on **Exhibits 3** and **4**; (vi) the Estimated Annual Production values, as set forth on **Exhibit 6**; (vii) Term, which will be the remainder of the Term of this Agreement; and (viii) such other terms that reasonably require modification as a result of the Substitution, and such amended agreement shall be deemed to be a continuation of this Agreement without termination. Purchaser shall also provide any new Purchaser, owner,

lessor or mortgagee consents or releases required by Seller or Seller's Financing Parties in connection with the substitute premises. Purchaser and Seller agree that, unless Seller is licensed as a general contractor under the laws of the State of California at the time of any Substitution(s), Purchaser and Seller shall enter into a contractor license agreement for the Substitution with a licensed general contractor in a form substantially similar to **Exhibit 13**,

c. In connection with such Substitution, Purchaser shall pay all reasonable costs associated with relocation of the System (or portion thereof), including all costs and expenses incurred by or on behalf of Seller in connection with removal of the System (or portion thereof) from the Premises and the design, engineering, installation and testing of the System (or portion thereof) at the substitute premises and all applicable interconnection fees and expenses at the substitute premises, as well as costs of new title search and other out-of-pocket expenses connected to preserving and refiling the security interests of Seller's Financing Parties in the System (or portion thereof).

d. Seller shall calculate the amount of electricity that would have been delivered to Purchaser during the period of time the System (or portion thereof) is not in operation due to the relocation (the "**Relocation Period**") and shall invoice Purchaser for such amount and any associated lost or recaptured Environmental Incentives and lost sales (and penalties payments associated with the same) of associated Environmental Attributes. Alternatively, at the District's written request, the Parties may negotiate an equitable adjustment to the Energy Rate for the remainder of the Term, subject to reasonable and objectively justifiable bases for such adjustment. Seller shall remove the System (or portion thereof) from the vacated Premises prior to the termination of Purchaser's ownership, lease or other rights to use such Premises. At the District's request and reasonable expense, Seller shall restore the vacated Premises to its prior condition except for normal wear and tear.

e. If the substitute premises has inferior Insolation as compared to the original Premises, Seller shall have the right to make an equitable adjustment to the Energy Rate such that Purchaser's payments to Seller are the same as if the System (or portion thereof) were located at the original Premises.

11. Removal of System at Expiration of Term.

Upon the expiration of the Term of this Agreement (provided Purchaser does not exercise its purchase option), Seller shall, at its expense, remove all of its tangible property comprising the System from the Premises on a mutually convenient date, but in no event later than one hundred and twenty (120) days after the expiration of the Term. Purchaser may submit to Seller no later than ninety (90) days prior to expiration of the Term a written demand for a decommissioning bond for the anticipated cost to remove the System from the Premises as contemplated herein. Seller's failure to provide Purchaser with such decommissioning bond within thirty (30) days of Purchaser's written demand shall constitute a breach of this Agreement and, as its sole remedy for such breach, the District may withhold payment under this Agreement for the anticipated cost the District will incur to remove the System from the Premises as contemplated herein. Upon Seller's performance of the removal of the System from the Premises as contemplated herein, any such decommissioning bond shall terminate and be rendered null and void. Purchaser and Seller agree that, if Seller is not licensed as a general contractor under the laws of the State of California at the time of removal and such license is required for removal, Seller shall have an appropriately licensed contractor remove the System from the Premises. Excluding ordinary wear and tear, the Premises shall be returned to its original condition including the removal of the System; provided, however, Seller shall not be required to remove (a) any supports, canopies, anchors, penetrations, conduits or other similar ancillary equipment which were installed by Seller if, in Seller's reasonable judgment, the removal of such supports, anchors, penetrations, conduits or other similar ancillary equipment would cause harm and damage to the Premises, and (b) any underground foundations or underground or buried conduits and cabling installed by Seller on or about the Premises. Seller shall leave the Premises in neat and clean order. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser shall have the right, at its option, to remove the System to a public warehouse and restore the Premises to its original condition (other than ordinary wear and tear) at Seller's cost. Purchaser shall provide sufficient space at no expense to Seller for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during System removal.

12. Metering, Measurement and Ownership of Data.

a. **Metering and Measurement**. Seller shall install one or more revenue grade meter(s) (collectively, the "**Seller Meter**"), as Seller deems appropriate, at or immediately before the Delivery Point to measure the output of the System. Seller Meter shall (i) meet the general commercial standards of the industry or the required standard of Purchaser's Serving Utility and (ii) provide and preserve a continuous flow of data to Seller twenty-four (24) hours per day through the data line provided by Purchaser pursuant to Section 8.o. Seller shall maintain the Seller Meter in accordance with Good Industry Practices. If any Seller Meter's operation is interrupted at any time for any reason, or is found to be inaccurate and/or in need of repair or replacement, the measurement of energy output for such period of interruption or inaccuracy (which shall be the period from the last date the affected Seller Meter was operating properly through

the date upon which the Seller Meter is corrected) will be estimated by Seller, acting in its reasonable judgment, based upon inverter data or past energy output delivery during a similar period and under similar conditions if such information is available (and if such information is not available, based upon any other relevant information or bases which may reasonably be used for such purpose in the circumstances), and Purchaser shall pay invoices during such period based on the estimated measurement. Seller shall own all data generated by the Seller Meter (the "**Meter Data**").

b. **Purchaser Utility Data**. Purchaser acknowledges that, throughout the Term, Seller (or Seller's contractors and agents, as Seller may designate) may require Purchaser's utility data for the Premises (including, but not limited to, usage data from Purchaser's Serving Utility) for purposes of Seller performing its obligations under this Agreement. Purchaser shall reasonably cooperate to provide Seller (or Seller's contractors and agents, as Seller may designate) with the authority necessary to request and receive utility data for the Premises, and shall endeavor, but not guarantee, to provide Seller with such utility data within five (5) business days of Seller's written request therefor. Any utility data provided hereunder shall be kept in confidence by Seller (or Seller's contractors and agents, as Seller may designate).

13. **Default, Remedies and Damages**.

a. **Default**. Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below shall be deemed a "**Defaulting Party**", the other Party shall be deemed a "**Non-Defaulting Party**" and each event of default shall be a "**Default Event**":

i. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith Dispute (as defined below), within five (5) days' following receipt of written notice from the Non-Defaulting Party of such failure to pay;

ii. failure of a Party to substantially perform any material obligation under this Agreement within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that such thirty (30) day cure period shall be extended (but not beyond an aggregate cure period of ninety (90) days) if and to the extent reasonably necessary to cure the Default Event, if (A) the Defaulting Party initiates such cure within the thirty (30) day period and continues such cure to completion and (B) there is no material adverse effect on the Non-Defaulting Party resulting from the failure to cure the Default Event within the initial thirty (30) day period;

iii. if any representation or warranty of a Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;

iv. Purchaser (i) loses its rights to occupy the Premises and the real property thereupon or (ii) ceases to conduct business operations at the Premises, in either case, unless Purchaser and Seller agree on terms of a relocation of the System pursuant to Section 10;

v. a Party, or its guarantor (if any), admits in writing its inability to pay its debts generally as they become due, becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect, or, if any such bankruptcy or other proceedings were initiated by a third party, if such proceedings have not been dismissed within sixty (60) days following receipt of a written notice from the Non-Defaulting Party demanding such cure;

vi. Purchaser prevents or delays Seller from installing the System or Purchaser otherwise performs or fails to perform in a way that prevents the delivery of electric energy from the System. Such Default Event shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement; or

vii. with respect to Purchaser only, Seller otherwise loses its rights to occupy, access and/or quietly enjoy the Premises as provided under this Agreement (other than as a result of a Default Event by Seller).

b. **Remedies**.

i. **Remedies for Payment Default Event**. If a Default Event occurs with respect to a Party's payment obligations hereunder (a "**Payment Default**"), the Non-Defaulting Party may suspend performance of its obligations under this Agreement. Further, the Non-Defaulting Party may pursue any remedy under this Agreement, at law or in equity, including terminating this Agreement and an action for damages, upon five (5) days prior written notice to the Defaulting Party following the Payment Default.

ii. **Remedies for Other Default Events**. On the occurrence of a Default Event other than a Payment Default, the Non-Defaulting Party may pursue any remedy under this Agreement, at law or in equity, including terminating this Agreement and an action for damages, upon five (5) days prior written notice to the Defaulting Party following the occurrence of the Default Event. Nothing herein shall limit either Party's right to collect damages upon the occurrence of a breach or a default by the other Party that does not become a Default Event.

iii. **Damages Upon Termination by Default**. Upon a termination of this Agreement by the Non-Defaulting Party as a result of a Default Event by the Defaulting Party the Defaulting Party shall pay a termination payment to the Non-Defaulting Party determined as follows (the "**Termination Payment**"):

(1) Termination by Seller. If Seller terminates this Agreement for a Default Event by Purchaser, the Termination Payment payable to Seller shall be equal to the sum of (i) the loss or recapture of Tax Attributes, Environmental Attributes and Environmental Incentives that would have accrued or would otherwise have been assigned to Seller during the remainder of the Term pursuant to the terms of this Agreement; (ii) the net present value (using a discount rate of 4% per annum) of the projected payments of the Energy Rate over the Term post-termination, had the Term remained effective for the full Initial Term; (iii) development costs incurred by Seller; and (iv) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Seller. The Termination Payment shall not be less than zero (0).

(2) Termination by Purchaser. If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser will be equal to the sum of (i) the net present value (using a discount rate of 4% per annum) of the excess, if any, of the reasonably expected cost of electricity from Purchaser's Serving Utility over the Energy Rate for the reasonably expected production of the System for the remainder of the Initial Term or the then current Additional Term, as applicable; (ii) all costs reasonably incurred by Purchaser in re-converting its electric supply to service from Purchaser's Serving Utility; (iii) any System removal costs incurred by Purchaser; and (iv) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser. The Termination Payment shall not be less than zero (0).

iv. **Liquidated Damages**. The Parties agree that, if Seller terminates this Agreement prior to the expiration of the Term pursuant to Section 13.b.ii, actual damages would be difficult to ascertain, and the Termination Payment determined in accordance with Section 13.b.iii.(1) is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement and is not a penalty.

c. **Obligations Following Termination for Default**.

i. **Reservation of Rights**. Except in the case of a termination under Section 13.b.ii and payment of a Termination Payment, if any, determined pursuant to Section 13.b.iii, nothing in this Section 13 limits either Party's right to pursue any remedy under this Agreement, at law or in equity, including with respect to the pursuit of an action for damages by reason of a breach or Default Event under this Agreement.

ii. **Mitigation Obligation**. The Non-Defaulting Party must make commercially reasonable efforts to mitigate its damages as the result of such Default Event; provided that such obligation shall not reduce Purchaser's obligation to pay the full Termination Payment set forth in Section 13.b.iii following a Default Event by Purchaser.

iii. **No Limitation on Payments**. Nothing in this Section 13 excuses a Party's obligation to make any payment when due under this Agreement, including with respect to payments for electricity that would have been delivered to Purchaser but for a Purchaser breach or Default Event.

iv. **Removal of System**. If Purchaser terminates this Agreement pursuant to Section 13.b.ii, then following such termination, Seller shall remove the equipment constituting the System in compliance with Section 11 above at the sole cost and expense of Seller.

14. Representations, Warranties, and Covenants.

a. General Representations, Warranties, and Covenants. Each Party represents, warrants and covenants to the other the following as of the Effective Date and the Conditions Satisfaction Date:

i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have each been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and shall not violate any law; and this Agreement is the valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).

ii. Such Party has obtained all permits, licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws (including Environmental Laws) that relate to this Agreement in all material respects.

iii. During the Term, both Parties will work together in good faith to undertake to conform with any reasonable interconnection requirements of Purchaser's Serving Utility (if applicable).

iv. Subject to any agreement with and requirements of Purchaser's Serving Utility (if applicable), during the Term, (1) Purchaser shall ensure that the Premises remains interconnected to the local utility grid at all times, (2) Seller will keep the System interconnected and in service in accordance with this Agreement and Purchaser will not interfere with same except as expressly permitted hereunder and (3) neither Party will take any action that it knows will void, invalidate, impair or make unavailable any Environmental Attributes, Environmental Incentives or Tax Attributes.

v. Neither Party is subject to regulation as a public utility as that term is defined under Applicable Law with respect to the transactions that are the subject of this Agreement, except as would not have a material adverse effect on the performance by either of the Parties of its obligations under this Agreement.

b. Seller's Representations, Warranties and Covenants. Seller represents, warrants and covenants to Purchaser the following as of the Effective Date and the Conditions Satisfaction Date:

i. Compliance with Applicable Law. Seller's performance of this Agreement complies with all Applicable Law, rules, regulations and orders of any Governmental Authority in all material respects.

ii. Third Party Rights. Seller shall use commercially reasonable efforts to ensure that neither the System nor any of Seller's services hereunder infringe upon any third party's intellectual property rights or other proprietary rights.

iii. Roof Installations. If a System penetrates, or is placed on, any portion of the Premises' roof, including through any Substitution, Seller shall warrant roof damage directly caused by such penetration and/or placement. This roof warranty will run the longer of (A) two (2) years following the completion of the System installation; and (B) the length of any existing installer warranty on the Premises' roof.

iv. Maintenance of System. During the Term, if determined necessary by Seller in its sole direction, Seller will cause a licensed contractor to repair or replace any defective part, material or component of the System or correct any defective workmanship in the System, at no cost or expense to Purchaser (including all labor costs) except to the extent such repair, replacement or correction is the direct result of any act or omission of Purchaser or its employees, contractors, invitees (e.g., students and guests) or agents. Seller may use new or reconditioned parts when making such repairs, replacements or corrections.

c. **Purchaser's Representations, Warranties and Covenants**. Purchaser represents, warrants and covenants to Seller the following as of the Effective Date and the Conditions Satisfaction Date:

i. Ownership of Premises. Purchaser is the fee owner of the Premises.

ii. No Conflicts. Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser or the Premises is bound.

iii. Accuracy of Information. To the best of Purchaser's knowledge, information provided by Purchaser to Seller, as it pertains to the Premises physical configuration, Purchaser's planned use of the Premises, and Purchaser's estimated electricity requirements, is accurate in all material respects.

iv. Hazardous Substances. Except as disclosed to Seller, there are no Hazardous Substances that exist in the areas on or near the Premises where Seller or its subcontractors will undertake to install, operate, maintain or repair the System.

v. Purchaser Status. Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.

vi. Swimming Pool. No electricity provided by the System will be used to hear a swimming pool.

15. **System and Premises Damage and Insurance**.

a. **System and Premises Damage**.

i. Seller's Obligations. If the System is damaged or destroyed other than by Force Majeure (as defined in Section 20.a) or Purchaser's negligence or willful misconduct, Seller shall promptly repair and restore the System to its pre-existing condition; provided, however, that if more than fifty percent (50%) of the System is destroyed during the last five (5) years of the Initial Term or during the Additional Term, Seller shall not be required to restore the System, but may instead terminate this Agreement, unless Purchaser agrees (A) to pay for the cost of such restoration of the System or (B) to purchase the System "AS-IS" at the Fair Market Value (as defined in Section 16.c) of the System in its then damaged or destroyed condition.

ii. Purchaser's Obligations. If the Premises is damaged or destroyed by casualty of any kind or any other occurrence other than Seller's negligence or willful misconduct, such that the operation of the System and/or Purchaser's ability to accept the electric energy produced by the System are materially impaired or prevented, Purchaser shall promptly repair and restore the Premises to its pre-existing condition; provided, however, that if more than fifty percent (50%) of the Premises is destroyed during the last five (5) years of the Initial Term or during the Additional Term, Purchaser may elect either (A) to restore the Premises or (B) to pay the Purchaser's Termination Payment and all other costs previously accrued but unpaid under this Agreement and thereupon terminate this Agreement.

b. **Insurance Coverage**. At all times during the Term, Seller and Purchaser shall maintain the following insurance:

i. Seller's Insurance. Seller shall maintain (A) property insurance on the System for the replacement cost thereof subject to sublimits in accordance with industry practice, (B) commercial general liability insurance with coverage of at least $1,000,000 per occurrence and $2,000,000 annual aggregate, (C) employer's liability insurance with coverage of at least $1,000,000, (D) workers' compensation insurance as required by Applicable Law, but in no event less than $1,000,000, and (E) umbrella or excess liability insurance with a limit of $5,000,000 per occurrence and in the annual aggregate in excess of the limits of insurance provided in clauses (A) through (D) immediately above.

ii. Purchaser's Insurance. Purchaser shall maintain, either through insurance policies or acceptable self-insured retentions, (A) property insurance on the Premises covering "All Risks" perils in an amount equal to the full replacement cost of the Premises, (B) commercial general liability insurance for the Premises with coverage of at least $1,000,000 per occurrence and $2,000,000 annual aggregate, (C) employers' liability insurance with coverage of at least $1,000,000, (D) workers' compensation insurance as required by Applicable Law, but in no event less than $1,000,000, and (E) umbrella or excess liability insurance with a limit of $5,000,000 per

occurrence and in the annual aggregate in excess of the limits of insurance provided in clauses (A) through (D) immediately above.

c. **Policy Provisions**. All insurance policies provided hereunder shall (i) contain a provision whereby the insurer agrees to give the Party not providing the insurance (A) not less than ten (10) days written notice before the insurance is cancelled or terminated as a result of non-payment of premiums, or (B) not less than thirty (30) days written notice before the insurance is otherwise cancelled or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other Party. Each Party shall name the other Party as additional insured as respects commercial general liability and employers' liability, to the extent applicable. Each Party shall waive its rights of subrogation against the other party on all required policies including workers compensation where allowable by law and to the extent applicable.

d. **Certificates**. Upon a Party's written request, each Party shall deliver to the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.

e. **Deductibles**. Unless and to the extent that a claim is covered by an indemnity set forth in this Agreement, each Party shall be responsible for the payment of its own deductibles.

16. **Ownership; Option to Purchase**.

a. **Ownership of System**. Seller shall be the legal and beneficial owner of the System at all times. Each of Seller and Purchaser agree that Seller (or the designated assignee of Seller permitted under Section 21) is the tax owner of the System and all tax filings and reports will be filed in a manner consistent with this Agreement. The System shall at all times retain the legal status of personal property of Seller as defined under Article 9 of the Uniform Commercial Code and shall not attach to or be deemed a part of, or fixture to, the Premises notwithstanding that certain portions of the System may otherwise qualify as fixtures due to the manner of installation of the System. Purchaser covenants that it shall use commercially reasonable efforts to place all parties having an interest in or a mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Purchaser shall obtain a Consent (as defined below) from such lienholder in accordance with Section 16.e below. If Purchaser is the fee owner of the Premises, Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Premises is located. If Purchaser is not the fee owner, Purchaser shall obtain such consent from such owner. Without limiting the generality of the foregoing, Purchaser hereby waives any statutory or common law lien that it might otherwise have in or to the System or any part thereof and agrees that, notwithstanding the occurrence of a Default Event by Purchaser under this Agreement beyond all applicable notice and cure periods (including those granted to Financing Parties), Seller or any Financing Party (or its designee) shall own and may remove the System from the Premises at any time.

b. **Option to Purchase**. At the end of the Initial Term or the Additional Term (each such date a "**Purchase Option Date**"), so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from Seller for a purchase price equal to the Fair Market Value (as defined in Section 16.c) of the System as of the Purchase Option Date. Purchaser must provide a notification to Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the Purchase Option Date, and the purchase shall be completed on or before the Purchase Option Date.

c. **Determination of Fair Market Value**. "**Fair Market Value**" means, in Seller's reasonable determination, the amount that would be paid in an arm's length (as determined by the Parties), free market transaction, for cash, between an informed, willing seller and an informed willing buyer, neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age, condition and performance of the System and advances in solar technology, provided that installed equipment shall be valued on an installed basis, shall not be valued as scrap if it is functioning and in good condition and costs of removal from a current location shall not be a deduction from the valuation, taking into account the present value of all associated future income streams expected to arise from the operation of the System for the remaining useful life of the System, including but not limited to the expected price of electricity, Environmental Attributes, Environmental Incentives and Tax Attributes and factoring in future avoided costs and expenses associated with the System and assuming the System is able to generate revenue for the then-remaining term of the Agreement at a price equal to the then-applicable Energy Rate and thereafter for the remaining useful life of the System at a price equal to the then fair market price for energy. Seller shall determine

Fair Market Value within thirty (30) days after Purchaser has exercised its option to Purchase the System. Seller shall give written notice to Purchaser of such determination, along with a full explanation of the calculation of Fair Market Value, including without limitation, an explanation of all assumptions, figures and values used in such calculation and factual support for such assumptions, figures and values. If Purchaser reasonably objects to Seller's determination of Fair Market Value within thirty (30) days after Seller has provided written notice of such determination, the Parties shall select a mutually acceptable nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System based on the formulation set forth herein and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. Upon purchase of the System, Purchaser shall assume complete responsibility for the operation and maintenance of the System and liability for the performance of the System, and Seller shall have no further liabilities or obligations hereunder.

d. **RESERVED**

e. **Subordination, Non-Disturbance and Attornment**. The Parties recognize that protecting the interests of Purchaser and Seller in the Premises and System, respectively, are necessary to the operation of this Agreement. Therefore, in the event there exists a mortgage, lien or other encumbrance over the Premises, Seller and Purchaser shall cooperate in good faith to execute and record (as necessary) a customary (i) consent, (ii) waiver or (iii) subordination, non-disturbance and attornment agreement, as applicable, each in form and substance reasonably satisfactory to Seller (each, a "**Consent**"). Purchaser further agrees to obtain lienholder's signature on the Consent and Seller agrees to cooperate with reasonable requests to provide any documents necessary to obtain such lienholder's signature.

17. **Indemnification**.

a. **General**. Each Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party and the directors, officers, shareholders, partners, members, agents and employees of such other Party, and the respective Affiliates of each thereof (collectively, the "**Indemnified Parties**"), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "**Liabilities**") resulting from any third party actions relating to (i) the Indemnifying Party's breach of a material term of this Agreement or any representation, warranty or covenant set forth in Section 14, (ii) injury to or death of persons, (iii) claims for money, and (iv) damage to or loss of property, in each case of clause (ii), (iii), and (iv), to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees); provided, however, that nothing herein shall require the Indemnifying Party to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising from the acts or omissions of any person other than the Indemnifying Party (or its contractors, agents or employees); provided further, however, that nothing in this Section 17 is intended to modify the limitations of Seller's liability set forth in Section 18. This Section 17.a however, shall not apply to liability arising from any form of Hazardous Substances or other environmental contamination, such matters being addressed exclusively by Section 17.c. For the avoidance of doubt, Purchaser shall not be required to defend, indemnify, or hold harmless the Seller from any Liabilities that arise from the Work of the EPC Contractor performed pursuant to the EPC Contract and EPC Contractor License Agreement.

b. **Notice and Participation in Third Party Claims**. The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a "**Claim**"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this Section 17.b unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall have no liability under this Section 17.b for any Claim for which such notice is not provided if that the failure to give notice prejudices the Indemnifying Party.

c. **Environmental Indemnification**. Seller shall indemnify, defend and hold harmless all of Purchaser's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined below) to the extent deposited, spilled or otherwise caused by Seller, the EPC Contractor, or any of its contractors or agents. Purchaser shall indemnify, defend and hold harmless all of

Seller's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Seller or any of its contractors or agents. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises generally or any deposit, spill or release of any Hazardous Substance.

i. "**Hazardous Substance**" means any chemical, waste or other substance (A) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any Environmental Laws, (B) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (C) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (D) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (E) for which remediation or cleanup is required by any Governmental Authority.

18. Limitations of Liability

a. EXCEPT WITH RESPECT TO PAYMENT OF A TERMINATION PAYMENT, OR IN CONNECTION WITH THIRD-PARTY INDEMNIFICATION CLAIMS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT.

b. **Actual Damages.** Notwithstanding any to the contrary in this Agreement, Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed the total monthly payments made by Purchaser to Seller under this Agreement in the one (1) year prior to a claim. The provisions of this Section 18.b shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise. Any action against Seller must be brought within one (1) year after the cause of action accrues.

19. Dispute Resolution. Disputes between the parties arising out of this Agreement shall be resolved by the following processes:

a. **Negotiation.** The Parties shall first attempt in good faith to resolve any dispute arising out of or relating to this Agreement by negotiation. The Parties' meet and confer process for a Disputed Invoice as detailed above, shall satisfy this negotiation requirement.

b. **Mediation.** Within fifteen (15) days following the receipt of written notice by one Party from the other Party of a demand for mediation, the Parties shall submit the dispute to non-binding mediation administered by the American Arbitration Association under its Commercial Arbitration Rules and Mediation Procedures (or other agreed upon rules), unless waived by mutual stipulation of both Parties.

c. **Civil Action / Venue.** If the Parties are not able to resolve a dispute by, or waive, mediation, then either Party may file a civil action in the Superior Court of California. The Venue for any such action shall be in the County in which the District. The Parties acknowledge and agree that any such action may be adjudicated by way of trial by judge; provided, that neither Party waives any rights they may have to demand a trial by jury during any such action.

20. Force Majeure.

a. "**Force Majeure**" means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; epidemic, pandemic, diseases, quarantines or travel bans; the binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); unavailability of equipment, supplies, products, or electricity from the utility grid (but not to the extent that any such unavailability of any of the foregoing results from the failure of the Party claiming

Force Majeure to have exercised reasonable diligence); and failure of equipment not utilized by or under the control of the Party claiming Force Majeure.

b. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations (including, with respect to Seller, its EPC Contractor's obligations under the EPC Contractor License Agreement and/or the EPC Contract) under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure event gives the other Party written notice thereof; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. The Term shall be extended day for day for each day performance is suspended due to a Force Majeure event.

c. If a Force Majeure event continues for a period of one hundred (180) days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, then the Parties shall, within thirty (30) days following receipt by the other Party of notice of such Force Majeure event, meet and attempt in good faith to negotiate amendments to this Agreement (the "**Force Majeure Amendment Period**"). If the Parties are unable to agree upon such amendments within the Force Majeure Amendment Period, then the Party not claiming Force Majeure shall have the right to terminate this Agreement without either Party having further liability under this Agreement except with respect to System removal, payment of amounts accrued prior to termination and actions or omissions that occur prior to termination. Notwithstanding the above, to the extent that a Change in Law amounts to a Force Majeure event and such event occurs after the fifth (5th) anniversary of the Commercial Operation Date, Purchaser shall have the option to purchase the System from Seller pursuant to Section 15(b) prior to the expiration of the Force Majeure Amendment Period; provided, however, that if Purchaser does not purchase the System at the end of the Force Majeure Amendment Period, then Seller shall have the right to terminate this Agreement without either Party having further liability under this Agreement except with respect to System removal, payment of amounts accrued prior to termination and actions or omissions that occur prior to termination.

d. Seller is aware that at the time of the execution of the Agreement, and for the foreseeable future, the performance of construction at the Premises has been impacted and may be impacted by the COVID-19 pandemic. Any disruption or delay in the EPC Contractor's performance of construction under this Agreement on Seller's behalf in any way related to COVID-19, including, without limitation, a future federal, state, and/or local statute, order, rule, regulation, ordinance, and/or directive relating to site safety in connection with COVID-19, shall not be considered a Force Majeure event unless it renders the EPC Contractor's performance of construction impossible or illegal or is otherwise prohibited by such future federal, state, and/or local statute, order, rule, regulation, ordinance, and/or directive. For the purposes of this Agreement, the Parties agree that it is foreseeable at the time of execution of the Agreement that federal, state, or local authorities having jurisdiction over the Work may institute and/or adopt a statute, order, rule, regulation, ordinance, and/or directive relating to construction site safety in connection with COVID-19 that may delay, but not prevent, performance of construction of the System.

e. Seller is aware that governmental agencies and utilities, including, without limitation, the Division of the State Architect, the Department of General Services, gas companies, electrical utility companies, water districts, and other agencies (collectively, the "**Review Agencies**") may have to approve Seller's prepared drawings or approve a proposed installation. Seller and the EPC Contractor have included in the construction schedule to the EPC Contractor License Agreement, which is incorporated herein by reference (the "**Construction Schedule**"), time for possible review of its drawings and for reasonable delays caused by such agencies. Seller and the EPC Contractor are entitled to additional time in the Construction Schedule for review of Seller's drawings or other approvals from the Review Agencies if all of the following conditions have been satisfied:

i. The time for this review is in excess of the time expressly allocated for this review in the Construction Schedule;

ii. Seller has diligently pursued review/approval from the Review Agencies;

iii. Seller's drawings and proposed installation are consistent with IR 16-8 in effect as of the date of this Agreement; and

iv. Seller's drawings and proposed installation are consistent with Seller's pre-check(ed) ("**PC**") design as of the date of this Agreement, where applicable, except as modified at the Purchaser's request.

21. Assignment and Financing.

a. Assignment. This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party. Notwithstanding the foregoing, Seller may, without the prior written consent of Purchaser, directly or indirectly (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party, (ii) assign this Agreement and the System to an Affiliate or subsidiary of Seller, (iii) assign this Agreement and the System to any entity through which Seller is obtaining financing or capital for the System, (iv) assign this Agreement and the System to any person succeeding to all or substantially all of the assets of Seller and (v) assign this Agreement and the System to any assignee that (A) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to those contemplated by this Agreement, or will contract with parties who have such experience and (B) has the financial capability to maintain the System and provide the services contemplated by this Agreement in the manner required by this Agreement. In the event of any such permitted assignment, Seller shall be released from all its liabilities and other obligations under this Agreement. Notwithstanding the foregoing, any assignment of Seller's rights and/or obligations under this Agreement shall not materially impact Purchaser's rights and obligations under this Agreement. This Agreement shall be binding on and inure to the benefit of a Party's successors and permitted assignees.

b. Financing. The Parties acknowledge that Seller may obtain construction and long-term financing or other credit support from one or more Financing Parties. "**Financing Parties**" means a person or persons providing construction or permanent financing to Seller or an Affiliate of Seller in connection with construction, ownership, operation and maintenance of the System or, if applicable, any person to whom Seller has transferred the ownership interest in the System. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties; provided, that such changes do not alter the fundamental economic terms of this Agreement. In connection with an assignment pursuant to Section 21.a and within five (5) business days after receipt of a written request by Seller, Purchaser agrees to execute any consent, estoppel or acknowledgement in form and substance reasonably acceptable to such Financing Parties.

c. Successor Servicing. The Parties further acknowledge that in connection with any construction or long term financing or other credit support provided to Seller or its Affiliates by Financing Parties, that such Financing Parties may require that Seller or its Affiliates appoint a third party to act as backup or successor provider of operation and maintenance services with respect to the System and/or administrative services with respect to this Agreement (the "**Successor Seller**"). Purchaser agrees to accept performance from any Successor Seller so appointed so long as such Successor Seller is duly licensed and performs in accordance with the terms of this Agreement.

d. Purchaser Acknowledgement. Purchaser acknowledges that Seller shall have the right to finance the System with financing accommodations from a Financing Party and that Seller's obligations may be secured by, among other collateral, a pledge or collateral assignment of this Agreement and a first security interest in the System. In order to facilitate such necessary financing, Purchaser agrees as set forth below.

i. Financing Party's Right to Cure.

(1) Upon receipt of the name and notice address of a Financing Party, Purchaser will not exercise any right to terminate this Agreement unless Purchaser has given the Financing Party prior written notice at the address provided to Purchaser in writing of any event giving rise to Purchaser's right to terminate this Agreement. Purchaser's notice of intent to terminate this Agreement must specify the condition giving rise to such right. Notwithstanding any contrary term or provision in this Agreement, Financing Party shall have forty-five (45) days beyond the cure period provided to Seller pursuant to this Agreement to cure the condition. Purchaser's and Seller's obligations under this Agreement will otherwise remain in effect and are required to be fully performed during any cure period.

(2) If the Financing Party or its assignee has commenced and is diligently pursuing judicial proceedings to acquire title to or control of the System, or has acquired title to or taken control of the System, and in either event cures all existing Default Events of Seller that are capable of being cured by

Financing Party or its assignee subject to and within the time allowed by Section 13 and assumes in writing the obligations of Seller hereunder, then this Agreement will continue in full force and effect.

ii. Notice of Default Events. Upon and at any relevant time after receipt of the notice provided for in Section 21.d.i, Purchaser agrees to deliver to the Financing Party a copy of any notice of a Default Event by Seller simultaneously with the delivery of such notice by Purchaser to Seller.

22. Confidentiality.

a. Confidentiality. Subject to the requirements of the California Public Records Act and/or the Freedom of Information Act, if either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the System or of Purchaser's business (collectively, "**Confidential Information**") to the other Party or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other Party, the receiving Party shall (i) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (ii) refrain from using such Confidential Information, except in the negotiation and performance of this Agreement, including but not limited to obtaining financing for the System. Notwithstanding the above, a Party may provide such Confidential Information to its Affiliates, and its and its Affiliates' officers, directors, members, managers, employees, agents, contractors, consultants, lenders, potential lenders, counsel to a Party or its lenders or potential lenders, and potential assignees (collectively, "**Representatives**") of this Agreement (provided and on condition that such Representatives be bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information), in each case whose access is reasonably necessary to the negotiation, financing, enforcement, performance and/or assignment of this Agreement. Any recipient of Confidential Information as set forth herein above shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for a breach of this provision by its Representatives. The terms of this Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Section 22.a, except as set forth in Section 22.b. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party agrees that the disclosing Party may be irreparably injured by a breach of this Section 22.a by the receiving Party or its Representatives and that the disclosing Party may be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of a breach of this Section 22.a. To the fullest extent permitted by Applicable Law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 22.a, but shall be in addition to all other remedies available at law or in equity.

b. Permitted Disclosures. Subject to the requirements of the California Public Records Act and/or the Freedom of Information Act and notwithstanding any other provision in this Agreement, neither Party shall be required to hold confidential any information that (i) becomes publicly available other than through the receiving Party, (ii) is independently developed by the receiving Party or its Representatives without reference to, reliance on, or use of Confidential Information or (iii) is already known, made available or becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of Confidential Information is required by a Governmental Authority under Applicable Law or pursuant to a validly issued subpoena, the receiving Party shall be permitted to disclose that portion (and only that portion) of the Confidential Information that it is legally required to disclose; provided, that, to the extent permitted by Applicable Law, it notifies the disclosing Party of such required disclosure promptly upon becoming aware of such required disclosure and cooperates with the disclosing Party in efforts to limit the disclosure to the maximum extent permitted by law.

23. Goodwill and Publicity. Neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon and approve any publicity materials, press releases or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement. Neither Party shall make any press release or public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law) without the specific prior written consent of the other Party. Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and Environmental Incentives and any related reporting rights. Notwithstanding the foregoing, Seller may, without Purchaser's consent, issue promotional or advertising materials regarding the System that do not identify Purchaser.

24. Miscellaneous Provisions.

a. **Choice of Law**. This Agreement shall be governed by the laws of the State of California without giving effect to conflict of laws principles.

b. **Notices**. All notices under this Agreement shall be in writing and shall be by personal delivery, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either Party may specify in writing. Each Party shall deem a document sent in PDF form to it as an original document.

c. **Further Assurances**. Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

d. **Right of Waiver**. Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time (other than with respect to and/or relating to the obligation to make any payment due under this Agreement); provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.

e. **Non-Dedication of Facilities; Seller Not A Utility**. Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this agreement. Purchaser acknowledges and agrees that, for purposes of this Agreement, Seller is not a "utility" as such term is used in Section 366 of the United States Bankruptcy Code and Purchaser agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein Purchaser is a debtor. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller shall have the right to terminate this Agreement without further liability, and Seller shall remove the System in accordance with Section 11 of this Agreement.

f. **Service Contract**. The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser shall not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.

g. **No Partnership**. No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.

h. **Independent Contractor Status**. While engaged in carrying out the performance of this Agreement, the Seller is an independent contractor, and not an officer, employee, agent, partner, or joint venture of the District. Seller shall be solely responsible for its own Worker's Compensation insurance, taxes, and other similar charges or obligations. Seller 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.

i. **Full Agreement, Modification, Invalidity, Counterparts, Captions**. This Agreement, together with any Exhibits, completely and exclusively states the agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. No extrinsic evidence whatsoever shall be admissible to modify or supplement, explain, or vary the terms of this completely integrated writing agreement. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of Applicable Law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.

j. **Forward Contract**. The transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

k. **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 the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of such person, and therefore the Seller agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment Practice Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Seller agrees to require like compliance by all its subcontractor(s).

l. **No Third-Party Beneficiaries**. Except for assignees, Financing Parties, and Successor Sellers permitted under Section 21, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person.

m. **Compliance with Laws**: Seller shall require its EPC Contractor to give all notices and comply with all laws, ordinance, rules and regulations bearing on conduct of the Work as indicated or specified herein. If Seller observes that any of the Work required by this Agreement is at variance with any such laws, ordinance, rules or regulations, Seller shall notify the District in writing and the District shall determine if there are any necessary changes to the scope of the Work and this Agreement shall be appropriately amended in writing. If the EPC Contractor performs any Work that Seller knows is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Seller shall bear all costs arising therefrom.

n. **Right to Audit**: District retains the right to reasonably review and audit, and the reasonable right of access to Seller's premises to review and audit, Seller's compliance with the provisions of this Agreement ("Audit Right"). The Audit Right includes the right to reasonably inspect, photocopy, and to retain copies, outside of the Seller's premises, of any and all Project-related records and other information with appropriate safeguards, if such retention is required by applicable law or demanded from a Department of Division of the State of California or other local or governmental authority with applicable oversight jurisdiction over the District. The Seller shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. Upon District's request, the Seller shall submit exact duplicates of originals of all requested records to the District within thirty (30) days and Seller shall retain all Project-related records and other information with appropriate safeguards during the Term of this Agreement and for a minimum of seven (7) years thereafter. The District shall keep this information confidential, as allowed by applicable law and return all confidential and proprietary information after the audit has been completed.

o. **Labor Code Requirements and Compliance with Community Workforce Agreement**

i. Seller acknowledges that the EPC Contractor and all other contractors and laborers performing labor on the Premises pursuant to this Agreement and the EPC Contract shall be subject to that certain June 27, 2017 Community Workforce Agreement (the "**CWA**") by and between the Santa Ana Unified School District, the Los Angeles and Orange Counties Building and Construction Trades Council and the Signatory Craft Councils and Unions, attached hereto as **Exhibit 12**.

ii. Seller, to the extent applicable, and all other contractors, including the EPC Contractor, and laborers performing labor on the Premises pursuant to this Agreement and the EPC Contract shall comply with all applicable provisions of the California Labor Code, Division 3, Part 7, Chapter 1, Articles 1-5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of

more than one thousand dollars ($1,000). Copies of the prevailing rate of per diem wages are on file with the District.

iii. Seller specifically acknowledges and understands that the District and/or the State of California monitors and enforces compliance with Labor Code and the CWA requirements through statutorily-authorized programs and the Seller shall require the EPC Contractor to perform the Work while complying with all the applicable provisions of those programs at no cost to the District, except as expressly provided herein.

iv. Seller, to the extent applicable, and all other contractors, including the EPC Contractor, and laborers performing labor on the Premises pursuant to this Agreement and the EPC Contract shall comply with Chapter 1 of Division 2, Part 7 of the California Labor Code, beginning with Section 1720, and including Section 1735, 1777.5 and 1777.6, forbidding discrimination, and Sections 1776, 1777.5 and 1777.6 concerning the employment of apprentices by EPC Contractor or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts.

p. **Registration:** Seller, to the extent applicable, and all other contractors, including the EPC Contractor, and laborers performing labor on the Premises pursuant to this Agreement and the EPC Contract shall comply with the applicable registration and qualification requirements pursuant to sections 1725.5 and 1771.1 of the California Labor Code.

q. **Certified Payroll Records**: Seller, to the extent applicable, and all other contractors, including the EPC Contractor, and laborers performing labor on the Premises pursuant to this Agreement and the EPC Contract shall keep accurate certified payroll records of employees performing labor on the Premises and shall make them available to the District as required by Applicable Law.

r. **Survival**. Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, Section 7.kk (Warranty Disclaimer), Section 8.d (Premises Access Rights), Section 11 (Removal of System at Expiration of Term), Section 13.a.vii (Remedies), Section 13.a.vii (Obligations Following Termination for Default), Section 14 (Representations, Warranties, and Covenants), Section 15.b (Insurance Coverage), Section 17 (Indemnification), Section 18 (Limitations of Liability), Section 19 (Dispute Resolution), Section 22 (Confidentiality), Section 223 (Goodwill and Publicity), Section 24.a (Choice of Law), Section 24.b (Notices), Section 24.e (Non-Dedication of Facilities; Seller Not A Utility), Section 24.f (Service Contract), Section 24.g (No Partnership), Section 24.i (Full Agreement, Modification, Invalidity, Counterparts, Captions), Section 24.gj (Forward Contract), Section 24.l (No Third Party Beneficiaries), and this Section 24.l (Survival). Notwithstanding anything to the contrary herein, Purchaser acknowledges and agrees that, except in the case of a Default Event by Seller, the early termination of this Agreement (whether pursuant to the terms thereof or otherwise) shall not affect the rights of Seller under the License or otherwise result in a termination of the License, and (i) Seller shall nonetheless have the right to maintain the System at the Premises, and (ii) Seller shall have the right to sell the power produced by the System, or any portion of such power, directly to the grid, and Purchaser shall, if requested by Seller or any utility provider to which Seller grants the right to construct, own, operate and maintain such utility at the Premises as provided under the License, execute a utility interconnection agreement or other documents to permit Seller to interconnect the System to the electrical system of the Premises and transmit power to the utility or utilities either directly or through the electrical system of the Premises, and sell such power to the utility provider or a third party; provided, however, that (A) Purchaser's failure to execute any such agreement shall not invalidate or void any rights granted by Seller to such utility pursuant to the preceding sentence, and (B) in furtherance of the foregoing obligations of Purchaser, Purchaser hereby appoints Seller as Purchaser's true and lawful attorney-in-fact, in its name or in Seller's name, with full power and authority to enter into any such agreement for and on behalf of Purchaser and to bind Purchaser to the terms of any such agreement, which power of attorney is coupled with an interest and shall be irrevocable. The Parties acknowledge that if the License continues to be in full force and effect after the early termination of this Agreement, the provisions of this Agreement that are cross-referenced in the License shall survive termination of this Agreement.

Exhibit 3

System Description, Delivery Point and Premises

1. **System Location:** See below. Final site selection, system sizes and locations to be determined.

	Site Name	Site Address
1	John Adams Elementary School	2130 S. Raitt St.
2	Wallace R. Davis Elementary School	1405 French St.
3	Diamond Elementary School	1450 S. Center St.
4	Thomas A. Edison Elementary School	2063 Orange Ave.
5	Manuel Esqueda Elementary School	2240 S. Main St.
6	Fairview Facilities Building	720 N Fairview St.
7	John C. Fremont Elementary School	1930 W. Tenth St.
8	Greenville Fundamental School	3600 S. Raitt St.
9	Heroes Elementary School	1111 West Civic Center Drive
10	Herbert Hoover Elementary School	408 E. Santa Clara Ave.
11	Andrew Jackson Elementary School	1143 S. Nakoma Dr.
12	John F. Kennedy Elementary School	1300 E. McFadden Ave.
13	Julia C. Lathrop Technology Magnet Intermediate	1111 S. Broadway
14	James Russell Lowell Elementary School	700 S. Flower St.
15	James Madison Elementary School	1124 Hobart St.
16	James Monroe Elementary School	417 E. Central Ave.
17	Pio Pico Elementary School	931 W. Highland St.
18	Roosevelt Elementary School	501 Halladay St.
19	Santiago Elementary School	2212 N. Baker St.
20	Jose A. Sepulveda Elementary School	1801 S. Poplar St.
21	Raymond A. Villa Fundamental Intermediate	1441 E. Chestnut Ave.
22	Woodrow Wilson Elementary School	1317 N. Baker St.

2. **System Size (DC kW):** 7,018.0 Portfolio

3. **Estimated Annual Production (kWh/year):** As set forth in **Exhibit 6.**

4. **Expected Structure:** Carport / Canopy

5. **Delivery Point and Premises:** Preliminary solar drawings are attached hereto as Schedule A to this **Exhibit 3**, which contain images of the:

   (i) Premises;
   (ii) System;
   (iii) Delivery Points; and
   (iv) Access points needed for Seller to install and service the System (bldg access, electrical room, stairs etc.)

6. **Additional Considerations:**

   a. Seller will work with Purchaser throughout planned modernizations (i.e., parking lot upgrades including paving and striping) to ensure System installations can be completed as contemplated herein.

The above System Description is based on known conditions as of the Effective Date and determined by the Parties in good faith. The

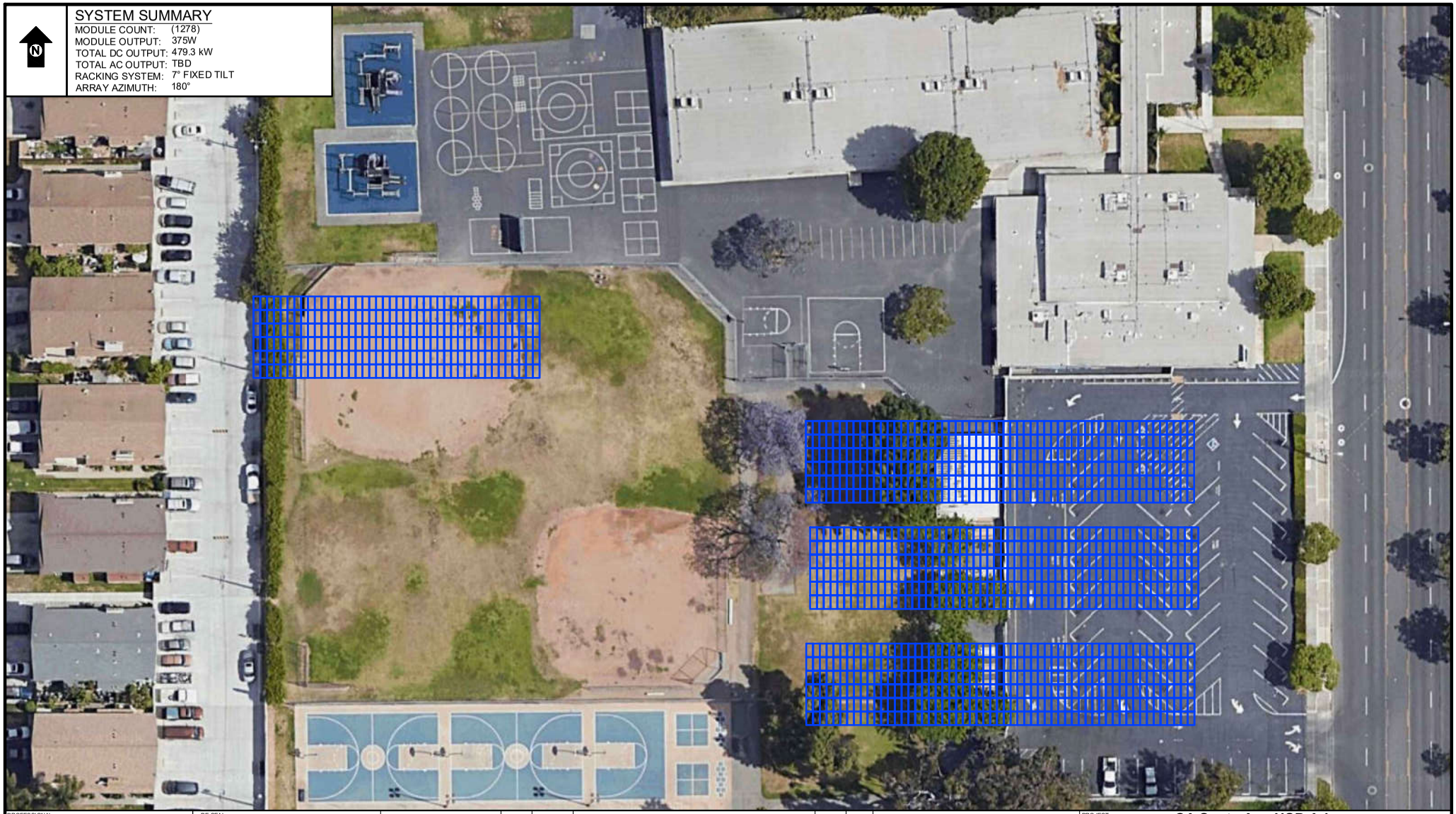
final System Description may vary from the initial description set forth above and, following final completion of the System, the above details will be updated to reflect the System Description of the as-built System. The Parties hereby acknowledge and agree that such adjustments to the System Description shall be memorialized in a signed amendment to this Agreement.

Schedule A to Exhibit 3

See drawings attached.

SYSTEM SUMMARY

MODULE COUNT:	(1278)
MODULE OUTPUT:	375W
TOTAL DC OUTPUT:	479.3 kW
TOTAL AC OUTPUT:	TBD
RACKING SYSTEM:	7° FIXED TILT
ARRAY AZIMUTH:	180°



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NO.	DATE	REVISIONS	BY	APP
0	08/06/20	CONCEPTUAL DESIGN	MG	JW

PRELIMINARY DRAWING

ONYX
Onyx Renewable Partners L.P.
230 Park Avenue, Suite 845
New York, NY 10169

PROJECT TITLE: **CA Santa Ana USD Adams**

PROJECT ADDRESS: **2130 S Raitt St., Santa Ana, CA 92704**

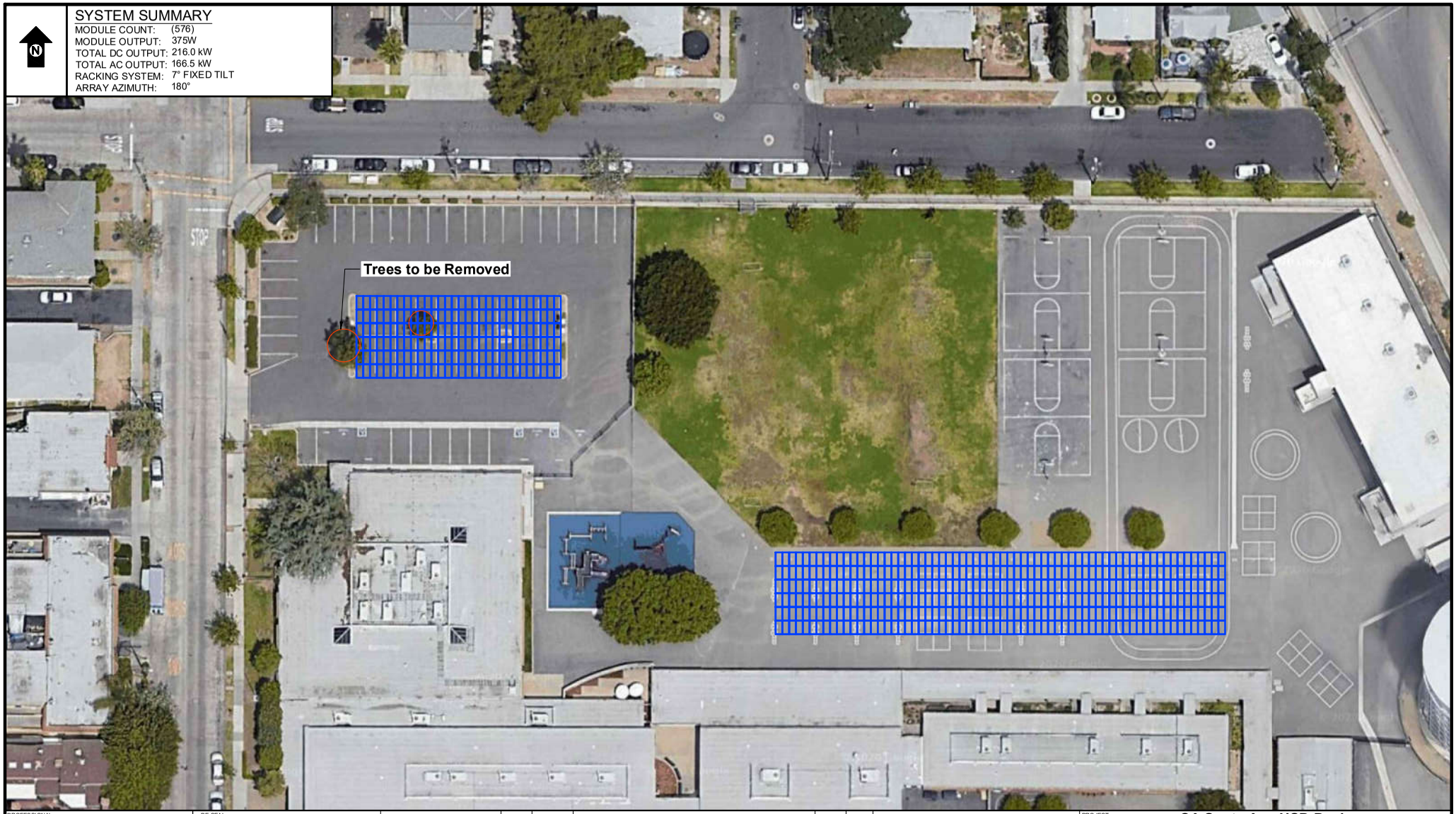
DRAWING NO.: **C-101**

SHEET NAME: **CONCEPTUAL LAYOUT**

SCALE	PROJECT NO	PLOT DATE	SHEET SIZE
1" = 20'		08/06/2020	ARCH D 36" X 24"

SYSTEM SUMMARY

MODULE COUNT:	(576)
MODULE OUTPUT:	375W
TOTAL DC OUTPUT:	216.0 kW
TOTAL AC OUTPUT:	166.5 kW
RACKING SYSTEM:	7° FIXED TILT
ARRAY AZIMUTH:	180°



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PRELIMINARY DRAWING

ONYX
Onyx Renewable Partners L.P.
230 Park Avenue, Suite 845
New York, NY 10169

PROJECT TITLE: **CA Santa Ana USD Davis**

PROJECT ADDRESS: **1405 French St, Santa Ana, CA 92701**

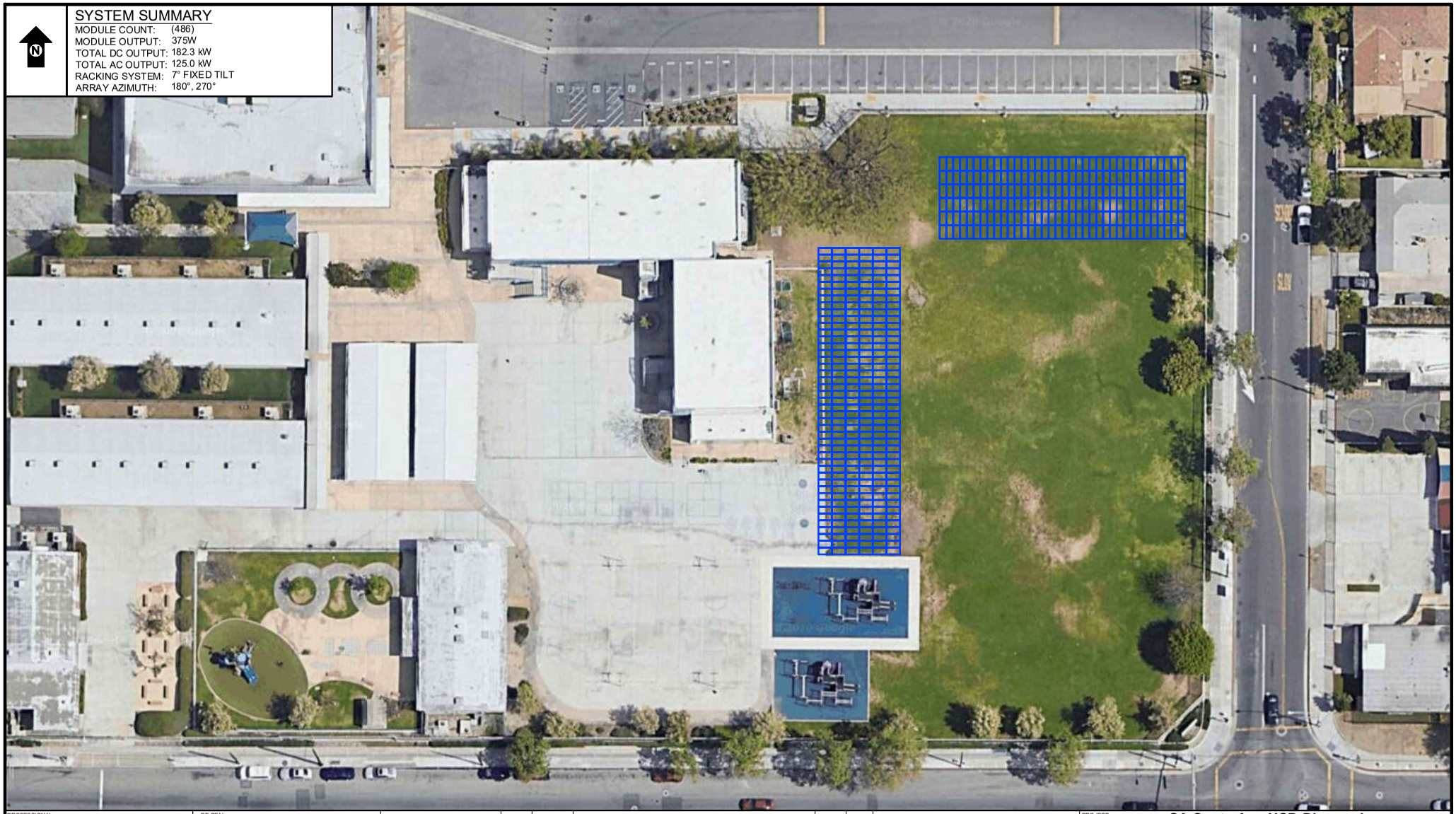
DRAWING NO.: **C-101**

SHEET NAME: **CONCEPTUAL LAYOUT**

SCALE	PROJECT NO	PLOT DATE	SHEET SIZE
1" = 30'		08/06/2020	ARCH D 36" X 24"

SYSTEM SUMMARY

MODULE COUNT:	(486)
MODULE OUTPUT:	375W
TOTAL DC OUTPUT:	182.3 kW
TOTAL AC OUTPUT:	125.0 kW
RACKING SYSTEM:	7° FIXED TILT
ARRAY AZIMUTH:	180°, 270°



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PRELIMINARY DRAWING

ONYX
Onyx Renewable Partners L.P.
230 Park Avenue, Suite 845
New York, NY 10169

PROJECT TITLE: **CA Santa Ana USD Diamond**

PROJECT ADDRESS: **1450 S. Center St., Santa Ana, CA 92704**

DRAWING NO.: **C-101**

SHEET NAME: **CONCEPTUAL LAYOUT**

SCALE: 1" = 20'

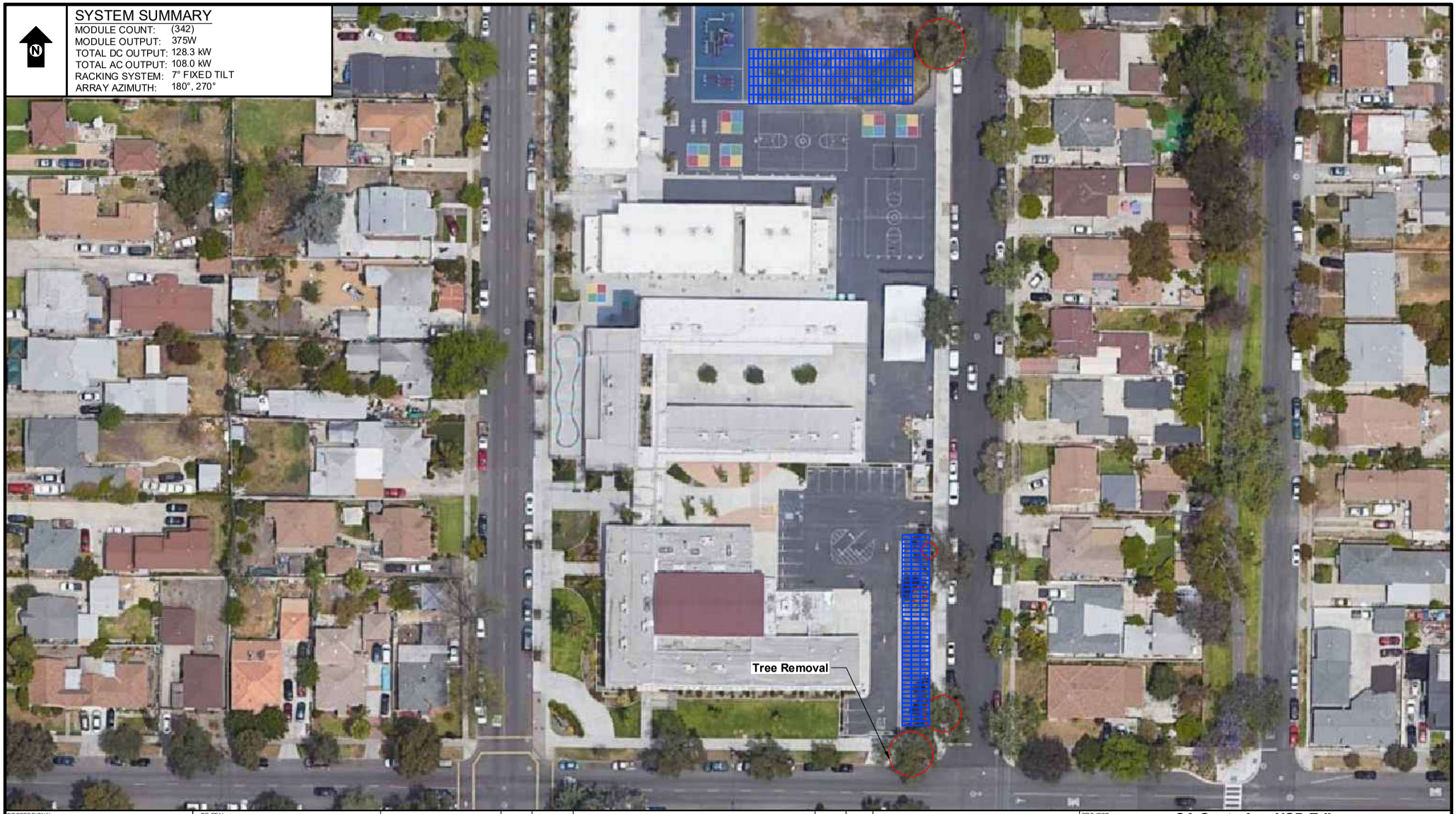
PROJECT NO:

PLOT DATE: 08/06/2020

SHEET SIZE: ARCH D 36" X 24"

SYSTEM SUMMARY

MODULE COUNT:	(342)
MODULE OUTPUT:	375W
TOTAL DC OUTPUT:	128.3 kW
TOTAL AC OUTPUT:	108.0 kW
RACKING SYSTEM:	7° FIXED TILT
ARRAY AZIMUTH:	180°, 270°



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ONYX
Onyx Renewable Partners L.P.
230 Park Avenue, Suite 845
New York, NY 10169

PROJECT TITLE: **CA Santa Ana USD Edison**

PROJECT ADDRESS: **2063 Orange Ave., Santa Ana, CA 92707**

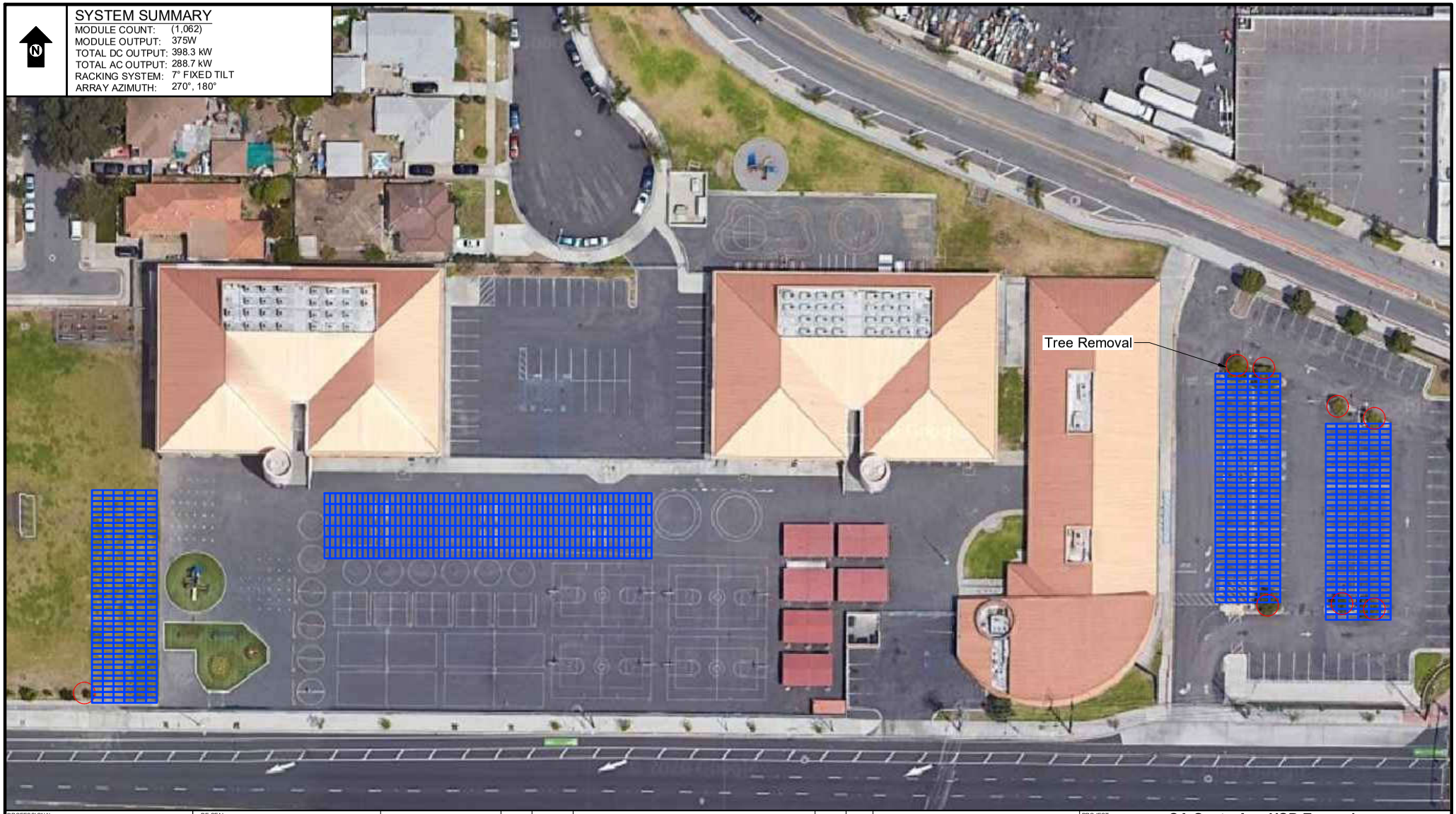
DRAWING NO.: **C-101**

SHEET NAME: **CONCEPTUAL LAYOUT**

SCALE	PROJECT NO	PLOT DATE	SHEET SIZE
1" = 30'		08/06/2020	ARCH D 36" X 24"

SYSTEM SUMMARY

MODULE COUNT:	(1,062)
MODULE OUTPUT:	375W
TOTAL DC OUTPUT:	398.3 kW
TOTAL AC OUTPUT:	288.7 kW
RACKING SYSTEM:	7° FIXED TILT
ARRAY AZIMUTH:	270°, 180°



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PRELIMINARY DRAWING

ONYX
Onyx Renewable Partners L.P.
230 Park Avenue, Suite 845
New York, NY 10169

PROJECT TITLE: **CA Santa Ana USD Esqueda**

PROJECT ADDRESS: **2240 S MAIN ST, SANTA ANA**

DRAWING NO.: **C-101**

SHEET NAME: **CONCEPTUAL LAYOUT**

SCALE	PROJECT NO	PLOT DATE	SHEET SIZE
1" = 25'		08/06/2020	ARCH D 36" X 24"

SYSTEM SUMMARY

MODULE COUNT:	(1,314)
MODULE OUTPUT:	375W
TOTAL DC OUTPUT:	492.75 kW
TOTAL AC OUTPUT:	299.7 kW
RACKING SYSTEM:	7° FIXED TILT
ARRAY AZIMUTH:	116.8°, 125.7°

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PRELIMINARY DRAWING

Onyx Renewable Partners L.P.
230 Park Avenue, Suite 845
New York, NY 10169

PROJECT TITLE: **CA Santa Ana USD Fairview**

PROJECT ADDRESS: **720 North Fairview St, Santa Ana CA**

DRAWING NO.: **C-101**

SHEET NAME: **CONCEPTUAL LAYOUT**

SCALE: 1" = 30'

PROJECT NO:

PLOT DATE: 08/06/2020

SHEET SIZE: ARCH D 36" X 24"

SYSTEM SUMMARY

MODULE COUNT:	(414)
MODULE OUTPUT:	375W
TOTAL DC OUTPUT:	155.25 kW
TOTAL AC OUTPUT:	TBD
RACKING SYSTEM:	7° FIXED TILT
ARRAY AZIMUTH:	270°

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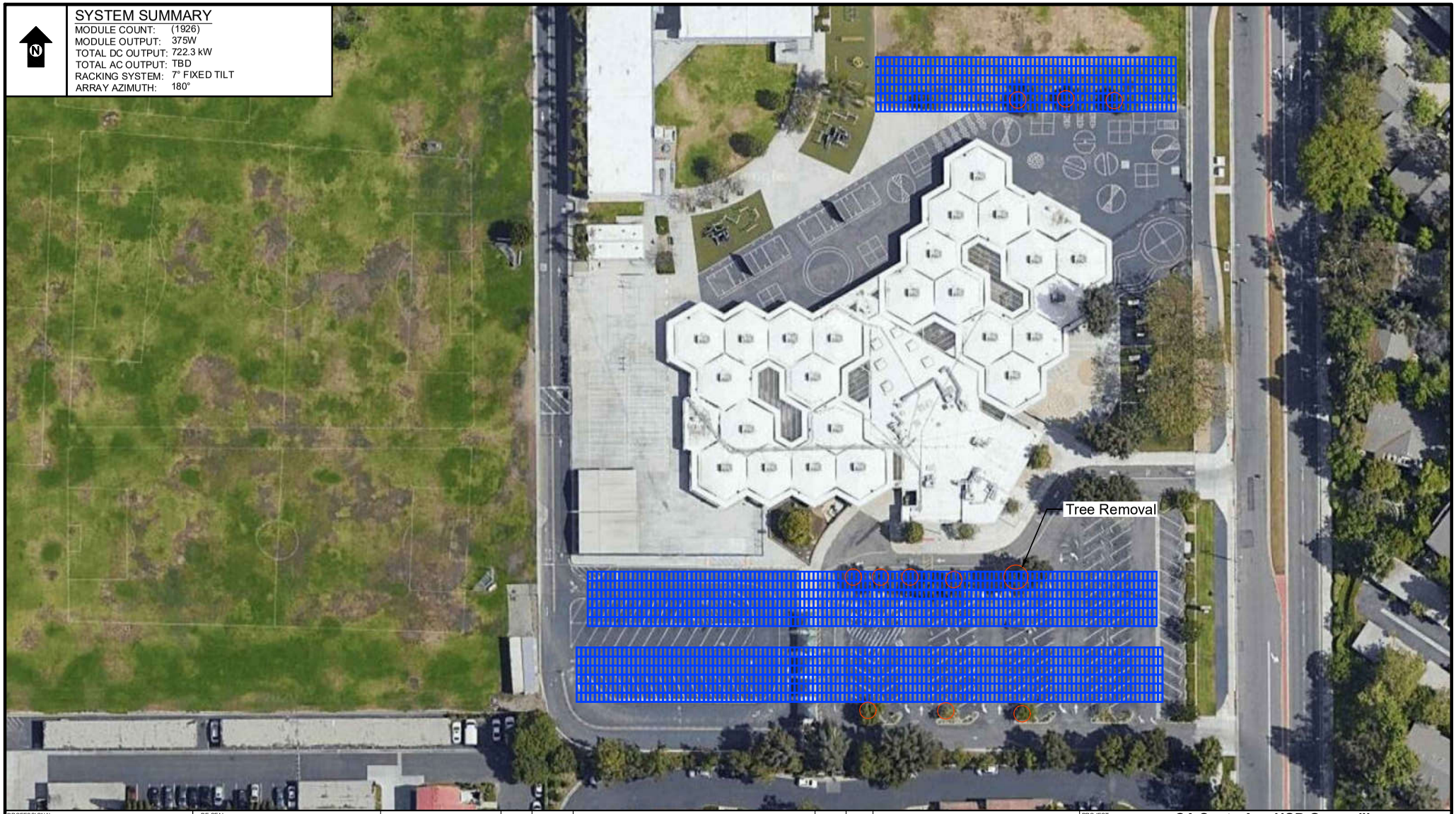
PRELIMINARY DRAWING

ONYX
Onyx Renewable Partners L.P.
230 Park Avenue, Suite 845
New York, NY 10169

PROJECT TITLE	**CA Santa Ana USD Fremont**
PROJECT ADDRESS	**1930 W 10th St, Santa Ana, CA, USA**
DRAWING NO.	**C-101**
SHEET NAME	**CONCEPTUAL LAYOUT**
SCALE	1" = 20'
PROJECT NO	
PLOT DATE	08/06/2020
SHEET SIZE	ARCH D 36" X 24"

SYSTEM SUMMARY

MODULE COUNT:	(1926)
MODULE OUTPUT:	375W
TOTAL DC OUTPUT:	722.3 kW
TOTAL AC OUTPUT:	TBD
RACKING SYSTEM:	7° FIXED TILT
ARRAY AZIMUTH:	180°



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PRELIMINARY DRAWING

ONYX
Onyx Renewable Partners L.P.
230 Park Avenue, Suite 845
New York, NY 10169

PROJECT TITLE: **CA Santa Ana USD Greenville**

PROJECT ADDRESS: **2130 S Raitt St., Santa Ana, CA 92704**

DRAWING NO.: **C-101**

SHEET NAME: **CONCEPTUAL LAYOUT**

SCALE: 1" = 20'

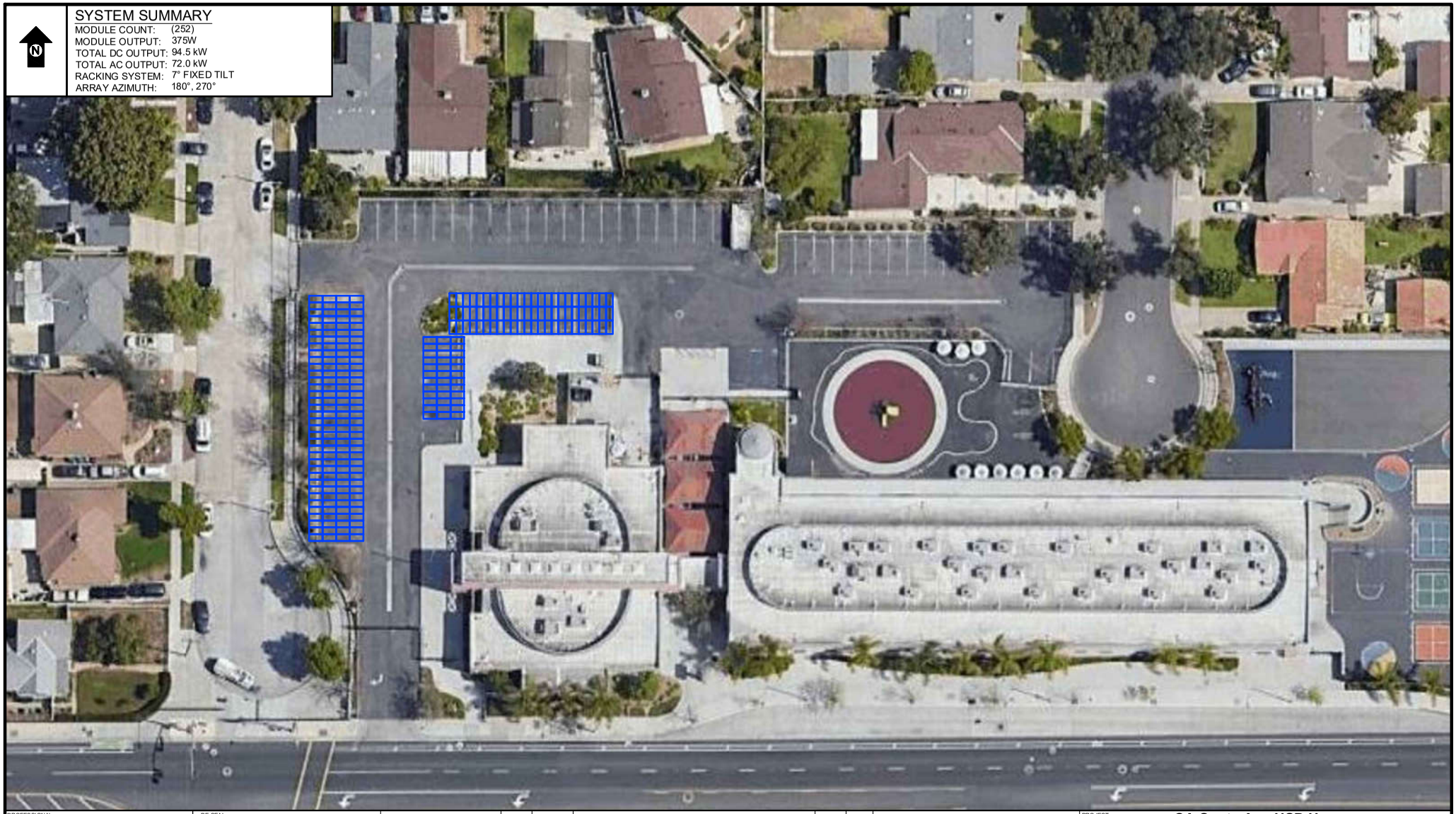
PROJECT NO:

PLOT DATE: 08/06/2020

SHEET SIZE: ARCH D 36" X 24"

SYSTEM SUMMARY

MODULE COUNT:	(252)
MODULE OUTPUT:	375W
TOTAL DC OUTPUT:	94.5 kW
TOTAL AC OUTPUT:	72.0 kW
RACKING SYSTEM:	7° FIXED TILT
ARRAY AZIMUTH:	180°, 270°



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ONYX
Onyx Renewable Partners L.P.
230 Park Avenue, Suite 845
New York, NY 10169

PROJECT TITLE: **CA Santa Ana USD Heroes**

PROJECT ADDRESS: **1111 Civic Center Dr, Santa Ana, CA 92703**

DRAWING NO.: **C-101**

SHEET NAME: **CONCEPTUAL LAYOUT**

SCALE: 1" = 30'

PROJECT NO:

PLOT DATE: 08/06/2020

SHEET SIZE: ARCH D 36" X 24"

SYSTEM SUMMARY

MODULE COUNT:	(450)
MODULE OUTPUT:	375W
TOTAL DC OUTPUT:	168.75 kW
TOTAL AC OUTPUT:	TBD
RACKING SYSTEM:	7° FIXED TILT
ARRAY AZIMUTH:	180°

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PRELIMINARY DRAWING

ONYX
Onyx Renewable Partners L.P.
230 Park Avenue, Suite 845
New York, NY 10169

PROJECT TITLE: **CA Santa Ana USD Hoover**

PROJECT ADDRESS: **408 E Santa Clara Ave, Santa Ana CA**

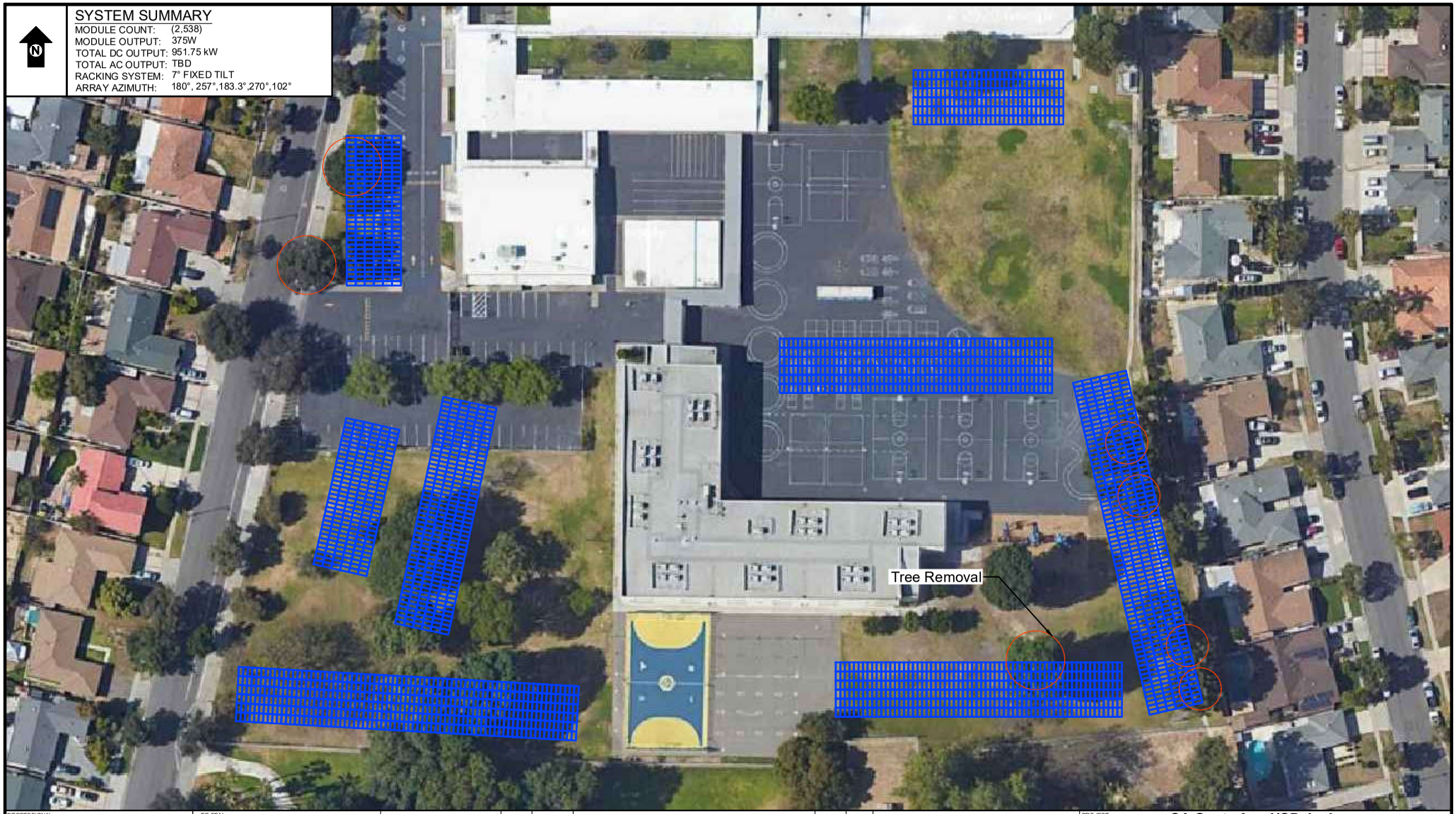
DRAWING NO.: **C-101**

SHEET NAME: **CONCEPTUAL LAYOUT**

SCALE	PROJECT NO	PLOT DATE	SHEET SIZE
1" = 20'		08/06/2020	ARCH D 36" X 24"

SYSTEM SUMMARY

MODULE COUNT:	(2,538)
MODULE OUTPUT:	375W
TOTAL DC OUTPUT:	951.75 kW
TOTAL AC OUTPUT:	TBD
RACKING SYSTEM:	7° FIXED TILT
ARRAY AZIMUTH:	180°, 257°,183.3°,270°,102°



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NO.	DATE	REVISIONS	BY	APP
0	08/06/20	CONCEPTUAL DESIGN	MG	JW

PRELIMINARY DRAWING

ONYX
Onyx Renewable Partners L.P.
230 Park Avenue, Suite 845
New York, NY 10169

PROJECT TITLE	CA Santa Ana USD Jackson
PROJECT ADDRESS	1143 S Nakoma Dr., Santa Ana, CA 92704
DRAWING NO.	C-101
SHEET NAME	CONCEPTUAL LAYOUT
SCALE	1" = 30'
PROJECT NO	
PLOT DATE	08/06/2020
SHEET SIZE	ARCH D 36" X 24"

SYSTEM SUMMARY

MODULE COUNT:	(1,134)
MODULE OUTPUT:	375W
TOTAL DC OUTPUT:	425.3 kW
TOTAL AC OUTPUT:	375.0 kW
RACKING SYSTEM:	7° FIXED TILT
ARRAY AZIMUTH:	180°, 270°

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0	08/06/20	CONCEPTUAL DESIGN	MG	JW

PRELIMINARY DRAWING

ONYX
Onyx Renewable Partners L.P.
230 Park Avenue, Suite 845
New York, NY 10169

PROJECT TITLE: **CA Santa Ana USD Kennedy**

PROJECT ADDRESS: **1300 E MCFADDEN AVE SANTA ANA 92705**

DRAWING NO.: **C-101**

SHEET NAME: **CONCEPTUAL LAYOUT**

SCALE: 1" = 40'

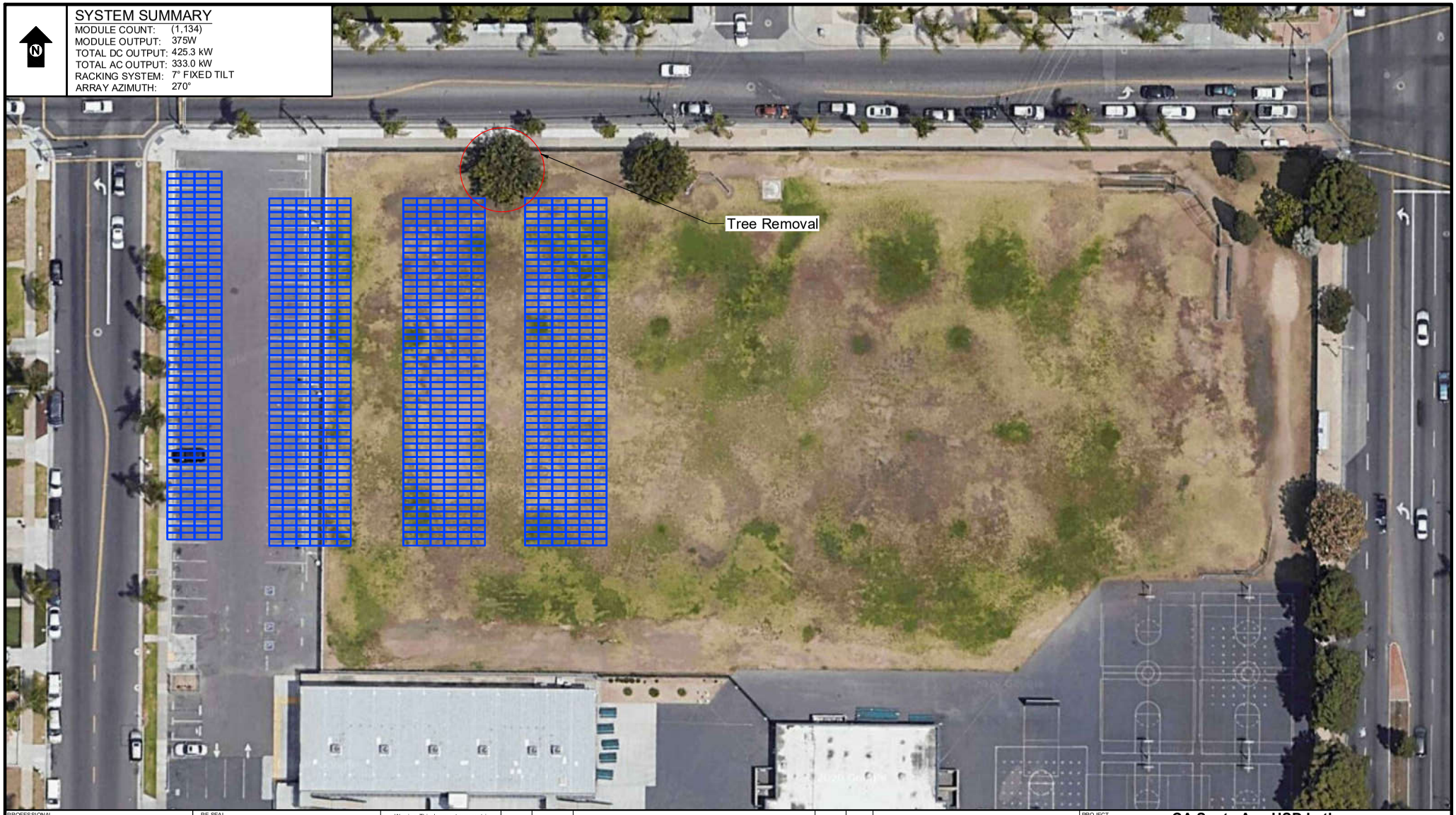
PROJECT NO:

PLOT DATE: 08/06/2020

SHEET SIZE: ARCH D 36" X 24"

SYSTEM SUMMARY

MODULE COUNT:	(1,134)
MODULE OUTPUT:	375W
TOTAL DC OUTPUT:	425.3 kW
TOTAL AC OUTPUT:	333.0 kW
RACKING SYSTEM:	7° FIXED TILT
ARRAY AZIMUTH:	270°



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NO.	DATE	REVISIONS	BY	APP
0	08/06/20	CONCEPTUAL DESIGN	MG	JW

PRELIMINARY DRAWING

ONYX
Onyx Renewable Partners L.P.
230 Park Avenue, Suite 845
New York, NY 10169

PROJECT TITLE: **CA Santa Ana USD Lathrop**

PROJECT ADDRESS: **1111 S BROADWAY SANTA ANA 92707**

DRAWING NO.: **C-101**

SHEET NAME: **CONCEPTUAL LAYOUT**

SCALE	PROJECT NO	PLOT DATE	SHEET SIZE
1" = 40'		08/06/2020	ARCH D 36" X 24"

SYSTEM SUMMARY

MODULE COUNT:	(900)
MODULE OUTPUT:	375W
TOTAL DC OUTPUT:	337.5 kW
TOTAL AC OUTPUT:	250.0 kW
RACKING SYSTEM:	7° FIXED TILT
ARRAY AZIMUTH:	180°, 270°

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NO.	DATE	REVISIONS	BY	APP
0	08/06/20	CONCEPTUAL DESIGN	MG	JW

PRELIMINARY DRAWING

ONYX
Onyx Renewable Partners L.P.
230 Park Avenue, Suite 845
New York, NY 10169

PROJECT TITLE: **CA Santa Ana USD Lowell**

PROJECT ADDRESS: **700 S FLOWER ST SANTA ANA 92703**

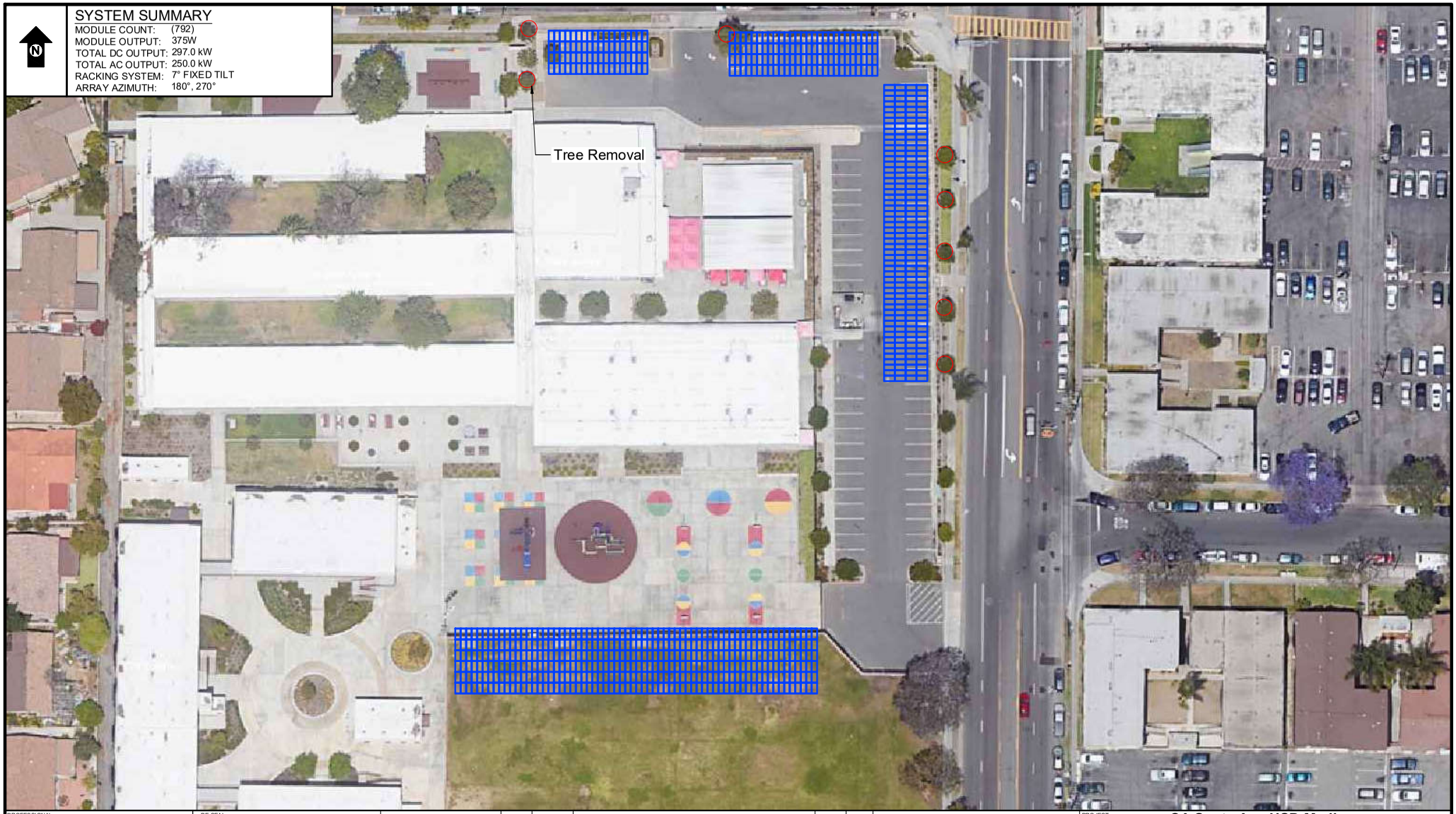
DRAWING NO.: **C-101**

SHEET NAME: **CONCEPTUAL LAYOUT**

SCALE	PROJECT NO	PLOT DATE	SHEET SIZE
1" = 20'		08/06/2020	ARCH D 36" X 24"

SYSTEM SUMMARY

MODULE COUNT:	(792)
MODULE OUTPUT:	375W
TOTAL DC OUTPUT:	297.0 kW
TOTAL AC OUTPUT:	250.0 kW
RACKING SYSTEM:	7° FIXED TILT
ARRAY AZIMUTH:	180°, 270°



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PRELIMINARY DRAWING

ONYX
Onyx Renewable Partners L.P.
230 Park Avenue, Suite 845
New York, NY 10169

PROJECT TITLE: **CA Santa Ana USD Madison**

PROJECT ADDRESS: **1124 HOBART ST SANTA ANA 92707**

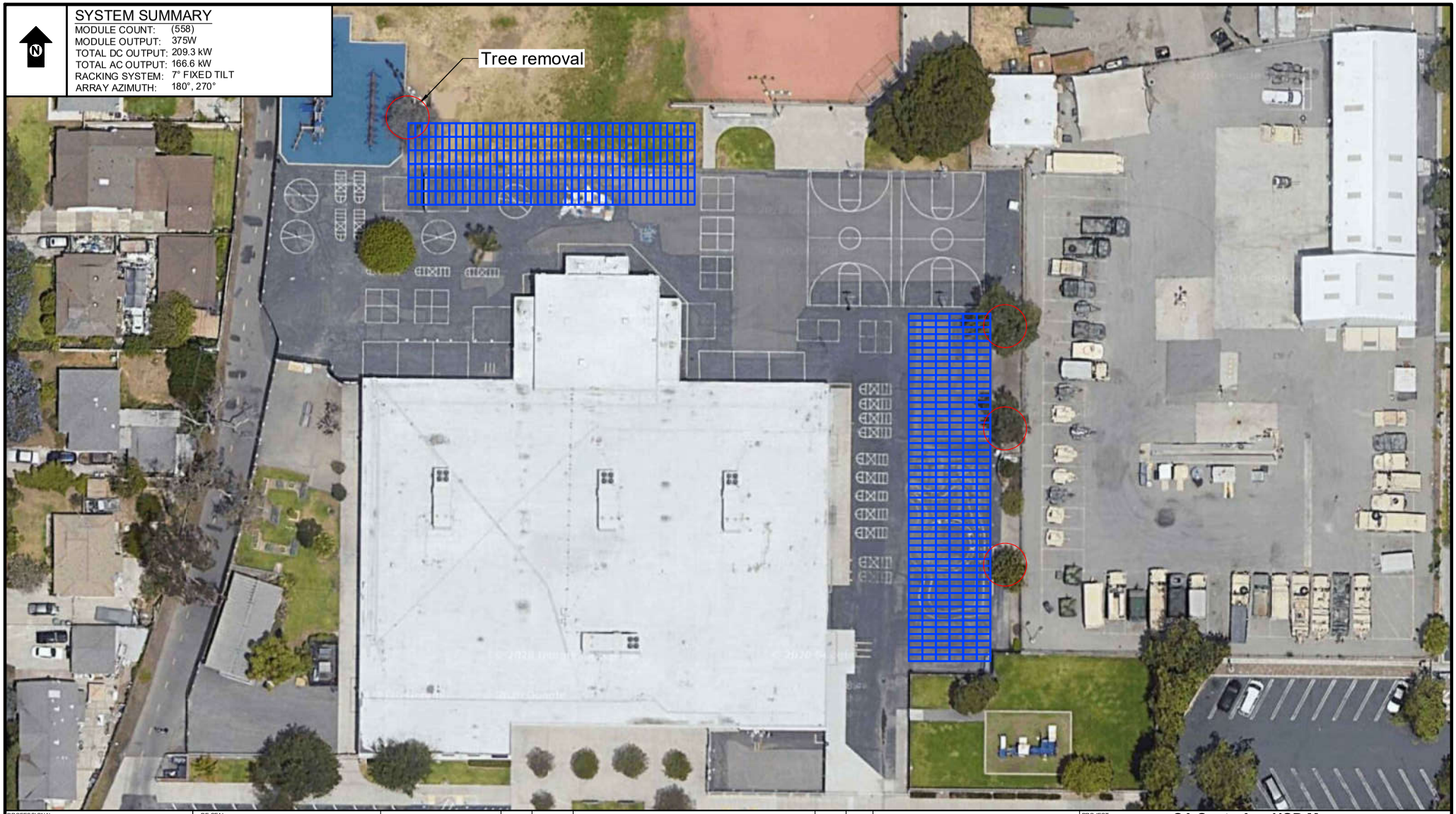
DRAWING NO.: **C-101**

SHEET NAME: **CONCEPTUAL LAYOUT**

SCALE	PROJECT NO	PLOT DATE	SHEET SIZE
1" = 25'		08/06/2020	ARCH D 36" X 24"

SYSTEM SUMMARY

MODULE COUNT:	(558)
MODULE OUTPUT:	375W
TOTAL DC OUTPUT:	209.3 kW
TOTAL AC OUTPUT:	166.6 kW
RACKING SYSTEM:	7° FIXED TILT
ARRAY AZIMUTH:	180°, 270°



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0	08/06/20	CONCEPTUAL DESIGN	MG	JW

PRELIMINARY DRAWING

ONYX
Onyx Renewable Partners L.P.
230 Park Avenue, Suite 845
New York, NY 10169

PROJECT TITLE: **CA Santa Ana USD Monroe**

PROJECT ADDRESS: **417 E CENTRAL AVE SANTA ANA 92707**

DRAWING NO.: **C-101**

SHEET NAME: **CONCEPTUAL LAYOUT**

SCALE	PROJECT NO	PLOT DATE	SHEET SIZE
1" = 25'		08/06/2020	ARCH D 36" X 24"

SYSTEM SUMMARY

MODULE COUNT:	(504)
MODULE OUTPUT:	375W
TOTAL DC OUTPUT:	189.0 kW
TOTAL AC OUTPUT:	144.0 kW
RACKING SYSTEM:	7° FIXED TILT
ARRAY AZIMUTH:	180°, 270°

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0	08/06/20	CONCEPTUAL DESIGN	MG	JW

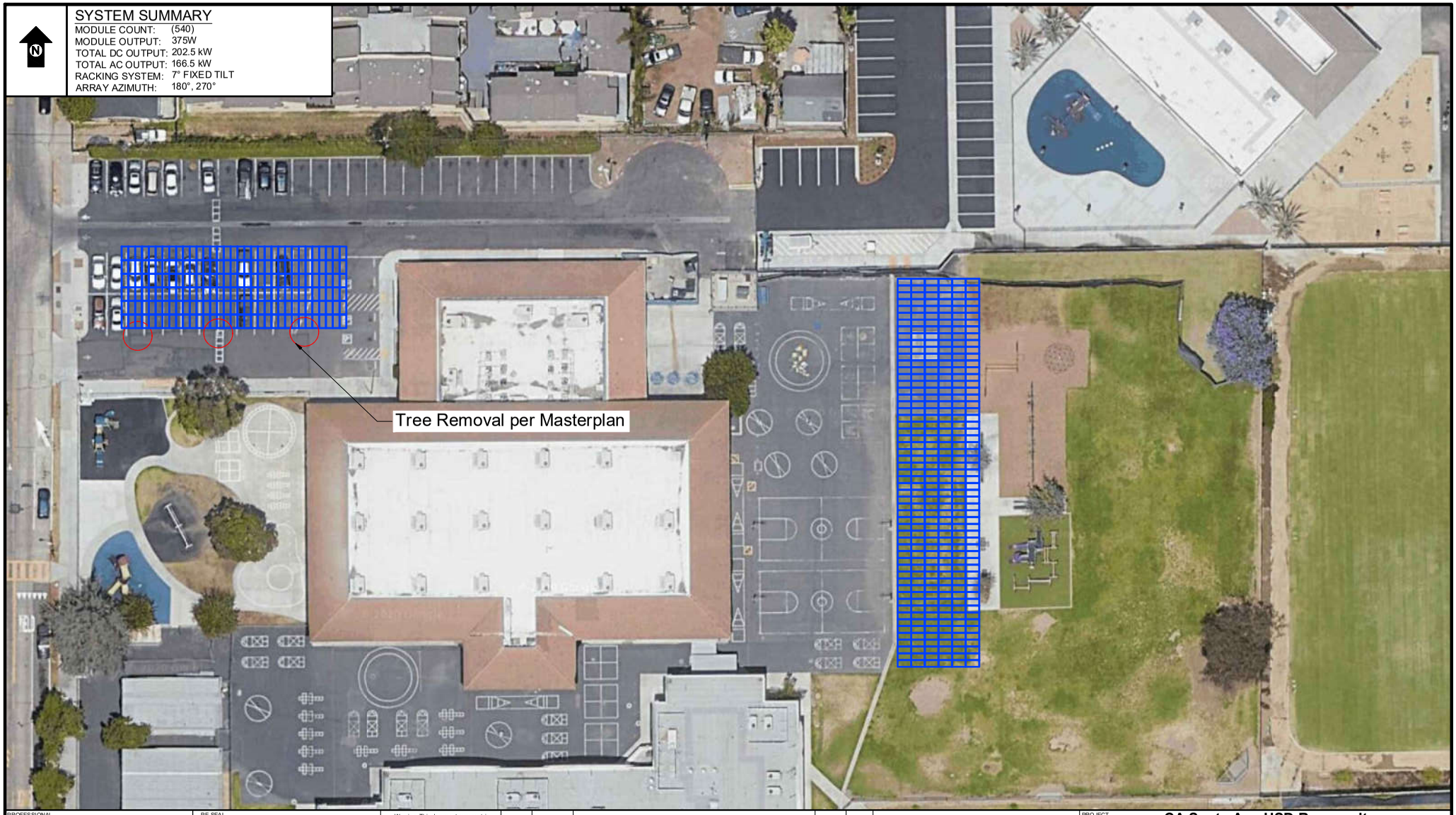
PRELIMINARY DRAWING

ONYX
Onyx Renewable Partners L.P.
230 Park Avenue, Suite 845
New York, NY 10169

PROJECT TITLE	CA Santa Ana USD Pio Pico
PROJECT ADDRESS	931 W. Highland St, Santa Ana, CA 92703
DRAWING NO.	C-101
SHEET NAME	CONCEPTUAL LAYOUT
SCALE	1" = 20'
PROJECT NO	
PLOT DATE	08/06/2020
SHEET SIZE	ARCH D 36" X 24"

SYSTEM SUMMARY

MODULE COUNT:	(540)
MODULE OUTPUT:	375W
TOTAL DC OUTPUT:	202.5 kW
TOTAL AC OUTPUT:	166.5 kW
RACKING SYSTEM:	7° FIXED TILT
ARRAY AZIMUTH:	180°, 270°



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0	08/10/20	CONCEPTUAL DESIGN	MG	JW

PRELIMINARY DRAWING

ONYX
Onyx Renewable Partners L.P.
230 Park Avenue, Suite 845
New York, NY 10169

PROJECT TITLE: **CA Santa Ana USD Roosevelt**

PROJECT ADDRESS: **601 S HALLADAY ST SANTA ANA 92701**

DRAWING NO.: **C-101**

SHEET NAME: **CONCEPTUAL LAYOUT**

SCALE	PROJECT NO	PLOT DATE	SHEET SIZE
1" = 20'		08/10/2020	ARCH D 36" X 24"

SYSTEM SUMMARY

MODULE COUNT:	(846)
MODULE OUTPUT:	375W
TOTAL DC OUTPUT:	317.3 kW
TOTAL AC OUTPUT:	250.0 kW
RACKING SYSTEM:	7° FIXED TILT
ARRAY AZIMUTH:	180°

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NO.	DATE	REVISIONS	BY	APP
0	08/06/20	CONCEPTUAL DESIGN	MG	JW

PRELIMINARY DRAWING

ONYX
Onyx Renewable Partners L.P.
230 Park Avenue, Suite 845
New York, NY 10169

PROJECT TITLE: **CA Santa Ana USD Santiago**

PROJECT ADDRESS: **2212 N Baker St, Santa Ana 92706**

DRAWING NO.: **C-101**

SHEET NAME: **CONCEPTUAL LAYOUT**

SCALE: 1" = 25'

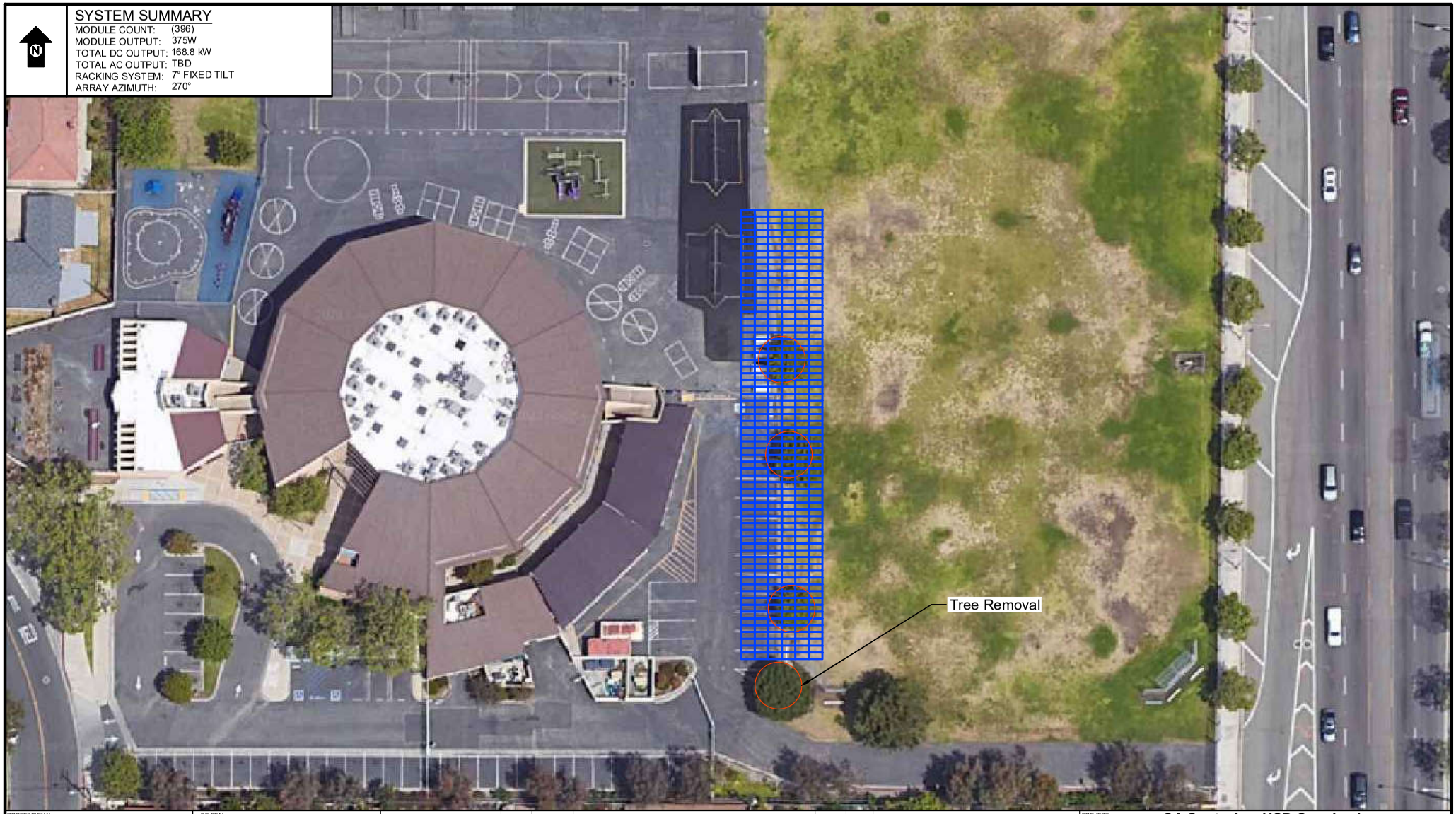
PROJECT NO:

PLOT DATE: 08/06/2020

SHEET SIZE: ARCH D 36" X 24"

SYSTEM SUMMARY

MODULE COUNT:	(396)
MODULE OUTPUT:	375W
TOTAL DC OUTPUT:	168.8 kW
TOTAL AC OUTPUT:	TBD
RACKING SYSTEM:	7° FIXED TILT
ARRAY AZIMUTH:	270°



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NO.	DATE	REVISIONS	BY	APP
0	08/06/20	CONCEPTUAL DESIGN	MG	JW

PRELIMINARY DRAWING

ONYX
Onyx Renewable Partners L.P.
230 Park Avenue, Suite 845
New York, NY 10169

PROJECT TITLE: **CA Santa Ana USD Sepulveda**

PROJECT ADDRESS: **1801 S poplar St, Santa Ana 82704**

DRAWING NO.: **C-101**

SHEET NAME: **CONCEPTUAL LAYOUT**

SCALE: 1" = 20'

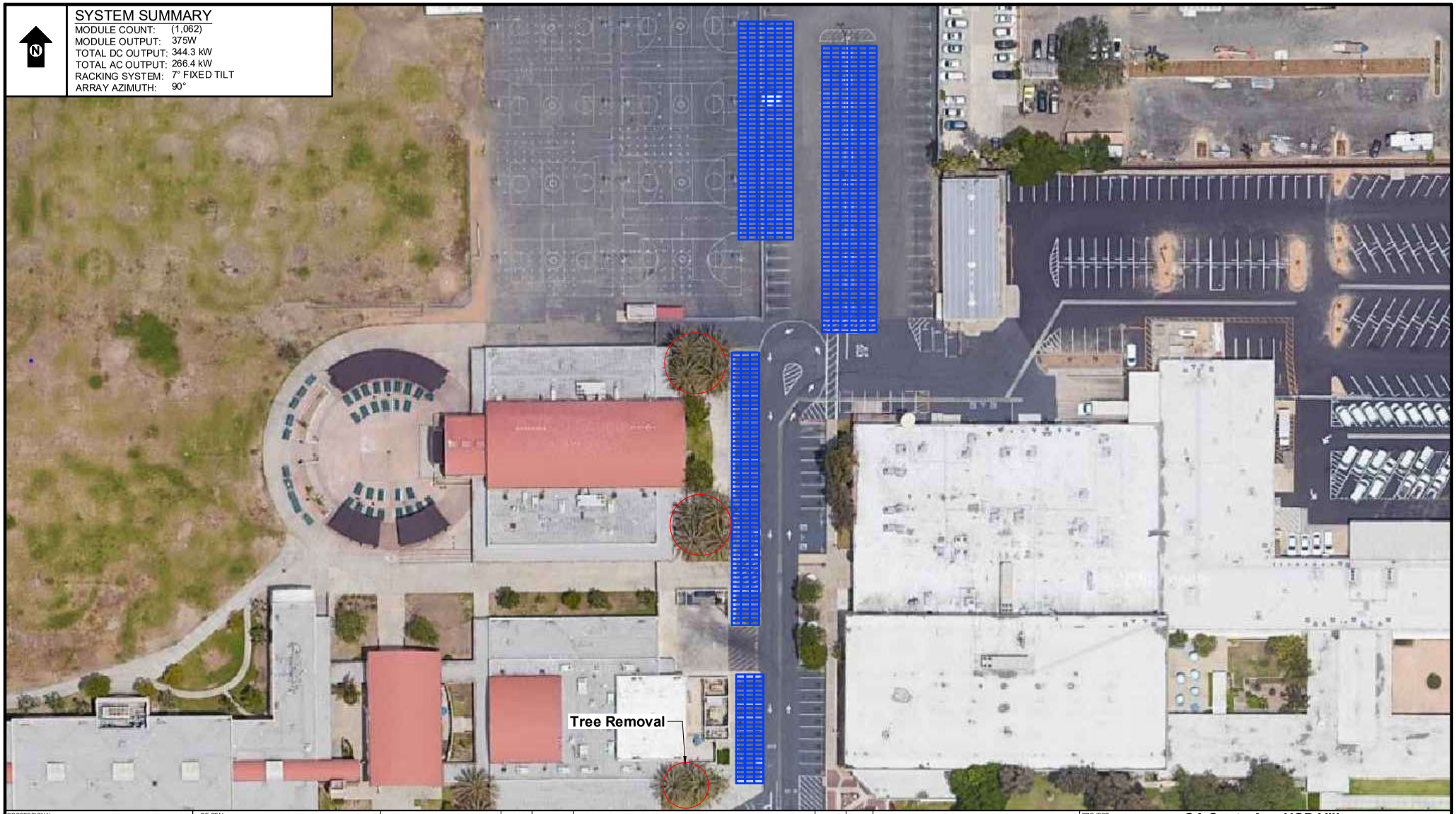
PROJECT NO:

PLOT DATE: 08/06/2020

SHEET SIZE: ARCH D 36" X 24"

SYSTEM SUMMARY

MODULE COUNT:	(1,062)
MODULE OUTPUT:	375W
TOTAL DC OUTPUT:	344.3 kW
TOTAL AC OUTPUT:	266.4 kW
RACKING SYSTEM:	7° FIXED TILT
ARRAY AZIMUTH:	90°



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NO.	DATE	REVISIONS	BY	APP
0	08/06/2020	CONCEPTUAL DESIGN	MG	JW

PRELIMINARY DRAWING

ONYX
Onyx Renewable Partners L.P.
230 Park Avenue, Suite 845
New York, NY 10169

PROJECT TITLE: **CA Santa Ana USD Villa**

PROJECT ADDRESS: **1441 E Chestnut Ave, Santa Ana, CA 92701**

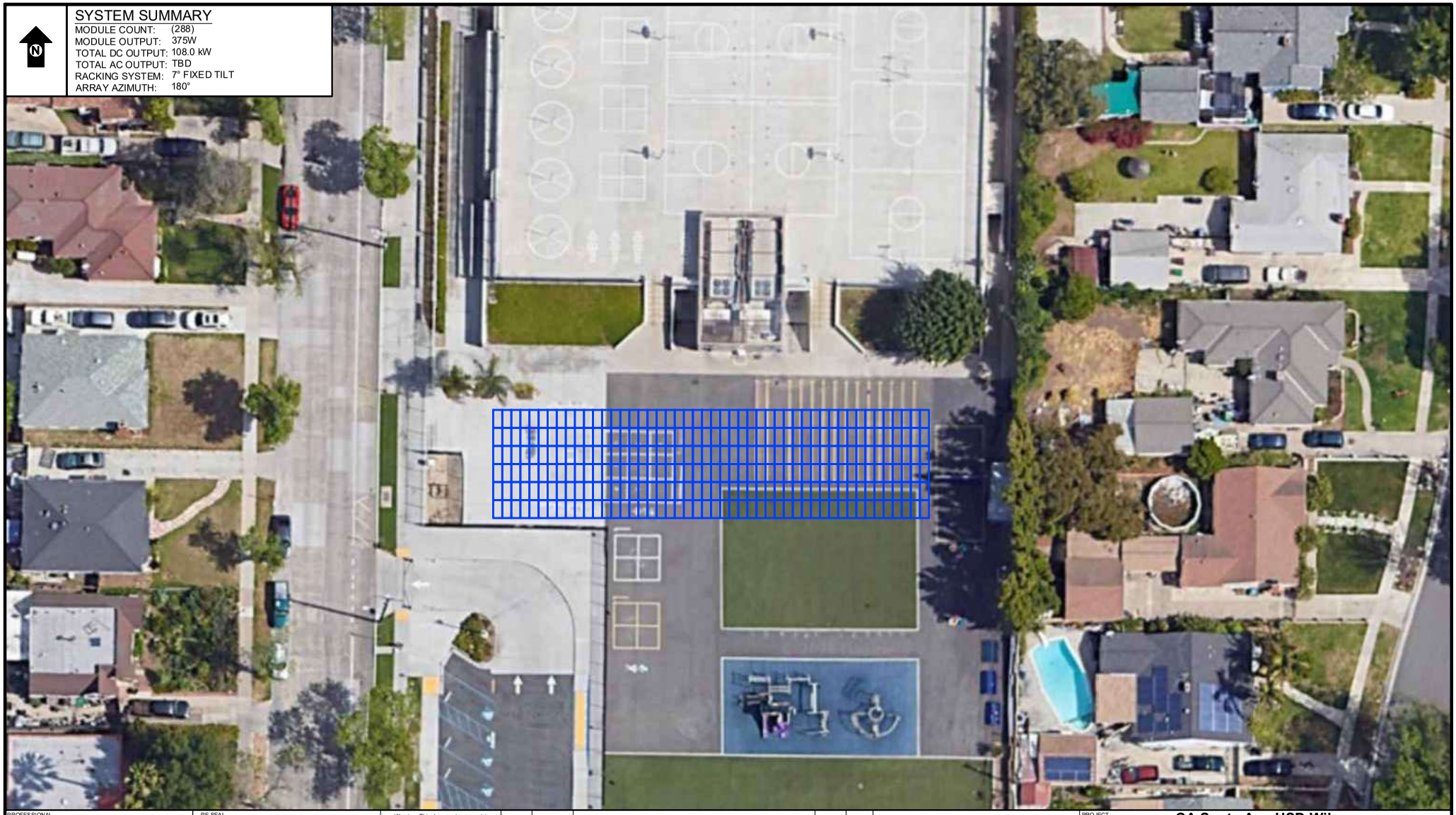
DRAWING NO.: **C-101**

SHEET NAME: **CONCEPTUAL LAYOUT**

SCALE	PROJECT NO	PLOT DATE	SHEET SIZE
1" = 30'		08/06/2020	ARCH D 36" X 24"

SYSTEM SUMMARY

MODULE COUNT:	(288)
MODULE OUTPUT:	375W
TOTAL DC OUTPUT:	108.0 kW
TOTAL AC OUTPUT:	TBD
RACKING SYSTEM:	7° FIXED TILT
ARRAY AZIMUTH:	180°



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NO.	DATE	REVISIONS	BY	APP
0	08/06/20	CONCEPTUAL DESIGN	MG	JW

PRELIMINARY DRAWING

ONYX
Onyx Renewable Partners L.P.
230 Park Avenue, Suite 845
New York, NY 10169

PROJECT TITLE: **CA Santa Ana USD Wilson**

PROJECT ADDRESS: **1317 N Baker St, Santa Ana, CA 92706, USA**

DRAWING NO.: **C-101**

SHEET NAME: **CONCEPTUAL LAYOUT**

SCALE: 1" = 15'

PROJECT NO:

PLOT DATE: 08/06/2020

SHEET SIZE: ARCH D 36" X 24"

Exhibit 4

RESERVED

Exhibit 5

Energy Rate Schedule

Contract Year	Energy Rate ($/kWh)
Year 1	$0.135
Year 2	$0.135
Year 3	$0.135
Year 4	$0.135
Year 5	$0.135
Year 6	$0.135
Year 7	$0.135
Year 8	$0.135
Year 9	$0.135
Year 10	$0.135
Year 11	$0.135
Year 12	$0.135
Year 13	$0.135
Year 15	$0.135
Year 16	$0.135
Year 17	$0.135
Year 18	$0.135
Year 19	$0.135
Year 20	$0.135
Year 21	$0.135
Year 22	$0.135
Year 23	$0.135
Year 24	$0.135
Year 25	$0.135

Exhibit 6

System

Contract Year	Estimated Annual Production (kWh/year)
Year 1	10,536,756
Year 2	10,484,072
Year 3	10,431,652
Year 4	10,379,494
Year 5	10,327,596
Year 6	10,275,958
Year 7	10,224,578
Year 8	10,173,455
Year 9	10,122,588
Year 10	10,071,975
Year 11	10,021,615
Year 12	9,971,507
Year 13	9,921,650
Year 14	9,872,042
Year 15	9,822,681
Year 16	9,773,568
Year 17	9,724,700
Year 18	9,676,077
Year 19	9,627,696
Year 20	9,579,558
Year 21	9,531,660
Year 22	9,484,002
Year 23	9,436,582
Year 24	9,389,399
Year 25	9,342,452

The above Estimated Annual Production is based on known conditions as of the Effective Date and are made in good faith by the Parties. The final Estimated Annual Production may vary from the initial description set forth above and, following final completion of the System, the above details will be updated to reflect the Estimated Annual Production of the as-built System. The Parties hereby acknowledge and agree that such adjustments to the Estimated Annual Production shall be memorialized in a signed amendment to this Agreement.

Exhibit 7

Seller Certifications
(see attached)

PREVAILING WAGE CERTIFICATION

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

Date: _____
Proper Name of Seller: _____
Signature: _____
Print Name: _____
Title: _____

WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700 in relevant part provides:

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

a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.

b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before permitting any employees to perform any labor on the Premises pursuant to this Agreement.

Date: _____
Proper Name of Seller: _____
Signature: _____
Print Name: _____
Title: _____

(In accordance with Article 5 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to permitting any employees to perform any labor on the Premises pursuant to this Agreement.)

FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

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

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

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

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

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

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

Name: _____

Title: _____

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

Date: _____
Proper Name of Seller: _____
Signature: _____
Print Name: _____
Title: _____

IRAN CONTRACTING ACT CERTIFICATION
(Public Contract Code § 2204)

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

Seller shall complete **ONLY ONE** of the following two paragraphs. s

☐ 1. Seller's Agreement is less than one million dollars ($1,000,000).

OR

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

OR

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

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

Date: _____
Proper Name of Seller: _____
Signature: _____
Print Name: _____
Title: _____

Exhibit 8

RESERVED

Exhibit 9

RESERVED

Exhibit 10

RESERVED

Exhibit 11

Final List of Plans, Specifications and Drawings for School Sites

If any information in this Exhibit is in conflict with the terms of the Agreement or Exhibits 1 to 4, the terms of the Agreement and Exhibits 1 to 4 shall control.

The Parties shall develop a List of Plans, Specifications and Drawings, which shall supersede and replace this Exhibit upon its adoption by the Parties. No List of Plans, Specifications and Drawings shall be effective in the absence of the Parties mutual prior written approval thereof. It is noted, all Specifications shall be placed on the Drawings and no separate Specifications shall be prepared.

PLANS / DRAWINGS – To be determined once designs are finalized.

Sheet number	File number	Description

Exhibit 12

Community Workforce Agreement

Exhibit 13

EPC Contractor License Agreement

THIS EPC CONTRACTOR LICENSE AGREEMENT is made and entered into on _____, 2020 ("**License Agreement**"), by and between _____ ("**Contractor**"), **Onyx Development Group LLC** ("**Onyx**") and **Santa Ana Unified School District** ("**District**"). Contractor, Onyx and District may be referred to herein individually as a "**Party**" or collectively as the "**Parties**."

RECITALS

WHEREAS, on [Insert Date] the District and Onyx entered into a Solar Power Purchase Agreement (as amended, restated, supplemented or other modified from time to time, the "**PPA**"), which is incorporated herein by reference, pursuant to Government Code section 4217.10, et seq. in which Onyx agreed to design, pay for the construction and installation of, own, operate and maintain a solar photovoltaic system (the "**System**") at [Insert School Name and Address] ("**Premises**") and the District agreed to purchase solar electricity for the Premises delivered by the System; and

WHEREAS, the terms of the PPA requires that Onyx, the District, and the EPC Contractor (as defined in the PPA) enter into this License Agreement to permit the Contractor to perform the Work (as defined below) and to set forth the obligations of Contractor while performing the Work at the Premises; and

WHEREAS, on [Insert Date] Onyx and Contractor entered into that certain Engineering, Procurement and Construction Agreement (as amended, restated, supplemented or other modified from time to time, the "**EPC Contract**") in which Contractor will, *inter alia*, perform the scope of work attached hereto as **Annex A** and incorporated herein by reference, on the Premises (the "**Work**" or "**Project**") and Onyx will pay Contractor for such Work; and

WHEREAS, pursuant to the terms of the PPA, the District and Onyx agreed to enter into this License Agreement with Contractor to memorialize Contractor's obligations and responsibilities while performing the Work at the Premises.

WITNESSETH, that for and in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

AGREEMENT

1. **Work.** The Parties acknowledge and agree that (i) Onyx shall not be acting in the capacity of a general contractor with respect to the Work and (ii) all such Work shall be performed by Contractor pursuant to the terms of the EPC Contract and the Plans and Specifications as more specifically described in Exhibit 11 of the PPA.

2. **License**.

   2.1 **Scope.** The District grants to Contractor and to Contractor's agents, employees, contractors and assignees, a license running with the Premises (the "**License**") for access to, on, over, under and across the Premises solely for the purposes of performing the Work consistent with the terms of the PPA. The Licenses shall be confined solely to the areas upon which Contractor is performing the Work, or which are reasonably necessary for Contractor to perform the Work, including staging areas. Contractor shall provide to the District a schedule of its intended access to the Premises prior to the performance of the Work. The District shall have the right to approve or reject the Contractor's schedule of intended access to the Premises. The term of the License shall continue until the Work is deemed complete by Onyx pursuant to the terms of the EPC Contract, except that the License shall be deemed terminated two (2) years after the execution of this License Agreement, unless extended by the District in writing executed by the Parties ("**License Term**"). Contractor shall be responsible to the District for any and all types of damage caused by it, its agents, employees or contractors to the Premises or to any persons or property thereon, including as a result of any breach of the Terms and Conditions to License Agreement attached hereto as **Annex E**. At the option of the District, the District or Contractor shall repair any such property damage. If the District repairs such damage, the Contractor shall reimburse District for reasonable expenses incurred to repair such damage within thirty (30) days after demand by District.

   2.2 **EPC Contract Termination.** If Onyx or the Contractor terminate the EPC Contract for any reasons, this License Agreement and the License Term shall terminate effective the date of any such termination.

3. **Payment.** Onyx shall be solely responsible for all payments due to Contractor for the Work. Contractor agrees that the District shall not be in any way be liable directly to Contractor for any payment for the Work, and forever releases and holds the District harmless for any payments or compensation due from Onyx to Contractor for the Work.

4. **Construction Schedule.** Subject to the EPC Contract, Contractor shall endeavor to complete the Work pursuant to the Construction Schedule attached hereto as **Annex B** and incorporated herein by reference. Any rights and obligations with respect to liquidated damages concerning any portion of the Work not completed by Contractor within the Construction Schedule shall be governed by the terms of the EPC Contract. Any rights and obligations with respect to liquidated damages concerning the System failing to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date (as each are defined in the PPA) shall be governed by the terms of the PPA. The District acknowledges that it shall have no right to recover any liquidated damages from Contractor. Any changes to the Construction Schedule shall not require an amendment to this License Agreement; provided, that Onyx and/or Contractor provide District's project representative with written notice (email being sufficient) of such changes promptly after such changes are made under the EPC Contract; provided further, that unless otherwise provided for in the PPA, Onyx shall not be granted an extension of time to achieve the Commercial Operation Date for the System as provided for the in the PPA.

5. **Bonds & Insurance.**

6.1. **Payment Bond & Performance Bond:** Contractor shall not commence the Work until it has provided to the District and Onyx, a Payment (Labor and Material) Bond and a Performance Bond, in substantially the forms attached hereto as **Annex C**, each in an amount equivalent to one hundred percent (100%) of the EPC Contract price issued by a surety admitted to issue bonds in the State of California and otherwise acceptable to the District and Onyx.

6.2. **Insurance:** Contractor and its subcontractors shall have and maintain in force during the performance of the Work, with the minimum indicated limits, the following insurance:

Commercial General Liability	Includes: Personal & Advertising Injury, Product Liability and Completed Operations	$1,000,000 each occurrence; $2,000,000 general aggregate
Automobile Liability – Any Auto	Combined Single Limit	$2,000,000 per occurrence
Excess Liability (or Umbrella Policy)		$6,000,000 per occurrence; $6,000,000 aggregate
Workers Compensation		Statutory limits pursuant to State law
Employers' Liability		$2,000,000 each accident, each disease; $2,000,000 policy limit
Builder's Risk (Course of Construction)		Issued for the value and scope of work under the EPC Contract.
Property of Others	Combined Single Limit General Aggregate	Issued for the value and scope of work under the EPC Contract.

Contractor shall provide to the District and Onyx certificate(s) of insurance and endorsements satisfactory to the District and Onyx. The policy(ies) shall not be amended or modified and the coverage amounts shall not be reduced without thirty (30) days written notice to the District and Onyx prior to cancellation. Except for worker's compensation insurance, the District, Onyx, and their subconsultants and agents shall be named as an additional insured on all policies. Contractor's policy(ies) shall be primary; any insurance carried by the District and Onyx shall only be secondary and supplemental. Contractor shall not allow any subcontractor, employee, or agent to commence Work on the Premises until the insurance required of Contractor, subcontractor, or agent has been obtained.

6. **Project Oversight.** Onyx shall retain project management responsibilities, and shall inspect and accept the Work. The District shall appoint a project representative who may inspect and correspond with Onyx and the Contractor, and who may evaluate Contractor's performance and compliance with this License Agreement. The District shall also retain a DSA approved Inspector of Record whose fees and costs shall be fully compensated by Onyx.

7. **Community Workforce Agreement**. Contractor acknowledges and agrees that its and its contractors' performance of the Work on the Premises is subject to that certain June 27, 2017 Community Workforce Agreement by and between the Santa Ana Unified School District, the Los Angeles and Orange Counties Building and Construction Trades Council and the Signatory Craft Councils and Unions, attached hereto as **Annex D**.

8. **Terms & Conditions of License Agreement**. The Contractor agrees that its performance of the Work is subject to the Terms and Conditions attached hereto as **Annex E**.

9. **Contractor Deliverables**. Prior to accessing the Premises and commencing any Work on the Premises, Contractor shall deliver to Onyx and the District completed and executed copies of the following:

   X Noncollusion Declaration (Annex F)
   X Prevailing Wage Certification (Annex F)
   X Workers' Compensation Certification (Annex F)
   X Finger Printing / Criminal Background Investigation Certification (Annex F)
   X Drug-Free Workplace / Tobacco-Free Environment Certification (Annex F)
   X Asbestos & Other Hazardous Materials Certification (Annex F)
   X Lead-Product(s) Certification (Annex F)
   X Roofing Contract Financial Interest Certification (Annex F)
   X Iran Contracting Act Certification (Annex F)
   X Insurance Certificates and Endorsements
   X Performance Bond (Annex C)
   X Payment Bond (Annex C)

10. **Notice**. Any notice required or permitted to be given under this License Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or sent by overnight delivery service addressed as follows:

Santa Ana Unified School District
1601 East Chestnut Ave.
Santa Ana, CA 92701
Attn: Orin Williams, Assistant Superintendent

Onyx Development Group LLC
230 Park Avenue, Suite 845
New York, NY 10169
Attn: Legal Department

[Insert Name of Contractor]
_____
_____
Attn: _____

Any notice personally given 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.

[Signature Page Follows]

ACCEPTED AND AGREED on the date indicated below. By signing this License Agreement, Contractor certifies, under penalty of perjury, that all the information provided herein and pursuant to this License Agreement is true, complete, and correct:

Dated: _____, 20___

Santa Ana Unified School District

Signature: _____

Print Name: _____

Print Title: _____

Dated: _____, 20___

[Insert Name of Contractor]

Signature: _____

Print Name: _____

Print Title: _____

CSLB No. _____

Dated: _____, 20___

Onyx Development Group LLC

Signature: _____

Print Name: _____

Print Title: _____

ANNEX A

WORK

The District agrees that the License Agreement shall cover the following Work at the Premises:

1. **Site Preparation**: The Project area will be prepared to accept the construction of the System.
    a. Parking Area Solar Canopies (the "Solar Support Structure(s)")
        i. Removal of parking blocks in direct interference of support structure foundations
        ii. Removal of light posts in direct interference of support structures and foundations
        iii. Soils testing (geotechnical only)
        iv. Site survey
        v. Scan for existing utilities (USA, Digalert or equivalent)

2. **Temporary Facilities**: Temporary facilities may be placed on site as needed for the duration of the Work and will be removed in a timely manner after the Work is completed. The following facilities may be placed on site in a location mutually agreed upon by the District and Contractor.
    a. Temporary workspace for the use of Contractor employees and contractors
    b. Toilet facilities for field staff
    c. Storage containers
    d. Scaffolding
    e. Heavy equipment including but not limited to forklifts, cranes, boom lifts, front end loaders, generators, trucks etc.
    f. Water facilities
    g. Lay down areas for oversized materials
    h. 120V power source, temporary poles, temporary connections and extensions to work area (single main connection point provided by District)
    i. Temporary chain link fence around staging areas (bare wire, 6' fence)

3. **Safety**: Appropriate safety measures will be applied in accordance with OSHA requirements. Contractor is responsible for maintaining safety in the performance of the Work. Prior to commencement of the Work, the District shall provide to Contractor all applicable rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.

4. **PV Solar System Installation**: Installation of a fully functional PV Solar power system to include:
    a. Mounting System
        i. Parking area Solar Support Structure installation
            1. Excavation for support structure foundations
            2. Pouring of concrete and placement of support structure foundations
            3. Erection of support structures
            4. Replacement of asphalt and concrete removed during underground excavation work.
            5. Removal of spoils and broom clean.
    b. AC Wiring and interconnection to be performed per NEC code, DSA approved plans, local jurisdiction rules and Onyx's specifications as noted in construction drawings.
        i. Installation of AC wire and conduit. Conduit to be located (run) underground to main service panel.
        ii. Interconnection of AC equipment to electrical service.
        iii. Interconnection of PV system to utility grid.
        iv. Installation and wiring of required AC disconnecting means.
    c. DC wiring to be performed per NEC code, DSA approved plans, local jurisdiction rules and Onyx's design specifications as noted in construction drawings.
        i. Module to module, combiner, home run, and recombiner DC conduit and wiring
        ii. Grounding of electrical components
        iii. Installation and wiring of required DC disconnecting means
    d. Inverter installation
        i. Installation of inverter foundation or wall mount / column mount as required. Foundations poured to Onyx's and DSA specifications, if applicable.

ii. Wiring and testing of inverter per manufacturer specifications

e. Monitoring hardware
   i. Installation of monitoring gateway and Current Transducers
   ii. Physical connection of monitoring hardware to network Global System for Mobile Communication (GSM)

f. System commissioning
   i. Electrical
      1. Inspection and testing of AC electrical continuity, operating voltage, amperage and phasing
      2. Inspection and testing of DC electrical continuity, voltage and polarity
      3. Inspection and testing of system and component grounding
      4. Inspection of wire strain relief and wire management
      5. Verify torque connection tightness
      6. Verify inverter function
   ii. Construction
      1. Verify correct installation of safety placards
      2. Verify component installation vs. design documents
      3. Verify condition and proper installation of PV modules
      4. Verify installation in accordance with DSA pre-check

5. **Lighting for Solar Structures**: Lighting under Solar Support Structures will be installed by the Contractor. Lighting materials will be to NEC code, DSA approved plans, local jurisdiction and Onyx LED specifications. Lighting levels under the arrays will meet or exceed minimum Illuminating Engineering Society of North America (IESNA) standards. Existing lighting circuits are assumed to have sufficient amperage for lighting under support structures.

6. **Site Access**: Contractor and approved District personnel, will have unrestricted access to the construction area. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy of the Premises. Contractor shall not cause any unnecessary hindrance or delay (i) to the use, and/or school operation(s), of the Premises and/or (ii) to the District or any other contractor working on the Project.

7. **Trenching/Boring**
   a. Underground conduit and conductor banks will be installed per minimum guidelines set forth in National Electric Code (NEC) code and Onyx design specifications.
   b. Concrete and asphalt removed by cutting or excavation will be replaced.
   c. Landscaping directly impacted by excavation activity will be restored to their prior condition immediately before commencement of installation. (Does not include Relocation of landscaping and vegetation outside the excavation area.)

8. **Materials**: All materials will be provided in accordance with Onyx's approved DSA-precheck design. Materials will be new and specifications will be to Onyx's design standards. Materials will meet NEC code, DSA and local jurisdiction requirements. Materials may be substituted subject to the limitations in the EPC Contract so long as such substitution(s) is in compliance with the DSA-approved designs. Supplied materials may include:

   a. PV Solar Modules
   b. Inverter and inverter mounting hardware
   c. Racking System
   d. Racking foundations
   e. Solar Support Structures
   f. Conduit
   g. Paint
   h. Wire
   i. LED lights under canopies
   j. Combiner boxes
   k. Fuses
   l. Disconnecting means
   m. Transformers

n. Monitoring equipment, including GSM communication network materials
o. As built drawings will be provided upon file DSA close- out.

ANNEX B

CONSTRUCTION SCHEDULE

Contractor shall endeavor to complete the Work pursuant to the Construction Schedule below:

**Final schedule to be determined. Anticipated construction from January 2021 – December 2022.*

[Insert Construction Schedule / Milestones]

ANNEX C

PERFORMANCE BOND

PERFORMANCE BOND (100% of EPC Contract Price)
(Note: Principal must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("Board") of the **Santa Ana Unified School District** ("District") and **Onyx Development Group LLC (**"Seller") have entered into that certain Solar Power Purchase Agreement, dated as of _____ (as amended, restated, supplemented or otherwise modified from time to time), regarding the installation, operation and maintenance of a solar canopy system (the "System") at _____[add site address].

WHEREAS, Seller and _____ ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to construct, install and commission the System ("Project"), which contract is dated as of _____, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "Contract"), and all of the Contract documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

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

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

- Perform all the work required under the Contract; and

- Pay to Seller and the District all damages Seller and/or the District incur as a result of the Principal's failure to perform all the work required under the Contract.

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

As a condition precedent to the satisfactory completion of the Contract, the above obligation shall hold good for two (2) years from the completion date of the work required under the Contract, during which time Surety's obligation shall continue if Principal shall fail to make full, complete, and satisfactory repair, replace, and totally protect Seller and the District from loss or damage resulting from or caused by defective materials or faulty workmanship. Nothing herein shall limit Seller's or the District's rights or the Principal's or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15 during the bond term.

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

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

_____

_____

Attention: _____

Telephone No.: (_____) _____-_____

Fax No.: (_____) _____-_____

E-mail Address: _____

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

Principal	**Surety**
_____	_____
(Name of Principal)	(Name of Surety)
_____	_____
(Signature of Person with Authority)	(Signature of Person with Authority)
_____	_____
(Print Name)	(Print Name)
	_____
	(Name of California Agent of Surety)
	_____
	(Address of California Agent of Surety)
	_____
	(Telephone Number of California Agent of Surety)

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

PAYMENT BOND

Principal's Labor & Material Bond (100% of EPC Contract Price)
(Note: Principal must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("Board") of the **Santa Ana Unified School District** ("District") and **Onyx Development Group LLC (**"Seller") have entered into that certain Solar Power Purchase Agreement, dated as of _____ (as amended, restated, supplemented or otherwise modified from time to time), regarding the installation, operation and maintenance of a solar canopy system (the "System") at _____[add site address].

WHEREAS, Seller and _____ ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to construct, install and commission the System ("Project"), which contract is dated as of _____, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "Contract"), and all of the Contract documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

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

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

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

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

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

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

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

Principal	**Surety**
_____	_____
(Name of Principal)	(Name of Surety)
_____	_____
(Signature of Person with Authority)	(Signature of Person with Authority)
_____	_____
(Print Name)	(Print Name)
	_____
	(Name of California Agent of Surety)
	_____
	(Address of California Agent of Surety)
	_____
	(Telephone Number of California Agent of Surety)

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

ANNEX D

Community Workforce Agreement

(see attached)

ANNEX E

TERMS AND CONDITIONS TO LICENSE AGREEMENT

1. ORDER OF INTERPRETATION: The Parties enter into this License Agreement concurrently with the EPC Contract. If there is any conflict between the terms of this License Agreement and the EPC Contract, then the terms of this License Agreement shall prevail over the conflicting terms of the EPC Contract to the extent necessary to eliminate such conflict.

2. EQUIPMENT LABOR. Contractor shall be responsible at its sole cost and expense for providing all equipment and labor necessary to comply with any obligations in this License Agreement.

3. SUBCONTRACTORS: Contractor shall comply with the Subletting and Subcontracting Fair Practices Act (Public Contract Code, section 4100 et. Seq.). Contractor shall identify by name and location of the place of business of each subcontractor who will perform the Work or a portion thereof in an amount in excess of one-half of 1 percent of the EPC Contract price or ten thousand dollars ($10,000) whichever is greater. Contractor agrees to bind every subcontractor, if any, by the terms of this License Agreement as far as such terms are applicable to subcontractor's work. If Contractor subcontracts any part of the Work, Contractor shall be fully responsible for acts and omissions of its subcontractor and of persons either directly or indirectly employed by itself. Nothing contained in the herein shall create any contractual relations between any subcontractor and the District.

4. SAFETY AND SECURITY: Contractor is responsible for maintaining safety in the performance of the Work. Contractor shall be responsible for complying with the District's the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.

5. TRENCH SHORING: If the Work is in excess of $25,000 and includes the excavation of any trench deeper than five (5) feet, Contractor must submit and obtain District's approval and 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.

6. EXCAVATIONS OVER FOUR FEET: If Work includes excavations over four (4) feet, Contractor shall promptly, and before the following conditions are disturbed, notify the District and Onyx, in writing, of any: (1) 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; (2) Subsurface or latent physical conditions at the Premises differing from those indicated; or (3) Unknown physical conditions at the Premises of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Work. The District and Onyx 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, Onyx shall issue a change order under the procedures described in the EPC Contract. In the event that a dispute arises between Onyx and the Contractor regarding 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 EPC Contract, but shall proceed with all Work. Contractor shall retain any and all rights provided either by the EPC Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

7. 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.

8. DRUG-FREE / TOBACCO FREE / SMOKE FREE POLICY: No drugs, alcohol, tobacco, and/or smoking are allowed at any time in any buildings and/or grounds on District property. No students, staff, visitors, consultants or contractors are to use drugs on these sites.

9. FINGERPRINTING: Contractor shall comply at all times with the provisions of Education Code section 45125.2 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees, its subcontractor(s), and its subcontractors' employees. Contractor shall not permit any employee to have any contact with District pupils until such time as Contractor has verified in writing to the governing board of the District, that such employee has not been convicted of a felony, as defined in Education Code section 45122.1. Contractor at all times shall fully complete and perform all tasks required pursuant to the Criminal Background Investigation/ Fingerprinting Certification.

10. CONTRACTOR SUPERVISION: Contractor shall provide competent supervision of personnel employed on the Premises, use of equipment, and quality of workmanship including but not limited to the following:

10.1. During progress of the Work, Contractor shall keep on the Premises, and at all other locations where any Work is being performed, a competent project manager and construction superintendent who are employees of the Contractor, to whom the District and

Onyx do not object and at least one of whom shall be fluent in English, written and verbal.

10.2. Before commencing the Work, Contractor shall give written notice to the District and Onyx of the name of its project manager and construction superintendent. Neither the Contractor's project manager nor construction superintendent shall be changed except with prior written notice to Onyx and the District, unless the Contractor's project manager and/or construction superintendent proves to be unsatisfactory to Contractor, Onyx, District, or any of the District's employees, agents, in which case, Contractor shall notify District in writing. The District and Onyx retain the right to reasonably refuse Contractor's replacement personnel. The Contractor's project manager and construction superintendent shall each represent Contractor, and all directions given to Contractor's project manager and/or construction superintendent shall be as binding as if given to Contractor.

10.3. All persons working for Contractor and subcontractor(s) shall refrain from using profane or vulgar language, or any other language that is inappropriate on the job site.

10.4. Contractor shall at all times enforce strict discipline and good order among Contractor's employees, and shall not employ on the Project any unfit person or anyone not skilled in the task assigned.

11. DUTY TO PROVIDE FIT WORKERS:

11.1. Contractor and its subcontractor(s) shall at all times enforce strict discipline and good order among their employees and shall not employ or work any unfit person or anyone not skilled in the Work or portion thereof assigned to that person. It shall be the responsibility of Contractor to ensure compliance with this requirement. Onyx and/or the District may require Contractor to permanently remove unfit persons from the Premises. Any person in the employ of Contractor or its subcontractor(s) whom Onyx and/or the District may deem incompetent or unfit shall be excluded from working on the Project and shall not again be employed on the Project except with the prior written consent of Onyx and the District. The Contractor shall furnish labor that can work in harmony with all other elements of labor employed or to be employed in the Work. If Contractor intends to make any change in the name or legal nature of the Contractor's entity, Contractor must first notify Onyx and the District. Onyx and the District shall determine if Contractor's intended change is permissible.

11.2. If Contractor or any subcontractor on the Premises fails to comply with any provision herein, Onyx and/or the District may have the offending person(s) immediately removed from the Premises, and the person(s) shall be replaced within three (3) days, at no additional expense to Onyx. Contractor, on behalf of it and its subcontractors, hereby waives any claim that the provisions of this paragraph or the enforcement thereof interferes, or has the potential to interfere, with its right to control the means and methods of its performance and duties under the EPC Contract.

12. PERSONNEL: The Contractor shall employ a full-time superintendent and necessary assistants who shall have complete authority to represent and act on behalf on the Contractor on all matters pertaining to the Work. The superintendent shall be competent and have a minimum of five (5) years' experience in construction supervision on projects of similar scale and complexity. The superintendent shall be satisfactory to Onyx and the District and, if not satisfactory, shall be replaced by the Contractor with one that is acceptable to Onyx and the District. The superintendent shall not be changed without the written consent of Onyx and the District unless the superintendent ceases to be employed by the Contractor.

13. CLEAN UP: Debris shall be removed from the Premises. The Premises shall be in order at all times when Work is not actually being performed and shall be maintained in a reasonably clean condition. Should the Contractor fail to perform the required clean-up, or should the clean-up be deemed unsatisfactory by Onyx and/or the District, Onyx and/or the District will then perform the clean-up. Onyx and/or the District may invoice Contractor for the costs of any clean-up which shall be paid to Onyx and/or the District within thirty (30) days.

14. NOISE AND DUST CONTROL:

14.1. Contractor shall comply with the requirements of the city and county having jurisdiction with regard to noise ordinances governing construction sites and activities. Construction equipment noise at the Premises shall be limited as required by applicable law, rule or regulation. If classes are in session at any point during the progress of the Work, and, in the District's reasonable discretion, the noise from any Work disrupts or disturbs the students or faculty or the normal operation of the school at the Premises, at the District's request, the Contractor shall schedule the performance of that Work around normal school hours or make other arrangements so that the Work does not cause disruption or disturbance.

14.2. The Contractor shall be fully and solely responsible for maintaining and upkeeping all areas of the Premises and adjoining areas, outdoors and indoors, free from flying debris, grinding powder, sawdust, dirt and dust as well as any other product, product waste or work waste, that by becoming airborne may cause respiratory inconveniences to persons, particularly to students and District personnel. Additionally, the Contractor shall take specific care to avoid deposits of airborne dust or airborne elements. Those protection devices, systems or methods shall be in accordance with the regulations set forth by the EPA and OSHA, and other applicable law, rule or regulation. Additionally, the Contractor shall be responsible to regularly and routinely clean up and remove any and all deposits of dust and other elements. Damage and/or any liability derived from the Contractor's failure to comply with these requirements shall be exclusively at the cost of the Contractor, including, without limitation, any and all penalties that may be incurred for violations of

applicable law, rule or regulation, and any amounts expended by Onyx and/or the District to pay such damages shall be due and payable to Onyx and/or the District on demand. Contractor shall replace any damaged property or part thereof and professionally clean any and all items that become covered or partially covered to any degree by dust or other airborne elements. If classes are in session at any point during the progress of Work, and, in the District's reasonable discretion, flying debris, grinding powder, sawdust, dirt or dust from any Work disrupts or disturbs the students or faculty or the normal operation of the school, at the District's request, the Contractor shall schedule the performance of all that Work around normal school hours and make other arrangements so that the Work does not cause disruption or disturbance.

14.3. If the Contractor fails to comply with the requirements for dust control, noise control, or any other maintenance or clean up requirement herein, the District, or Onyx, shall notify the Contractor in writing and the Contractor shall take immediate action. Should the Contractor fail to respond with immediate and responsive action and not later than twenty-four (24) hours from that notification, Onyx and/or the District shall have the absolute right to proceed as it may deem necessary to remedy such matter. Any and all costs incurred by Onyx and/or the District in connection with those actions shall be the sole responsibility of, and be borne by, the Contractor. Onyx and/or the District may invoice Contractor for the costs which shall be paid to Onyx and/or the District within thirty (30) days.

15. ACCESS TO WORK: District representatives shall at all time have access to the Work wherever it is in preparation or in progress. Contractor shall provide safe and proper facilities for such access.

16. EVENINGS AND WEEKENDS. If Onyx and Contractor agree that Contractor shall perform weekend Work, Contractor shall give the District seventy-two (72) hours' notice prior to performing any evening and/or weekend Work. Contractor shall perform all evening and/or weekend Work only upon District's written approval and in compliance with all applicable rules, regulations, laws, and local ordinances including, without limitation, all noise and light limitations.

17. 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 Onyx or the District, is permitted to act at his discretion to prevent such threatened loss or injury.

18. ASSIGNMENT OF CONTRACT: Contractor shall not assign or transfer in any way any or all of its rights, burdens, duties, or obligations under this License Agreement without the prior written consent of the District and Onyx.

19. INDEMNIFICATION / HOLD HARMLESS CLAUSE: To the furthest extent permitted by California law, Contractor shall defend, indemnify, and hold free and harmless the District, Onyx, and their agents, representatives, officers, Contractors, employees, trustees, and volunteers ("the indemnified parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, including without limitation the payment of all consequential damages, arising out of, pertaining to or relating to, in whole or in part, the negligence, recklessness, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, Contractors, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Work or from any activity, work, or thing done, permitted, or suffered by the Contractor in conjunction with this License Agreement, unless the claims are caused wholly by the sole negligence or willful misconduct of the indemnified parties. The District and Onyx shall have the right to accept or reject any legal representation that Contractor proposes to defend the indemnified parties. The District and Onyx have the absolute discretion to reject any counsel proposed for concurrent representation of the Onyx and District if either party reasonably believes that concurrent representation of the District and Onyx would create a conflict of interest.

20. PERMITS AND LICENSES: Contractor and all of its employees, agents, and subcontractors shall secure and maintain in force, at Contractor's sole cost and expense, all licenses and permits as are required by law, in connection with performing the Work.

21. ANTI-DISCRIMINATION: It is the policy of the District that in connection with all work performed on the Premises there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, or religious creed, and therefore the Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment Practice Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).

22. COMPLIANCE WITH LAWS: Contractor shall give all notices and comply with all laws, ordinance, rules and regulations bearing on conduct of the Work as indicated or specified. If Contractor observes that any of the Work is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify the District and Onyx, in writing, and, at the sole option of Onyx and the District, any necessary changes to the scope of the Work shall be made and the EPC Contract shall be appropriately amended in writing. If Contractor performs any Work that is in violation of any laws, ordinances, rules or regulations, without first notifying Onyx and the District of the violation, Contractor shall bear all costs arising therefrom.

23. DISPUTES AND CLAIMS BETWEEN DISTRICT AND CONTRACTOR.

DISPUTES/CLAIMS: To the extent any Claims (as defined below) arise between the District and the Contractor, such

Claims shall be resolved in accordance with the procedures established in Public Contract Code § 9204. Claims between Onyx and the Contractor shall be resolved pursuant to the terms of the EPC Contract.

23.1. Claim. The term "Claim" means a written demand by the Contractor sent by registered mail or certified mail with return receipt requested for:

23.1.1. An extension of time or additional compensation related to the work, including relief from damages or penalties;

23.1.2. Payment of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the License Agreement and payment that is not otherwise expressly provided for in the License Agreement or to which the Contractor is not otherwise entitled; or

23.1.3. Payment of an amount that is disputed by the District.

23.2. Submission of Claim. The Contractor shall submit the Claim by registered mail or certified mail with return receipt to the District representative identified in the "Notice" provisions of the License Agreement, with a copy to the any project/construction manager, if applicable. The Contractor shall submit its Claim in writing, together with all Supporting Documentation no later than the earlier of either: (1) thirty (30) days after the date the Claim arises; or (2) sixty (60) days after the date of Completion. It is the intent of the District to evaluate and resolve Claims with the Contractor as close to the events giving rise to such Claims as possible and to avoid stale or late Claims, including late notice and documenting of Claims, and to timely mitigate the issue, event, condition, circumstance and/or cause of the Claim and any adverse impacts or damages related thereto. Should the Contractor fail to submit a Claim by the deadline set forth in this Article, Contractor waives and releases such Claim, including all rights and remedies in connection therewith.

23.3. Contents of Claim. A Claim must include all Supporting Documentation and a statement identifying it as a Claim signed by an authorized agent or officer of the Contractor under penalty of perjury and including the following language immediately above or before the Contractor's signature: "I declare under penalty of perjury under the laws of the State of California that the information provided and statements made in this Claim are true and correct, substantiated and of merit." The Contractor recognizes and acknowledges that this requirement is not a mere formality but is intended to ensure that the Contractor only submits Claims that it believes are true and correct, substantiated and have merit. Should Contractor fail to submit the foregoing written statement signed under penalty of perjury, Contractor waives and releases its Claim, including all rights and remedies in connection thereto.

23.4. Subcontractor Claims. Pursuant to Public Contract Code § 9204(d)(5), a Subcontractor may request in writing, either on its own behalf or on behalf of a lower tier Subcontractor, that the Contractor submit to the District 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 submitted to the District shall furnish reasonable documentation to support the claim. Regardless of whether or not the Contractor decides to submit the Subcontractor's claim to the District, Contractor shall provide a copy of the Subcontractor's written request, including all supporting documentation, to the District or project/construction manager, if applicable, within ten (10) days of Contractor's receipt of the request. In the event the Contractor agrees to submit a Subcontractor's claim to the District, the Contractor shall submit such claim, unless such claim was previously submitted to the District. Within forty-five (45) days of receipt of the Subcontractor's written request, the Contractor shall notify the Subcontractor in writing as to whether the Contractor submitted the claim to the District and, if the Contractor did not submit the claim, the Contractor shall provide the Subcontractor with a written statement of the reasons for not having done so and shall concurrently provide a copy of such written statement to District and/or the project/construction manager, if applicable. In the event the Contractor includes supporting documentation with such written statement, the Contractor shall concurrently provide a copy of such supporting documentation to the project/construction manager, if applicable. If the Contractor submits a Claim on behalf of a Subcontractor, the Claim shall include a statement in writing and signed by an authorized agent or officer of the Contractor under penalty of perjury that includes the following language immediately above or before the Contractor's signature: "I declare under penalty of perjury under the laws of the State of California that [insert name of Contractor] has thoroughly evaluated the claim of [insert name of Subcontractor] and determined that the information provided and statements made in the claim are true and correct, substantiated and of merit."

23.5. District Review of Claim. Upon receipt of a Claim, the District shall review the Claim and, within a period not to exceed forty-five (45) days, shall provide Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Upon receipt of a Claim, the District and the Contractor may, by mutual written agreement, extend the forty-five (45) day time period. The District shall process and make payment of any undisputed portion of a Claim within sixty (60) days after the District issues its written statement. Failure by the District to provide a written statement in response to a Claim from the Contractor within the forty-five (45) day time period, or within an agreed upon extended time period, shall result in the Claim being deemed rejected in its entirety. A Claim that is rejected by reason of the District's failure to respond, or failure to timely respond, to the Claim shall not constitute an adverse finding regarding the merits of the Claim or the claimant's responsibility or qualifications.

23.6. Meet and Confer Meeting. If the Contractor disputes the District's written response, or if the District fails to respond within the time frame prescribed above, the Contractor, within fifteen (15) days of the District's written response or, if the District fails to respond, within fifteen (15) days after the District's response was due, may demand, in a writing sent to the District's Superintendent by registered mail or certified mail, return receipt requested, with a copy to the District representative identified in the "Notice" provision of the License Agreement, and project/construction manager, if applicable, an informal conference to meet and confer for settlement of the issues in dispute. The District shall schedule a meet and confer conference within thirty (30) days of its receipt of the Contractor's written demand.

23.7. Mediation. Within ten (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 District shall provide the Contractor 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 sixty (60) days after the District issues its written statement. Any disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation. The expenses and fees of the mediator and the administrative fees shall be divided among the parties equally. Each party shall pay its own legal fees, witness fees, and other expenses. The District and the Contractor shall mutually agree to a mediator within ten (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. The foregoing notwithstanding, pursuant to Public Contract Code § 9204(f), the parties may mutually agree in writing to waive mediation.

23.8. Pending resolution of the dispute, Contractor agrees it will neither rescind the Contract nor stop the progress of the Work, but will allow determination by the court of the State of California, in the county in which the District's administration office is located, having competent jurisdiction of the dispute.

23.9. Nothing in this Article shall prevent the Parties from resolving any disputes or claims pursuant to Public Contract Code section 20104, et seq., if applicable.

23.10. Nothing in this Contract, waives, modifies or tolls the Contractor's obligation to present a timely claim under Government Code § 910, et seq. Therefore, in addition to complying with the contractual Claims procedures, the Contractor is required to present claims to the District pursuant to Government Code § 910, et seq.

24. LABOR CODE REQUIREMENTS: Provided that the cost of the Work is more than $1,000, and the Work is a "public works" under the Labor Code, the parties agree as follows:

24.1. The Work is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

24.2. District hereby provides notice of the requirements described in Labor Code § 1771.1(a) that a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code § 1725.5.

24.3. Contractor acknowledges that all or a portion of the Work are a public work, and that it and its subcontractors have complied with Labor Code § 1725.5, including, without limitation, the registration requirements thereof.

24.4. Contractor shall post all required job site notices and shall comply with all applicable requirements prescribed thereby, including but not limited to Labor Code § 1771.4.

24.5. Contractor shall comply with all applicable provisions of the Labor Code, Division 3, Part 7, Chapter 1, Articles 1-5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars ($1,000).

24.6. Copies of the prevailing rate of per diem wages are on file with the District.

24.7. Contractor and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the Labor Code, beginning with § 1720, and including §§ 1735, 1777.5 and 1777.6, forbidding discrimination, and §§ 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Contractor or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts. Contractor shall comply with Labor Code § 1777.5 pertaining to prevailing wage compensation to apprentices for preemployment activities.

25. PAYROLL RECORDS: Contractor and its subcontractor(s) shall keep accurate certified payroll records of employees and make them available to Onyx and the District immediately upon request.

26. 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 with respect to the Work. Contractor shall retain these books, records, and systems of account for the duration of the EPC Contract. Contractor shall permit Onyx and the District, their 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 Work. Audit(s) may be performed at any time, provided that Onyx and/or the District shall give reasonable prior notice to

Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents.

27. GOVERNING LAW: This License Agreement shall be governed by and construed in accordance with the laws of the State of California with venue of any action in a in the county in which the District's administration office is located.

28. PROVISIONS REQUIRED BY LAW DEEMED INSERTED: Each and every provision of law and clause required by law to be inserted in this License Agreement shall be deemed to be inserted herein and this Contract shall be read and enforced as though it were included therein.

29. BINDING CONTRACT: This License Agreement shall be binding upon the Parties hereto and upon their successors and assigns, and shall inure to the benefit of the Parties and their successors and assigns.

30. DISTRICT WAIVER: District's waiver of any term, condition, covenant or waiver of a breach of any term, condition or covenant shall not constitute the waiver of any other term, condition or covenant or the waiver of a breach of any other term, condition or covenant.

31. INVALID TERM: If any provision of this License Agreement is declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining parts, terms and provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term or provision will be deemed not to be a part of this License Agreement.

32. ENTIRE AGREEMENT: This License Agreement sets forth the entire agreement 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 License Agreement may be modified only by a writing evidencing the Parties' mutual consent.

33. CLOSEOUT AND CORRECTION OF ERRORS: Contractor acknowledges and agrees that it will be subject to those obligations regarding Closeout and Correction of IOR identified errors in the Work as identified in Section 7(d) of the PPA and incorporated herein by reference.

ANNEX F

CERTIFICATIONS TO BE COMPLETED BY CONTRACTOR

NONCOLLUSION DECLARATION

(Public Contract Code § 7106)

The undersigned declares:

I am the _____ **[PRINT YOUR TITLE]**

of _____ **[PRINT FIRM NAME],**

the party making the foregoing EPC Contractor License Agreement ("Contract").

The Contract is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The Contract is genuine and not collusive or sham. The Contractor has not directly or indirectly induced or solicited any other entity to put in a false or sham bid or proposal. The Contractor has not directly or indirectly colluded, conspired, connived, or agreed with any other Contractor or anyone else to put in a sham bid or proposal, or to refrain from proposing. The Contractor has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the price of construction of the Contractor or any other entity, or to fix any overhead, profit, or cost element of the price of construction, or of that of any other entity. All statements contained in the Contract are true. The Contractor has not, directly or indirectly, submitted his or her construction cost or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid or proposal, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Contractor that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Contractor.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on the following date:

Date: _____
Proper Name of Contractor: _____
Signature: _____
Print Name: _____
Title: _____

PREVAILING WAGE CERTIFICATION

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

Date: _____
Proper Name of Contractor: _____
Signature: _____
Print Name: _____
Title: _____

WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700 in relevant part provides:

> Every employer except the State shall secure the payment of compensation in one or more of the following ways:
>
> c. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
>
> d. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

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

Date: _____
Proper Name of Contractor: _____
Signature: _____
Print Name: _____
Title: _____

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

FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

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

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

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

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

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

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

Name: _____

Title: _____

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

Date: _____
Proper Name of Contractor: _____
Signature: _____
Print Name: _____
Title: _____

DRUG-FREE WORKPLACE / TOBACCO-FREE ENVIRONMENT CERTIFICATION

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

1 Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying actions which will be taken against employees for violations of the prohibition;

2 Establishing a drug-free awareness program to inform employees about all of the following:
   a. The dangers of drug abuse in the workplace.
   b. The person's or organization's policy of maintaining a drug-free workplace.
   c. The availability of drug counseling, rehabilitation, and employee-assistance programs.
   d. The penalties that may be imposed upon employees for drug abuse violations.

3 Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required above, and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

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

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

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

Date: _____
Proper Name of Contractor: _____
Signature: _____
Print Name: _____
Title: _____

ASBESTOS & OTHER HAZARDOUS MATERIALS CERTIFICATION

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

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

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

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

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

Date: _____
Proper Name of Contractor: _____
Signature: _____
Print Name: _____
Title: _____

LEAD-PRODUCT(S) CERTIFICATION

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

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

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

The California Education Code also prohibits the use or import of lead-containing paint, lead plumbing and solders, or other potential sources of lead contamination in the construction of any new school facility or in the modernization or renovation of any existing school facility. The Contractor shall provide the District with any sample results prior to beginning Work, during the Work, and after the completion of the Work. If failure to comply with these laws, rules, and regulations results in a site or worker contamination, the Contractor will be held solely responsible for all costs involved in any required corrective actions, and shall defend, indemnify and hold harmless the District, pursuant to the indemnification provisions of the Agreement, for all damages and other claims arising therefrom. If lead disturbance is anticipated in the Work, only persons with appropriate accreditation, registrations, licenses and training shall conduct this Work and, prior to the commencement of such Work, the lead training records of such persons may be examined by the District upon request.

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

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

Date: _____
Proper Name of Contractor: _____
Signature: _____
Print Name: _____
Title: _____

ROOFING CONTRACT FINANCIAL INTEREST CERTIFICATION
(Public Contract Code § 3006)

I, _____, _____
Name Name of Contractor

certify that I have not offered, given, or agreed to give, received, accepted, or agreed to accept, any gift, contribution, or any financial incentive whatsoever to or from any person in connection with any roof project contract or subcontract with respect to the Project. As used in this certification, "person" means any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

Furthermore, I _____, _____
Name Name of Contractor

certify that I do not have, and throughout the duration of the Work, I will not have, any financial relationship in connection with the performance of the Work with any architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor that is not disclosed below.

I, _____, _____
Name Name of Contractor

have the following financial relationships with an architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor, or other person in connection with the following roof project contract or subcontract with respect to the Project:

Name of Contractor ("Firm"): _____

Mailing address: _____

Address of branch office used for this Project: _____

If subsidiary, name and address of parent company: _____

I certify that to the best of my knowledge, the contents of this disclosure are true, or are believed to be true.

Date: _____
Proper Name of Contractor: _____
Signature: _____
Print Name: _____
Title: _____

IRAN CONTRACTING ACT CERTIFICATION
(Public Contract Code § 2204)

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

Contractor shall complete **ONLY ONE** of the following two paragraphs. s

☐ 1. Contractor's Agreement is less than one million dollars ($1,000,000).

OR

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

OR

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

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

Date: _____
Proper Name of Contractor: _____
Signature: _____
Print Name: _____
Title: _____