



REGULAR BOARD MEETING AGENDA
BOARD OF DIRECTORS MEETING
MALAGA COUNTY WATER DISTRICT
3580 SOUTH FRANK STREET
FRESNO, CALIFORNIA 93725
Tuesday, September 13, 2022 at 6:00PM

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in a District Board Meeting, please contact the District Office at 559-485-7353 at least 48 hours prior to the meeting, to ensure that reasonable arrangements can be made to provide accessibility to the meeting.

- ❖ Please submit all written correspondence for the Board of Directors by 12:00 pm the Friday prior to the meeting. Please deliver or mail to the District Clerk.
- ❖ Public comments are limited to three (3) minutes or less per individual per item, with a fifteen (15) minute maximum per group per item and will be heard during the communication portion of the agenda.

1. Call to Order:

2. Roll Call: President Charles Garabedian, Jr.; Vice President Salvador Cerrillo; Director Irma Castaneda; Director Frank Cerrillo, Jr.; Director Carlos Tovar, Jr.

3. Certification: Certification was made that the Board Meeting Agenda was posted 72 hours in advance of the meeting.

4. Old Business:

- a. **Park Parking Lot.** Revised proposal submitted for the complete pavement removal and replacement of parking lot, with drainage upgrade for approximately 57,439 square feet. Total time for this project is 15 days.

Recommended action: to approve revised proposal as submitted.

Motion by: _____; **Second by:** _____

5. New Business: none for this meeting.

6. Incorporation Reports:

7. Recreation Reports:

8. Engineer Reports:

- a. District Engineer Report.
- b. CDBG Engineer Report:

9. General Manager's Report:

- a. Solar Master Agreement
- b. Payments/Billing-Uniform
- c. Restrooms
- d. Walking Path
- e. Venue Flyer for businesses

- 10. President's Report:
- 11. Vice President's Report:
- 12. Director's Reports:
- 13. Legal Counsel Report:

14. Communications:

a. Written Communications:

1. Thank you letter from Morelia Ortiz, Malaga Scholarship recipient.
2. The San Joaquin Valley Air Pollution Control District has recently developed the following Compliance Assistance Bulletin, which outlines procedures that permitted facilities must follow when using stationary or portable backup generators or other power sources to reduce the strain on California's electrical grid during peak times of the energy emergency.

b. Public Comment: *The Public may address the Malaga County Water District Board on item(s) of interest within the jurisdiction of the Board, not appearing on the agenda. The Board will listen to comments presented; however, in compliance with the Brown Act, the Board cannot take action on items that are not on the agenda. The public should address the Board on agenda items at the time they are addressed by the Board. All speakers are requested to wait until recognized by the Board President. All Comments will be limited to three (3) minutes or less per individual/group per item per meeting, with a fifteen (15) minutes maximum.*

15. Consent Agenda. The items listed below in the Consent Agenda are routine in nature and are usually approved by a single vote. Prior to any action by the Board of Directors, any Board member may remove an item from the consent agenda for further discussion. Items removed from the Consent Agenda may be heard immediately following approval of the Consent Agenda or set aside for discussion and action after Regular Business.

- a. Minutes of the Regular Board Meeting of August 23, 2022.
- b. Financial Statements and Accounts Payable Reports.

Recommended action: To approve the Consent Agenda as presented or amended.

Motion by: _____; **Second by:** _____

16. Closed Session:

17. Adjournment:

Motion by: _____, **Second by:** _____

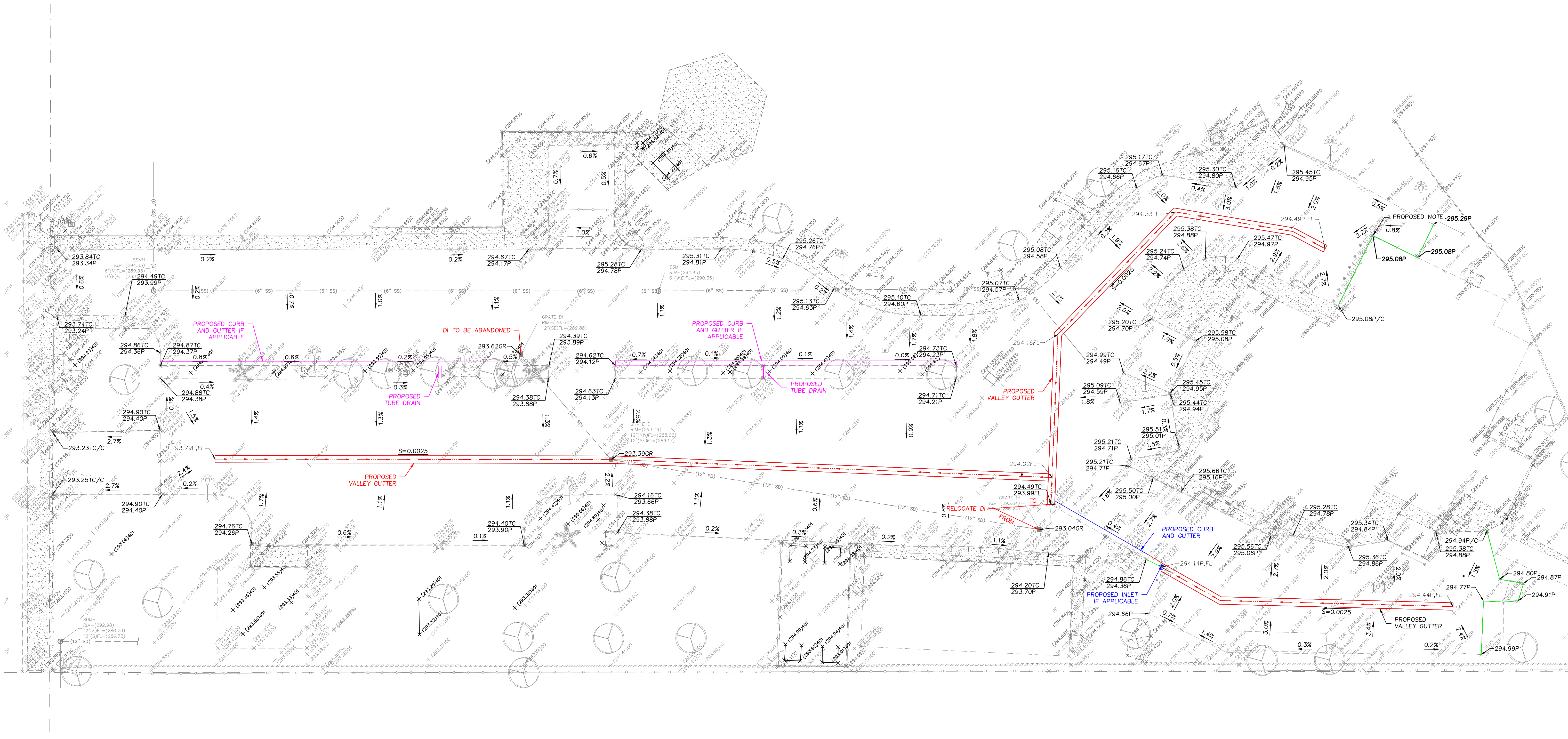
Certification of Posting

I, Norma Melendez, District Clerk of the Malaga County Water District, do hereby certify that the foregoing agenda for the Regular Meeting of the Board of Directors of September 13, 2022 was posted for public view on the front window of the MCWD office at 3580 S. Frank Street, Fresno Ca 93725, at 5:00P.M. On 09/09/2022.

Norma Melendez

Norma Melendez, District Clerk

item 4.a.



GENERAL NOTES:

- RED - VALLEY GUTTERS NEEDED FOR ALL DESIGNS
- GREEN - EDGE OF PAVEMENT REDESIGN
- BLUE - PROPOSED CURB AND GUTTER (IF NO CURB AND GUTTER, INLET NECESSARY AT END OF VALLEY GUTTER)
- PINK - PROPOSED TUBE DRAINS AT 8" CURB REVEAL (IF NO TUBE DRAINS, CURB AND GUTTER NECESSARY ALONG LENGTH OF ISLANDS)

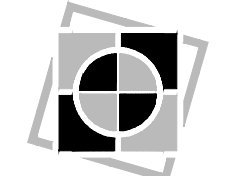
EARTHWORK QUANTITIES:

- ESTIMATED PAVING AREA = ±1.3 AC.
- ESTIMATED EXCAVATION = 1282 C.Y.
- ESTIMATED EMBANKMENT = 196 C.Y.

MALAGA COMMUNITY PARK PARKING LOT

SITE LAYOUT EXHIBIT

Yamabe & Horn
Engineers, Inc.
CIVIL ENGINEERS • LAND SURVEYORS
2085 N. BURL AVENUE SUITE 101 FRESNO, CA 93727
TEL: (559) 244-5123 WEBSITE: YANDHEINGR.COM



RESHMI V. ROGERS
No. 66888
CIVIL
STATE OF CALIFORNIA

PROJECT TITLE

SHEET DESCRIPTION

Dr. By: SR
Ch. By: KR
Date: 08-05-2022
Scale: As Noted
YH Job No. 22-177
Sheet No. 1
of 1 Sheets



item 4.a.

PREPARED FOR

Moises Ortiz

Malaga County Water District

moisesortiz0905@gmail.com

08/15/2022

**Malaga Community Ctr -- Complete
Parking Lot Renovation and
Drainage Upgrade**

Project Number 1-4-23315

Contact

Lori Aubin

1800 E. McFadden Ave.

Santa Ana, CA

(559) 474-1081

Lori.Aubin@theKYAgroup.com

Pages 6

CA LICENSE #984827 B + C15

DIR #1000003379



Proposal: 1-4-23315

To: Malaga County Water District
3580 S Frank Avenue
Fresno
California
93725

Date: August 15, 2022
Terms: Net 30

c/o: Malaga County Water District
RA: Lori Aubin
RA Phone: (559) 474-1081
RA Email: Lori.Aubin@theKYAgroup.com
Site: Malaga Community Center
Address: 3582 S Winery Avenue
93725

Site Qualifications and General Scope of Work

DIR # 1000003379

COMPLETE PAVEMENT REMOVAL / REPLACEMENT + DRAINAGE UPGRADE Approx. 57,439 SF

All Scope of Work is per the drawing provided by the client

Remove and store on-site existing concrete wheel stops for re-installation

- Saw cut damaged asphalt, remove and haul away area measuring approx. 57,439 SF
 - Water down, grade, and compact sub-grade prior to paving
 - Pave back with 3" of new asphalt to match existing asphalt grade.
- Note: Asphalt will be graded as per plans.

NEW CONCRETE VALLEY GUTTER

- Form and pour new curb & gutter and valley gutter as shown on plans.

LINE STRIPING

- Line striping, stenciling, & symbols will be reapplied using 1 coat of premium, long-lasting water-based and or oil/solvent base commercial traffic paint.
- *Re-stripe, re-stencil, and repaint symbols on parking lot per existing layout

CONCRETE

- Saw cut and relocate root drain to exit at the face of the concrete curb
- Demo and haul away built-up concrete ramp painted yellow.
- Create a new ADA ramp in front of the handicap stall to be ADA compliant.

All work is Prevailing Wage

Initials _____

Notes: Sales tax rate will be based upon the shipping address. Price is good for 30 days from date of quote.



SCOPE OF WORK - PRICING

Malaga Community Ctr -- Complete Parking Lot Renovation and Drainage Upgrade	Quantity	U/M	Price	Value
<u>Provide all Materials and Labor for the Malaga Community Center Complete Asphalt & Parking Lot Renovation Project (Includes Sales Tax)</u>	1.00	EA	\$327,616.44	\$327,616.44
<u>Bonding Fee</u>	1.00	EA	\$3,931.40	\$3,931.40
	Total Price			\$331,547.84

Initials _____

*This is a legal agreement - please read carefully
Complete and Initial all pages*

Proposal Number 1-4-23315



CONDITIONS AND WARRANTY

1) Proposal:

The above proposal is valid for 30 days from the date first set forth above. After 30 days, we reserve the right to increase prices due to the rise in cost of raw materials, fuel or other cost increases. When applicable, KYA Services LLC reserves the right to implement a surcharge for significant increases in raw materials, including, but not limited to; fuel, and materials. Due to the duration of time between proposals, contracts and final furnishing, KYA Services LLC reserves the right to implement this surcharge when applicable.

Any job that is accepted prior to December 31st of the current year and scheduled to install after December 31st of the current year is subject to price increase

2) Purchase:

By executing this proposal, or submitting a purchase order pursuant to this proposal (which shall incorporate the terms of this agreement specifically by reference) which is accepted by KYA Services LLC. (the "Company"), the purchaser identified above ("you" or the "Purchaser") agrees to purchase the materials and the services to be provided by the "Company", as detailed in the Pricing and "General Scope of Work" sections in this agreement, above.

3) Standard Exclusions:

Unless specifically included, this agreement does not include, and Company will not provide services, labor or materials for any of the following work: (a) removal or disposal of any material containing asbestos or any hazardous materials as defined by the EPA; neither we nor our installers are responsible for the handling, removal or abatement of asbestos contained floor material or adhesive. Further, our policy is to request an Asbestos Hazard Emergency Response Act (AHERA) report prior to proceeding with any floor material or floor adhesive removal. We and our installers consider it the owners responsibility to produce this report prior to executing this contract. (b) moving Owner's property around the installation site. (c) repair or replacement of any Purchaser or Owner- supplied materials. (d) repair of concealed underground utilities not located on prints, supplied to Company by Owner during the bidding process, or physically staked out of by the Owner, and which are damaged during construction; or (e) repair of damage to existing surfaces that could occur when construction equipment and vehicles are being used in the normal course of construction.

4) Insurance Requirements:

Company is not required to provide any insurance coverage in excess of Company's standard insurance. A copy of the Company's standard insurance is available for your review prior to acceptance of the Company's proposal.

5) Payment:

Terms of payment are defined in the "Pricing" details section and are specific to this contract. For purposes of this agreement, "Completion" is defined as being the point at which the materials have been furnished. In any event where Completion cannot be effected due to delays or postponements caused by the Purchaser or Owner, final payment (less 10% retainage) is due within 30 days of the date when the Completion was scheduled, had the delay not occurred. All payments must be made to KYA Services LLC 1800 E McFadden Ave, Santa Ana, CA 92705. If the Purchaser or Owner fails or delays in making any scheduled milestone payments, the Company may suspend the fulfillment of its obligations hereunder until such payments are made, or Company may be relieved of its obligations hereunder if payment is more than 60 days past due. Company may use all remedies available to it under current laws, including but not limited to filing of liens against the property and using a collection agency or the courts to secure the collection of the outstanding debt.

6) Lien Releases:

Upon request by Owner, Company will issue appropriate partial lien releases as corresponding payments are received from Purchaser, but prior to receiving final payment from Purchaser or Owner, Company will provide a full release of liens upon receipt of final payment. In accordance with state laws, Company reserves the right to place a lien on the property if final payment has not been received 10 days prior to the filing deadline for liens.

7) Site Plan Approval, Permit/s, Permit Fees, Plans, Engineering Drawings and Surveying:

Site plan approval, permits, permit fees, plans, engineering drawings and surveying are specifically excluded from this agreement and the Services unless specified under the "General Scope of Work". The Company does not in any way warrant or represent that a permit or site plan approval for construction will be obtained. Sealed engineered drawings that are required but not included in the "General Scope of Work" will result in additional cost to Purchaser.

8) Manufacturing and Delivery:

Manufacturing lead-time and delivery varies depending on the product purchased.

Initials _____



9) Returned Product, Deposits and/ or Cancelled Order:

From date of shipment from our facility, all returned product(s) and cancelled orders are subject to a 50% restocking fee. No returns are available following this date. All deposits are non-refundable.

10) Concealed Conditions:

"Concealed conditions" include, without limitation to, water, gas, sprinkler, electrical and sewage lines, post tension cables, and steel rebar. Observations that were able to be made either by visual inspection or by drawings and/or plans submitted by Owner at the time this agreement was approved. If additional Concealed Conditions are discovered once work has commenced which were not visible at the time this proposal was approved, Company will stop work and indicate these unforeseen Concealed Conditions to Purchaser or Owner so that Purchaser and Company can execute a change order for any additional work. In any event, any damage caused by or to unforeseen Concealed Conditions is the sole responsibility of the Purchaser and Company shall not be held liable for any such damage. Soil conditions are assumed to be soil that does not contain any water, hard rock (such as limestone, caliche, etc.), rocks bigger than 4inches in diameter or any other condition that will require additional labor, equipment and/or materials not specified by the purchaser or Owner in the bidding process.

Any condition requiring additional labor, equipment, and/or materials to complete the drilling or concrete operations will require a change order before Company will complete the process. Any variation will incur additional charges.

11) Changes in the Work:

During the course of this project, Purchaser may order changes in the work (both additions and deletions). The cost of these changes will be determined by the Company, and a change order must be completed and signed by both the Purchaser and the Company, which will detail the "General Scope of the Change Order". Should any change be essential to the completion of the project, and the Purchaser refuses to authorize such change order, then Company will be deemed to have performed its part of the project, and the project and Services will be terminated. Upon such termination, Company will submit a final billing to Purchaser for payment, less labor allowance for work not performed but including additional charges incurred due to the stoppage. No credit will be allowed for materials sold and supplied, which will remain the property of the Purchaser.

12) Warranty; Limitations of Liability:

Company warrants that all Company-supplied labor and Services will be performed in a good and workmanlike manner. Purchaser shall notify the Company in writing detailing any defects in Service for which a warranty claim is being made.

COMPANY SHALL NOT IN ANY EVENT BE LIABLE FOR INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR LIQUIDATED DAMAGES IN ANY ACTION ARISING FROM OR RELATED TO THIS AGREEMENT, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), INTENDED CONDUCT OR OTHERWISE, INCLUDING WITHOUT LIMITATION, DAMAGES RELATING TO LOSS OF PROFITS, INCOME OR GOODWILL, REGARDLESS OF WHETHER COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT WILL COMPANY'S LIABILITY FOR MONETARY DAMAGES UNDER THIS AGREEMENT EXCEED THE FEES PAID OR DUE AND PAYABLE FOR THE SERVICE UNDER THIS AGREEMENT (OR RELEVANT PURCHASE ORDER).

The warranties or the materials are contained in a separate document between Company and the ultimate Owner of the materials, which will be provided to Owner at the time of completion of work.

13) Indemnification:

To the fullest extent permitted by law. Purchaser shall indemnify, defend and hold harmless the Company and its consultants, agents and employees or any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, relating to furnishing of the materials or performance of the Services, provided that such claim, damage, loss or expense is attributable to bodily injury to, sickness, disease or death of a person, or injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions of the Purchaser or its agents, employees, or subcontractors or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in Section 13.

14) Delegation: Subcontractors:

The Services and furnishing of materials may be performed by subcontractors under appropriate agreements with the Company

Initials _____



15) Force Majeure: Impracticability:

The Company shall not be charged with any loss or damage for failure or delay in delivering or furnishing of materials when such failure or delay is due to any cause beyond the control of the Company, due to compliance with governmental regulations, or orders, or due to any acts of God, lockouts, slowdowns, wars or shortages in transportation, materials or labor.

16) Dispute Resolution:

Any controversy or claim arising out of or related to this agreement must be settled by binding arbitration administered in Santa Ana, CA by a single arbitrator selected by the parties or by the American Arbitration Association, and conducted in accordance with the construction industry arbitration rules. Judgement upon the award may be entered in any court having jurisdiction thereof.

17) Entire Agreement; No Reliance:

This agreement represents and contains the entire agreement between the parties. Prior discussion or verbal representations by the parties that are not contained in this agreement are not part of this agreement. Purchaser hereby acknowledges that it has not received or relied upon any statements or representations by Company or its agents which are not expressly stipulated herein, including without limitation any statements as to the materials, warranties or services provided hereunder.

18) No Third-Party Beneficiaries:

This agreements creates no third party rights or obligations between Company and any other person, including any Owner who is not also a Purchaser. It is understood and agreed that the parties do not intend that any third party should be a beneficiary of this agreement.

19) Governing Law:

This agreement will be constructed and enforced in accordance with the laws of the State of California.

20) Assignment:

Purchaser may not assign this agreement, by operation of law or otherwise, without the prior written consent of the Company. The agreements shall be binding upon and ensure to the benefit of the Company and the Purchaser, and their successors and permitted assigns.

Executed to be effective as of the
date executed by the Company:

KYA Services LLC

Accepted by:

Signature:

Signature:

Lori Aubin

By: (Print)

By: (Print)

Lori Aubin

Title:

Title:

Regional Advisor

Date:

Date:

August 15, 2022

Initials _____

*This is a legal agreement - please read carefully
Complete and Initial all pages*

Proposal Number 1-4-23315

4217 ENERGY SERVICES MASTER AGREEMENT

by and between

Malaga County Water District

and

SiteLogIQ, Inc.

1651 Response Rd., Suite 300

Sacramento, California, 95815

CA Contractor License #: 1054171

September, 2022

Deleted: June 2, 2022

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EXHIBITS

Exhibit A	Definitions
Exhibit B	Certifications
Exhibit B-1	Drug-Free Workplace / Tobacco-Free Environment Certification
Exhibit C	Not Used
Exhibit D	Not Used
Exhibit E	Insurance
Exhibit F	Certificate of Substantial / Final Completion and Acceptance
Exhibit G	Notice to Proceed

ENERGY SERVICES AGREEMENT

This ENERGY SERVICES AGREEMENT ("Agreement"), dated as of **June 2, 2022**, ("Effective Date"), is by and between Malaga County Water District, a District organized and existing under the laws of the State of California ("District") and Sitelog IQ, Inc., a Delaware corporation ("Contractor") (each a "Party" and collectively, the "Parties").

RECITALS

WHEREAS, District desires to reduce energy consumption and operational expenses through the installation of energy conservation and energy generation technologies ("System");

WHEREAS, California Government Code § 4217.10 et seq. authorizes Cities, Counties, and Special Districts to enter into agreements, contracts and related documents with private sector entities for developing energy generation and conservation projects upon District's finding that the anticipated costs for such services provided under this Agreement, together with any financing costs, will be less than the anticipated marginal energy costs to District;

WHEREAS, District has assigned specific areas on District properties (each one, a "Site") on which the solar and energy conservation measures (each one, a "System") will be constructed;

WHEREAS, District desires to engage Contractor to design, supply and install selected and listed scope of work at each Site; and

WHEREAS, Contractor desires to provide such turnkey upgrades, design, supply and installation services, all in accordance with the terms and conditions set forth in this Agreement; and

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

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. DEFINITIONS.

Unless otherwise required by the context in which any term appears: (a) capitalized terms used in this Agreement shall have the respective meanings set forth in **Exhibit A**; (b) the singular shall include the plural and vice versa; (c) the word "including" shall mean "including, without limitation;" (d) references to "Sections" and "Exhibits" shall be to sections and exhibits of this Agreement; (e) the words "herein", "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection; and (f) references to this Agreement shall include a reference to all attached Exhibits, as the same may be amended, modified, supplemented or replaced from time to time.

2. CONTRACTOR CERTIFICATIONS

This Agreement includes the following contractor certifications, the forms of which are attached in **Exhibit B**, which must be completed by Contractor prior to commencement of the work on the Systems:

- i. Drug-Free Workplace / Tobacco-Free Environment Certification (**Exhibit B-1**)
- ii. Non-collusion Declaration (**Exhibit B-2**)

3. GENERAL

3.1. Scope of Work

- (a) Contractor shall furnish to District turnkey energy efficiency upgrades and the engineering, design, procurement, construction management, installation, construction, monitoring, and commissioning of energy generation systems (each one a "System") installed at two sites (collectively, the upgrades and Systems shall be referred to as the "Project").
- (b) Operations and maintenance are not a part of this Agreement. District shall enter into a separate contract for operations and maintenance.

3.2. Contract Price

- (a) Contract Price. Subject to adjustments, as set forth in this Agreement, Contractor agrees to perform the Work for the price as defined in **Exhibit C**.

Deleted: various

Deleted: <#>Work shall be performed in accordance with this Agreement, Energy Conservation Findings, and Exhibits attached hereto.¶

Deleted: and/or the issuance of additional of Work Orders

Deleted: in each Work Order ("Work Order Price") as detailed

Deleted: The total value of the Contract is the summation of the Work Order Prices, as updated from time to time ("Contract Price"): ...

- (i) Payment of the Contract Price shall be made in compliance with the process described in **Exhibit C**.

3.3. Protective Measures.

- (a) Contractor shall be responsible for all injury or damage to individuals or property that may occur as a result of its fault or negligence, or that of its Subcontractors, in connection with the performance of the Work, subject to the limitation of liability contained in Section 7.5.
- (b) Contractor shall take all reasonably necessary precautions for the safety of its employees and any and all other individuals present on the Site where the System is located and prevent accidents or injury to individuals on, about, or adjacent to the premises where the Work is being performed.
- (c) Contractor shall keep the relevant part of the Site where the System is located and surrounding areas free from accumulation of waste materials or rubbish caused by the Work, and at the end of each Day that the Contractor performs the Work, Contractor shall remove any debris, store such debris in containers at its sole expense, and leave the Site in a clean and orderly condition. Upon Final Completion, Contractor shall remove from the relevant part of the Site where the System is located all waste materials, rubbish, debris, debris containers, tools, Equipment, machinery and surplus materials from the Site and leave the Site in a clean and orderly condition.
- (d) Trenching and Excavations. Contractor shall be responsible for complying with the provisions of California Public Contract Code Section 7104 regarding trenching and excavations that extend deeper than four (4) feet below the surface. No change order issued pursuant to California Public Contract Code Section 7104 shall provide for any increase in compensation that would exceed the recovery allowed pursuant to the "Claims" section of the General Requirements.

3.4. Prevailing Wage.

- (a) California Labor Code. Contractor shall comply with all applicable provisions of the California Labor Code, Division 2, Part 7, Chapter 1, Articles 1-5, including (without limitation) the payment of the general prevailing per diem wage rates for public work projects in excess of \$1,000. In addition, Contractor and each Subcontractor shall comply with Chapter 1 of Division 2, Part

7 of the California Labor Code, commencing with Section 1720, and including Sections 1735, 1777.5 and 1777.6 forbidding discrimination, and Sections 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Contractor or Subcontractor.

- (b) Certified Payroll Records. This Project is subject to the requirements of Subchapter 4.5 of Chapter 8 of Title 8 of the California Code of Regulations. Contractor and all subcontractors must furnish certified payroll records to the Department of Industrial Relations' Compliance Monitoring Unit at least monthly, or within ten (10) Business Days of any separate request by the Compliance Monitoring Unit, in the manner required by the Compliance Monitoring Unit.
- (c) Payment Withholding. Pursuant to 8 CCR 16463(e), the District may withhold contract payments when payroll records are delinquent or inadequate or as required by the Labor Commissioner. The amount withheld shall be limited to those payments due or estimated to be due to the Contractor or Subcontractor whose payroll records are delinquent or inadequate, plus any additional amount that the Labor Commissioner has reasonable cause to believe may be needed to cover a back wage and penalty assessment against the Contractor or Subcontractor whose payroll records are delinquent or inadequate; provided that the Contractor shall be required in turn to cease all payments to a Subcontractor whose payroll records are delinquent or inadequate until the Labor Commissioner provides notice that the Subcontractor has cured the delinquency or deficiency.
- (d) Site Access.
 - (i) Contractor shall provide site access to Department of Industrial Relations personnel upon request.
 - (ii) Construction staging areas, storage areas, access, parking, Site use, etc. must be acceptable to District at all times. Site access and use will be limited. At no times shall public roads or sidewalks be blocked.
 - (iii) Driveways and Entrances: Contractor shall keep driveways, entrances, and fire access roads clear and available to District, District's employees, and emergency vehicles. Contractor shall not use these areas for parking or storage of materials.

- (iv) Contractor shall schedule deliveries to minimize use of driveways and entrances.
 - (v) Contractor shall schedule deliveries to minimize space and time requirements for storage of materials and equipment on-site.
 - (vi) Parking: Designated Contractor parking areas will be assigned. All vehicles should be locked as the District cannot guarantee observation of Contractor or public vehicles.
 - (vii) Contractor shall confine operations on the Site to areas indicated in the Contract Documents and as directed by District. Portions of the Site beyond areas on which Work is indicated are not to be disturbed. Contractor shall conform to Site rules and regulations affecting the Work while engaged in project construction.
- (e) Prevailing Wage Notice. On each job site that is subject to compliance monitoring and enforcement by the Department of Industrial Relations, the Contractor shall post at appropriate, conspicuous, weatherproof points at the site the Notice of Projects Subject to Requirements of Subchapter provided in Title 8, section 16451(d) of the California Code of Regulations.
- (f) Prevailing Rate Penalty. Contractor shall, as a penalty, forfeit not less than Two Hundred Dollars (\$200.00) to the District for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the Department of Industrial Relations for such work or craft in which such worker is employed for the Work by the Contractor or by any Subcontractor, of any tier, in connection with the Work. Pursuant to California Labor Code §1775, the difference between prevailing wage rates and the amount paid to each worker each calendar day, or portion thereof, for which each worker paid less than the prevailing wage rate, shall be paid to each worker by Contractor.

3.5. Site Conditions.

- (a) Prior to the start of construction, Contractor will conduct a full and complete visual inspection of each Site, including (a) the readily apparent surface conditions of any areas where a System will be installed in or on the ground, including areas where utilities are located such as manhole covers, pull boxes, marked

underground service areas, etc., (b) all staging, storage, delivery, and other areas necessary to perform the Work, (c) ingress to and egress from each Site for all supplies, personnel and Equipment, (d) all as-built drawings, Site layout, easement and other documentation provided by District to Contractor, (e) extent of the Work, locality, actual conditions, as built conditions, and all local conditions and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the design and the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto, and (f) has considered the physical conditions at or contiguous to the sites or otherwise that may affect the cost, progress, performance or furnishing of the Work, as Contractor considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of Contract Documents.

- (b) Contractor will document and provide to District all findings in regards to the aforementioned inspection. If any conditions exist, arise, or are discovered at the Sites that differ materially from those conditions that Contractor discovered or should have reasonably discovered based on the inspections set forth in this Section, including without limitation, conditions related to Hazardous Materials or archeological findings, soils conditions, ground water, rock, caving, or subsurface obstructions of which Contractor was not aware on the date of this Agreement or could not reasonably be expected to anticipate based on the inspection described above, and such conditions involve the incurrence by Contractor of any material expenses to correct or accommodate such conditions (hereinafter, "Unanticipated Condition"), Contractor shall submit a request for a Change Order to District. District and Contractor may mutually agree to modify the Work to offset the Change Order request to comply with District budget limits.

3.6. Labor.

Contractor shall be responsible for all Contractor labor-related delays or disruption of the progress of the Work. Contractor shall promptly take any and all reasonable steps that may be available in connection with the resolution of violations of collective bargaining agreements or labor jurisdictional disputes. Contractor shall advise District promptly in writing of any actual or threatened labor dispute of which Contractor has knowledge that might materially affect the performance of the Work by Contractor or by any of its Subcontractors. Notwithstanding the foregoing, (a) the settlement of strikes, walkouts, lockouts

or other labor disputes shall be at the discretion of the Party having the difficulty, (b) a labor-related delay shall not give rise to a change in the Construction Schedule unless such delay constitutes a Force Majeure Event under paragraph (c) of the definition thereof, and (c) in no event will labor-related delays or difficulties give rise to additional payments to Contractor.

3.7. Insurance.

- (a) Contractor, at its own expense, shall procure or cause to be procured and maintain or cause to be maintained in full force and effect at all times commencing no later than commencement of the Work at the Site and until Final Completion, all insurance coverage specified in Exhibit E.
- (b) District and any lenders to the District shall be added as additional insureds under the commercial general liability, automobile liability and umbrella/ excess liability insurance procured and maintained by Contractor in connection with the Work. Contractor shall not add District or any lender as additional insureds under its worker's compensation insurance policy.
- (c) Contractor shall furnish current certificates indicating that the insurance required under this Agreement is being maintained. Contractor's certificate shall contain a provision whereby the insurer agrees to give the other Party thirty (30) Calendar days (or ten (10) Calendar days in the event of failure to pay premiums) written notice before the insurance is cancelled.

Deleted: and District,

Deleted: their

Deleted: Each Party

Deleted: Each Party's

3.8. Performance of the Work.

- (a) Contractor shall supervise and direct the Work, using Contractor's best skill and attention. Contractor shall be solely responsible for all methods, techniques, sequences and procedures, and shall coordinate all portions of the Work. District will deal only through Contractor, who shall be responsible for the proper execution of the entire Work.

A subcontractor ("Subcontractor") is a person or organization that has a direct contract with Contractor to perform any of the Work. Contractor agrees that it is as fully responsible to District for the acts and omissions of Subcontractors and of persons either directly or indirectly employed by Contractor as it is for the acts and omissions of persons directly employed by it. Nothing contained in this Agreement or any other document associated with the performance of the work shall create any contractual relation between any Subcontractor and District.

Contractor agrees to bind every Subcontractor by the terms of this Agreement as to that portion of the Work performed by Subcontractor, unless specifically noted to the contrary in a subcontract approved in writing by District. Contractor agrees to be bound to the Subcontractor by all of the obligations that District assumes to Contractor under this Agreement as to the portion of the Work performed by Subcontractor.

- (b) Contractor agrees to use, and agrees that it shall require each of its Subcontractors to use, only personnel who are qualified and properly trained and who possess every license, permit, registration, certificate or other approval required by Applicable Law or any Governmental Authority to enable such Persons to perform their Work involving any part of Contractor's obligations under this Agreement.
- (c) Contractor agrees that all materials and Equipment to be supplied or used by Contractor or its Subcontractors in the performance of its obligations under this Agreement shall be new (if being incorporated into the System) or in good operating condition (if not being incorporated into the System) and fit for the use(s) for which they are employed by Contractor or its Subcontractors. Such materials and Equipment shall at all times be maintained, inspected and operated pursuant to Industry Standards and as required by Applicable Law. Contractor further agrees that all licenses, permits, registrations and certificates or other approvals required by Applicable Law or any Governmental Authority will be procured and maintained for such materials and Equipment at all times during the use of the same by Contractor or its Subcontractors in the performance of any of Contractor's obligations under this Agreement.

3.9. Hazardous Materials.

- (a) Contractor hereby specifically agrees to indemnify, defend and hold District, their present and future Board members, administrators, employees, agents, representatives, successors and assigns harmless from and against any and all losses, liabilities, claims, demands, damages, causes of action, fines, penalties, costs and expenses (including, but not limited to, all reasonable consulting, engineering, attorneys' or other professional fees), that they may incur or suffer by reason of:
 - (i) any release of a Hazardous Material brought on to the Site by Contractor, or any pre-existing Hazardous Materials that, through Contractor's sole negligence, are released or disturbed at the Site;

- (ii) any enforcement or compliance proceeding commenced by or in the name of any Governmental Authority because of an alleged, threatened or actual violation of any Applicable Law by Contractor; and
 - (iii) any action reasonably necessary to abate, remediate or prevent a violation or threatened violation of any Applicable Law by Contractor.
- (b) District hereby specifically agrees to indemnify, defend and hold Contractor, its present and future direct or indirect parents, subsidiaries, affiliates, divisions, and their respective directors, officers, employees, shareholders, agents, representatives, successors and assigns harmless from and against any and all losses, liabilities, claims, demands, damages, causes of action, fines, penalties, costs and expenses (including, but not limited to, all reasonable consulting, engineering, attorneys' or other professional fees), that they may incur or suffer by reason of:
 - (i) any release of a Hazardous Material brought on to the Site by District, District Representative, or Third Party and any pre-existing Hazardous Material except pre-existing Hazardous Material released or disturbed at the Site through Contractor's negligence;
 - (ii) any enforcement or compliance proceeding commenced by or in the name of any Governmental Authority because of an alleged, threatened or actual violation of any Applicable Law by District or District Representative; and

3.10. Suspension of the Work.

- (a) If Contractor does not receive payment of any undisputed invoices submitted in accordance with Section 4.2, Contractor shall have the right, upon not less than fifteen (15) Business days written notice, to suspend the Work under this Agreement. Contractor shall be entitled to compensation for all undisputed amounts under this Agreement. If District issues full payment of the undisputed invoice within fifteen (15) Business days of written notice of intention to suspend, the notice of intention to suspend shall have no further force or effect and Contractor shall continue to perform the services hereunder as if the notice of intention to suspend had not been given. In the event of any such suspension, Contractor shall be entitled to request (i) an extension of the deadlines of this Agreement for the same period of the suspension. If a suspension of the Work under this Section

Deleted: <#>any action reasonably necessary to abate, remediate or prevent a violation or threatened violation of any Applicable Law by District or District Representative.¶

Deleted: , and (ii) the reimbursement of the additional costs and expenses, if any, reasonably incurred and substantiated by Contractor (provided Contractor undertakes reasonable efforts to mitigate such costs and expenses) in protecting, securing or insuring the Work, the delay resulting from such suspension, and in resumption of the Work.

continues for more than two (2) months, Contractor shall be entitled to, at its sole discretion, terminate this Agreement.

- (b) If the suspension is not due to an act, omission or default of any of the Parties, and such delay falls under the definition of an Excusable Delay, then the deadlines of this Agreement will be extended for the same period of the suspension, or for such other period that the Parties deem reasonable in view of the circumstances, and District shall assume any costs arising under the effects of the suspension on the obligations of the Parties under this Agreement. Notwithstanding the occurrence or continuation of any Force Majeure Event, the provisions of this Section shall apply.
- (c) After the resumption of the performance of the Work, Contractor shall, after due notice to District, examine the Work affected by the suspension. Contractor shall make good any defect, deterioration or loss of the construction or the Work affected that may have occurred during the suspension period.

3.11. Taxes.

The Price includes (and Contractor assumes exclusive liability for and shall pay before delinquency) all federal, state or local sales, use, value added, excise and other taxes, charges or contributions imposed on, or with respect to all Equipment and Contractor's services contemplated by this Agreement, provided that District shall pay and have exclusive liability with respect to any taxes payable with respect to District's income. Contractor shall hold harmless, indemnify and defend District, together with any and all its governing board, administrators, agents and employees from any liability, penalty, interest and expense by reason of Contractor's failure to pay such taxes, charges or contributions.

3.12. Liens.

Contractor warrants good title, free and clear of all liens, claims, charges, security interests, and encumbrances whatsoever, to all Equipment and other items furnished by it or any of its Subcontractors that become part of the System to the extent payment therefore has been received by Contractor from District.

3.13. Compliance with Applicable Laws.

- (a) Contractor specifically agrees that it shall at all times fully comply with Applicable Laws and that it shall perform the Work in accordance with the Applicable Laws.

3.14. Energy Credits.

Deleted: <#>District may suspend the Work temporarily at its discretion. In the event of any such suspension, Contractor shall be entitled to request (i) an extension of the deadlines of this Agreement for the same period of the suspension, and (ii) the reimbursement of the additional costs and expenses, if any, reasonably incurred and substantiated by Contractor (provided Contractor undertakes reasonable efforts to mitigate such costs and expenses) in protecting, securing or insuring the Work, the delay resulting from such suspension, and in resumption of the Work. If a suspension of the Work under this Section 3 continues for more than six (6) months, Contractor shall be entitled, at its sole discretion, to terminate this Agreement. ¶ ...

Deleted: Costs properly incurred by Contractor (including but not limited to demobilization and mobilization costs, insurance fees, and repair cost) shall be added to the Work Order Price, so long as the suspension did not arise due to any act, omission or default on the part of Contractor.

Deleted: Work Order

Deleted: Contractor and District shall cooperate with each other to minimize the tax liability of both Parties to the extent legally permissible....

(a) Contractor acknowledges that District shall own, and may assign or sell in its sole discretion, all rights, title, and interest associated with or resulting from the development, construction, installation and ownership of the System or the production, sale, purchase or use of the energy output including, without limitation:

Deleted: District

Deleted: Contractor

- (i) All Environmental Incentives arising from the Environmental Attributes associated with the System;
- (ii) The reporting rights and exclusive rights to claim that: (i) the energy output was generated by the System (except as stated in paragraph (a)), (ii) Contractor is responsible for the reductions in emissions of pollution and greenhouse gases resulting from the System, (iii) Contractor is entitled to all credits, certificates, registrations, etc., evidencing or representing any of the foregoing;
- (iii) All carbon reduction tonnage as defined under the Climate Action Reserve or similar definition as enacted by the State of California or the U.S. Federal Government ("Carbon Credits");
- (iv) All "renewable energy credits" (as such term is defined in Section 399.12(h)(2) of the California Public Utilities Code);
- (v) All Environmental Incentives hereafter enacted into law, whether under federal, state or local law, arising from the Environmental Attributes of the System or the energy output or production, sale, purchase, consumption or use of the energy output from the System, expressly excluding, however, any future Environmental Incentives that are or may be dependent on ownership of the System for federal tax purposes.

Deleted: Contractor

Deleted: District shall take such steps as Contractor shall reasonably request to confirm Contractor's ownership of Energy Credits as herein provided and shall cooperate with Contractor, to the extent Contractor reasonably requests and at Contractor's expense, in the sale or other disposition of Energy Credits.

(b) The Carbon Credits, renewable energy credits, grants and future Environmental Incentives as described herein shall be referred to collectively as "Energy Credits". The District may assign, sell, transfer or otherwise convey all or any part of its right, title, and interest in and to the Energy Credits from time to time as it may determine to be in its best interest.

Deleted: <#> District recognizes designer/contractor under this project may be eligible for a tax deduction for energy efficient commercial buildings under §179D of the Internal Revenue Code. District agrees and recognize that Contractor will be the designer of this project for purposes of the §179D deduction. District shall cooperate with Contractor in completing the paperwork and certifications necessary to allow Contractor to claim any §179D or other energy efficient commercial buildings tax deduction" provided credits cannot be used by or benefit District. Performance & Payment Bonds.¶

3.15. Performance and Payment Bonds.

Contractor shall submit a Performance Bond and Payment Bond in accordance with Exhibit C.

3.16. Title: Risk of Loss.

- (a) From Effective Date and until the date of Substantial Completion for the Work subject to the applicable Work Order, Contractor assumes risk of loss and full responsibility for the cost of replacing or repairing any damage to the System and all damages to and defects in materials, Equipment, supplies and maintenance equipment (including temporary materials, equipment and supplies) that are purchased by Contractor for permanent installation in or for use during construction of the System.
- (b) District shall bear the risk of loss and full responsibility with respect of the System from and after the date of Substantial Completion of the Work subject to the Work Order.
- (c) Notwithstanding anything herein to the contrary, District shall bear the risk of loss and full responsibility for the cost of replacing or repairing any damage to that portion of the System, and all materials, Equipment, supplies and maintenance equipment (including temporary materials, equipment and supplies) that are purchased by Contractor or District for permanent installation in or for use during construction of the System to the extent caused by the negligent, grossly negligent or willful acts of District or its agents, employees or representatives.
- (d) Title to all materials, Equipment, supplies and maintenance equipment required by this Agreement, to be purchased by Contractor for permanent installation as part of the System or for ownership by District in the operation of that portion of the System, shall pass to the District upon the achievement of Substantial Completion of the Work required by that Work Order.

Deleted: applicable to the Work Order

Deleted: subject to the particular Work Order

4. PRICE AND PAYMENT

4.1. Contract Price.

- (a) The Price is firm fixed price for the scope proposed and includes all expenses expected to be incurred by Contractor including, but not limited to, equipment and materials, erection, construction, commissioning, inclusive of cost of travel and lodging expenses, applicable permits (other than the District Permits), services, supplies, labor, appurtenances, fees, charges, and taxes, related to Contractor's performance of its obligations under this Agreement.

Deleted: Work Order

(b) Any Work above and beyond code requirements and Industry Standards requested by the District shall be resolved through a Change Order to this Agreement.

Deleted: Changes to the System or

(c) If applicable and approved by District, any additional Work not otherwise specified in Exhibit C shall be resolved through a Change Order to this Agreement.

(d) District and Contractor may mutually agree to reduce portions of the Work to offset the Change Order request to comply with District budget limits.

(e) The Price shall only be changed by Change Order approved by Contractor and District.

Deleted: Work Order

4.2. Payment.

(a) District shall pay to Contractor the progress payments set forth in Exhibit C when Contractor has completed the Work associated with such payment. Contractor must submit documentation at the time of invoicing for related progress payments.

(b) District shall pay one hundred percent (100%) of each progress payment.

(c) The following minimum content will be contained in, or delivered together with, any payment request from Contractor to District:

(i) Contractor address, phone number, and fax

(ii) Contractor invoice number and date

(iii) Project Site address(es)

(iv) Description of completed milestones since the immediately preceding payment request

(v) Total invoice amount

(vi) "Rem it to" details (for wire transfer)

(vii) Lien waivers from major Subcontractors.

(viii) Signature of authorized representative of Contractor, certifying as to the accuracy of the payment request.

Deleted: (>5% of Work Order Price)

(d) Overdue payment obligations of District hereunder shall bear interest from the date due until the date paid at a rate per annum

equal to the rate published by the *Wall Street Journal* as the “prime rate” on the date on which such interest begins to accrue plus two percent (2%). District shall submit the CEC reimbursement documents to the CEC within ten (10) Business days after District’s receipt of Contractor’s invoice. If the CEC delays payment to District for longer than thirty (30) Business days, or modifies the requirements for reimbursement, Parties shall negotiate in good faith to develop a solution that is acceptable to all Parties.

- (e) District may withhold or, on account of subsequently discovered evidence, nullify and require repayment of the whole or part of any payment to the extent necessary to protect District from loss, including costs and actual attorneys’ fees, on account of (1) any breach of this Agreement by Contractor; (2) claims filed or reasonable evidence indicating probable filing of claims; (3) failure of Contractor to make payments properly to its Subcontractors or for material, labor or fringe benefits; (4) a reasonable doubt that the Work to be completed as a condition to a payment has properly been completed; (5) penalties assessed against District for failure of Contractor to comply with state, federal or local laws and regulations; or (6) any other ground for withholding payment allowed by state or federal law, or as otherwise provided in this Agreement. When the above matters are rectified, such amounts as then due and owing shall be paid or credited to Contractor.

5. COMMENCEMENT & COMPLETION

5.1. Commencement and Substantial Completion.

- (a) Contractor shall perform the Work as soon as practicable following the receipt of District Notice to Proceed.
- (b) District shall provide access to the sites to complete the Work.
- (c) The Contractor shall achieve Substantial Completion as set forth in Work Order. Contractor may claim a justified extension of the Substantial Completion Date if it is or will be delayed in completing the Work for one or more of the following causes:
 - (i) Unanticipated Conditions which directly affect the Project Milestones;
 - (ii) Changes in the design, scope, or schedule of the Project required by the District;
 - (iii) Breach of this Agreement by District;

Deleted: <#>District agrees, and Contractor shall be entitled to, an increase in the Contract Price where the cost to Contractor for any raw-material or component (including without limitation, solar panels, tracking equipment, inverters, lighting and mechanical system components or any other equipment necessary to complete the work required by this Agreement) increases greater than two percent (2%) after the date of this Agreement. Contractor shall be entitled to an equitable adjustment in time and money for any costs that it incurs directly or indirectly that arise out of or relate to changes in taxes, tariffs, or similar charges due to such changes including, without limitation, escalation, delay damages, costs to re-procure, costs to change suppliers, costs of manufactured equipment or system components, or other costs of any kind resulting from the changes.¶
For any non-Contractor caused delay or suspension lasting longer than 90 Calendar days, Contractor shall be entitled to a reasonable increase in the Contract Price for an increase in cost for materials, equipment, labor, taxes, tariffs, or other items necessary to complete the work. Should an increase arise; a fair and equitable solution will be negotiated in [...]

- (iv) Suspension of the Work for more than 90 Calendar Days;
or
 - (v) Force Majeure Event.
- (d) The following are conditions precedent to Substantial Completion:
- (i) the System is mechanically, electrically, and structurally constructed in accordance with the requirements of this Agreement, the Work and Industry Standards, except for non-critical punchlist items that do not affect operations;
 - (ii) the electrical infrastructure and the grid connection for the System is mechanically, electrically and functionally complete and capable of interconnection with the local utility;
 - (iii) District and Contractor shall have agreed on the punchlist items. For clarity purposes, the punchlist shall include final as-built drawings, operation and maintenance manuals, operation and maintenance training, permission to operate by local utility, Performance Test, and final lien waivers; and
 - (iv) all necessary documents have been submitted to the local public utility and all Work has been completed to the extent necessary for the local utility to issue a permission to operate.
- (e) When Contractor believes it has achieved Substantial Completion, Contractor shall provide notice to District containing sufficient detail to enable District to determine that Contractor has complied fully with the requirements of Section 5.1(d). Within ten (10) Business days after receipt of such notice, District shall either issue to Contractor the Certificate of Substantial Completion in a form similar to Exhibit E, or, if reasonable cause exists for doing so, advise Contractor by notice (stating the reasons therefore) that Substantial Completion has not been achieved. In the event District determines that Substantial Completion has not been achieved in accordance with the conditions precedent in Section 5.1(d), Contractor shall promptly take such action or perform such Work as is required to achieve Substantial Completion and shall thereupon issue to District another notice as set forth above. This procedure shall be repeated until such time as District has acknowledged Substantial Completion subject to Section 5.1(f).

- (f) All punchlist items shall be completed no later than sixty (60) Business Days after Substantial Completion Date unless otherwise delayed by the local utility. Failure of Contractor to fulfill this obligation shall entitle District to complete the pending works on its own. District shall issue final payment to Contractor minus the cost to complete remaining or incomplete punchlist items.
- (g) Any dispute between District and Contractor with respect to the projected achievement of Substantial Completion as contemplated by this Section 5.1 shall be resolved in accordance with Section 8.5.

5.2. Final Completion.

- (a) Final Completion of the System shall be deemed to have occurred only if:
 - (i) all punch list items contemplated in Section 5.1(d)(iii) have been completed or waived;
 - (ii) all manuals, drawings and other documents expressly required to be delivered by Contractor hereunder have been delivered to District;
 - (iii) on-site operation and maintenance training as required has occurred;
 - (iv) all final Lien waivers have been obtained;
 - (v) a Certificate of Final Completion in a form similar to Exhibit F is duly signed and recorded by District's Representative and the Contractor's Representative; and
 - (vi) local utility has provided a permission to operate.
- (b) Upon Final Completion, Contractor shall submit to District a Certificate of Final Completion in a form similar to Exhibit F certifying that all of the foregoing conditions have been satisfied. District shall, within ten (10) Business Days after the receipt by District of such written certificate, shall execute an acknowledgment of such certificate if Contractor has achieved Final Completion or provide written notice of Contractor's failure to achieve Final Completion. Contractor shall promptly take such action or perform such Work as is required to achieve Final Completion and shall thereupon issue to District another notice as set forth above. This procedure shall be repeated until such time as District has acknowledged Final Completion .

- (c) Any dispute between District and Contractor with respect to the projected achievement of Final Completion as contemplated by this Section 5.2 shall be resolved in accordance with Section 8.5.

5.3. Inspection.

All Work performed by Contractor and all Equipment shall be subject to inspection by District, but such right of inspection of the Work or Equipment shall not relieve Contractor of responsibility for the proper performance of the Work or Equipment to the extent provided under this Agreement. Contractor shall provide to District or District's designee access to Contractor's facility or facilities where the Work is being performed during business hours, and subject to compliance with Site safety rules and policies. District shall ensure that the inspections do not affect the normal performance of this Agreement unless Work is not in compliance with this Agreement.

6. REPRESENTATIONS & WARRANTIES

6.1. Representations and Warranties of Contractor.

Contractor represents and warrants to District that:

- (a) Contractor is a Delaware corporation, duly organized, validly existing, and in good standing under the laws of the State of Delaware, and has full power to engage in the business it presently conducts and contemplates conducting, and is and will be duly licensed or qualified and in good standing under the laws of the State of California and in each other jurisdiction wherein the nature of the business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder.
- (b) Contractor has (either directly or through a Subcontractor) all the required authority, ability, skills, experience, and capacity necessary to perform and shall diligently perform the Work in a timely and professional manner, utilizing sound procurement principles, project management procedures, construction procedures and supervisory procedures, all in accordance with Industry Standards. Contractor has (either directly or through a Subcontractor) the experience and skills necessary to determine, and Contractor has reasonably determined, that Contractor can perform the Work for the Work Order Price.
- (c) The execution, delivery and performance by Contractor of this Agreement will not (i) violate or conflict with any covenant,

agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected, or its organizational documents or (ii) subject the System or any component part thereof to any lien other than as contemplated or permitted by this Agreement.

- (d) There are no undisclosed actions, suits, proceedings, patent or license infringements or investigations pending or, to Contractor's knowledge, threatened against it before any court or arbitrator that individually or in the aggregate could result in any materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Contractor or in any impairment of its ability to perform its obligations under this Agreement.
- (e) All goods, services, equipment, parts, and materials furnished in connection with the Work related to the System are new, unused and undamaged at the time of delivery to the Site.
- (f) The individual executing this Agreement on behalf of Contractor is duly authorized to execute and deliver this Agreement on behalf of Contractor and this Agreement is binding upon Contractor in accordance with its terms.
- (g) Contractor Not Employee of District: It is understood and agreed that in no instance is any party, signing this Contract for or on behalf of District or acting as an employee or representative of District, liable on this Contract, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of District is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.
- (h) Non-Discrimination: Contractor shall provide all services under this Agreement without discrimination, and shall not discriminate against any employee or applicant for employment, on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation. Contractor will comply with Section 1735 of the Labor Code and all provisions of Executive Order No. 10925 of March 6, 1961, as amended, and all rules, regulations and relevant orders of the President's Committee on Equal Opportunity created thereby. Contractor shall also comply with the California Fair Employment and Housing Act (Government Code, Section 12900 and following).
- (i) Severability: The invalidity of any provision of this Agreement, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

- (k) Retention of Records. Pursuant to Government Code Section 8546.7, the performance of any work under this Agreement is subject to the examination and audit of the State Auditor at the request of District or as part of any audit of District for a period of three years after final payment under the Agreement. Each party hereto shall retain all records relating to the performance of the Work and the administration of the Agreement for three years after final payment hereunder.

6.2. Representations and Warranties of District.

District represents and warrants to Contractor that:

- (a) District is a California District, duly organized, validly existing, and in good standing under the laws of the State of California, and has full legal capacity and standing to pursue its purpose (including the capacity to dispose of and encumber all of its assets) and full power to engage in the business it presently conducts and contemplates conducting.
- (b) The execution, delivery and performance by District of this Agreement will not (i) violate or conflict with any covenant, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected, or its organizational documents or (ii) subject the System or any component part thereof or the Site or any portion thereof to any lien other than as contemplated or permitted by this Agreement.
- (c) There are no undisclosed actions, suits, proceedings, patent or license infringements or investigations pending or, to District's knowledge, threatened against it before any court or arbitrator that individually or in the aggregate could result in any materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of District or in any impairment of its ability to perform its obligations under this Agreement.
- (d) The individual executing this Agreement on behalf of District is duly authorized to execute and deliver this Agreement on behalf of District and this Agreement is binding upon District in accordance with its terms.

7. BREACH & TERMINATION

7.1. Termination by District for Cause.

- (a) Contractor agrees that District shall be entitled to terminate this Agreement for cause upon the occurrence of any of the following circumstances:

Deleted: <#>District will exercise commercially reasonable efforts to procure funding for the Project within three-hundred and sixty-five (365) Calendar days of the Effective Date.¶
District has proof of funds, to the satisfaction of the Contractor, that are necessary from time to time to pay Contractor the Work Order Price in accordance with the terms of this Agreement.¶

(i) Except as otherwise permitted under this Agreement, Contractor abandons the entire Work for more than ninety (90) Calendar days or fails to commence the Work within ~~ninety (90)~~ Calendar days after receiving the Notice to Proceed, and after expiration of said period fails to commence or continue performance of the Work within ten (10) Business days of Contractor's written notice from District to commence or continue performance of the Work;

Deleted: one-hundred and eighty (180)

(ii) Contractor commits a material breach of this Agreement, and Contractor does not commence the cure of said breach and thereafter diligent pursuant to completion the cure of said breach, within thirty (30) Calendar days following Contractor's receipt of written notice thereof from District, or

(iii) Contractor makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency, or it becomes the subject of any proceeding commenced under any federal or state insolvency statute or law for the relief of debtors.

(b) Upon the occurrence of any of the foregoing, District may instruct Contractor to discontinue all or any part of the Work, and Contractor shall thereupon discontinue the Work of such parts thereof. District shall thereupon have the right to continue and complete the Work or any part thereof, by contract or otherwise. District shall also pay Contractor for all services rendered in conformity with the agreements, unless offset by the amount of damages incurred by the District or the amount incurred to complete the work up to and including the date of termination;

Deleted: plus all costs incurred with respect to equipment or materials ordered (which order cannot be refunded, terminated or such costs otherwise recovered by Contractor) prior to the date of termination; plus, if applicable, amounts payable to Subcontractors arising from costs or expenses reasonably incurred by such Subcontractor and directly resulting from such termination; plus, if applicable, costs incurred by Contractor in demobilizing its work force from Site; plus all engineering and development cost incurred by Contractor prior to the Effective Date.

7.2. Termination by District for Convenience.

(a) Contractor agrees that District shall be entitled to terminate this Agreement for Convenience upon the occurrence of any of the following circumstances:

(i) Upon exercising commercially reasonable efforts, District shall be entitled to terminate this Agreement if it is unable to procure funding for the Project within three-hundred and sixty-five (365) Calendar days of the Effective Date.

(ii) If any covenant, condition or restriction upon the Site prohibits the installation of the System at the Site, District has the right to terminate this Agreement.

(iii) For unanticipated site conditions that are beyond the contemplation of the parties that create any additional costs to District.

(b) Upon the occurrence of any of the foregoing, District may instruct Contractor to discontinue all or any part of the Work, and Contractor shall thereupon discontinue the Work of such parts thereof. District shall also pay Contractor for all services rendered up to and including the date of termination; plus all costs incurred with respect to equipment or materials ordered (which order cannot be refunded, terminated or such costs otherwise recovered by Contractor) prior to the date of termination; plus, if applicable, amounts payable to Subcontractors arising from costs or expenses reasonably incurred by such Subcontractor and directly resulting from such termination; plus, if applicable, costs incurred by Contractor in demobilizing its work force from Site; plus all engineering and development cost incurred by Contractor prior to the Effective Date.

7.3. Termination by Contractor.

- (a) Contractor may terminate this Agreement, for any of the following causes:
- (i) If District makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency, or it becomes the subject of any proceeding commenced under any federal or state insolvency statute or law for the relief of debtors.
 - (ii) If District fails to make any payment to Contractor hereunder when due, which failure remains uncured for thirty (30) Calendar days following District's receipt of written notice thereof from Contractor, the District shall be in breach and Contractor shall have all rights and remedies that may be available under Applicable Law against District with respect thereto, including without limitation the right to suspend performance of the Work or terminate this Agreement as set forth in this Agreement.

7.4. Indemnity.

Deleted: and defined in Section 4,

Deleted: <#> District shall reimburse Contractor for all services rendered up to and including the date of termination; plus all costs incurred with respect to equipment or materials ordered (which order cannot be refunded, terminated or such costs otherwise recovered by Contractor) prior to the date of termination; plus, if applicable, amounts payable to Subcontractors arising from costs or expenses reasonably incurred by such Subcontractor and directly resulting from such termination; plus, if applicable, costs incurred by Contractor in demobilizing its work force from Site; plus all engineering and development cost incurred by Contractor prior to the Effective Date. ¶

- (a) Contractor shall indemnify, defend (upon the request of District) and hold harmless District and District's agents, board members, elected and appointed officials and officers, employees, volunteers and authorized representatives from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs, and expenses (including, but not limited to, reasonable attorney's fees of District Counsel and counsel retained by District, expert fees, costs and staff time, and investigation costs) of whatever kind or nature (collectively "Claims"), that arise out of or are in any way connected with the performance of this Contract by Contractor or Contractor's officers, agents, employees, independent contractors, subcontractors, or authorized representatives, except where caused by the sole negligence, active negligence or willful misconduct of District. Without limiting the generality of the foregoing, the same shall include injury, or death to any person or persons, damage to any property, regardless of where located, including the property of District, and any workers' compensation claim or suit arising from or connected with any services performed pursuant to this Contract on behalf of Contractor by any person or entity. Notwithstanding the foregoing, the indemnification obligations of Contractor set forth in this Section shall not apply when the claim of infringement arises from a particular design, process or product of a particular manufacturer or manufacturers that Contractor is directed by District to use in connection with the Contract Documents, unless the Contractor has reason to believe there is an infringement of such intellectual property right.
- (b) District shall fully indemnify, save harmless and defend Contractor and its successors, assigns, officers, directors, members, managers, employees, agents, affiliates and partners in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any person (other than Affiliates of Contractor or Subcontractors) arising from or relating to this Agreement, but only to the extent caused by (a) the negligence, gross negligence or willful misconduct of District or its agents or employees or others under District's control or (b) a breach by District of its obligations hereunder.
- (c) Each Party shall indemnify, defend and hold the other Party, and its present and future governing board members, administrators, direct and indirect parents, subsidiaries and Affiliates and their directors, officers, shareholders, employees, agents and representatives harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties,

Deleted: <#>District shall indemnify, defend and hold Contractor and its present and future direct and indirect parents, subsidiaries and Affiliates and their directors, officers, shareholders, employees, agents and representatives harmless from against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, damages, costs or expenses (including attorneys' fees and disbursements) of any kind whatsoever arising from the challenge to the procedures under which this Agreement was approved by the District. ¶

damages, costs or expenses (including attorneys' fees and disbursements) of any kind whatsoever arising from (a) actual or alleged infringement or misappropriation by such Party (or in the case of Contractor, any Subcontractor) of any patent, copyright, trade secret, trademark, service mark, trade name, or other intellectual property right in connection with the System, including without limitation, any deliverable, (b) such Party's (and in the case of Contractor, any Subcontractor's) violation of any third-party license to use intellectual property in connection with the Work, including, without limitation, any deliverable.

- (d) If any claim is brought against a Party (the "Indemnified Party") that gives rise to a potential indemnity claim under this Section, then the Indemnified Party shall give written notice of said claim to the other Party (the "Indemnifying Party"). Upon receipt of written notice of the claim, the Indemnifying Party shall be entitled to participate in, and, unless in the opinion of counsel for the Indemnifying Party a conflict of interest between the Parties may exist with respect to such claim, assume the defense of such claim, with counsel reasonably acceptable to the Indemnified Party. Where the Indemnifying Party has elected not to assume the defense of a claim that gives rise to a potential indemnity claim under this Section, the Indemnifying Party shall reimburse the Indemnified Party for its reasonable and necessary defense expenses to the extent said claim is adjudged to be covered under the indemnity obligations. Even if the Indemnifying Party assumes the defense of the Indemnified Party with acceptable counsel, the Indemnified Party, at its sole option, may participate in the defense, at its own expense, with counsel of its own choice without relieving the Indemnifying Party of any of its obligations hereunder.

7.5. Limitations of Liability.

- (e) No Consequential Damages. IN NO CIRCUMSTANCES SHALL THE CONTRACTOR OR DISTRICT OR ANY OF THEIR RESPECTIVE OFFICERS, MEMBERS OR EMPLOYEES BE LIABLE FOR PUNITIVE, OR EXEMPLARY DAMAGES OF ANY NATURE INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOST PROFITS OR REVENUES OR THE LOSS OF USE OF SUCH PROFITS OR REVENUE, LOSS BY REASON OF PLANT SHUTDOWN OR INABILITY TO OPERATE AT RATED CAPACITY, COSTS OF REPLACEMENT POWER OR CAPITAL, DEBT SERVICE FEES OR PENALTIES, INVENTORY OR USE CHARGES, DAMAGES TO REPUTATION, DAMAGES FOR LOST OPPORTUNITIES, REGARDLESS OF WHETHER SAID CLAIM IS BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING

Deleted: CONSEQUENTIAL

NEGLIGENCE AND STRICT LIABILITY) OR OTHER THEORY OF LAW. NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS ON PARTIES' LIABILITY FOR CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES IN THIS SECTION SHALL NOT APPLY TO THE PARTIES' RESPECTIVE INDEMNITY OBLIGATIONS AS SET FORTH IN THIS AGREEMENT FOR SUCH DAMAGES WHEN SUCH DAMAGES ARE SOUGHT BY THIRD PARTIES.

(f) Maximum Liability. Whether an action or claim is based on warranty, contract, tort or otherwise, under no circumstance shall either Party's total liability arising out of or related to this Agreement exceed the greater of (a) one-hundred percent (100%) of the Contract Price, or (b) the maximum insurance limit as defined in Exhibit E.

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8. MISCELLANEOUS

8.1. Representatives.

(a) District Representative. District designates, and Contractor agrees to accept Moises Ortiz, as District Representative for all matters relating to Contractor's performance of the Work. The actions taken by District Representative regarding such performance shall be deemed the acts of District and shall be fully binding for District. District may, upon written notice to Contractor, pursuant to Section 8.6 hereof, change the designated District Representative.

(b) Contractor Representative. Contractor designates, and District agrees to accept, John Gajan as Contractor Representative for all matters relating to Contractor's performance under this Agreement. The actions taken by Contractor Representative shall be deemed the acts of Contractor and shall be fully binding for Contractor. Contractor may, upon written approval of District, such approval shall not be unreasonably withheld.

(c) Power of Representatives. The Parties shall vest their Representatives with sufficient powers to enable them to assume the obligations and exercise the rights of Contractor or District, as applicable, under this Agreement.

(d) Notices to Representative. Notwithstanding Sections 8.1(a) and 8.1(b), all amendments, Change Orders, notices and other communications between Contractor and District contemplated herein shall be delivered in writing and otherwise in accordance with Section 8.6.

Deleted: approved pursuant to Section 8.6 hereof, change the designated Contractor Representative.

8.2. Ownership of Plans, Data, Reports and Material.

- (a) Subject to Sections 8.2(b), Contract Documents developed by Contractor under this Agreement shall become the property of District when prepared and shall be delivered to District upon completion of the Work; provided that nothing in the foregoing shall impair, alter or otherwise affect Contractor's proprietary rights in its patents, products or other intellectual property.
- (b) Any additional inventions or intellectual property created during performance of this Agreement shall be owned by Contractor.
- (c) Contractor further agrees to grant and hereby grants to District an unrevocable, non-exclusive, royalty-free license under all patents, copyrights and other proprietary information of Contractor related to the Work now or hereafter owned or controlled by Contractor to the extent reasonably necessary for the operation, maintenance or repair of the System or any subsystem or component thereof designed, specified, or constructed by Contractor under this Agreement. No other license in such patents and proprietary information is granted pursuant to this Agreement.

8.3. Governing Law.

The formation, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event of any Dispute that is not resolved pursuant to Section 8.5, the Parties hereto agree to submit to the jurisdiction of any court of competent jurisdiction and shall comply with all requirements necessary to give such court jurisdiction.

8.4. Force Majeure.

Contractor shall promptly notify District in writing of any delay or anticipated delay in Contractor's performance of this Agreement due to a Force Majeure Event, and the reason for and anticipated length of the delay. Contractor shall deliver such notice as soon as reasonably practicable, but in any event within forty-eight (48) hours of Contractor's becoming aware of such delay. Contractor shall be excused for any delays or defaults in the performance of its obligations under this Agreement that are the result of a Force Majeure Event. Contractor shall be entitled to a reasonable extension of time for delays due to a Force Majeure Event.

8.5. Dispute Resolution.

- (a) Good faith negotiations. In the event that any question, dispute, difference or claim arises out of or in connection with this Agreement, including any question regarding its existence, validity, performance or termination (a "Dispute"), which either

Party has notified to the other, senior management personnel from both Contractor and District shall meet and diligently attempt in good faith to resolve the Dispute for a period of thirty (30) Calendar days following one Party's written request to the other Party for such a meeting.

- (b) Non-Binding Mediation. If the Dispute remains unresolved, a Party may require that a non-binding mediation take place with a mediator mutually chosen by District and Contractor.
- (c) Attorneys' Fees. The prevailing Party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with such an action from the other Party.

8.6. Notices and Demands.

Any notice, request, demand or other communication required or permitted under this Agreement, shall be deemed to be properly given by the sender and received by the addressee if made in writing (a) the same day if personally delivered; (b) three (3) Business days after deposit in the mail if mailed by certified or registered air mail, post prepaid, with a return receipt requested; or (c) the same day if sent by facsimile or electronic mail with confirmation. Mailed notices, facsimile notices or electronic notices shall be addressed as follows to:

District:

Name: Malaga County Water District
Attention: Moises Ortiz
Address: 3280 S. Frank St
Fresno, CA 93725
Phone: (559) 485-7353
Email: m.ortiz@malagacwd.org

With a copy to: District Counsel

Name: Costanzo & Associates
Attention: Neal E. Costanzo
Address: 575 E. Locust Avenue, Suite 115
Fresno, CA 93720
Phone: (559) 261-0163
Email: ncostanzo@costanzolaw.com

Contractor:

Name: Site log IQ, Inc.
Attention: John Gajan, President, West Energy
Address: 1651 Response Rd. Suite 300

Deleted: <#>Technical Dispute.

Technical Disputes shall be resolved by an independent expert. For the purposes of this Agreement, a "Technical Dispute" shall mean a Dispute regarding whether the System conforms to the Industry Standards and applicable Building Codes, whether the relevant part of the Site where the System is located meets the required Site characteristics, and any other Disputes of a technical or engineering nature. All Technical Disputes shall be resolved on an accelerated basis by a nationally recognized professional expert unless otherwise agreed in writing by Contractor and District. Partic...

Deleted: <#> If District and Contractor are unable to agree on a mediator, then either may request that the American Arbitration Association (the "AAA") to appoint a mediator. The mediator's fee and expenses shall be paid one-half by District, and one-half by Contractor. In any such mediation, representatives of the Parties with authority to resolve the dispute shall meet for at least three hours with mediator. The obligation to mediate shall not be binding upon any Party with respect to (i) requests for preliminary injunctions, temporary restraining orders, specific performance, or other ...

Sacramento, CA 95815
Phone: (888) 819-0041

E-mail: john.gajan@sitelogiq.com

8.7. Public Records Act Disclosure.

Contractor has been advised and is aware that all reports, documents, information and data including, but not limited to, computer tapes, discs or files furnished or prepared by Contractor, or any of its subcontractors, and provided to District may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 et seq.). Exceptions to public disclosure may be those documents or other information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Contractor informs District of such trade secret. The District will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. District shall provide Contractor five (5) Business days written notice if District intends to disclose any information which Contractor has identified as trade secret, and provide Contractor ten (10) Business days to take steps to oppose such disclosure.

8.8. Time of Essence.

Time is expressly agreed to be of the essence of this Agreement and each, every and all of the terms, conditions and provisions herein.

8.9. Validity.

The provisions contained in each section, subsection and clause of this Agreement shall be enforceable independently of each of the others and their validity shall not be affected if any of the others are invalid. If any of those provisions is void but would be valid if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid. The Parties shall, if necessary, negotiate in good faith and make any necessary amendments to ensure the enforceable terms of this Agreement reflect the true intent of the Parties as of the date of execution of this Agreement.

8.10. Binding Effect.

This Agreement shall be binding on the Parties hereto and on their respective permitted successors, heirs and assigns.

8.11. Modifications.

No oral or written amendment or modification of this Agreement by any administrator, Board member, officer, agent or employee of Contractor or District, either before or after execution of this Agreement, shall be of any force or effect unless such amendment or modification is in writing and is signed by any duly authorized representative of both Parties to be bound thereby.

8.12. Headings.

The headings in this Agreement are for convenience of reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

8.13. Counterparts; Signature Pages.

This Agreement may be executed in counterparts which, taken together, shall constitute a single instrument. Facsimile and other electronically transmitted signature pages shall be effective to bind a Party to this Agreement.

8.14. Announcements and Publications.

Contractor shall coordinate with District with respect to, and provide advance copies to District for review of, the text of any proposed announcements or publications that include any non-public information concerning the Work prior to the dissemination thereof to the public or to any Person other than Subcontractors or advisors of Contractor, in each case, who agree to keep such information confidential. If District delivers written notice to Contractor rejecting any such proposed announcement or publication within ten (10) Business Days after receiving such advance copies, the Contractor shall not make such public announcement or publication; provided, however, that Contractor may disseminate or release such information in response to requirements of Governmental Authority.

8.15. Complete Agreement.

This Agreement together with the Exhibits hereto completely and exclusively states the agreement of the Parties regarding its subject matter and its terms govern, all prior proposals, agreements, or other communications between the Parties, oral or written, regarding such subject matter. No oral agreement or conversation with any officer or employee of either Party or any or all prior proposals shall affect or modify any of the terms and conditions of this Agreement. This Agreement shall not be modified except by written amendment signed on behalf of the District and Contractor by their duly authorized representatives. Any purported oral amendment to the Agreement shall have no effect.

8.16. No Agency.

This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

8.17. Priority of Documents.

In the event of conflicting provisions between any of the Contract Documents, the provisions shall govern in the following priority: first, duly executed amendments to this Agreement (to the extent not superseded by a subsequent amendment); second, this Agreement; third, Work Order in Exhibit C, and fourth, the other Contract Documents.

8.18. Assignment.

No Party shall be entitled to assign or subcontract this Agreement or any of its rights or obligations under this Agreement, nor shall it enter into any transaction as a result of which it may transfer, assign, charge or dispose by any title of any of those rights and obligations, without the prior written consent of the other Party, which shall not be unreasonably withheld, provided that Contractor may subcontract that portion of the Work to Subcontractors. Notwithstanding the foregoing, (i) without the consent of the Contractor, District shall be entitled to assign its right, title and interest in and to this Agreement (and, in particular, any rights arising in relation to any insurance policy and any other right to collect any amount from Contractor) to any lenders by way of security for the performance of obligations to such lenders; (ii) without consent of the District, Contractor shall be entitled to assign its right, obligation, title and interest in and to this Agreement in connection with a merger or acquisition of Contractor; and (iii) without consent of District, Contractor shall be entitled to assign its right, obligation, title and interest in and to this Agreement to an Affiliate of the Contractor.

8.19. No Waiver.

Either Party's failure to enforce any provision of this Agreement or the waiver thereof in a particular instance shall not be construed as a general waiver of any part of such provision. The provision shall remain in full force and effect.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have duly executed and delivered this Agreement as of the date set forth above.

Malaga County Water District
a District organized and existing under
the laws of the State of California

By: _____
Name: [REDACTED]
Title: [REDACTED]

Sitelog IQ, Inc.,
a Delaware corporation

By: _____
Name: John Gajan
Title: President, West Energy
Contractor's License #: 1054171

**California Energy Commission ECAA Loan Scope of Work:
PV Renewable Energy System Installation**

PROJECT SCOPE OF WORK INDEX

<u>Section 1</u>	General Scope of Work
<u>Section 2</u>	Proposed Project Installation Timeline & Coordination
<u>Section 3</u>	Fixed Price Amount
<u>Section 4</u>	Progress Payment Schedule
<u>Section 5</u>	Payment & Performance Bonds
<u>Section 6</u>	Terms and Conditions

1.0 General Scope of Work

The scope of work for the new systems include engineering, permitting, procurement, construction, and commissioning, supervision, materials and supplies, labor, tools, construction equipment and machinery, utilities and transportation for the proper execution and completion of a fully integrated and operational System, unless otherwise excluded in the sections below. Contractor shall perform, supervise and direct the Work in accordance with Industry Standards, Applicable Law and Project Milestone dates.

1.1 Solar System Summary

The solar PV systems installations will be installed as illustrated in the Site Layout Plans provided in Section 1.14. Any changes to the location, size, or orientation shall constitute a Change Order. In summary, the solar PV systems will include the following:

1. Malaga CWD – Waste Water Treatment Plant solar installation @ 3749 S Maple Ave., Fresno, CA 93725 will include one (1) electricity grid-connected carport structure photovoltaic system with a total rated approximate capacity of 349.9 kW-DC-STC. Carport structures will have a minimum clear height of 14'-0" above grade.
2. Malaga CWD – Community Center solar installation @ 3582 S Winery Ave, Fresno, CA 93725 will include one (1) electricity grid-connected carport structure photovoltaic system with a total rated approximate capacity of 97.4 kW-DC-STC. Carport structures will have a minimum clear height of 14'-0" above grade. Columns will be provided with Concrete Abutments. ADA upgrades are not included and will be addressed as necessary by others during parking modernization project. Removal of one (1) light pole and light pole base. Installation of road grade electrical box.

In general, the PV Systems will consist of the following:

- a. PV modules
- b. PV module support structure or trackers
- c. Inverter(s)
- d. System electrical protection
- e. Electrical disconnects
- f. Switchgear
- g. Control and monitoring systems
- h. Computer Monitoring for system information installed in main office (Customer to provide internet access)
- i. Outdoor rated equipment enclosures
- j. Cables, wires, jumpers, connectors, system grounding and associated trenching and/or boring
- k. Equipment foundations
- l. Lighting (Under Carport Only)
- m. Signage

1.2 Engineering Design Services

The Contractor shall be responsible for detailed design and operational coordination of equipment and materials installed for the System. The Contractor shall conform to Industry Standard and Applicable Law. The following design services shall be provided by the Contractor:

- A. Civil Engineering design, including the preparation of the following:
 - Site Plan
 - Geotechnical Report (if required)
- B. Structural Engineering Design, including:
 - Foundations and other structural concrete
 - PV module support structural design
 - Structural design calculations, as required
- C. Mechanical Systems design, as required.
- D. Electrical Systems design, including:
 - PV modules
 - Inverter
 - DC combiners, disconnects, fuses, and wiring
 - AC breakers and disconnects
 - Revenue metering
 - Enclosures, conduit, and wiring
 - Communications and control systems as described herein
 - Other electrical systems included in the scope of work

1.3 Permits

Contractor shall obtain and shall file on a timely basis any documents required to obtain Applicable Permits except those permits that are the responsibility of the Customer ("Customer Permits"). Customer shall obtain, and shall file on a timely basis,

any documents required to obtain all such Customer Permits. Customer shall pay for all taxes, fees, and costs required to obtain all Permits.

Applicable Permits include:

- o Fire Marshal
- o General Construction and Building Permits

Customer Permits include:

- o CEQA (Categorical Exemption certified by the Customer is assumed for this project)
- o Easements required to complete the work.
- o All other permits required for construction of the System, except for Applicable Permits

14 Procurement

Contractor shall procure all materials and equipment included in the scope of work for the installation of a complete System under this Work Order.

15 Construction Services

The following services shall be provided by the Contractor as part of the general construction activities:

- A. Civil construction, including surveying, clearing, grubbing, excavation, trenching, and backfill
- B. Structural construction, including foundations, concrete work, grouting, anchors, erection of PV racks, shade structures, and other support structures
- C. Mechanical construction (if required)
- D. Electrical construction, including PV modules, combiners, inverter, disconnects, wiring, breakers, metering, control and monitoring systems, telecom systems, and lighting systems as required for a complete System
- E. Safety services, including on-site safety equipment, personnel training, and safety monitoring of construction activities
- F. Support services, including Contractor's trailers, shaded worker rest areas, restroom facilities, and security
- G. Coordination with Customer's staff for site access, laydown, and storage with minimal interference with building operations
- H. Operator training services
- I. Restoration of landscape and hardscape to pre-construction condition, or in accordance with new design, as needed
- J. Construction inspections, material verification, and testing as required
- K. Lawful Disposal of refuse, spoils, chemicals, and waste materials associated with construction activities
- L. Testing and start-up services for electrical and control systems included in the scope of work. Testing shall include pre-operational functional tests, equipment calibration, and insulation resistance tests. All necessary test equipment and instrumentation will be provided.
- M. Miscellaneous consumable materials required to erect the System

- N. Coordination with Customer's Staff and Representatives, including Inspector of Record ("IOR") for all inspections and submittals.

16 Documentation Submittals

Contractor will prepare and submit designs, drawings, and specifications to the Customer for review and approval. Customer shall review the documents and provide any comments in writing to Contractor within ten (10) Business Days after receipt of such documents (the "Design Review Period"). Contractor will proceed with the assumption that Customer has approved the documents if no comments are received within ten (10) Business Days. To the extent consistent with Applicable Law and Industry Standards, Contractor will incorporate Customer comments into the final designs, drawings, and specifications (the "Construction Documents"), as applicable. Contractor shall submit such revised documents to Customer for additional Design Review Periods, which shall not extend longer than ten (10) Business Days, until Customer approves such revised documents subject to the terms of the Agreement.

The following list is not all inclusive but defines the Construction Documents that are required to be submitted by the Contractor for review and approval by the Customer.

- A. Facility drawing with Project improvements drawn to scale (Site Plan)
- B. Electrical design package including:
 - Single Line AC and DC diagrams
 - Communication, Monitoring and Control schematics
 - Electrical Circuit and Conduit schedule
 - Electrical Equipment installation plans
 - Lighting plan, if required
 - Placard schedule
 - Equipment data sheets
- C. Structural Calculations package including:
 - Ground structural elements for ground-mount systems
 - Equipment foundations and enclosures
- D. System energy production calculations and software model based on Site Plan
- E. Approved Applicable Permits
- F. Geotechnical report including Project applicable soil properties (if required)
- G. Project Schedule
- H. Environment, Health and Safety Plan
- I. System Manual with specifications, startup, commissioning and testing procedures for relevant equipment.
- J. System Operation and Maintenance manual (O&M plan)
- K. As-Builts (Record Drawings)
- L. Professional Engineer Wet Stamps and signatures on final design documents:
 - Electrical Design package
 - Structural Calculation package
- M. Interconnection Agreement with Local Utility

Deleted: Any comments provided by Customer after ten (10) Business Days that result in re-work shall constitute a Change Order. Customer shall consolidate all comments for each review cycle such that Contractor does not receive comments in separate submittals at different times from various Customer personnel. Any re-work as a result of receiving comments in separate submittals shall constitute a Change Order.

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N. Documentation for Rate Change with Local Utility

17 Workmanship Warranty

Commencing on the Final Completion Date and for a period of one (1) year thereafter, Contractor warrants that the Systems will be free from defects ("Workmanship Warranty"). If a System has a defect, and Customer provides written notification of said defect within the one (1) year Workmanship Warranty period, Contractor will, at its option, either repair or replace the portion of the System that is defective at no cost to Customer within forty-five (45) Business days of notification. The Workmanship Warranty shall not apply to the extent such defect is caused by any of the following:

- (d) Alterations or repairs made to the supporting structure of any System or associated wiring and parts without Contractor's prior written approval;
- (e) Failure of a System to perform caused by legislative, administrative, or executive regulation, order or requisition of the government, local utility or public utilities commission, or any state, provincial or municipal government or official;
- (f) Use of a System beyond the scope contemplated in its operating manuals or technical specifications;
- (g) Damage to a System not caused directly or indirectly by Contractor or its subcontractors under any agreement between Contractor and Customer;
- (h) Force Majeure Events;
- (i) A change in usage of that portion of the Site on which the System is located which may affect building or site permits and related requirements, without the written approval of Contractor, or a change in ownership of building or property and the new owner has not signed an assumption agreement of the terms and conditions herein;
- (j) Any defect of deficiency to the extent the same results from a specific written direction from the Customer if, prior to implementing such written direction, Contractor advised Customer that Customer's written direction would so affect the warranty provided by Contractor hereunder.

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18 Manufacturer Warranties

Contractor shall procure and assign to Customer warranties from the equipment manufacturers (the "Manufacturer Warranty") to the extent said equipment is purchased and provided for the Solar Plant by Contractor. Solar energy equipment included in the scope of work for electricity generation (PV modules, inverters) shall have a minimum ten (10) year manufacturer performance warranty to protect against degradation of electrical generation output of more than 15% from their originally rated electrical output. Except as expressly provided in this Agreement, Contractor's obligations under this warranty do not apply to any defects whatsoever in the equipment purchased and provided by Contractor for the Solar Plant, provided Contractor has procured and assigned to Customer the Manufacturer Warranty of such equipment. Contractor makes no representation or warranty, and Customer

shall seek no recourse from Contractor, regarding the Manufacturer Warranties, including, without limitation, any degradation in electrical generation output of the PV modules.

Contractor shall require that Manufacturers provide the following warranties:

- a. Inverters shall have a ten (10) year standard Manufacturer Warranty.
- b. PV modules shall have the following standard Manufacturer Warranties:
 - i. Five (5) year material and workmanship warranty;
 - ii. Ten (10) year power output warranty at ninety percent (90%) of rated nominal power output; and
 - iii. Twenty-Five (25) year power output warranty at eighty percent (80%) of rated nominal power output.
- c. Meters shall have a one (1) year standard Manufacturer Warranty.

19 Performance Test

The Contractor is responsible for conducting the Performance Test of the complete System, including PV modules, inverters, metering, controls, and accessories. The Contractor shall provide all test equipment and special instrumentation required for the tests.

The Contractor shall operate the System during the Performance Tests. Customer shall be entitled to be present during any Performance Test.

Upon completion of any Performance Test, Contractor shall submit promptly the relevant certificate containing the results of such Performance Test to Customer's Representative as soon as practicable, but in any event within five (5) Business Days. Customer's Representative shall promptly review such certificate and the results set forth therein and shall determine whether the Performance Test has been successfully completed within five (5) Business Days following receipt of such certificate.

If the System fails to satisfy any Performance Test, Customer's Representative shall execute the certificate including the Performance Test that failed. Contractor shall repeat the Performance Test one or several times before Final Completion of the System. Contractor shall take all corrective actions so that the System may successfully complete the Performance Tests, without prejudice to Customer's rights and remedies in accordance with this Agreement.

The Performance Test is the ability of the System to demonstrate Actual System Power Output is consistent with the Nameplate Rated Capacity during the test period commencing immediately after Substantial Completion and permission has been provided by the local utility.

The following additional definitions apply to the System Performance Test:

- “Actual System Power Output” means the AC kilowatt hour output of the System measured at the revenue meter at the Site adjusted for Standard Test Conditions, ancillary loads, System losses, and ambient conditions.
- “Nameplate Rated Capacity” means the total Nameplate Rated Capacity (kW-DC-STC) as calculated by adding the PV module nameplate ratings at Standard Test Conditions (STC) of the PV modules in the System.
- “Standard Test Conditions (STC)” are defined as the following:
 - Irradiance in the plane of the array (average module tilt angle and orientation of the System) of 1,000 W/m².
 - 25°C module cell operating temperature as measured at the back surface or cell of the module.
 - Air Mass (AM) of 1.5.
- “Test Period” means a qualified period of time following Substantial Completion during which the Actual System Power Output and ambient conditions are measured and recorded. The Test Period shall consist of at least five (5) valid Calendar days. A day is considered valid if a wide distribution of data is collected over the range of insolation values from 200 to 1000 W/m². Each day shall have an adequate number (320 minimum) of valid data points in both the morning and afternoon.
- A successful test will demonstrate that the Actual System Power Output equals or exceeds ***ninety-five percent (95%)*** of the Nameplate Rated Capacity. If the Actual System Power Output does not meet this criteria, the Contractor shall investigate the System for defects, make any necessary corrections, and retest the System to achieve a successful Performance Test.

Actual System Power Output generated has been estimated based on the actual utility rates & billing structure at this time. Minor changes or modifications to the utility rate structure may positively or negatively affect financial benefits. Utility billing structure is out of Contractor’s control.

1.10 Project Closeout

- a. Contractor shall deliver to Customer an owner’s manual, operator’s manual and as-built drawings for the System no later than ninety (90) Calendar days after Substantial Completion occurs. For the avoidance of doubt, the as-built drawings shall be included in the punch list items.
- b. At Customer’s request, Contractor shall provide Customer’s personnel with no less than one (1) full Day of detailed and complete on-site operation training with respect to the System. Customer’s personnel shall have the qualifications necessary to perform their activities and will be hired by Customer or its Affiliate. Contractor shall provide Customer reasonable assistance in soliciting and obtaining any subsidies, rebates or incentives that may be available from any Governmental Authority pursuant to or in connection with the purchase or operation of the System or otherwise. Contractor makes no representation nor warranty

to Customer as to the availability or amount of any such subsidies, rebates or incentives.

1.11 Customer Responsibilities

Contractor shall not be obligated to perform any work or activity beyond the scope of the work and its other obligations under this Agreement. In particular, the following shall not be included in the Scope of Work and therefore shall be performed by Customer:

- a. The Customer shall furnish, to the extent not already provided to Contractor:
(a) all surveys or other information in Customer's possession that describe the physical characteristics, legal limitations, and utility locations in and around the Site; (b) any prior environmental review documentation and all known information in Customer's possession concerning subsurface conditions, including without limitation the existence of any known Hazardous Materials, in or around the general area of the Site where the Work will be performed; (c) all relevant information in Customer's possession, including any structural or other relevant as-built drawings and photographs, of prior construction undertaken in the general area where the Work will be performed; (d) title reports less than one (1) year in age; and (e) any and all easements, zoning variances, planning approvals, including any resolution of any environmental impact issues, and any other legal authorization regarding utilization of the Site essential to the execution of the Work.
- b. Customer shall provide continuous access to the Site to perform the Work according to the Construction Schedule;
- c. Customer shall make water source available at the Site for construction water;
- d. Customer shall obtain the Customer Permits;
- e. Customer shall select its own personnel so that it is present at the date of Substantial Completion;
- f. Customer shall provide access to, and allow Contractor the use of, water lines, sewer lines, storm water lines, power lines, fuel lines, telephone and communication lines, pipelines, and drainage ditches; and

1.12 General Clarifications & Qualifications to Scope of Work

- a. Work Order Price assumes one (1) review cycle by Customer of the equipment layout drawings, one (1) review cycle by Customer of final design

documentation, and one (1) final set of as-built drawings delivered to Customer in electronic format and hard copy.

- b. Schedule and Work Order Price assumes Customer will review and provide comments on drawings within 10 Business days.
- c. Work Order Price is based on code approved conduit and wiring methods. All conduit expected to be direct buried.
- d. Work Order Price assumes that the Contractor will not encounter any Rock during trenching and excavating.
- e. Work Order Price assumes that the Contractor will not encounter any ground water during trenching and excavating.
- f. Work Order Price is based on the COMEX and The Steel Index (TSI) material pricing as of the Effective Date.
- g. Work Order Price is based on straight time Monday to Friday (no holidays) work week, 40 hours per week between 6:00 AM and 6:00 PM.
- h. Work Order Price and schedule assumes that Customer will receive all necessary easements within 45 Business days after the Effective Date.
- i. Work Order Scope assumes there are no existing encumbrances or easements on the site.

1.13 Solar Scope of Work Exclusions

The Solar Work excludes the following:

- a. Plumbing, Fire Sprinklers, Fire and Life Safety equipment and its components.
- b. Warranty, repair and/or upgrade of the existing mechanical, plumbing and electrical systems, air distribution and control systems found in disrepair or not compliant to code.
- c. Any and all systems and structure defects repairs/replacements as a result of pre-existing condition.
- d. Upgrade of the existing site electrical service capacity.
- e. Any upgrades to existing parking lots, sidewalks, etc. unless otherwise included in scope.
- f. Structural upgrades and/or shoring of existing rooftops to support solar PV.
- g. Drill hole casing, water mitigation, or Rock drilling.
- h. Concrete encasement of underground conduit.
- i. Hazardous material abatement and/or removal of any kind.
- j. Storm Water Pollution Prevention Plan (SWPPP).
- k. Americans with Disabilities Act (ADA) improvements including curb cutting, truncated dome installation, repainting, restriping, or installation of new signs unless otherwise provided in the scope of work.
- l. California Solar Initiative (CSI) Incentive application fees.
- m. Tree Mitigation Costs.

Deleted: <#>Wiring from PV panels to combiners is USE cable and not placed in raceways.¶

Painting of columns and beams only on all carports (one coat of epoxy primer and one coat of acrylic topcoat; "low-cover" colors may incur additional costs for multiple coats). Pricing assumes (1) paint color.¶

Galvanized finish on all ground mount arrays.¶

Grounding as required by NEC.¶

AC and DC wiring to be aluminum where possible.¶

Deleted: <#>Increases to COMEX and The Steel Index (TSI) may result in an increase in the Contract Price per Section 4.2(g)¶ Work Order Price is based on site parking being available to all Contractor and Subcontractor employees.

Deleted: <#>Work Order Price and Schedule assumes that the Customer has closed all previous construction projects with the Division of State Architecture that may cause a delay in the approval of this Project.¶

Deleted: <#>Plan Check Fees.¶ Inspector of Record fees.¶

- n. String level monitoring.
- o. Paint for carport structures outside of columns and beams
- p. Relocation and modification of underground utilities.

- q. Field painting – lot striping, conduit painting, etc. above and beyond any items altered during construction or otherwise specified in the scope of work.
- r. Concrete Abutments unless otherwise specified.
- s. Asphalt (fog, coating, and striping)
- t. Operation and Maintenance services.

The Contractor will notify the Customer of any excluded work or repairs which are necessary to the function of the Work as soon as the Contractor becomes aware of such, and before proceeding with related work.

Deleted: <#>Other Fees (plan check, utility permits, parking, etc.).¶

Any additional costs associated with COVID-19 (this includes, but not limited to, safety training, sanitizing equipment, limitation on number of workers in a space, etc.).¶

Any items not specified in this scope.¶

1.14 Site Plans

Waste Water Treatment Plant PV Layout



Community Center PV Layout



2.0 **PROPOSED PROJECT INSTALLATION TIMELINE & COORDINATION**

This project will require extensive scheduling and coordination to ensure the efficient implementation of the Work shown herein. Contractor will provide retrofit services in Phases. Each construction Phase will include a complete PV system retrofit at a given building or site listed above.

The Customer shall provide safe access to the buildings and provide the necessary security for staff safety during the rigging and equipment handling process. During the retrofit services, areas of the building designated by Contractor may need to be vacated to ensure the safety of the occupants. It will be the Customer's responsibility to temporarily relocate staff or occupants to other buildings and/or, if needed, provide temporary facilities for the duration of the given phase of each project.

In order to minimize the disruption of Customer's operation, coordination and scheduling items shall include but are not limited to multiple trips to the job site, multiple equipment riggings, temporary relocation of the tenants (staff), etc. Contractor will work with the Customer to develop a detailed project schedule. Once the project schedule is confirmed, Contractor will provide the Customer with a Schedule of Values and a progress payment schedule, which corresponds to the project schedule. The installation of mechanical systems will start upon executing this Agreement and ordering and obtaining necessary equipment, parts and materials needed for installation, as listed in the scope of work. It is anticipated the construction phase of this project would be performed starting November 2022 and completed by November 2023.

Customer and its representatives shall coordinate all the project activities with Contractor's Project Manager only.

2.1 **WORK ORDER MILESTONES**

Estimated Work Order Milestone Schedule	
Milestone	Milestone Date
Notice to Proceed	TBD
Construction Mobilization	Notice to Proceed + 20 weeks
Substantial Completion	Notice to Proceed + 60 weeks
Final Completion	Notice to Proceed + 72 weeks

Deleted: Contractor shall be given a day-for-day slip in the Work Order Milestone Schedule for a delay in the Funding Date beyond the date shown above. ¶

3.0 **FIXED PRICE AMOUNT**

The fixed price not to exceed amount for the Work Order is: **\$ 2,773,610**

The following District Controlled Contingency is included in the Fixed Price Above:

\$150,000.00 for District approved Changes or Unanticipated Conditions.

4.0 **PROGRESS PAYMENT SCHEDULE**

The Customer shall pay to Contractor the progress payments set forth below when Contractor has completed the Work associated with such payment. Contractor must submit documentation at the time of invoicing for related progress payments.

Progress Payments Schedule	
Payment Milestone	% of Total Work Order Price
Notice to Proceed	10%
Equipment Deposit	25%
Progress Payments	50%
Substantial Completion	10%
Final Completion/Retention	5%

5.0 **PERFORMANCE AND PAYMENT BONDS**

Upon the written request of the Customer prior to commencement of work, Contractor shall provide evidence of the following bonds to Customer:

- Performance Bond. A bond issued by a corporate surety authorized to issue surety insurance in California, and reasonably acceptable to Customer, in an amount equal to one-hundred percent (100%) of this Scope of Work Price payable under the Agreement securing the faithful performance of this Scope of Work; and
- Payment Bond. A bond issued by a corporate surety authorized to issue surety insurance in California, and reasonably acceptable to Customer, in an amount equal to one-hundred percent (100%) of this Scope of Work Price payable under the Agreement securing the payment of all claims for the performance of labor or services on, or the furnishing of materials for, the performance of this Scope of Work.

Deleted: Contractor shall be entitled to, an increase in the Contract Price where the cost to Contractor for any labor, raw-material, or component (including without limitation, solar panels, tracking equipment, inverters, lighting and mechanical system components or any other equipment or materials necessary to complete the work required by this Work Order) increases after the Execution Date of the Energy Services Master Agreement. Such increase may be determined by the relative index for such labor, equipment, or material component including but limited to Consumer Price Index, The Steel Index, Commodity Indexes, etc. Contractor shall be entitled to an equitable adjustment in time and money for any costs that it incurs directly or indirectly that arise out of or relate to changes in taxes, tariffs, or similar charges due to such changes including, without limitation, escalation, delay damages, costs to re-procure, costs to change suppliers, costs of manufactured equipment or system components, or other costs of any kind resulting from the changes.¶

The Performance and Payment Bonds shall guarantee timely completion of the Work in accordance with this Scope of Work and shall cover the installation period. The warranty period shall extend one (1) year following Final Completion.

The surety, having provided the Performance and Payment Bonds under this Scope of Work, shall assume no liability to Contractor, Customer or any third parties, should Contractor fail, for any reason, to deliver acceptable warranties beyond the one (1) year warranty period following Final Completion.

6.0

[Signatures to follow]

Deleted: **TERMS AND CONDITIONS**
Unless otherwise stated, this Work Order shall be completed within the terms of the Energy Services Master Agreement executed on _____ between SiteLogIQ Inc., and the District.

IN WITNESS, WHEREOF, the Parties hereto have duly executed and delivered this Work Order as of the date set forth below.

Sitelog IQ, Inc
a Delaware Corporation

By: _____ Date: _____

Name: John Gajan
Title: President

Malaga County Water District.

By: _____ Date: _____

Name: Moises Ortiz
Title: General Manager

EXHIBIT A DEFINITIONS

“Affiliate” of a specified Person means any Person that directly or indirectly through one or more intermediaries’ controls, is controlled by, or is under common control with, such specified Person. As used in this definition of Affiliate, the term “control” of a specified Person including, with correlative meanings, the terms, “controlled by” and “under common control with,” means (a) the ownership, directly or indirectly, of 50% or more of the equity interest in a Person or (b) the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

“Agreement” shall have the meaning set forth in the preamble.

“Applicable Law” shall mean, with respect to any Governmental Authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, injunction, registration, license, permit, authorization, guideline, governmental approval, consent or requirement of such Governmental Authority, as construed from time to time by any Governmental Authority.

“Applicable Permits” means those permits identified as the responsibility of Contractor as determined in Exhibit C.

“Authority Having Jurisdiction (AHJ)” means those local, state, or federal entities having regulatory authority over a specific aspect of the Project, such as building officials, Department of State Architecture, and fire departments.

“Business Day” means Mondays to Fridays, except such days on which banks are permitted or required to close in California.

“Certificate of Substantial Completion” shall mean a document in similar form to Exhibit F.

“Certificate of Final Completion” shall mean a document in similar form to Exhibit F.

“Change” shall mean any addition to, deletion from, suspension of, or other modification to the quality, function, or intent of the Work, including without limitation any such addition, deletion, suspension, or other modification that effects a change in the scope of the Work. An “Unanticipated Condition” as defined in Section 3.5 hereof, experienced by Contractor during the course of the Work is included within the definition of “Change”.

“Change Order” shall mean a written document signed by District and Contractor to adjust the Work Order Price or Construction Schedule as a result of a Change issued after execution of this Agreement.

“Commencement of Work” shall mean the commencement of Work for each Work Order.

“Construction Schedule” shall mean the schedule for implementation of the Work as determined by the Contractor to meet the Project Milestones as set forth on Exhibit C.

“Construction Documents” shall mean construction documents prepared by Contractor and approved by District.

“Contract Documents” shall mean this Agreement and Exhibits hereto, and drawings, specifications, plans, calculations, models and designs that are part of this Agreement and the Construction Documents prepared by Contractor and approved by District.

“Contractor” shall have the meaning set forth in the preamble.

“Contractor Representative” shall mean the individual designated by the Contractor in accordance with Section 8.1(b).

“Day” means calendar day unless it is specified that it means a “Business Day”.

“Dispute” shall have the meaning set forth in Section 8.5(a).

“District” shall have the meaning set forth in the Preamble to this Agreement.

“District Permits” means those permits identified as the responsibility of District in Exhibit C.

“District’s Representative” shall mean the individual designated by District in accordance with Section 8.1(a).

“Dollar” and “\$” shall mean the lawful currency of the United States of America.

“Effective Date” shall mean the date first set forth in the preamble.

“Environmental Attributes” means all environmental and other attributes that differentiate the System or the energy generated by fossil-fuel based generation units, fuels or resources, characteristics of the System that may result in the avoidance of environmental impacts on air, soil or water, such as the absence of emission of any oxides of nitrogen, sulfur or carbon or of mercury, or other gas or chemical, soot, particulate matter or other substances attributable to the System or the compliance of the System or the energy output with the law, rules and standards of the United Nations Framework Convention on Climate Change (the “UNFCCC”) or the Kyoto Protocol to the UNFCCC or crediting “early action” with a view thereto, or laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency or successor administrator or any state or federal entity given jurisdiction over a program involving transferability of Environmental Attributes and Reporting Rights.

“Environmental Incentives” means all rights, credits (including tax credits), grants, rebates, benefits, reductions, offsets and allowances and entitlements of any kind,

howsoever entitled or named (including carbon credits and allowances), whether arising under federal, state or local law, international treaty, trade association membership or the like arising from the Environmental Attributes of the System on each Site or the energy output or otherwise from the development, construction, installation or ownership of the System on each Site or the production, sale, purchase, consumption or use of the energy output from each Site. Without limiting the foregoing, "Environmental Incentives" includes green tags, renewable energy credits, grants, tradable renewable certificates, portfolio energy credits, the right to apply for (and entitlement to receive) incentive programs offered by the State of California and the right to claim federal income tax credits under Section 45 or 48 of the Code as such credits are available arising from the Environmental Attributes of the system on each Site or the energy output or otherwise from the development, construction, installation or ownership of the System on each Site or the production, sale, purchase, consumption or use of the energy output from each Site.

"Equipment" shall mean (a) all materials, supplies, apparatus, machinery, equipment, parts, tools, components, instruments, appliances, spare parts and appurtenances thereto that are required for prudent design, construction or operation of the System in accordance with Industry Standards and (b) all materials, supplies, apparatus, machinery, equipment, parts, tools, components, instruments, appliances, spare parts and appurtenances thereto described in, required by, reasonably inferable from or incidental to the Work or the Contract Documents.

"Excusable Delay" shall mean a Delay outside of Contractor's control that prevents Contractor from achieving the Commercial Operation Date for any System in accordance with the Project Schedule, and to the extent that such Delay adversely affects the Work such that the performance of the Work is prevented or delayed, Contractor shall be entitled to an adjustment in the Construction Schedule and deadlines of this Agreement. For purposes of this Agreement, an Excusable Delay shall include any of the following events:

- (a) an act or failure to act of, or other delay caused by, or negligence of, District or its agents or employees;
- (b) changes in the design, scope or schedule of the Project unilaterally required by the District;
- (c) the suspension of Work in whole or in part by District;
- (d) labor disputes, fire, vandalism, delay in manufacturing and deliveries;
- (e) adverse weather conditions not reasonably anticipated and in excess of 150% of the normal weather (*e.g.*, rain, snow, sleet) for the local geographic area for the past ten (10) years as measured in a given month;
- (f) unforeseen conditions at any Site, including discovery or

existence of Hazardous Substances;

- (g) the occurrence of a Force Majeure, or other unavoidable casualties or other causes beyond Contractor's control;
- (h) the failure to obtain any Utility Interconnection Agreement, permission to operate, Applicable Permit, CEQA/NEPA approval or approval of a Governmental Authority or delays caused by changes and/or modifications to the Scope of Work as required by any Governmental Authority having jurisdiction over the Project;
- (i) any equipment or material delays caused by suppliers or vendors;
- (j) any breach of this Agreement or the Utility Interconnection Agreement;
- (k) any other cause outside Contractor's control after Contractor's best efforts to mitigate that delay, to the extent that Contractor is able to mitigate such delay, provided that a failure to perform of Contractor's subcontractors' shall not be an Excusable Delay, unless such subcontractors are unable to perform the Work as a result of any of the events described in this definition of "Excusable Delay".

Deleted: or any information provided to the Contractor by District or Utility is inaccurate or incomplete; or

"Facility" shall mean any and all properties of the District upon which the System shall be constructed or to which the System shall be connected, including land, buildings, structures, equipment, and electrical tie-in points.

"Final Completion" shall mean satisfaction or waiver of all of the conditions for completion of that portion of the System applicable to a particular Work Order as set forth in Section 5.2.

"Force Majeure Event" shall mean, when used in connection with the performance of a Party's obligations under this Agreement, any act or event (to the extent not caused by such Party or its agents or employees) which is reasonably unforeseeable, or being reasonably foreseeable, reasonably unavoidable (including by taking prudent protective and preventative measures) and outside the control of the Party which invokes it, and which renders said Party unable to comply totally or partially with its obligations under this Agreement. In particular, any of the following shall be considered a Force Majeure Event:

- a. war (whether or not war is declared), hostilities, revolution, rebellion, insurrection against any Governmental Authority, riot, terrorism, acts of a public enemy or other civil disturbance;
- b. acts of God, including but not limited to, unusually severe storms, floods, lightning, earthquakes, hailstorms, ice storms, tornados, typhoons, hurricanes, landslides, volcanic eruptions, winds in excess of ninety (90) miles per hour, drought, and objects striking the earth from space (such as meteorites) sabotage or destruction by a third party (other than any contractor retained by or on behalf of the Party) of FACILITY and equipment relating to the performance by the affected Party of its obligations under this Agreement;
- c. strikes, walkouts, lockouts or similar industrial or labor actions or disputes, in each case of a regional or national nature;
- d. changes in Applicable Law after the Effective Date that materially impact a Party's ability to perform under this Agreement; and
- e. acts of any Governmental Authority that materially restrict or limit Contractor's access to the Site.
- f. plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other restrictions.
- g. explosion, fire, destruction of machines, equipment, factories and of any kind of installation, prolonged break-down of transport, telecommunication or electric current

"Governmental Authority" shall mean any national, autonomic, regional, province, town, District, or municipal government, or other administrative, regulatory or judicial body of any of the foregoing.

"Hazardous Material" shall mean oil or petroleum and petroleum products, asbestos and any asbestos containing materials, radon, polychlorinated biphenyl's ("PCBs"), urea formaldehyde insulation, lead paints and coatings, and all of those chemicals, substances, materials, controlled substances, objects, conditions and waste or combinations thereof which are now listed, defined or regulated in any manner by any federal, state or Applicable Law.

"Indemnified Party" shall have the meaning set forth in Section 7.4.

"Indemnifying Party" shall have the meaning set forth in Section 7.4.

“Industry Standards” shall mean those standards of care and diligence normally practiced by a majority of engineering, construction and installation firms in performing services of a similar nature in jurisdictions in which the Work will be performed and in accordance with good construction practices, Applicable Permits, and other standards established for such Work.

“Manufacturer Warranty” shall have the meaning set forth in Exhibit C.

“Notice to Proceed Date” shall mean the date that District has granted Contractor the Notice to Proceed for the Work.

“Party” shall mean, individually, each of the parties to this Agreement.

“Performance Tests” means, the tests of the System, as more particularly described in Exhibit C.

“Person” shall mean any individual, corporation, partnership, company, joint venture, association, trust, unincorporated organization or Governmental Authority.

“Project” shall mean the entirety of Work to be performed by Contractor pursuant to the terms and conditions of the Work and any Change Orders.

“Representatives” shall mean the Contractor Representative and the District Representative and each may individually be referred to as a “Representative”.

“Rock” is defined as limestone, sandstone, granite or similar rocks in solid beds or masses in original or stratified position which can be removed only by continuous drilling, blasting or the use of pneumatic tools, and all boulders of 1 cubic yard in volume or larger. Material which can be loosened with a pick, frozen materials, soft laminated shale and hardpan, which for convenience or economy is loosened by drilling, blasting, wedging or the use of pneumatic tools, shall not be classified as “Rock”.

“District” shall have the meaning set forth in preamble.

“Site” shall have the meaning set forth in the first recital, and is more fully described in Exhibit C. An individual Site shall mean any area of a property owned by the District upon which a System is constructed.

“Solar Plant” shall mean that portion of the System only related to converting solar radiation into electricity and explicitly excludes all energy conservation technologies.

“Subcontractor” shall mean any Person, other than Contractor and Suppliers, retained by Contractor to perform any portion of the Work (including any Subcontractor of any tier) in furtherance of Contractor’s obligations under this Agreement.

“Substantial Completion” shall mean satisfaction or waiver of all of the conditions for completion of that portion of the System applicable to a particular Work Order as set forth in Section 5.1(d).

“Substantial Completion Date” shall mean the actual date on which the Substantial Completion of the System, as defined in Section 5.1(d), has occurred.

“Suppliers” shall mean those Equipment suppliers with which Contractor contracts to build the System.

“System” shall have the meaning ascribed in the Recitals to this Agreement.

“Technical Dispute” shall have the meaning set forth in Section 8.5(b).

“Third Party” shall have the meaning of any persons or entity not affiliated with Contractor or District.

“Unanticipated Condition” shall have the meaning set forth in Section 3.5.

“Work” shall mean all obligations, duties, and responsibilities assigned to or undertaken by Contractor and described in Exhibit C with respect to the System.

“Work Order” shall mean the assigned Work for each Site as described in Exhibit C.

“Work Order Price” shall mean the amount for performing the Work that is payable to Contractor as set forth in Section 3.2, as the same may be modified from time to time in accordance with the terms hereof, and as described in Exhibit C.

EXHIBIT B
CERTIFICATIONS

Exhibit B-1 Drug-Free Workplace / Tobacco-Free Environment Certification

Exhibit B-2 Non-Collusion Declaration

**DRUG-FREE WORKPLACE / TOBACCO-FREE ENVIRONMENT CERTIFICATION
(EXHIBIT B-1)**

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 Malaga County Water 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 District under California law and requires all contractors on District projects to comply with the provisions and requirements of Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990. Contractor shall certify that it will provide a drug-free workplace by doing all of the following:

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

2 Establishing a drug-free awareness program to inform employees about all of the following:

- a. The dangers of drug abuse in the workplace.
- b. The person's or organization's policy of maintaining a drug-free workplace.
- c. The availability of drug counseling, rehabilitation, and employee-assistance programs.
- d. The penalties that may be imposed upon employees for drug abuse violations.

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

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

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

Date:

Signature: _____

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(Public Contract Code § 7106)

I am the President of SitelogIQ West, the party making the foregoing Contract.

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 Contractor.

Date:

Proper Name of Contractor: SiteLog IQ

Signature: _____

Print Name: John Gajan

EXHIBIT E INSURANCE

Contractor Insurance Requirements

1. **Required Coverages.** Contractor shall carry and maintain with carriers or self-insurance, as a minimum, the following insurance coverage:
 - i. **Workers Compensation Insurance and Employers Liability.** In accordance with the laws of the state of where work may be done with limits for employers liability in the minimum amount of one million dollars (\$1,000,000) for each occurrence and one million dollars (\$1,000,000) for each occurrence of bodily injury on a per employee basis;
 - ii. **Commercial General Liability.** One million dollars (\$1,000,000) per occurrence/two million dollars (\$2,000,000) in the aggregate for bodily injury, personal injury and property damage, products and completed operations;
 - iii. **Commercial Automobile Liability. Any Auto.** One million dollars (\$1,000,000) per accident including owned, non-owned, and hired automobiles.
 - iv. Excess coverage of four million dollars (\$4,000,000) per occurrence and aggregate, or any other equivalent, available insurance coverage of the Contractor.
2. **Policy Endorsements.** Insurance coverage required to be maintained by Contractor under this Agreement shall:
 - i. provide a severability of interests or cross liability clause for Commercial General Liability Insurance;
 - ii. except in the case of worker's compensation insurance and other statutory insurances where it would be inappropriate, name District and others as may be reasonably required by District, as additional insured's; and to the extent permissible in accordance with the policy, include a waiver of subrogation by the insurers in favor of District and each of its respective assignees, Affiliates, agents, officers, directors, employees, insurers or policy issuers and a waiver of any right of the insurers to any set-off or counterclaim, whether by endorsement or otherwise, in respect of any type of liability of any of the Persons insured under any such policies.

3. Certificates. Contractor shall throughout the Agreement Term provide certificate(s) and/or memoranda of insurance evidencing the coverage specified in this Attachment E to District upon District's reasonable request.

Deleted: District Insurance Requirements¶

Required Coverage. District shall carry and maintain with carriers or self insurance, as a minimum, the following insurance coverage:¶

Workers Compensation Insurance and Employers Liability. In

accordance with the laws of the state of where work may be done with limits for employers liability in the minimum amount of one million dollars (\$1,000,000) for each occurrence and one million dollars (\$1,000,000) for each occurrence of bodily injury on a per employee basis;¶

¶
Commercial General Liability. One million dollars (\$1,000,000) per occurrence/two million dollars (\$2,000,000) in the aggregate for bodily injury, personal injury and property damage, products and completed operations;¶

¶
Commercial Automobile Liability.
Any Auto. One million dollars (\$1,000,000) per accident including owned, non-owned, and hired automobiles. ¶

Excess coverage of four million dollars (\$4,000,000) per occurrence and aggregate, or any other equivalent, available insurance coverage of the Contractor.¶

Policy Endorsements. Insurance coverage required to be maintained by District under this Agreement shall provide a severability of interests or cross liability clause for Commercial General Liability Insurance;¶

EXHIBIT F
NOTICE OF SUBSTANTIAL/FINAL COMPLETION AND ACCEPTANCE

Notice is hereby given regarding:

The agreement between SitelogIQ, Inc. and Malaga County Water District including all contract amendments, is completed to the satisfaction of the contract dated [Original Contract Date].

The final contract value is \$2,773,611.00

Please complete and cause to be recorded the attached Notice of Completion and close the following performance and payment bond specific to this project (Bond [Bond Numbers]) dated [Dates of Bonds].

Unless otherwise provided by notice in writing, within five (5) business days of this notice, work is considered complete and receipt of full payment will constitute acknowledgement and release SitelogIQ of any further obligations, excepting the [1-year term] warranty for workmanship.

ACCEPTANCE

Contractor:

SitelogIQ, Inc.

By: _____

Name: John Gajan

Title: President, West Energy

Date: [Date]

Delivered To:

Malaga County Water District

Customer's Representative:

Name: Moises Ortiz

Title: General Manager

Date: [Date]

**EXHIBIT G
NOTICE TO PROCEED**

Site log IQ, Inc.
1651 Response Rd, Suite 300
Sacramento, CA 95815
John Gajan, President, West Energy

Re: Notice to Proceed

Dear John Gajan:

This Notice to Proceed is being issued by Malaga County Water District ("District") to Site log IQ, Inc. ("Contractor") pursuant to the 4217 Energy Services Agreement, entered into on

This Notice to Proceed authorizes the Work described by Work Order 1 in Exhibit C of the Agreement.

By signing and dating this Notice to Proceed, the parties hereto agree to these terms and represent and warrant they have the authority to execute this Notice to Proceed on behalf of their respective organizations.

ACKNOWLEDGED & AGREED TO:

Malaga County Water District

Site log IQ

Signature: _____

Signature: _____

Name: Moises Ortiz

Name: John Gajan

Title: General Manager

Title: President, West Energy

Date:

Date:

NEAL E. COSTANZO
MICHAEL G. SLATER

LAW OFFICES OF
COSTANZO & ASSOCIATES
A PROFESSIONAL CORPORATION
575 E. LOCUST AVENUE
SUITE 115
FRESNO, CALIFORNIA 93720
(559) 261-0163

FAX (559) 261-0706
OUR FILE NO. 02891-001

September 8, 2022

Jessica Ritter
Email: Jessica.Ritter@sitelogiq.com

**Re: Malaga County Water District Agreement for Installation of Solar Panels
and Related Equipment**

Dear Jessica:

Enclosed herewith is the red-lined changes I have made to the Agreement between Malaga and Sitelogiq which, as you can see, are almost entirely simple deletions of things that were in the Agreement that, in my view, simply do not apply here. In fact, in my view, the entire Agreement is covered, as I have modified it by the "California Energy Commission ECAA Loan Scope of Work" ("Scope of Work"), which is apparently intended as Exhibit C. I think we discussed all of the deletions I have made, so unless you need reasons for these, largely deletions, I am just turning over the revised Agreement to you to determine whether or not we can agree on terms for this very simple project. I have a potential problem with the definition of the word "work" but I am not sure how to correct it. "Work" refers to Exhibit C and there is no Exhibit C. There are a number of definitions, including manufacturer warranty and "site" that refer to Exhibit C. I believe this is a reference to the "Scope of Work". If that is the case, those definitions are appropriate.

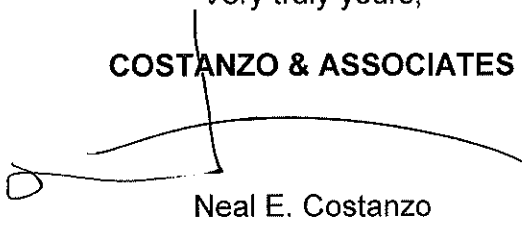
The "4217 Energy Services Master Agreement" the ("Master Agreement") is unduly and unnecessarily detailed and repeats vitually everything that is in the scope of work. It would be better to take the scope of work document, as our agreement and use the general terms and conditions that would be applicable to the contract that appear in the Master Agreement included at the end of the scope of work document. That way you would have a singular agreement capable of actually being read and understood. The references to Exhibit C in the Services Master Agreement are assumed to be references to the scope of work. I suggest we simply change all of this and make it a contract that is one single, simple document. There is no need for this kind of detail and repetition in an agreement. In any event, based on the assumption that Exhibit C is the scope of work, I have left many of the provisions which I had deleted previously intact. You repeat in the Master Agreement the requirements relating to providing insurance the performance and payment bonds. I have not eliminated these provisions, but I do want to point out that they are absolutely unnecessary because they are already in the scope of work.

Let me know if the changes I have made are acceptable.

I have not done anything to the Agreement to provide energy management services because I do not understand the reason for the Agreement. I have not yet reviewed the operations and maintenance agreement. It seems unnecessary to do at this point and that agreement can await the approach of completion of the installation of the solar equipment.

Very truly yours,

COSTANZO & ASSOCIATES

A handwritten signature in dark ink, appearing to read 'Neal E. Costanzo', is written over a horizontal line. The signature is stylized with a large, sweeping 'N' and a long horizontal stroke.

Neal E. Costanzo

NEC/js
C/C

eddie.jordan@sitelogiq.com

david.koch@sitelogiq.com

mortiz@malagacwd.org

item 9.e.

Need a venue to host your next event?



**CORPORATE EVENTS | REUNIONS | AWARDS |
WEDDING | TRAINING | LUNCHEONS |
GRADUATIONS**

The Arriaga Community Center inside the Malaga Park is available for your next event.



(559) 485-7353



3582 S WINERY AVE,
FRESNO, CA 93725

item 14.a.1.

Dear Malaga County Water District,

I am writing this letter to you to thank you for your Scholarship. With the generous donation of \$400 I am going to be able to use it either to buy supplies for school or to pay for my transportation. Thank you for making a difference in my life.

Sincerely,

Morelia Ortiz

RECEIVED

SEP 06 2022

BY:

Compliance Assistance Bulletin

August 31, 2022

item 14.a.**Extreme Heat Event and
Governor's Emergency Proclamation**

Extreme heat events with higher-than-average temperatures have been occurring in California. These occurrences have the potential to raise demand and put a strain on California's electricity grid. As a result, the California Independent System Operator (CAISO) and the Governor's Office have taken steps to boost electricity capacity during these Extreme Heat Events. The Governor issued a [Proclamation of a State of Emergency](#) concerning electrical dependability for August 31, 2022 through September 7, 2022 as a result of an extreme heat event that is putting and will continue to put significant demand and strain on California's energy grid. The proclamation will allow the use of stationary and portable backup generators, power plants, and other power sources to increase energy production to reduce the strain on California's electrical grid during peak times of the energy emergency. Details regarding suspended requirements are available in the [Proclamation](#).

Please be advised that under the Proclamation, permitted facilities must notify the San Joaquin Valley Air Pollution Control District (District), as well as the California Air Resources Board (CARB) and the California Energy Commission (CEC), within 48 hours if their operations may cause permit conditions to be violated. In addition, within 30 days of operation, such facilities must submit a report to the District, CARB, and the CEC including the following information: the additional fuel used, the additional hours of operation, and the energy produced by that additional use. Please submit these required reports to Compliance@valleyair.org.

To assist in minimizing any negative air quality impacts from increased power generation under the Proclamation, the District advises that facilities continue to reduce emissions as feasible, including considering energy efficiency and conservation measures, and other clean-air actions. The District supports efforts by businesses, public agencies, and residents to reduce energy consumption through a number of potential actions (see recommendations [here](#)).

For additional questions, or to submit required information contact the District's Compliance Department at:
Phone: [559-230-6000](tel:559-230-6000) Email: Compliance@valleyair.org



REGULAR BOARD MEETING MINUTES
BOARD OF DIRECTORS MEETING
MALAGA COUNTY WATER DISTRICT
3580 SOUTH FRANK STREET
FRESNO, CALIFORNIA 93725
Tuesday, August 23, 2022 at 6:00PM

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in a District Board Meeting, please contact the District Office at 559-485-7353 at least 48 hours prior to the meeting, to ensure that reasonable arrangements can be made to provide accessibility to the meeting.

Please submit all written correspondence for the Board of Directors by 12:00 pm the Friday prior to the meeting. Please deliver or mail to the District Clerk.

1. Call to Order: 6:01PM

2. Roll Call: President Charles Garabedian, Jr.; Vice President Salvador Cerrillo; Director Irma Castaneda; Director Frank Cerrillo, Jr.; Director Carlos Tovar, Jr.

All present after Director Tovar, jr. arrived after rollcall ended.

Also present: Neal Costanzo, Norma Melendez and Moises Ortiz.

3. Certification: Certification was made that the Board Meeting Agenda was posted 72 hours in advance of the meeting.

4. Consent Agenda. The items listed below in the Consent Agenda are routine in nature and are usually approved by a single vote. Prior to any action by the Board of Directors, any Board member may remove an item from the consent agenda for further discussion. Items removed from the Consent Agenda may be heard immediately following approval of the Consent Agenda or set aside for discussion and action after Regular Business.

a. Minutes of the Special Board Meeting of August 2, 2022.

b. Minutes of the Regular Board Meeting of August 4, 2022.

Recommended action: To approve the Consent Agenda as presented or amended.

Motion by Vice President Cerrillo; Second by Director Castaneda and with a 5-0 vote to approve the consent agenda as presented.

Director Castaneda dismissed herself at 6:10pm.

5. Old Business:

a. **Payroll.** A continued discussion from the previous board meeting. Quotes have been submitted for the district's payroll services.

Recommended action: to review quotes for potential action.

Motion by Vice President Cerrillo; Second by Director Cerrillo, Jr. and by a 4-0 vote to go forward with Moomjian Bookkeeping for payroll services.

6. New Business:

a. **Task Order 22-03.** An agreement between Malaga CWD and Provost and Pritchard for engineering services for the Well 5A Storage Tank Project.

Recommended action: for consideration and approval of Task Order 22-03.

Motion by Vice President Cerrillo; Second by Director Tovar, Jr. and by a 4-0 vote to approve Task Order 22-03.

- b. **Square Point of Sale (POS).** Information provided for the potential purchase of Square POS credit card readers for Fiesta Day and any future events. There is a 2.6% + 10 cents charge per transaction. If card has to be manually entered, the transaction fee is 3.5% + 15 cents. For cost effectiveness, it is recommended to purchase the Square reader for magstripe at \$10/reader. Additional options are available.

Recommended action: board's pleasure.

Motion by Vice President Cerrillo, Second by Director Cerrillo, Jr. and by a 4-0 vote to approve purchase of Square POS system.

7. Incorporation Reports:

President Garabedian, Jr. reported on the incorporation workshop of August 18. He suggests meetings should always begin on a positive note instead of focusing on the negative.

8. Recreation Reports:

9. Engineer Reports:

- a. District Engineer Report. None for this meeting.
- b. CDBG Engineer Report: none for this meeting.

10. General Manager's Report:

11. President's Report:

Report given in item 7. He also suggests that EOC be contacted to sign up for a non-profit booth for Fiesta Day.

12. Vice President's Report:

Vice President Cerrillo reported that he will have a meeting with Director Castaneda, and with some recreation staff and rec. committee members on Monday 8/29 to discuss updates of Fiesta Day.

13. Director's Reports:

None for this meeting.

14. Legal Counsel Report:

Reserved for closed session.

15. Communications:

- a. Written Communications:
 - 1. Caglia Environmental Open House invitation at their location on Cedar Ave. on September 19, from 4:00-7:00pm.

2. County of Fresno Guidance Document for Unincorporated Community Plans. Zoom meeting scheduled for September 8, from 5:30-6:30pm for questions and comments.

b. Public Comment: *The Public may address the Malaga County Water District Board on item(s) of interest within the jurisdiction of the Board, not appearing on the agenda. The Board will listen to comments presented; however, in compliance with the Brown Act, the Board cannot take action on items that are not on the agenda. The public should address the Board on agenda items at the time they are addressed by the Board. All speakers are requested to wait until recognized by the Board President. All Comments will be limited to three **(3)** minutes or less per individual/group per item per meeting, with a fifteen **(15)** minutes maximum.*

Vice President Cerrillo left the meeting at 6:58pm.

16. Closed Session: 7:04pm

- a. Malaga County Water District v. CVRWQCB case number 16CECG03036 (Government Code section 54956.9 (d)(1).)
- b. Malaga County Water District v CVRWQCB case number MCV071279 (Govt Code 54956.9(d)(1).)
- c. Malaga County Water District v CVRWQCB case number MCV071280 (Govt Code 54956.9(d)(1).)

Nothing to report.

17. Adjournment:

Motion by Director Cerrillo, Jr., Second by Carlos Tovar, Jr. and by a 3-0 vote to adjourn the meeting at 7:20pm.

Certification of Posting

I, Norma Melendez, District Clerk of the Malaga County Water District, do hereby certify that the foregoing minutes for the Regular Meeting of the Board of Directors of August 23, 2022 was posted for public view on the front window of the MCWD office at 3580 S. Frank Street, Fresno Ca 93725, on 09/14/2022.

Norma Melendez

Norma Melendez, District Clerk