

Bueno, Amy

From: Allen-Cantley, Nalani
Sent: Friday, November 06, 2015 8:27 AM
To: Grima, Charlotte; Alger, Karen; Mindeguia, Yvette Alzugaray; Campbell, Paula; Fentanes, Donna; Bueno, Amy; Chan, Jennifer; Sebers, Ryan; Valenzuela, Judy; Krause, Michael; Spaulding, Jay; Mar, Susan; Bhatia, Leticia; Ramich, Cregg
Cc: Moore, Shawnterra
Subject: Items approved/not approved at November 5 Board meeting

Here is the recap of approved items.

2 expulsion waiver hearing recommendations

Action (Resolutions)

Resolution #15-73: Native American Heritage Month
Resolution #15-79: Approval of Authorizing District Officers for Investments
Resolution #15-82: Fixing the Reserve Cap

Consent Agenda

Educational Services

Student travel proposals
SES contracts

Human Resources

Certificated Assignment Order
Classified Assignment Order

Business Services

Monthly reports
Donations
Declaration of surplus property
2015-16 fundraising event(s)
Contracts/Agreements under \$25,000

Action

Educational Services

K-8 Fountas and Pinnell Leveled Literacy Intervention System

Human Resources

Nutrition Services–Director Job Description
Reinstatement of Research Analyst position

Business Services

Traffic solution at Buri
Buri

Cafeteria Owes regulation **pulled from agenda, adding to 12/10 meeting**

Water bottling stations at elementary and middle schools
Measure J/Quote for external speakers at Monte Verde
Measure J/Updated EADOC agreement
Measure J/Project Frog proposal for Parkway cabinetry
Measure J/OpTerra energy services agreement

Bueno, Amy

From: Krause, Michael
Sent: Thursday, November 05, 2015 10:46 PM
To: Fentanes, Donna
Cc: Bonner, Jeff; Samad, Seleh "Salom"; Bueno, Amy
Subject: Measure J Board items

Good morning:

All Measure J items were approved on the November 5th agenda. The next meeting will be held on December 10th.

Thank you,

Mr. Michael Krause
Assistant Superintendent, Business Services
South San Francisco Unified School District
Office: 650-877-8702
Cell: 650-784-1720

**SOUTH SAN FRANCISCO UNIFIED SCHOOL DISTRICT
BOARD OF TRUSTEES
AGENDA AND ORDER OF BUSINESS – REGULAR MEETING
Thursday, November 5, 2015**

**Alta Loma Middle School – Ram Hall
116 Romney Avenue, South San Francisco, California**

OPEN SESSION — 7:00 p.m.

- A. CALL TO ORDER**
- B. ROLL CALL**
- C. PLEDGE OF ALLEGIANCE** will be led by Alta Loma Middle School 5th grader Savannah Cedeno.
- D. REPORTING OUT FROM CLOSED SESSION**
- E. REVIEW OF AGENDA**
- F. RECOGNITION AWARDS** – volunteers
- G. PTA COUNCIL REMARKS**
- H. STAFF ASSOCIATION REPRESENTATIVES' REMARKS**

South San Francisco Federation of Adult Educators
South San Francisco Classroom Teachers Association
California School Employees Association Chapter 197
- I. PERSONNEL COMMISSION**
- J. ITEMS FROM BOARD**

Announcements
Board Calendar
Board Committee Reports

K. SUPERINTENDENT'S REPORT

- a. Recognition for Matt Souza on his Literary Award
- b. Recognition for David Yanover and Nicole Wallace as Outstanding Educators in Region 4
- c. Other

L. COMMUNICATIONS

Public comments are limited to three minutes per individual. Name/address cards are placed in the back of the room to be completed and given to the secretary. The Board President will call upon individuals in random order who have requested to speak. Each person may only speak once, and is required to address the Board from the podium. The meeting is recorded. Individuals may address the Board concerning school business not on the agenda, but public comment cannot be acted upon or discussed by the Board unless placed on the agenda at a subsequent meeting, in accordance with the law (Brown Act). The Board may request staff to respond orally at the meeting or in writing at a future time.

M. PRESENTATIONS

(Individual presentations are limited to a maximum of 10 minutes.)

1. EDUCATIONAL SERVICES

- a. Teaching and learning presentation:
Alta Loma Middle School

Principal Lou Delorio will share with the Board educational priorities and programs at Alta Loma Middle School.

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ACTION *(Resolutions)*

1. ADMINISTRATION

- a. Resolution No. 15-73 Native American Heritage Month

1

Staff recommends the adoption of Resolution #15-73: Honoring Native American Heritage Month.

PAGE

2. BUSINESS SERVICES

- a. Resolution No. 15-69 Officer of the SSFUSD for Investments** 2

The South San Francisco Unified School District currently holds stock donated years ago to the district by community members. Legal opinions have been handed down that school districts are not to be holding any type of stock investments. Currently, Dr. Richard Rigg, a former Superintendent, is the only authorized officer of the district on record with the investment company. In order for the investment company to discuss and work on solutions to sell the stocks, a new officer of the district must be appointed with a resolution.

- b. Resolution No. 15-82 Fixing the Reserve Cap** 3 - 5

The Board of Trustees of the South San Francisco Unified School District supports SB 799, and any legislation like it which proposes to modify the reserve cap law to restore governing board flexibility over the use of reserves to adequately prepare for economic difficulties and save for investments in educational programs, and calls upon the Legislature and the Governor to enact such modifications during the 2015-16 regular session of the California State Legislature.

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N. CONSENT AGENDA: The following items are submitted for Board approval. One motion will authorize action for those items so designated.

1. ADMINISTRATION

- a. Minutes to the Special Board Meeting, October 12, 2015. 6 - 13
- b. Minutes to the Regular Board Meeting, October 22, 2015. 14 - 28
- c. Minutes to the Special Board Meeting, October 24, 2015. 29

2. EDUCATIONAL SERVICES

- a. Staff recommends the approval of permission for SSFHS AVID students to participate in the Big Ideas Fest in San Jose, CA on December 2 – 5. 30 - 31
- b. Staff recommends the approval of permission for the ECHS Wrestling team to participate in the Lou Bronzen Invitational in Brentwood, CA on December 22-23, 2015. 32
- c. Staff recommends the approval of permission for the ECHS Wrestling team to participate in the California Coast Classic in Aptos, CA on December 28-29, 2015. 33
- d. Staff recommends the approval of permission for the ECHS Wrestling team to participate in the Napa Valley Girls Classic in Napa, CA on January 8-9, 2016. 34
- e. Staff recommends the approval of permission for the ECHS Wrestling team to participate in the Mid Cal Championships in Gilroy, CA on January 22-23, 2016. 35
- f. Staff recommends the approval of permission for the ECHS Advanced Placement students to attend dance classes and perform in Denver, CO on February 18–21, 2016. 36
- g. Staff recommends the approval of permission for the ECHS Wrestling team to participate in the Central Coast Section Championships in San Jose, CA on February 19-20, 2016. 37
- h. Staff recommends the approval of the Supplemental Education Services (SES) provider contracts for the 2015-2016 school year. 38 - 72

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3. HUMAN RESOURCES	
a. Certificated Personnel Assignment Order	73
b. Classified Personnel Assignment Order	74
4. BUSINESS SERVICES	
a. Purchase Order Listing, October 1 - 23, 2015.	75 - 84
b. Warrant Register, October 1 - 23, 2015.	85 - 128
c. Cash Receipts, October 1 - 23, 2015.	29 - 141
d. Gifts to the District, October 2015	142 - 143
e. Staff recommends the approval of the declaration of surplus property.	144 - 148
f. Staff recommends the approval of fundraising events for the 2015-2016 school year.	149 - 150
g. Staff recommends the approval of professional service agreements under \$25,000.	151 - 152

<u>INFORMATION/DISCUSSION</u>	<u>PAGE</u>
1. ADMINISTRATION	
a. Discussion of SSFUSD surplus property	153
<p>Dr. Moore will present to the Board, on work she has done thus far to initiate the process of determining surplus property and discussing how it might be used.</p>	
2. HUMAN RESOURCES	
a. Update on classification study for Classified Service	154 - 155
<p>Staff will present to the Board, a plan to undertake a classification study for all classified services to inform successor contract negotiations for the 2016-2019 agreement.</p>	
b. Update on substitute teacher shortage	156 - 160
<p>Staff will present to the Board, information from a Substitute Shortage group which included CTA representation, teachers, administrators, and high school personnel. A brainstorm list of all possible options for SSFUSD to alleviate the current sub shortage will be discussed.</p>	
c. Update on Department of Fair Employment and Housing (DFEH) settlement agreement	161 - 180
<p>Staff will present to the Board, an update on a Board-approved settlement agreement regarding a Department of Fair Employment and Housing (DFEH) claim with Christine Forsell, a District employee.</p>	
3. BUSINESS SERVICES	
a. Traffic at Buri Buri	181
<p>Staff will present to the Board, information on traffic concerns at Buri Buri due to the current construction at that site along with options available to potentially alleviate some safety concerns.</p>	

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b. Update on El Nino preparedness	182
<p>Staff will present to the Board, an update on measures being taken to prepare the District for potential flooding in the upcoming rainy season.</p>	
c. Cafeteria Owes regulation	183 - 184
<p>Staff will present to the Board, information on a regulation to ensure parents who owe for paid and reduced meals are held accountable for their debts to the District as well as provide community outreach in order for parents/guardians to be well informed about the process.</p>	
d. Discussion of Genentech MOU	185 - 194
<p>Staff will present to the Board, information on a Genentech Foundation grant to the District of a science education and laboratory facility, known as the "Science Garage".</p>	

PUBLIC HEARING – OpTerra energy services agreement

A Public Hearing will provide an opportunity for members of the public to comment on an OpTerra energy services agreement with the District.

ACTION *(continued)*

1. EDUCATIONAL SERVICES

a. Approval of Fountas and Pinnell Leveled Literacy Intervention System	195 - 196
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Staff recommends the approval of a pilot program of the K-8 Fountas and Pinnell Leveled Literacy Intervention System, as presented to the Board.

2. HUMAN RESOURCES

a. Approval of Nutrition Services Director job description	197 - 200
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Staff recommends the approval of a change in job title and revised job description for the Director of Nutrition Services, as presented the Board.

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- b. Approval of reinstatement of Research Analyst position** 201 - 205

Staff recommends the approval of the reinstatement of the District's Research Analyst position, as presented to the Board.

3. BUSINESS SERVICES

- c. Traffic at Buri Buri** 206

Staff recommends the approval of the options available to potentially alleviate some safety concerns at Buri Buri due to current construction, as presented to the Board.

- d. Approval of Cafeteria Owes regulation** 207

Staff recommends the approval of a regulation to ensure parents who owe for paid and reduced meals are held accountable for their debts to the District as well as provide community outreach in order for parents/guardians to be well informed about the process, as presented to the Board.

- e. Water bottling stations at elementary and middle schools** 208

Staff recommends the approval of the additional water bottle filling stations at the District's elementary and middle schools, as presented to the Board.

- g. Measure J/Approval of quote for external speakers at Monte Verde** 209 - 218

Staff recommends the approval of IT Management's installation of external speakers at Monte Verde, as presented to the Board.

- h. Measure J/Approval of Bentley systems agreement (name change only)** 219 - 229

Staff recommends the approval of the EADOC (Bentley Systems) agreement for the Measure J Bond program's online filing and document access account, as presented to the Board.

	<u>PAGE</u>
i. Measure J/Approval of Project Frog proposal for Parkway cabinetry	230 - 242

Staff recommends the approval of the Project Frog proposal for the Parkway Heights Art Room Exploratorium cabinetry, as presented to the Board.

j. Measure J/Approval of OpTerra energy services agreement	243 - 269
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Staff recommends the authorization of the Assistant Superintendent of Business Services to negotiate and execute the attached Energy Services Agreement with OpTerra Energy Services, as presented to the Board.

REVIEW OF FUTURE AGENDA ITEMS AND MEETINGS

December 10, 2015 – Televised (Municipal Building)

- Teaching and learning presentation – Westborough Middle School
- Board of Trustees reorganization
- Resolution honoring outgoing Board President
- First interim budget report “positive certification”
- Resolution for Computer Science Week
- CSBA Delegate Assembly nomination

January 14, 2016

- Teaching and learning presentation – Skyline Elementary School
- Williams report for 4th quarter ending 12/31/15
- Audited report for the year ended June 30, 2014
- Approval of SPSAs
- Resolution honoring African American History Month

February 11, 2016

- Teaching and learning presentation – Sunshine Gardens Elementary School
- Resolution for Week of the School Administrator
- Recognition for outgoing Student Trustee Perez
- Discussion of student club fees

February 25, 2016

- Teaching and learning presentation – Spruce Elementary School
- Resolution honoring Women’s History Month
- 2016 CSBA Delegate Assembly election

March 10, 2016

- Teaching and learning presentation – Ponderosa Elementary School
- Second interim budget report “positive certification”

March 24, 2016

- Teaching and learning presentation – El Camino High School
- Approval of Summer School program
- Set dates for Tier III funds hearing and 2016-2017 budget adoption

April 14, 2016 - Televised (Municipal Building)

- Teaching and learning presentation – Martin Elementary School
- Resolution for Day of the Teacher
- Resolution for Classified School Employee Week
- Williams report for 1st quarter ending 3/31/16
- Resolutions for Retirements
- Resolution to approve 2016-2017 TRAN

April 28, 2016

- Teaching and learning presentation – Junipero Serra Elementary School
- Resolutions for Retirees
- Measure J/Summer construction projects

SUMMARY OF BOARD DIRECTIVES

GOOD AND WELFARE

- Comments from Board Members and Superintendent

ADJOURNMENT

Copies of the agenda only are posted next to the front door of the District Office at 398 B Street, and at the following public libraries: South San Francisco libraries, West Orange and Grand Avenue, and the Daly City Library on Wembly Avenue, Daly City. It is also available for review at the District's website: www.ssfusd.org (Click on *Board Meeting Agendas and Minutes*).

1) A CD is made of the Open Session of each meeting; 2) Any writing or document that is a public record relating to an open session agenda item, and is distributed less than 72 hours prior to a regular meeting will be made available for public inspection in the District Office located at 398 B Street, South San Francisco, California 94080. If however, the document or writing is not distributed until the regular meeting to which it relates, then the document or writing will be made available to the public at the location of the meeting, as listed on this agenda.; and 3) For special accommodation to participate in this meeting, please contact the Office of the Superintendent, a minimum of 48 hours prior to the meeting: Telephone--(650) 877-8705, Fax--(650) 588-8113 or e-mail: ncantley@ssfusd.org

acknowledged both ECHS Social Science teachers with certificates of recognition for being selected by the California League of High Schools. She said the District is proud of them and Ms. Wallace was also selected to represent Region 4 at the State conference.

- c. **Other** – the Superintendent said she is very proud of Trustee Goodman and he has done a wonderful job while a Board member in the District. (The Board, Cabinet and audience applauded Mr. Goodman on his accomplishment.)

ASB Reports

- o Alan Perez, ASB President, South San Francisco High School, shared events at his school with the Board. The first anniversary of the Halloween festival had a great turnout and the site raised \$800 dollars. The annual Bell Game takes place next Saturday and SSFHS is hoping to continue its winning streak against ECHS. The Blue and White Ball is being held tomorrow. Auditions for the school play “As You Like It” will be held on November 14 and 15.
- o Tiana Valerio, ASB President, El Camino High School, highlighted recent and upcoming events on campus. They are in the middle of the school’s third annual Hunger Games nominations and will again have a canned food drive during the event. The Colt bush has been removed and she thanked Principal Lunt for including the student body in how to use the open space. They are working with their counterparts at SSFHS to plan the upcoming Winter Ball. The Halloween concert had a great turnout. This year’s “Doodle for Goggle” contest theme is “What Makes Me Happy”. Submissions are due by December 7. The winner will get \$50K for their school. The annual Bell Game will be held this year at ECHS on November 14.

L. COMMUNICATIONS

Reem Nasrah, a parent, asked that the upper practice field at ECHS be leveled to prevent student injuries.

John Jacobson, a resident, spoke about permanent field lights at ECHS. He said no community member at a recent meeting opposed this. OpTerra attended the meeting and was able to answer all questions posed. Attendance at games has increased while the site has used temporary lights.

M. PRESENTATIONS

1. EDUCATIONAL SERVICES

- a. **Teaching and learning presentation:
Alta Loma Middle School**

c. Update on Department of Fair Employment and Housing (DFEH) settlement agreement

Mr. Spaulding provided an update on a Board-approved settlement agreement regarding a Department of Fair Employment and Housing (DFEH) claim with Christine Forsell, a District employee. The agreement was settled on June 25, 2015. The District has met all agreement details by the due date. There is now an interactive employee process log to be followed. The District must do this two more years to satisfy the settlement agreement.

3. BUSINESS SERVICES

a. Traffic at Buri Buri

Assistant Superintendent Krause reported on traffic concerns at Buri Buri due to the current construction at that site along with options available to potentially alleviate some safety concerns. He stressed that safety is the District's #1 priority. The student drop off/pick up area has been reconfigured and alleviated some traffic problems at the site. He cautioned that no District staff member can enforce traffic laws, but only encourage drivers. An additional guard has been proposed with the crossing guard company.

Vice President Lucy expressed concern with the guard's directions being followed. Dr. Moore replied that she has communicated with Police Chief Azzopardi for support and has personally seen an improvement at the site this week. The Superintendent praised Principal Vicky Dye for doing a good job and said she will help train the guard. Trustee Goodman cautioned that the guard have experience so he/she would be respected. Mr. Krause will contact the company tomorrow to have the guard begin work next Monday.

b. Update on El Nino preparedness

Mr. Krause reported on the following measures being taken to prepare the District for potential flooding in the upcoming rainy season:

- Staff are doing dry runs and drills.
- Facilities is checking storm drains and assessing them on a regular basis.
- Staging sandbags at sites and stocking them in the warehouse.
- Public Works department will help the District stuff sandbags.
- An arborist is assessing/trimming trees as needed before fall.
- Gutters are being cleared.
- Created a work roster with District's emergency contacts.
- On site inspectors check before and after rain and make weekly inspections.

to pay when they children are given free meals.

Student Trustee Perez suggested providing information with the form so parents understand the sites or District are getting charged for meals.

Trustee Lucy recommended revisiting the 2013/2014 policy change.

President Bush directed that Action Item 3d, be pulled and brought back at the December 10 Board meeting.

d. Discussion of Genentech MOU

Superintendent Moore spoke about a Genentech Foundation grant to the District of a science education and laboratory facility, known as the "Science Garage". This would focus on college and career readiness in science, biotechnology and math. It would be located at SSFHS. She complimented Genentech on their amazing partnership with the District. Ms. Bush said Genentech has been generous to the school community through a wonderful collaboration.

Genentech Project Manager Victoria Vargas stated that the approximately 8,000 square foot facility would accommodate 36 students. It would be completed at the start of the 2017 school year.

PUBLIC HEARING – OpTerra energy services agreement

A Public Hearing provided an opportunity for members of the public to comment on an OpTerra energy services agreement with the District.

The Board meeting was suspended to open a public hearing at 9:12 p.m.

James Ruigomez, of the San Mateo County Building Trade Councils said he supports Board approval for the OpTerra agreement. He has worked with them on many projects, which they delivered on time and on budget, and they employ local workers.

The public hearing was closed and the Open Session reconvened at 9:15 p.m.

ACTION *(continued)*

2. EDUCATIONAL SERVICES

a. Approval of Fountas and Pinnell Leveled Literacy Intervention System

MOTION # (Goodman/Ochsenhirt) to approve a pilot program of the K-8 Fountas and Pinnell Leveled Literacy Intervention System. Motion Carried. (Unanimous)

3. HUMAN RESOURCES

a. Approval of Nutrition Services Director job description

MOTION # (Acosta/Ochsenhirt) to approve a change in job title and revised job description for the Director of Nutrition Services. Motion Carried. (Unanimous)

b. Approval of reinstatement of Research Analyst position

MOTION # (Goodman/Lucy) to approve the reinstatement of the District's Research Analyst position. Motion Carried. (Unanimous)

4. BUSINESS SERVICES

c. Traffic at Buri Buri

MOTION # (Lucy/Goodman) to approve the options available to potentially alleviate some safety concerns at Buri Buri due to current construction. Motion Carried. (Unanimous)

d. Approval of Cafeteria Owes regulation

This item was pulled from the agenda.

e. Water bottling stations at elementary and middle schools

MOTION # (Acosta/Goodman) to approve the additional water bottle filling stations at the District's elementary and middle schools. Motion Carried. (Unanimous)

g. Measure J/Approval of quote for external speakers at Monte Verde

Trustee Acosta inquired about speakers at other sites. Mr. Krause replied they will begin with Monte Verde and then check the quality of the work. The next sites will be Buri Buri, Ponderosa, etc. This is a six month plan. They will be assessing all sites, renovated or not.

MOTION # (Acosta/Ochsenhirt) to approve IT Management's installation of external speakers at Monte Verde. Motion Carried. (Unanimous)

h. Measure J/Approval of Bentley systems agreement (name change only)

MOTION # (Lucy/Goodman) to approve the EADOC (Bentley

Systems) agreement for the Measure J Bond program's online filing and document access account. Motion Carried. (Unanimous)

i. Measure J/Approval of Project Frog proposal for Parkway cabinetry

MOTION # (Goodman/Lucy) to approve the Project Frog proposal for the Parkway Heights Art Room Exploratorium cabinetry. Motion Carried. (Unanimous)

j. Measure J/Approval of OpTerra energy service agreement

MOTION # (Goodman/Lucy) to authorize the Assistant Superintendent of Business Services to negotiate and execute the attached Energy Services Agreement with OpTerra Energy Services. Motion Carried. (Unanimous)

REVIEW OF FUTURE AGENDA ITEMS AND MEETINGS

December 10, 2015 – Televised (Municipal Building)

- Board of Trustees reorganization
- Resolution honoring outgoing Board President
- Teaching and learning presentation – Parkway Middle School
- Presentation on Workforce Housing
- Presentation on Native American heritage
- First interim budget report “positive certification”
- Resolution for Computer Education Week
- Update of District’s Strategic Plan
- CSBA Delegate Assembly nomination
- Update on District surplus property
- Update on Mandated Reporting
- Educator Effectiveness Grant
- Approval of Cafeteria Owes policy
- Update on solar savings
- Measure J update
- Approval of Governance Handbook
- Approval of Board Policy and program description for Dance for PE credit at HSs
- Approval of action plan for substitute shortage recommendation
- Approval of fans at sites
- Measure J/Approval of quote for external speakers at Buri Buri and Ponderosa
- Measure J/Approval of architect for Martin
- Measure J/Approval of bids for SSFHS driveway (back entrance)



OPTERRA
ENERGY SERVICES



South San Francisco USD:

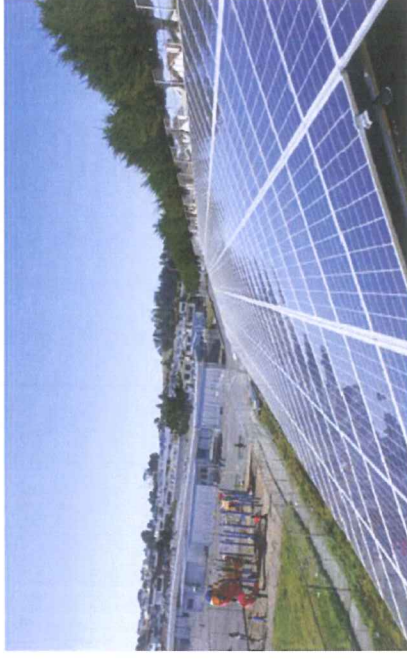
*Supporting the STEM Mission, Colts
Field Lighting, and Energy Vision*

October 20, 2015
South San Francisco, CA

Tonight's Agenda



- Program Vision
- Energy Summary Matrix
- Colts Field Lighting Overview
- Funding Pathways
- STEAM Pathways Programming
- Roadmap and Next Steps



Program Vision



- Expand and support the **STEAM Mission** through CTE pathways programming, HS internships, and foundational K-8 STEAM experiences
- Install high-efficiency **LED Stadium Lighting at El Camino HS** to support educational / extracurricular activities and overall athletic program
- Incorporate and leverage **Prop. 39 State Funds** to accomplish high-priority energy infrastructure projects



Energy Summary Matrix



South San Francisco Unified School District											
Building Name	Address	Square Feet	Annual Electric Billing	Annual Gas Billing	Total Yearly Billing	Total Billing per SF	Solar Projects	LED Lighting	ADA Access Upgrades	LED Stadium Lighting	STEM Education
Serra Vista	257 Longford Dr.	24,000	\$ 22,795	\$ 5,826	\$ 28,621	\$ 1.19	X	X			X
Hillside Campus	1400 Hillside Blvd.	38,000	\$ 20,176	\$ 3,610	\$ 23,786	\$ 0.63	X	X			X
El Camino High School	1320 Mission Rd.	165,000	\$ 4,462	\$ 24,272	\$ 28,734	\$ 0.17		X	X	X	X
South San Francisco High School	398 B. St.	200,000	\$ 135,318	\$ 40,752	\$ 176,070	\$ 0.88	X				X
Other Schools	District-Wide	-	\$ -	\$ -	\$ -	\$ -					X
		\$ 639,700	\$ 266,269	\$ 125,681	\$ 391,950	\$ 0.61					

Development Methodology and Process

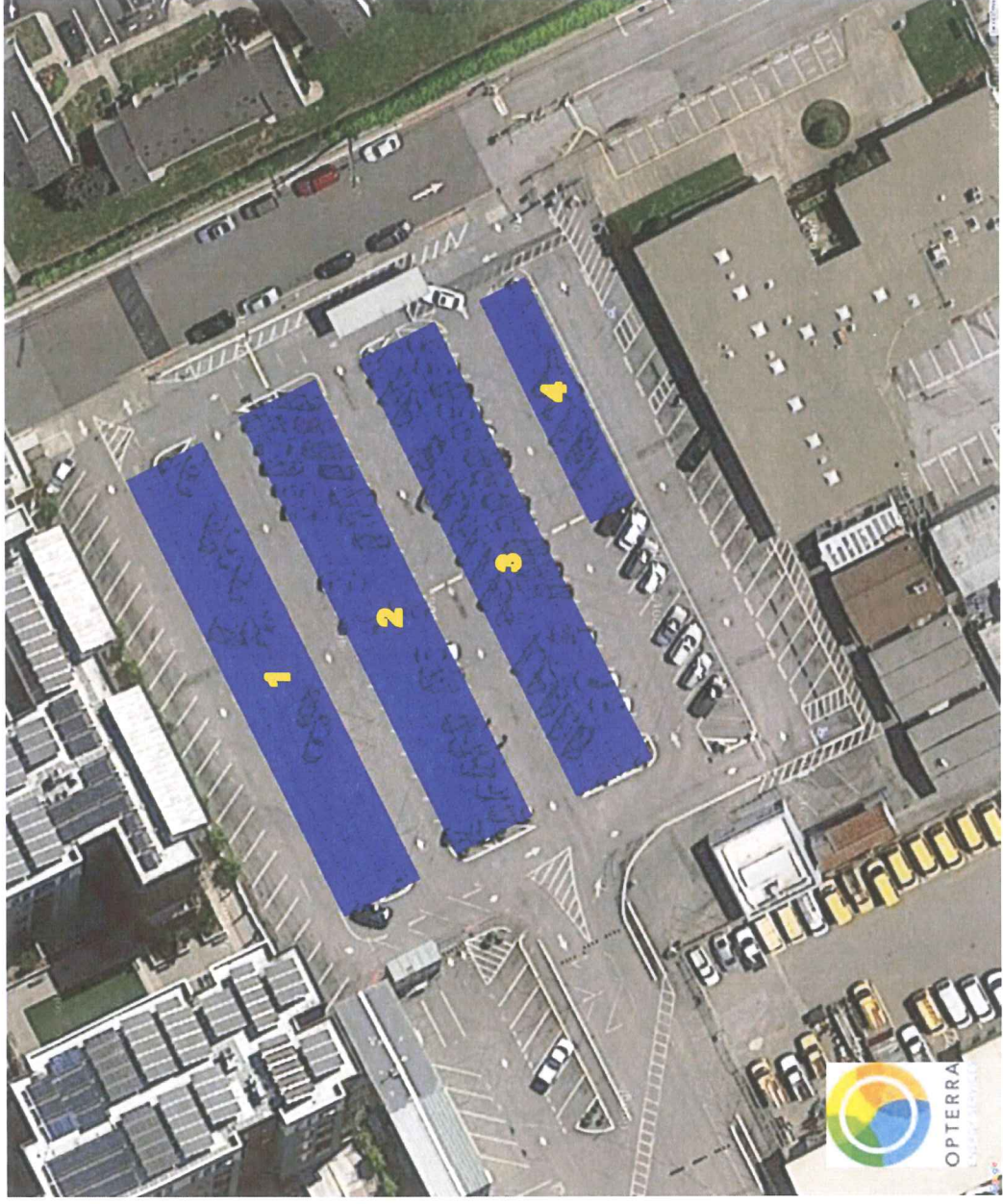


Development Activity	Date(s)
Board Approval of Program Development Agreement	8/13
Leadership Team Kick-Off for Design-Development	8/18
Comprehensive Energy Engineering	8/18 – 10/2
STEAM Mission Development Kick-Off	8/25 – 9/15
Leadership Team Scope Review and Feedback	9/2
El Camino Community Forums	9/22 – 10/13
Competitive Procurement Process	10/1 – 10/15
Board Update	10/8
Leadership Team Scope Review and Feedback	10/20
STEAM Mission Continued Development and Meeting with Dr. Leticia Bhatia	10/29

Solar Locations: South San Francisco High School



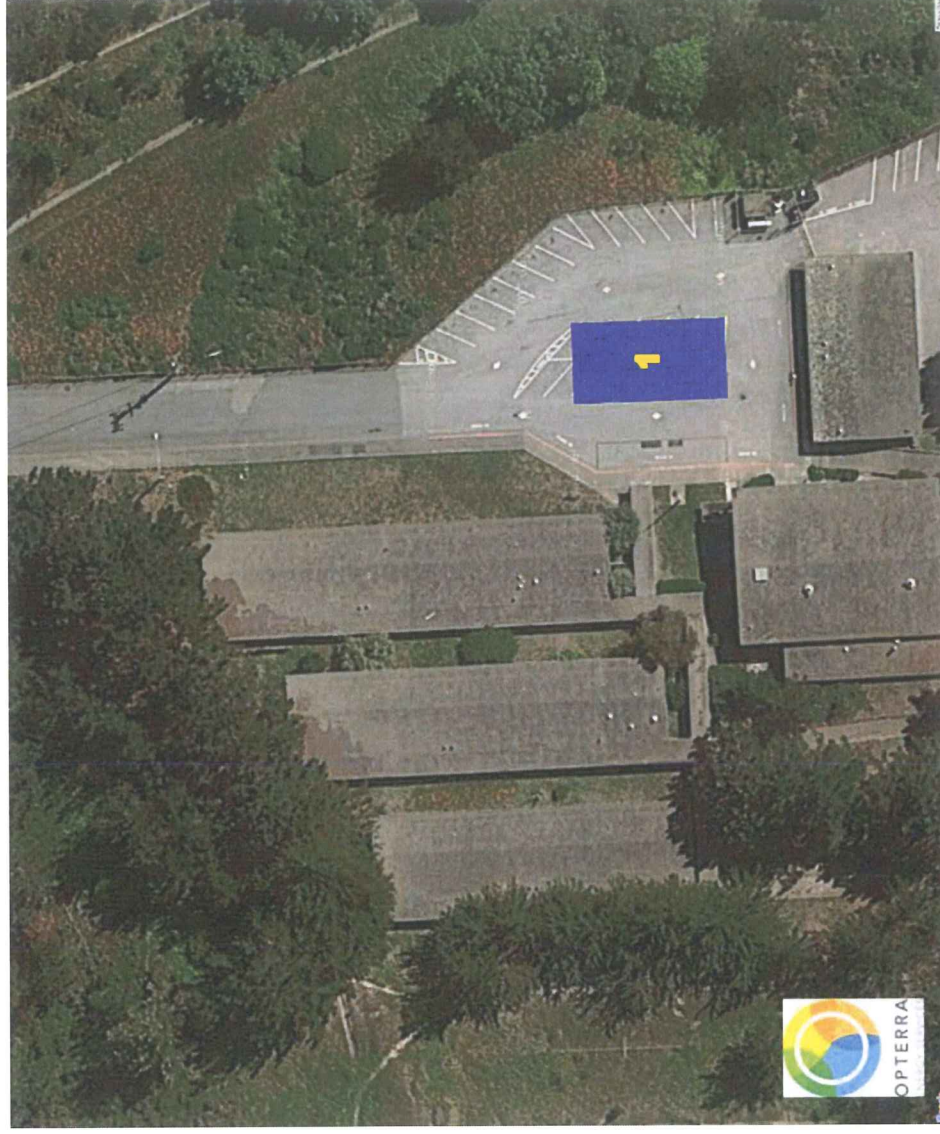
- Meter # 1009631327
- Total: 306.1 kW
 - Array 1 – 92.6 kW
 - Array 2 – 92.6 kW
 - Array 3 – 92.6 kW
 - Array 4 – 28.3 kW



Solar Locations: Serra Vista



- Meter # 1009538516
- Array 1: 28.6 kW



LED Lighting at Colts Field



■ Benefits of LED Lighting

- LED lights are the most energy efficient lighting available, and are widely utilized at school fields throughout the Country, including at College and NFL stadiums
- LED lights are very *directed*, which helps reduce light pollution
- LED lights provide razor-sharp definition, which ensures clear visibility and increases student safety

Existing Portable Diesel Lights

- Generators fueled by diesel
- Diesel generates noise pollution
- Generator creates poor air quality
- Light pollution
- Extended field use

LED Lights (Proposed)

- LED lights
- Energy efficiency
- Controlled light spill
- Minimized light glare
- Extended field use



Stadium Lighting for the El Camino Colts



- **The Goal:**
 - Support the Educational Experience
 - Allow El Camino's student-athletes to compete when their parents, teachers, and community members can attend
 - El Camino is one of only seven high schools without permanent field lighting in the Peninsula Athletic League.
 - Of these seven high schools, five from the San Mateo Union High School District (Aragon, Capuchino, Hillsdale, Mills and San Mateo) received approval in October to move forward with permanent lighting installations.
 - Create a safe environment for evening sporting events (and graduation) as sanctioned by the District and High School Leadership
 - Reduce early class dismissals for student-athletes
 - Actively engage the community in this design process for feedback and ideas



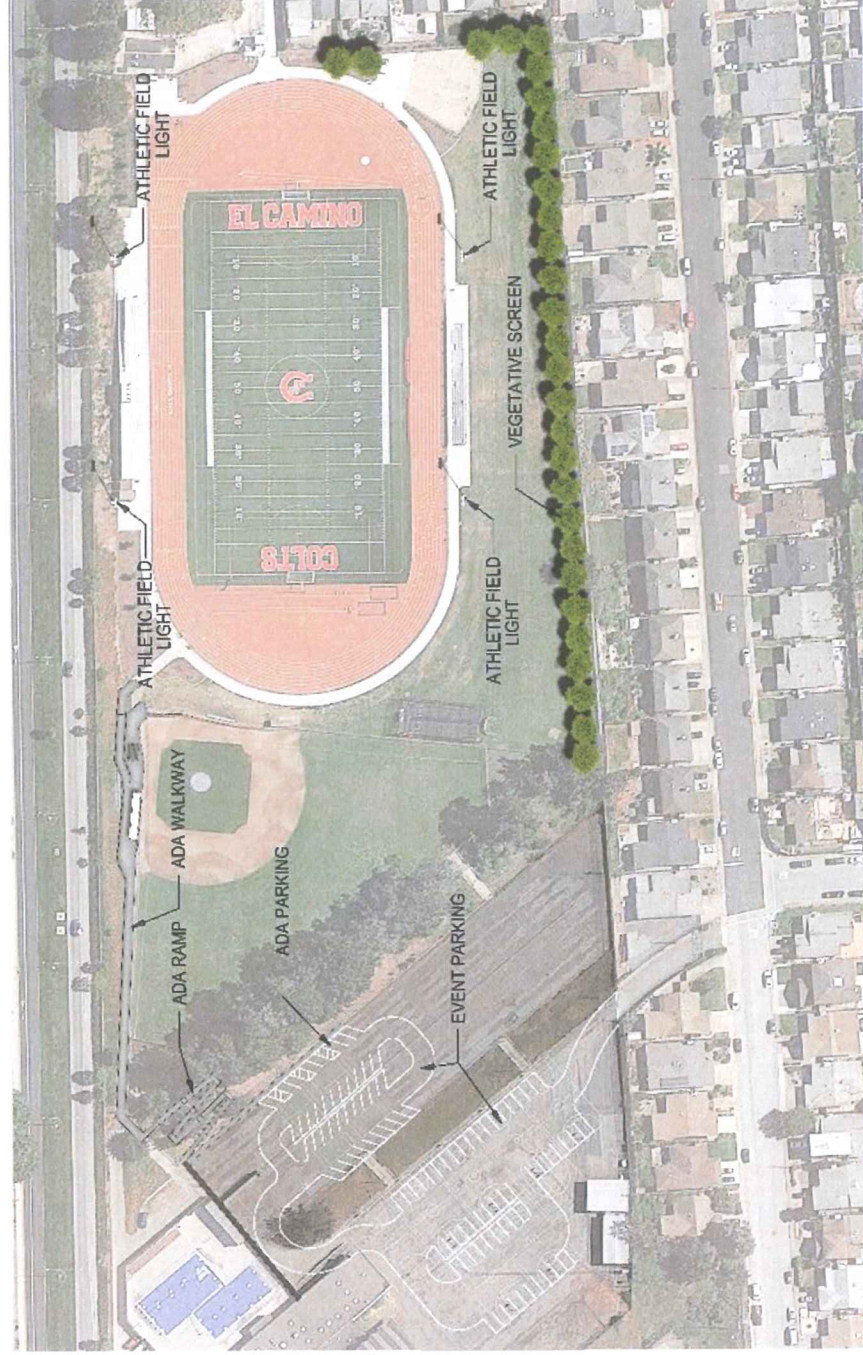
Design Considerations



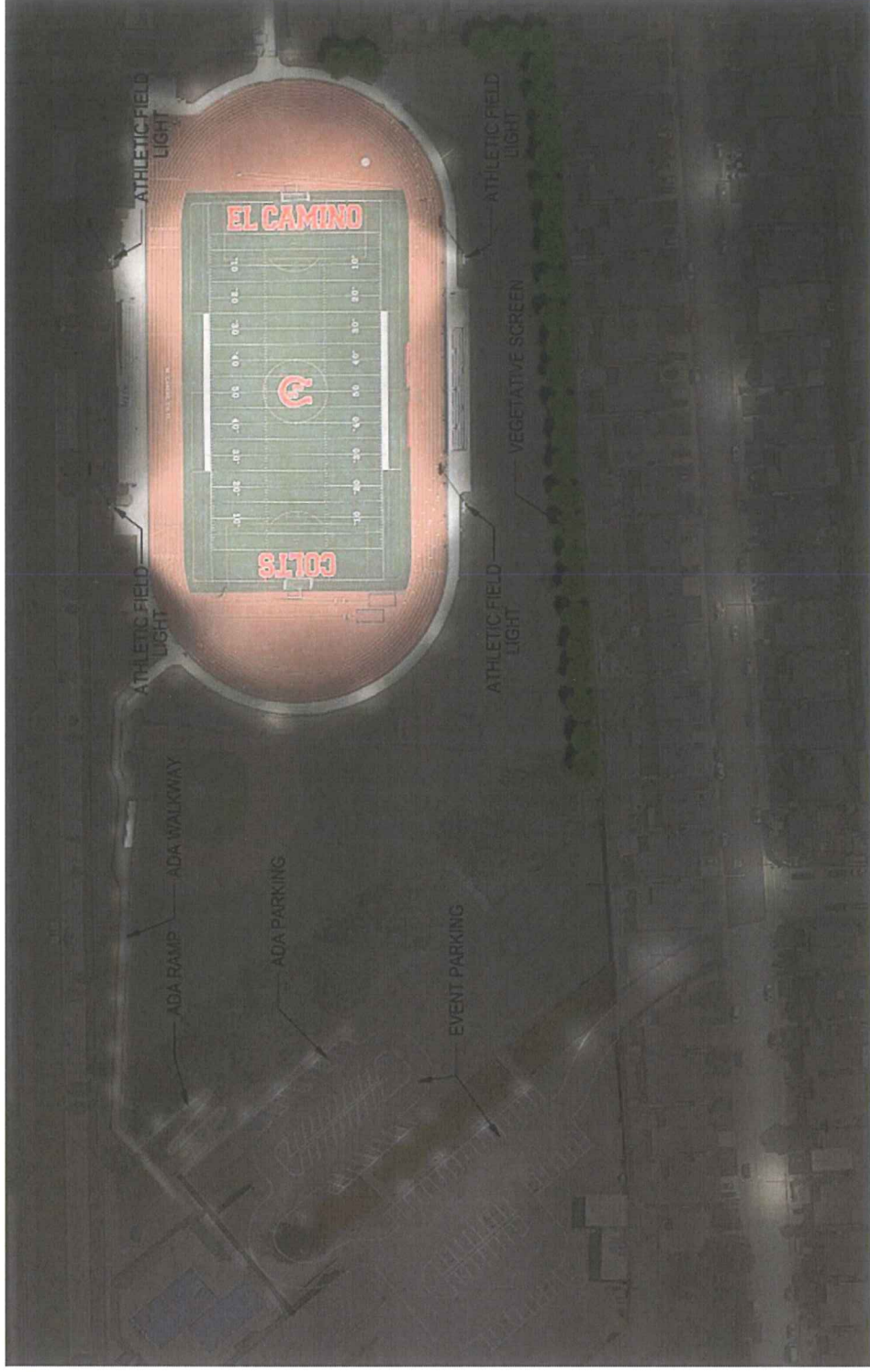
- Active collaboration with community stakeholders and neighbors, with the leadership of Principal Lunt and Assistant Principal Smith, and involvement and support of the Athletic Directors
- Held three publicized community forums to solicit feedback and ideas
 - Reduce and Minimize Light Pollution
 - Control Traffic / Parking Management
 - Manage Use of Public Address (PA) System
 - Litter / Trash Management



Colts Field: Blueprint for the Future



Colts Field: Aerial Rendering



Funding Pathway



Year	Solar Electricity Produced (kWh) W	Solar-Avoided Electric Rate (\$/kWh) X	Total Projected Utility Electricity Savings Y = W * X	Energy Conservation Rebates A	Energy Conservation Savings B	O&M and M&V Costs C	Maintenance Savings D	District Prop 39 Funds E	Net Program Savings F = A+B+D-E-C	Estimated Lease Payment G	Project Net Benefit H = F - G	Cumulative Program Savings I
1	483,984	\$0.286	\$138,400	\$10,157	\$22,682	\$0	\$5,000	\$400,000	\$576,239	\$557,453	\$18,786	\$18,786
2	481,564	\$0.299	\$143,905		\$23,703	\$0	\$5,150	\$400,000	\$572,758	\$553,972	\$18,786	\$37,572
3	479,156	\$0.312	\$149,629		\$24,769	\$0	\$5,305	\$400,000	\$579,703	\$560,917	\$18,786	\$56,358
4	476,760	\$0.326	\$155,580		\$25,884	\$0	\$5,464		\$186,928	\$168,142	\$18,786	\$75,144
5	474,377	\$0.341	\$161,768		\$27,049	\$0	\$5,628		\$194,445	\$175,659	\$18,786	\$93,930
6	472,005	\$0.356	\$168,203		\$28,266	\$14,159	\$5,796		\$188,106	\$169,320	\$18,786	\$112,716
7	469,645	\$0.372	\$174,893		\$29,538	\$14,584	\$5,970		\$195,817	\$177,031	\$18,786	\$131,502
8	467,297	\$0.389	\$181,849		\$30,867	\$15,021	\$6,149		\$203,844	\$185,059	\$18,786	\$150,288
9	464,960	\$0.407	\$189,082		\$32,256	\$15,472	\$6,334		\$212,200	\$193,414	\$18,786	\$169,074
10	462,635	\$0.425	\$196,603		\$33,708	\$15,936	\$6,524		\$220,899	\$202,113	\$18,786	\$187,860
11	460,322	\$0.444	\$204,423		\$35,224	\$16,414	\$6,720		\$229,953	\$211,167	\$18,786	\$206,646
12	458,020	\$0.464	\$212,554		\$36,810	\$16,907	\$6,921		\$239,378	\$220,592	\$18,786	\$225,432
13	455,730	\$0.485	\$221,008		\$38,466	\$17,414	\$7,129		\$249,189	\$230,403	\$18,786	\$244,218
14	453,452	\$0.507	\$229,799		\$40,197	\$17,936	\$7,343		\$259,402	\$240,616	\$18,786	\$263,004
15	451,184	\$0.530	\$238,939		\$42,006	\$18,474	\$7,563		\$270,034	\$251,248	\$18,786	\$281,790
16	448,929	\$0.553	\$248,443		\$43,896	\$19,029	\$7,790		\$281,100	\$262,314	\$18,786	\$300,576
17	446,684	\$0.578	\$258,325		\$45,871	\$19,599	\$8,024		\$292,620	\$273,834	\$18,786	\$319,362
18	444,450	\$0.604	\$268,600		\$47,936	\$20,187	\$8,264		\$304,612	\$285,826	\$18,786	\$338,148
19	442,228	\$0.632	\$279,283		\$50,093	\$20,793	\$8,512		\$317,095	\$298,309	\$18,786	\$356,933
20	440,017	\$0.660	\$290,392		\$52,347	\$21,417	\$8,768		\$330,089	\$77,826	\$252,264	\$609,197
21	437,817	\$0.690	\$301,942		\$54,702	\$22,059	\$9,031		\$343,616		\$343,616	\$952,813
22	435,628	\$0.721	\$313,952		\$57,164	\$22,721	\$9,301		\$357,696		\$357,696	\$1,310,509
23	433,450	\$0.753	\$326,439		\$59,736	\$23,403	\$9,581		\$372,354		\$372,354	\$1,682,863
24	431,283	\$0.787	\$339,423		\$62,425	\$24,105	\$9,868		\$387,611		\$387,611	\$2,070,474
25	429,126	\$0.822	\$352,924		\$65,234	\$24,828	\$10,164		\$403,494		\$403,494	\$2,473,968
Total	15,575,708		\$5,746,359		\$1,010,828	\$380,458	\$182,296	\$1,200,000	\$7,769,182		\$2,473,968	

Program generates over \$2.4 million in savings over the program lifetime

Supporting K-12 STEAM Pathways: Opportunities and Concepts



- Based on exploratory conversations, the STEAM components included in this program may include:
 - Creating a **STEAM Summer Institute for Middle School** with hands-on, project-based learning experiences around sustainability and energy sources
 - Designing a series of STEAM-Focused, NGSS/Common Core standards-aligned **Professional Development workshops for K-5** teachers across the district to help empower teachers to build the foundational skills essential for student success in the classroom and beyond.
 - Supporting the **Design CTE Pathway** with project-based learning experiences through a specialized **Pathways Academy Internship Program** for high schoolers to gain real-world experiences and explore the interconnectivity between design and sustainability



OpTerra is committed to being a school and community partner for years to come!

Roadmap and Next Steps



Meeting to Review Prop 39 development plan and overall program funding strategy, as well as the current scope of work	9/2	X	OES/SSFUSD
STEAM Mission Meeting with Dr. Shawnterra Moore and Dr. Leticia Bhatia to discuss energy education program and STEAM development process	9/15	X	OES/SSFUSD
First of 3 community forums for El Camino Stadium Lighting	9/22	X	OES/SSFUSD
Leadership Team Meeting Review of recommended scope, savings, and discussion of schedule for competitive procurement	9/22	X	OES/SSFUSD
Opterra ES works with SSFUSD Staff to walk multiple contractors and runs transparent, competitive procurement process (RFP) on installation, equipment and financing for the Energy Savings and STEAM Mission Scopes	10/1 - 10/15	X	OES
Board Update Update to the Board on program scope and progress on STEAM Mission, El Camino Lights, and Energy Upgrades	10/8	X	Board Meeting
Legal Review and Contract Approval			
Board Presentation and Public Hearing for 4217 and Approval to Execute Energy Services Contract for Energy Savings Scope of Work	11/5	Scheduled	Board Meeting
Construction			
Prop 39 OES handles administrative requirements for Prop 39 funding plan	November - January	On-Track	OES
OES finalizes engineering and design, DSA/OPSC Submittals, equipment procurement	December - January	On-Track	OES
STEAM Vision Energy Educational Program Kick-Off	January	On-Track	OES
Media & Positive Public Relations Press release and groundbreaking/ribbon-cutting media effort to celebrate South San Francisco's continued initiatives and achievements	February	On-Track	OES/SSFUSD
Opterra ES begins construction on Energy Savings and STEAM Mission - On-Site Construction Management Team works closely with District staff and partners to coordinate construction with other projects	February	On-Track	OES

Upcoming Activities:

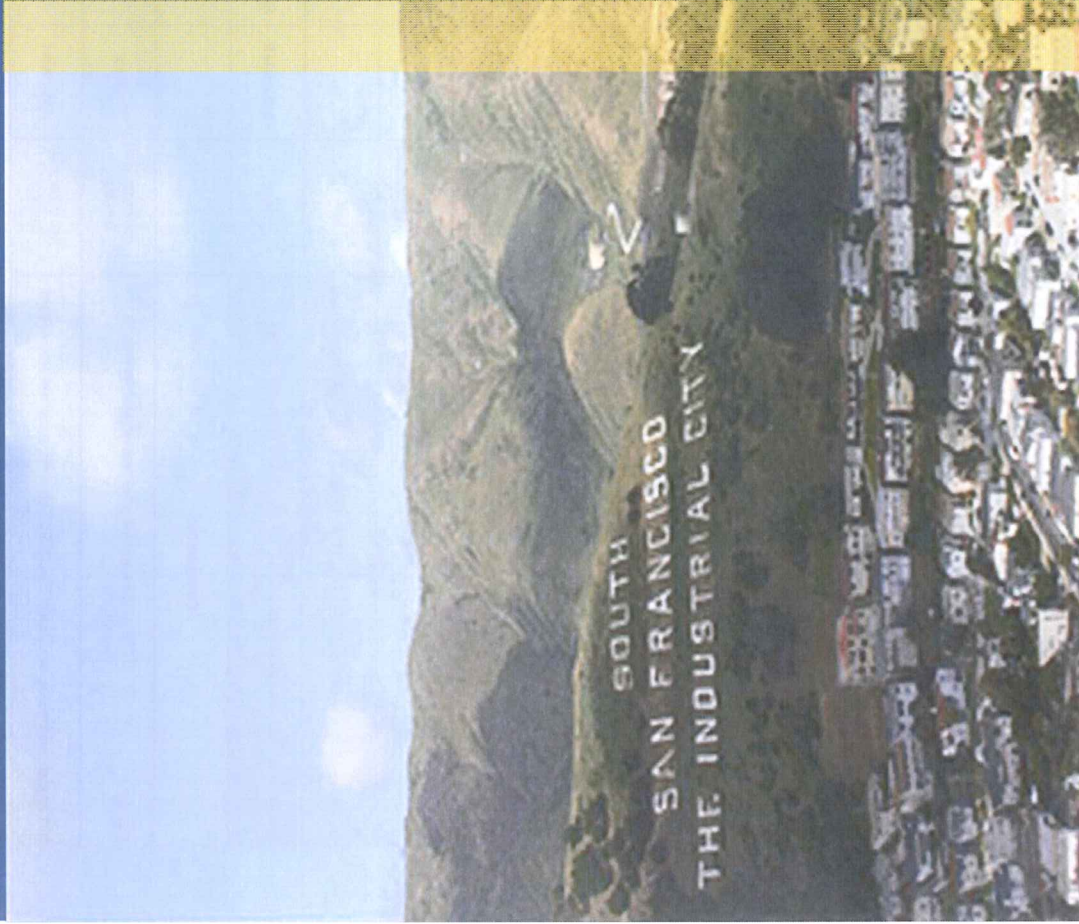
DSA submittals and finalization

Ground-breaking ceremony in February

Project construction and implementation

STEAM Program kick-off

Program Benefits



Create **30-40 local jobs**

Generate over **\$2.4 million in general fund savings**

Bring **Friday Night Lights** to Colts Field to support student success and community pride

Empower the District's STEAM Mission and CTE Pathways through:

- **STEAM Summer Institute** for Middle School Students
- High School **Internships**
- K-8 project-based **learning experiences** and professional development

Contact Information



David Baldwin, P.E.
Director, Energy Management
dbaldwin@opterraenergy.com
(408) 703-6625

Courtney Jenkins
Director, Project Development
cjenkins@opterraenergy.com
(510) 502-7314

Steve Ramirez
Senior Project Manager
sramirez@opterraenergy.com
(415) 994-6942

Caren Perlmutter
STEAM Education Manager
cperlmutter@opterraenergy.com
(415) 971-9369



Fund: 21 BUILDING FUND

OBJECT CLASSIFICATION	WORKING BUDGET	CURRENT	EXPENDED/RECEIVED YEAR TO DATE	%	ENCUMBERED	UNENCUMBERED BALANCE	%
8660 INTEREST	275,000.00	0.00	92,746.03	33.7	0.00	182,253.97	66.2
TOTAL: 8000	275,000.00	0.00	92,746.03	33.7	0.00	182,253.97	66.2

SOUTH SAN FRANCISCO UNIFIED SCHOOL DISTRICT

Memorandum

TO: Board of Trustees
FROM: Shawnterra Moore, Ed.D., Superintendent
THRU: Michael Krause, Assistant Superintendent – Business Services
DATE: November 5, 2015
RE: Traffic at Buri Buri Elementary School

BACKGROUND:

Buri Buri Elementary School is currently undergoing construction and this has caused some traffic concerns along Del Monte for parents dropping off students. The District takes very seriously the safety of all students, staff and community members. Staff would like to have a discussion of options available to potentially alleviate some safety concerns.

FISCAL IMPLICATIONS:

None

RECOMMENDATION:

For Information/Discussion only.

SOUTH SAN FRANCISCO UNIFIED SCHOOL DISTRICT

Memorandum

TO: Board of Trustees
FROM: Shawnterra Moore, Ed.D., Superintendent
THRU: Michael Krause, Assistant Superintendent – Business Services
DATE: November 5, 2015
RE: Traffic at Buri Buri Elementary School

BACKGROUND:

Buri Buri Elementary School is currently undergoing construction and this has caused some traffic concerns along Del Monte for parents dropping off students. The District takes very seriously the safety of all students, staff and community members.

It is the recommendation of the Director of Facilities and the Principal of Buri Buri to increase the existing contract the District has with the crossing guard vendor All Cites Management, which could provide the needed additional assistance for the site from now until the drop off zone is opened up to ensure safe passage of students, staff and parents. Staff recommends increasing manpower at Buri Buri with an additional crossing guard for the next six weeks for morning drop off and afternoon pickup.

FISCAL IMPLICATIONS:

The weekly rate for crossing guard services, four hours per day, is \$350.00. For six weeks, the total cost would be \$2,100.00 to be picked from General Fund.

RECOMMENDATION:

It is recommended that the South San Francisco Unified School District Board of Trustees approve the additional services as outlined above.

SOUTH SAN FRANCISCO UNIFIED SCHOOL DISTRICT

Memorandum

TO: Board of Trustees
FROM: Shawnterra Moore, Ed.D., Superintendent
THRU: Michael Krause, Assistant Superintendent – Business Services
DATE: November 5, 2015
RE: Monte Verde External Speakers

BACKGROUND:

Safety and security of students, staff and the community are of the utmost concern at all school sites. It has been determined that certain sites are in need of external speakers installed so that any announcements can be heard by all parties on the campus. Monte Verde did not have any external speakers installed during the recent construction and therefore is in need to have installation of an external communication system.

IT Management is on record as being a part of the CMAS piggyback contract system for school districts, they have been toughly vetted and have been working with the District on installing other technology infrastructure and know the schematics of all sites very well. A walkthrough was conducted of the site with the Principal, the Director of Facilities and the Assistant Superintendent of Business Services along with IT Management to ensure all needs were assessed. Staff feels very confident in the ability of IT Management to complete the work in a timely manner and with all necessary infrastructure. Staff recommend moving forward swiftly with IT Management to install as quickly as possible external speakers for Monte Verde. Other school sites are also being assessed for external speaker installation in the near future.

FISCAL IMPLICATIONS:

The cost for installation of external speakers at Monte Verde is \$14,998.97 and will be paid for from General Fund.

RECOMMENDATION:

It is recommended that the South San Francisco Unified School District Board of Trustees approve the agreement as presented.



October 28, 2015
 Proposal valid for 15 days.

South San Francisco Unified School District
 398 B Street
 South San Francisco, CA 94080

Outdoor IP Speakers Procurement and Installation Monte Verde Elementary School

Dear Mr. Michael Krause,
 Per the walk-through on Friday, October 23, 2015 and analyzing the locations in Monte Verde Elementary School, the following is the quote for the Outdoor IP Speakers.

Based on our discussion, the below chart will include the hardware, software, professional services, and cabling work associated with the project based on CMAS Schedule*:

▪ (9) IP Outdoor IP Speakers with InformaCast Paging Lic.	\$ 6,536.43
▪ Cabling for (9) and physical installation of (8) speakers	\$ 4,792.00
▪ Cages for (11) speakers	\$ 1,265.00
▪ Engineering of the system and configuration	\$ 1,791.00
• <u>Subtotal</u>	<u>\$ 14,384.43</u>
• Tax	\$ 614.54
• <u>Grand Total</u>	<u>\$ 14,998.97</u>

Allocation per site walk dated October 23, 2015:

	Site Name	Indoor SPK	Outdoor SPK	Lic/ase	Eng. Services	Cabling Mat. /Srv	Cage	Total Price
1	Monte Verde ES	0	9	9	9	8	11	\$ 14,998.97
								<u>\$ 14,998.97</u>

*This project is priced per CMAS contract number 3-14-70-0019, valid until 1/30/2018 which was approved by SSFUSD.

Additional Notes

- Pricing offered in this quote includes work after business hours with clear access to the site.
- All the information provided in this quote is confidential, and proprietary. It cannot be shared with others without written permission from IT Management.

Terms and Conditions

- The provided quote does not include patching of the equipment.
- There will be 3 weeks of lead time for the above equipment due to shortage of material from factory.
- The provided quote does not include rack and stack of network equipment.
- The provided quote does not include MDF/IDF equipment racks and ladder racks. The existing out door speaker will remain and will not be demo'd.
- Where there are existing speakers, the new speakers will be installed within 3 feet or less from the existing speaker.



Warranty

- A one year warranty of the work described in the SOW will be provided. In the event of a return trip for repairs not done by IT Management, there will be a minimum of 4 hour return trip charge.

Please do not hesitate to contact us with any questions or concerns.

Please approve and acknowledge so we can proceed with the project.

South San Francisco Unified School District

Name: _____

Date: _____

Title: _____

Signature: _____

Regards,

Arman Eghbali MS, MBA
VP, Engineering Service
Direct: (408) 789-8770
AEghbali@ITMGMT.com
www.ITMGMT.com

MONTE VERDE ELEMENTARY

MONTE VERDE ELEMENTARY
2551 ST. CLOUD DRIVE, S.B.
(650) 877-8838

SOUTH SAN FRANCISCO UNIFIED S.D.
398 B STREET
(650) 877-8700

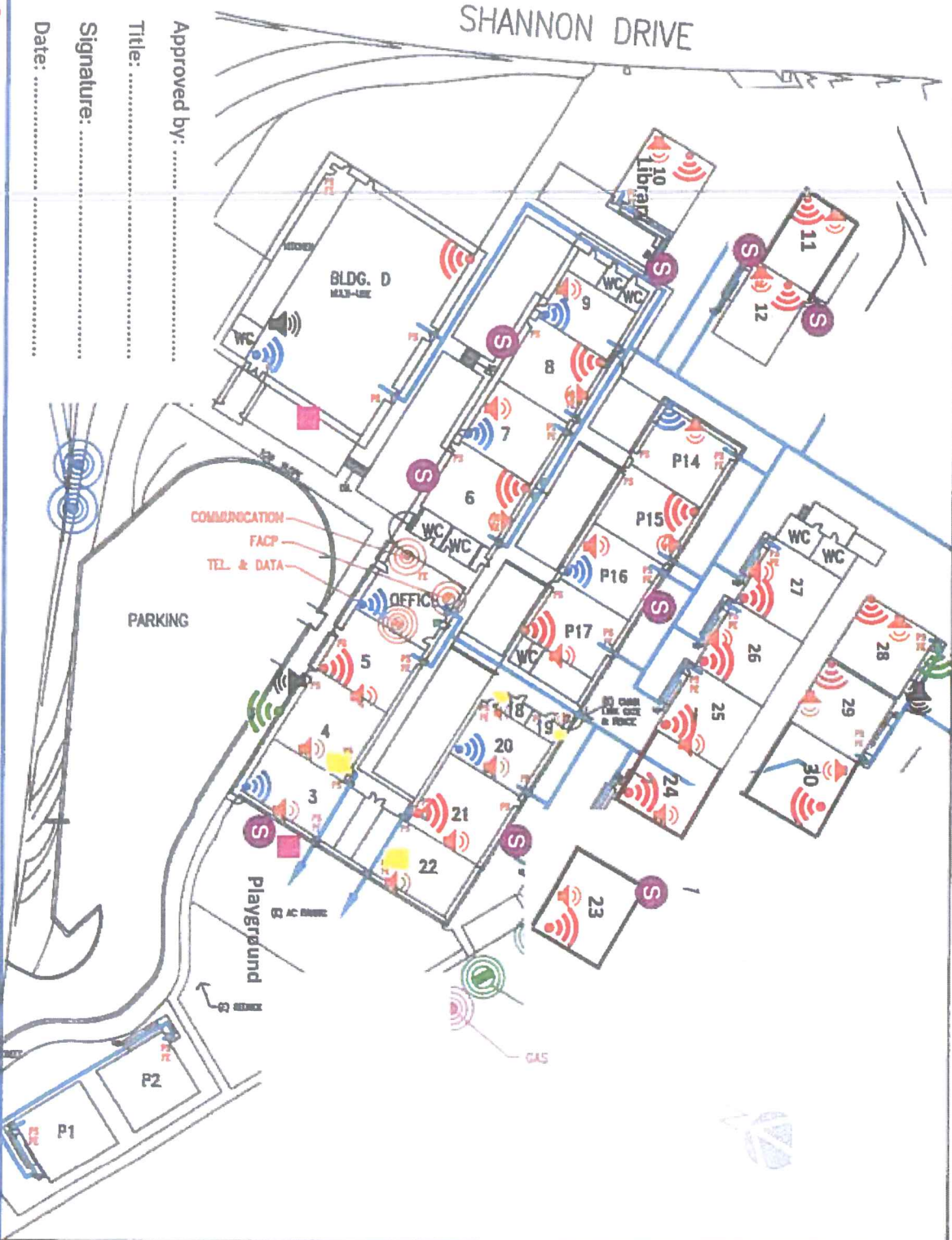
SHANNON DRIVE

Approved by:

Title:

Signature:

Date:



- Existing Meraki AP
- New Indoor Aruba A
- New Outdoor Aruba P

- Indoor Speaker
- Outdoor Speaker
- Extra Gate Drop Indoor

- Highlighted areas in blue are M.I.
- New SPK
- Extra Gate Drop Outdoor

October 26, 2015





State of California
**MULTIPLE AWARD SCHEDULE
IT MANAGEMENT CORP**

CONTRACT NUMBER:	3-14-70-0019C
CMAS CONTRACT TERM:	2/19/2014 through 6/30/2018
CONTRACT CATEGORY:	Information Technology Goods & Services
APPLICABLE TERMS & CONDITIONS:	August 2010
MAXIMUM ORDER LIMIT:	\$500,000
FOR USE BY:	State & Local Government Agencies
BASE GSA SCHEDULE NO.:	GS-35F-0308U
BASE SCHEDULE HOLDER:	By Light Professional IT Services

This contract provides for the purchase and warranty of hardware and software. (See page 2 for the specific brands and restrictions applicable to this contract.)

NOTICE: Products and/or services on this CMAS contract may be available on a Mandatory Statewide Contract (formerly Strategically Sourced Contract). If this is the case, the use of this CMAS contract is restricted unless the State agency has an approved exemption pursuant to MM 05-11 and as further explained in the Statewide Contract User Instructions. Information regarding Statewide Contracts can be obtained at the website <http://www.documents.dgs.ca.gov/pd/contracts/contractindexisting.htm>. This requirement is not applicable to local government entities.

The most current Ordering Instructions and Special Provisions and CMAS Terms and Conditions, products and/or services and pricing are included herein. All purchase orders issued under this contract incorporate the following Ordering Instructions and Special Provisions and CMAS Terms and Conditions dated August 2010.

Agency non-compliance with the requirements of this contract may result in the loss of delegated authority to use the CMAS program.

Contractor non-compliance with the requirements of this contract may result in contract termination.

Handwritten signature: Stephanie Lim

STEPHANNE LIM, Program Analyst, California Multiple Award Schedules Unit
November 5, 2015

Effective Date: **02/19/2014**

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
IT MANAGEMENT CORP
CMAS NO. 3-14-70-0019C

CMAS PRODUCT & SERVICE CODES

The CMAS Product & Service Codes listed below are for marketing purposes only. Review this CMAS contract and the base contract identified below for the products and/or services available on this contract.

- Brand-Aruba Networks
- Data Commun-Component
- Data Commun-Equipment
- Data Commun-Network Mgmt
- Data Commun-Processor
- Data Commun-Technical Control
- LAN/WAN-Wireless Network
- Software-Communications
- Software-Data Commun Mgmt
- Software-Internet Security
- Software-License Agreement
- Software-Network

AVAILABLE PRODUCTS AND/OR SERVICES

Only products from the manufacturer(s) listed below are available within the scope of this contract.

Aruba Networks, Inc.

The ordering agency must verify all products and/or services are currently available on the base GSA schedule at the GSA eLibrary. Access the GSA eLibrary at: www.gsa.eLibrary.gsa.gov

EXCLUDED PRODUCTS AND/OR SERVICES

Software maintenance as a service, maintenance software maintenance training, personal services and public works services with a requirement for State contractor licensing are not available under this contract.

CMAS BASE CONTRACT

This CMAS contract is based on some or all of the products and/or services and prices from GSA Schedule No. GS-35F-0308U (BY LIGHT PROFESSIONAL IT SERVICES, INC.) with a GSA term of 3/17/2008 through 6/30/2018. The term of this CMAS contract incorporates an extension of three months beyond the expiration of the base GSA contract, and is shown in the "CMAS Term Dates" on page 1.

Replace "By Light Professional IT Services, Inc." with "IT Management Corp" where "By Light Professional IT Services, Inc." is referenced in the federal GSA multiple award Contract Terms and Conditions.

ISSUE PURCHASE ORDER TO

Agency purchase orders must be mailed to the following address or faxed to (408) 730-1101:

IT Management Corp
5201 Great America Parkway, Suite 320
Santa Clara, CA 95054
Attn: John Recendez

Agencies with questions regarding products and/or services may contact the contractor at:

Phone: (408) 789-8720
E-mail: jrecendez@ITMGMT.com

CALIFORNIA SELLER'S PERMIT

IT Management Corp's California Seller's Permit No. is 101684160. Prior to placing an order with this company, agencies should verify that this permit is still valid at the following website: www.boe.ca.gov.

CONTRACT PRICES

The maximum prices allowed for the products and/or services available in this CMAS contract are those set forth in the base contract identified on page 2 of this contract.

The ordering agency is encouraged to seek prices lower than those on this CMAS contract. When responding to an agency's Request for Offer (RFO), the contractor can offer lower prices to be competitive.

AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)

Ordering departments executing purchases using ARRA funding must attach the ARRA Supplemental Terms and Conditions document to their individual RFOs and purchase documents. Departments are reminded that these terms and conditions supplement, but do not replace, standard State terms and conditions associated with this CMAS contract. The ARRA Supplemental Terms and Conditions can be accessed at www.documents.das.ca.gov/pdf/poliproc/ARRATand%20C081009final.pdf

WARRANTY

For warranties, see the federal GSA schedule and the CMAS Terms and Conditions, General Provisions, CMAS Warranty.

DELIVERY

30 days after receipt of order or as negotiated between agency and contractor and included in the purchase order, or as otherwise stipulated in the contract.



February 19, 2014

Arman Eghbali
IT Management Corp
5201 Great America Parkway, Suite 320
Santa Clara, CA 95054

Subject: IT Management Corp's California Multiple Award Schedule (CMAS)

CMAS Contract No.: 3-14-70-0019C
~~CMAS Contract Term: February 19, 2014 through June 30, 2018~~
Base GSA Schedule No.: GS-35F-0308U

The State of California is pleased to accept your firm's offer to establish a California Multiple Award Schedule (CMAS) contract which we have assigned the CMAS contract number and term identified above. This contract number must be shown on each invoice rendered. Additionally, this letter shall not be construed as a commitment to purchase any or all of the State's requirements from your firm. Prior approval is required from the State for all news releases regarding this contract.

It is your firm's responsibility to furnish, upon request, a copy of this CMAS contract to State and local government agencies. A complete CMAS contract includes the following: 1) this acceptance letter; 2) CMAS cover pages (which includes the signature page, ordering instructions and special provisions and any attachments or exhibits as prepared by the CMAS Unit); 3) CMAS terms and conditions; 4) Federal GSA terms and conditions; and 5) product/service listing and prices. The CMAS Unit strongly recommends that government agencies place orders with Contractors who provide ALL of the contract elements described above.

To manage this contract, Contractors are directed to the "CMAS Contract Management and Information Guide", which can be accessed at www.dgs.ca.gov/pd/programs/leveraged/cmas.aspx, then select the "For Suppliers/Contractors" link. This guide covers topics such as CMAS Quarterly Reports, amendments, extensions, renewals, Contractor's change of address or contact person, company name change requests, and marketing your CMAS contract.

It is the Contractor's responsibility to submit on a timely basis detailed CMAS Quarterly Reports (along with any applicable incentive fees).

THE NEXT QUARTERLY REPORT DUE FOR THIS CONTRACT IS Q1-2014 (JAN-MAR)
DUE BY APR 15, 2014.

The "Approved CMAS Contractor" logo is only available to CMAS contract holders for display at conferences or on other marketing material. A login and password is required to download the logo. Go to www.dgs.ca.gov/pd/Home/FormsResourcesLibrary.aspx, then select "Reference Material", click on "CMAS Logos" under the heading "Marketing Tools". At the prompt, enter the login "cmassupplier" and the password, "cmas010194".

Should you have any questions regarding this contract, please contact me at 916-375-4579. Thank you for your continued cooperation and support of the CMAS Program.

X STEPHANNE LIM, Program Analyst
California Multiple Award Schedules Unit

PROCUREMENT DIVISION

November 5, 2015

Page 216
Action

State of California
MULTIPLE AWARD SCHEDULE
IT Management Corporation

CONTRACT NUMBER:	3-13-70-0019A
CMAS CONTRACT TERM:	12/12/2013 through 07/31/2018
CONTRACT CATEGORY:	Information Technology Goods & Services
APPLICABLE TERMS & CONDITIONS:	August 2010
MAXIMUM ORDER LIMIT:	\$500,000
FOR USE BY:	State & Local Government Agencies
BASE GSA SCHEDULE NO.:	GS-35F-0499N
BASE SCHEDULE HOLDER:	Accu-Tech Corporation

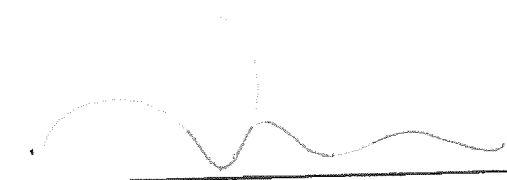
This contract provides for the purchase and warranty of hardware only.
(See page 2 for the specific brands applicable to this contract.)

NOTICE: Products and/or services on this CMAS contract may be available on a Mandatory Statewide Contract (formerly Strategically Sourced Contract). If this is the case, the use of this CMAS contract is restricted unless the State agency has an approved exemption pursuant to MM 05-11, and as further explained in the Statewide Contract User Instructions. Information regarding Statewide Contracts can be obtained at the website: <http://www.documents.dgs.ca.gov/pd/contracts/contractindexlisting.htm>. This requirement is not applicable to local government entities.

The most current Ordering Instructions and Special Provisions and CMAS Terms and Conditions, products and/or services and pricing are included herein. All purchase orders issued under this contract incorporate the following Ordering Instructions and Special Provisions and CMAS Terms and Conditions dated August 2010.

Agency non-compliance with the requirements of this contract may result in the loss of delegated authority to use the CMAS program.

Contractor non-compliance with the requirements of this contract may result in contract termination.



JYOTI PATEL-OSBY, Program Analyst, California Multiple Award Schedules Unit

Effective Date: **12/12/2013**

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
IT MANAGEMENT CORPORATION
CMAS NO. 3-13-70-0019A**

CMAS PRODUCT & SERVICE CODES

The CMAS Product & Service Codes listed below are for marketing purposes only. Review this CMAS contract and the base contract identified below for the products and/or services available on this contract.

Brand-Berk-Tek
Brand-Commscope
Brand-Corning
Brand-Leviton
Brand-Molex
Brand-Panduit
Wire-Cable (Various)
Wire-Communication (Component)
Wire-Communication (Copper)
Wire-Communication (Fiber)
Wiring-Telecom
Service-Telecom Cabling

AVAILABLE PRODUCTS AND/OR SERVICES

Only products from the manufacturer(s) listed below are available within the scope of this contract:

ADC Krone	Leviton
Berk-Tek	Lynn Electronics
Chatsworth	Mohawk
Commscope	Molex
Corning	OCC
Gai-Tronics	Ortronics
Geist	Panduit
Great Lakes	Preformed Line Products
Hellerman Tyton	Quiktron
Holocom	Siemon
Hubbell Premise Wiring	Superior Modular
Kitco Fiber Optics	Systemax

The ordering agency must verify all products and/or services are currently available on the base GSA schedule at the GSA eLibrary. Access the GSA eLibrary at www.gsaelibrary.gsa.gov.

CMAS BASE CONTRACT

This CMAS contract is based on some or all of the products and/or services and prices from GSA Schedule No. GS-35F-0499N (ACCU-TECH CORPORATION) with a GSA term of 04/10/2008 through 04/09/2018 including modification PO-0342. The term of this CMAS contract incorporates an extension of three months beyond the expiration of the base GSA contract, and is shown in the "CMAS Term Dates" on page 1.

Replace "Accu-Tech Corporation" with "IT Management Corporation" where "Accu-Tech Corporation" is referenced in the federal GSA multiple award Contract Terms and Conditions.

ISSUE PURCHASE ORDER TO

Agency purchase orders must be mailed to the following address, or faxed to (408) 730-1100:

IT Management Corporation
5201 Great America Parkway, Suite 320
Santa Clara, CA 95054
Attn: John Recendez

Agencies with questions regarding products and/or services may contact the contractor as follows:

Contact: Arman Eghball
Phone: (408) 569-8494
E-mail: aeghball@101voice.com

CALIFORNIA SELLER'S PERMIT

IT Management Corporation's California Seller's Permit No. is 101684160. Prior to placing an order with this company, agencies should verify that this permit is still valid at the following website: www.boe.ca.gov.

CONTRACT PRICES

The maximum prices allowed for the products and/or services available in this CMAS contract are those set forth in the base contract identified on page 2 of this contract.

The ordering agency is encouraged to seek prices lower than those on this CMAS contract. When responding to an agency's Request for Offer (RFO), the contractor can offer lower prices to be competitive.

AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)

Ordering departments executing purchases using ARRA funding must attach the ARRA Supplemental Terms and Conditions document to their individual RFOs and purchase documents. Departments are reminded that these terms and conditions supplement, but do not replace, standard State terms and conditions associated with this CMAS contract. The ARRA Supplemental Terms and Conditions can be accessed at:

www.documents.dqs.ca.gov/pd/pollproc/ARRATand%20C081009final.pdf.

WARRANTY

For warranties, see the federal GSA schedule and the CMAS Terms and Conditions, General Provisions, CMAS Warranty.

DELIVERY

30 days after receipt of order, or as negotiated between agency and contractor and included in the purchase order, or as otherwise stipulated in the contract.

SOUTH SAN FRANCISCO UNIFIED SCHOOL DISTRICT

Memorandum

TO: Board of Trustees
FROM: Shawnterra Moore, Ed.D., Superintendent
THRU: Michael Krause, Assistant Superintendent – Business Services
DATE: November 5, 2015
RE: Measure J-Bentley Systems Agreement

BACKGROUND:

Since the beginning of the Measure J Bond Program, the District has utilized EADOC for all of its online storage and filing needs. During the first three years of the program, this account was managed by Swinerton. In November 2013, the District requested to be billed directly for these services. The attached contract is a name change only.

FISCAL IMPLICATIONS:

None

RECOMMENDATION:

It is recommended that the South San Francisco Unified School District Board of Trustees approve the EADOC (Bentley Systems) Master Services Agreement for the Measure J Bond Program's online filing and document access account.

BENTLEY SYSTEMS, INCORPORATED MASTER SERVICES AGREEMENT

This BENTLEY SYSTEMS, INCORPORATED Master Services Agreement ("Agreement") is entered into, to be effective as of August 31, 2015 ("Effective Date"), by and between South San Francisco Unified School District ("Customer"), with its principal place of business located at South San Francisco Unified School District 398 B Street South San Fran, and BENTLEY SYSTEMS, INCORPORATED ("BENTLEY SYSTEMS" or "Service Provider"), with its principal place of business located at 685 Stockton Drive, Exton, PA 19341.

Whereas, BENTLEY SYSTEMS offers a hosted Construction Management Software Services (the "Services") which delivers a collaborative web based construction project management application to the AEC industry connecting facility owners, construction managers, contractors, architects, sub consultants, sub contractors and suppliers together so they can securely share and exchange construction project information electronically;

Whereas, Customer wishes to utilize Bentley Systems' Services;

Now therefore, the parties enter into this Agreement upon the terms and conditions as set forth below.

1. The Services.

1.1. Services. Customer requires the Services with respect to certain information technology needs. Customer received and has approved a Customer Proposal (the "Proposal") containing estimated Project parameters from BENTLEY SYSTEMS. The specific Services and fees are set forth in the Customer Proposal (the "Proposal") which is incorporated herein by reference.

1.2. Purpose. This Agreement sets forth the terms and conditions under which BENTLEY SYSTEMS agrees to license certain hosted Services and provide all other services, including data import / export, monitoring, support, backup and recovery, change management, technology upgrades, and training necessary for Customer's productive use of the Services, as further set forth in a Service Level Agreement in the form of the Exhibit A attached hereto and incorporated by reference.

1.3. License. BENTLEY SYSTEMS hereby grants Customer a non-exclusive, non-transferable, worldwide right to use the Services, solely for Customer's own business purposes, subject to the terms and conditions of this Agreement. All rights not expressly granted to Customer are reserved by BENTLEY SYSTEMS and its licensors.

1.4. Authorized Users. Unless otherwise limited on a Service Level Agreement, Customer and any of its clients, clients' contractors, employees, agents, contractors, or suppliers of services that have a need to use the Services for the benefit of Customer shall have the right to operate and use the same. Customer is responsible for management of all Customer information during the Term of Services, including control of all Customer passwords and usernames.

1.5. Restrictions. While BENTLEY SYSTEMS may grant an unlimited amount of Users, Customer shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service in any way; (ii) modify or make derivative works based upon the Service or the Content; (iii) create Internet "links" to the Service or "frame" or "mirror" any Content on any other server or wireless or Internet-based device.

1.6. Control of Services and Customer Activity. The method and means of providing the Services shall be under the exclusive control, management, and supervision of BENTLEY SYSTEMS, giving due consideration to the requests of Customer. However, Customer is responsible for all activity occurring during the Term of the Services and shall abide by all applicable local, state, national and foreign laws and regulations in connection with use of the Service. Customer agrees to keep Password secure and not to disclose it to unauthorized users.

1.7. Backup and Recovery of Customer Data. As a part of the Services, BENTLEY SYSTEMS is responsible for maintaining a backup of Customer Data, for an orderly and timely recovery of such data in the event that the Services may be interrupted. Unless otherwise described in a Service Level Agreement, BENTLEY SYSTEMS shall maintain a contemporaneous backup of Customer Data in triplicate, including an off-site facility that can be recovered within 45 minutes at any point in time.

1.8. Change Control Procedure. Customer may, upon written notice, request increases or decreases to the scope of the Services under an Exhibit A. If Customer requests an increase in the scope, Customer shall notify BENTLEY SYSTEMS, and, not more than five (5) business days (or other mutually agreed upon period) after receiving the request, BENTLEY SYSTEMS shall notify Customer whether or not the change has an associated cost impact. If Customer approves, Customer shall issue a change control, which will be executed by BENTLEY SYSTEMS. Customer shall have the right to decrease the scope and the fee will be reduced accordingly.

2. Term and Termination.

2.1 Term. This Agreement shall commence on the Effective Date and continue for the duration of the Project ("Project Duration") as estimated by the Proposal. (See Section 2.2 below). Certain Sections of this Agreement shall survive the termination of this Agreement (where noted). This Agreement may be terminated earlier in accordance with the terms set forth in this Section or until such time as Customer provides BENTLEY SYSTEMS with written notice of termination; provided, however, that such notice be given no fewer than thirty (30) calendar days prior to the last day of the then-current Subscription Plan (see Section 4.1 below).

2.2 Proposal. A Proposal contains estimated Project parameters provided by BENTLEY SYSTEMS to Customer. An approved Proposal is valid for a construction start date of +/- 3 months from the estimated start date listed. If the Project is delayed more than 3 months or canceled, the Proposal is void unless BENTLEY SYSTEMS extends the Term in writing. A Proposal is valid for 90 days from date of issue.

2.3 Termination for Cause. If either party materially breaches any of its duties or obligations hereunder, including successive failure of BENTLEY SYSTEMS to meet a Service Level, and such breach is not cured, or the breaching party is not diligently pursuing a cure to the non-breaching party's sole satisfaction, within thirty (30) calendar days after written notice of the breach, then the non-breaching party may terminate this Agreement or a Service Level Agreement for cause as of a date specified in such notice.

2.4 Payments upon Termination. Upon the expiration or termination of this Agreement for any reason, Customer shall pay to BENTLEY SYSTEMS all undisputed amounts due and payable hereunder.

2.5 Return of Materials. Upon expiration or earlier termination of this Agreement, each party shall: (a) promptly return to the other party, or certify the destruction of any of the following of the other party held in connection with the performance of this Agreement or the Services: (i) all Confidential Information; and, (ii) any other data, programs, and materials; and, (b) return to the other party, or permit the other party to remove, any properties of the other party then situated on such party's premises. In the case of Customer Data, BENTLEY SYSTEMS shall, immediately upon termination of this Agreement, provide Customer with a final export of the Customer Data and shall certify the destruction of any Customer Data within the possession of BENTLEY SYSTEMS. The parties agree to work in good faith to execute the foregoing in a timely and efficient manner.

2.6 The provisions of this Section 2 shall survive the termination of this Agreement.

3. Services Levels.

3.1 Service Levels Reviews. BENTLEY SYSTEMS and Customer will meet as often as shall be reasonably requested by Customer, but no more than monthly, to review the performance of BENTLEY SYSTEMS as it relates to the Service Levels further described in Exhibit A.

3.2 Failure to Meet Service Levels. As further described in Exhibit A, in the event BENTLEY SYSTEMS does not meet any of the requisite Service Levels, BENTLEY SYSTEMS shall: (a) reduce the applicable monthly invoice to Customer by the amount of the applicable Performance Credits as a credit, and not as liquidated damages; and, (b) use its best commercial efforts to ensure that any unmet Service Level is subsequently met. Notwithstanding the foregoing, BENTLEY SYSTEMS will use commercially reasonable efforts to minimize the impact or duration of any outage, interruption, or degradation of Service. The remedies set forth in this Section 3.2 shall be Customer's sole and exclusive remedy for any failure by BENTLEY SYSTEMS to meet the Service Levels.

3.3 The provisions of this Section 3 shall survive the termination of this Agreement.

4. Fees and Expenses. Any sum due BENTLEY SYSTEMS for Services performed, including setup and training shall be due and payable within 30 business days ("Pay Period") after receipt thereof by the Customer of an invoice from BENTLEY SYSTEMS.

4.1 Billing and Subscription Plans. Unless otherwise provided for under a Service Level Agreement, attached hereto as Exhibit A, BENTLEY SYSTEMS shall bill to Customer the sums due pursuant to the following Subscription Plans:

4.1.1 Yearly Subscription Plan. Yearly subscription payments are due upon completion of the application setup session. If the duration of the project is extended beyond the original duration the customer will continue to make annual payments. Once the project is completed the customer will be refunded any overpayment based on a monthly proration of the annual fee.

4.1.2 Lump Sum Payment Plan. Lump Sum payments are due upon completion of the application setup session. Project duration does not effect the lump sum price.

4.2 Late Fees. In the event of non-payment within the Pay Period, 2% of the total amount due will be added to the balance for every Pay Period. Failure to remit payment for two consecutive Pay Periods (60 business days) will be considered a material breach by Customer and BENTLEY SYSTEMS reserves the right to terminate the agreement and immediately seek remedies.

4.3 Price Adjustments. Service pricing is based upon engineer's estimate for the Project and estimated Project Duration. If the actual cost of the Customer's construction is 10% higher or lower than the original estimate, BENTLEY SYSTEMS reserves the right to adjust the Subscription price.

4.4 Taxes. BENTLEY SYSTEMS represents and warrants that it is an independent contractor for purposes of federal, state, and local employment taxes. BENTLEY SYSTEMS agrees that Customer is not responsible to collect or withhold any such taxes, including income tax withholding and social security contributions, for BENTLEY SYSTEMS. Any and all taxes, interest or penalties, including any federal, state, or local withholding or employment taxes, imposed, assessed, or levied as a result of this Agreement shall be paid or withheld by BENTLEY SYSTEMS.

5. Representations and Warranties.

5.1 Mutual Representations and Warranties. Customer and BENTLEY SYSTEMS represent and warrant that: it has all requisite legal power, financial capacity, and authority to execute, deliver, and perform its obligations under this Agreement. Parties Agree that this Agreement, when executed and delivered, shall be a valid and binding obligation of it enforceable in accordance with its terms.

5.2 Service Provider Representations and Warranties. BENTLEY SYSTEMS knows the particular purpose for which the Services are required and such Services to be performed under this Agreement shall be performed in a competent and professional manner and in accordance with the highest professional standards. BENTLEY SYSTEMS acknowledges that Customer is relying on BENTLEY SYSTEMS' representation of its experience and expertise, and that any substantial misrepresentation may result in damage to Customer. The Services will achieve in all material respects the functionality described in a Service Level Agreement and the documentation of BENTLEY SYSTEMS, and that such functionality shall be maintained during the Term.

6. Non-Disclosure of Confidential Information. The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. All Confidential Information shall be held in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep such information confidential.

6.1 Meaning of Confidential Information. For the purposes of this Agreement, the term "Confidential Information" shall mean all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such entity; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing entity and marked "confidential" or with words of similar meaning; (c) with respect to information and documentation of Customer, whether marked "Confidential" or not, consists of Customer information and documentation included within any of the following categories: (i) policyholder, payroll account, agent, customer, supplier, or contractor lists; (ii) policyholder, payroll account, agent, customer, supplier, or contractor information; (iii) information regarding business plans (strategic and tactical) and operations (including performance); (iv) information regarding administrative, financial, or marketing activities; (v) pricing information; (vi) personnel information; (vii) products and/or and services offerings (including specifications and designs); or, (viii) processes (e.g., technical, logistical, and engineering); or, (d) any Confidential Information derived from information of a party. The term "Confidential Information" does not include any information or documentation that was: (a) already in the possession of the receiving entity without an obligation of confidentiality; (b) developed independently by the receiving entity, as demonstrated by the receiving entity, without violating the disclosing entity's proprietary rights; (c) obtained from a source other than the disclosing entity without an obligation of confidentiality; or, (d) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through or on behalf of, the receiving entity). Notwithstanding the foregoing, in no case shall either Party's compliance with an order of a court or agency of competent jurisdiction be a breach of this Agreement.

6.2 The provisions of this Section 6 shall survive the termination of this Agreement.

7. Proprietary Rights

7.1 Pre-existing Materials. Customer acknowledges that, in the course of performing the Services, BENTLEY SYSTEMS may use software and related processes, instructions, methods, and techniques that have been previously developed by BENTLEY SYSTEMS (collectively, the "Pre-existing Materials") and that same shall remain the sole and exclusive property of BENTLEY SYSTEMS.

7.2 Data of Customer. Customer's information, or any derivatives thereof, contained in any BENTLEY SYSTEMS repository (the "Customer Data," which shall also be known and treated by BENTLEY SYSTEMS as Confidential Information) shall be and remain the sole and exclusive property of Customer. Customer shall be entitled to an export of Customer Data, without charge, upon the request of Customer upon termination of this Agreement. BENTLEY SYSTEMS is provided a license to Customer Data hereunder for the sole and exclusive purpose of providing the Services, including a license to store, record, transmit, maintain, and display Customer Data only to the extent necessary in the provisioning of the Services.

7.3 Privacy. BENTLEY SYSTEMS's privacy and security policies may be viewed at <http://www.bentley.com/en-US/Corporate/Privacy+Policy.htm>. BENTLEY SYSTEMS reserves the right to modify its privacy and security policies in its reasonable discretion from time to time. Customers may opt-out of receiving e-mails from third parties outside of BENTLEY SYSTEMS by de-selecting the check box on the enrollment page.

7.4 No License. Except as expressly set forth herein, no license is granted by either party to the other with respect to the Confidential Information, Pre-existing Materials, or Customer Data. Nothing in this Agreement shall be construed to grant to either party any ownership or other interest, in the Confidential Information, Pre-existing Materials, or Customer Data, except as may be provided under a license specifically applicable to such Confidential Information, Pre-existing Materials, or Customer Data.

7.5 The provisions of this Section 7 shall survive the termination of this Agreement.

8. Marketing. Notwithstanding the Non-Disclosure Agreement between the parties referred to in Section(s) 6 and 7, Customer agrees that BENTLEY SYSTEMS, INC. may refer to Customer and may briefly describe Customer's business on in any of its marketing and advertising materials, including, but not limited to, the BENTLEY SYSTEMS website and promotional materials related to Social Media, Tradeshows and Conferences. Customer hereby grants BENTLEY SYSTEMS, INC. a limited license to use any Customer trade names and trademarks for this purpose.

9. [Intentionally deleted]

10. Mutual Indemnity. BENTLEY SYSTEMS agrees to indemnify, defend, and hold Customer, its officers, directors, agents, and employees (each, an "Indemnitee" and collectively, the "Indemnitees") harmless from and against any and all liabilities, damages, losses, expenses, claims, demands, suits, fines, or judgments (collectively "Claims"), including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from any Customer Indemnitee, by reason of any Claim asserted by a third party claiming that Customer's use of the Services infringes such third party's intellectual property rights; *provided, however*, that the foregoing indemnity is conditioned upon BENTLEY SYSTEMS receiving prompt written notice of any such Claim, full cooperation from Customer and BENTLEY SYSTEMS having full control of the defense and settlement thereof. Customer agrees to defend, indemnify and hold harmless BENTLEY SYSTEMS, its officers, directors, employees, agents and partners, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to reasonable attorney's fees) arising from: (i) Customer's use of and access to the Services (ii) Customer's violation of any term of this Agreement; (iii) Customer's violation of any third party right, including without limitation any copyright, property, or privacy right; or (iv) any claim that Customer's

use of Service caused damage to a third party. The provisions of this Section shall survive the termination of this Agreement.

11. **Access and Maintenance.** BENTLEY SYSTEMS provides Customer access to the Services 24 hours a day, 365 days a year, except during scheduled maintenance periods. Customer will be notified 72 hours in advance of scheduled maintenance. All scheduled maintenance occurs on weekends to minimize the impacts to the Customer (see Service Level Agreement, attached as Exhibit A).
12. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANY OTHER PROVISION SET FORTH HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, AND/OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT; PROVIDED, HOWEVER, THAT THE FOREGOING EXCULPATION OF LIABILITY SHALL NOT APPLY WITH RESPECT TO DAMAGES INCURRED AS A RESULT OF THE GROSS NEGLIGENCE OR WILFULL MISCONDUCT OF A PARTY. A PARTY SHALL BE LIABLE TO THE OTHER FOR ANY DIRECT DAMAGES ARISING OUT OF OR RELATING TO ITS PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT THE LIABILITY OF A PARTY, WHETHER BASED ON AN ACTION OR CLAIM IN CONTRACT, EQUITY, NEGLIGENCE, TORT, OR OTHERWISE FOR ALL EVENTS, ACTS, OR OMISSIONS UNDER THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID OR PAYABLE UNDER THIS AGREEMENT, AND PROVIDED, FURTHER, THAT THE FOREGOING LIMITATION SHALL NOT APPLY TO: (A) A PARTY'S OBLIGATIONS OF INDEMNIFICATION, AS FURTHER DESCRIBED IN THIS AGREEMENT; (B) DAMAGES CAUSED BY A PARTY'S GROSS NEGLIGENCE OR WILFULL MISCONDUCT; OR, (C) A PARTY'S BREACH OF ITS OBLIGATIONS OF CONFIDENTIALITY, AS FURTHER DESCRIBED IN THIS AGREEMENT. THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.
13. **DISCLAIMER OF WARRANTIES.** NOTWITHSTANDING ANY OTHER PROVISION SET FORTH HEREIN, THE SERVICES ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, BENTLEY SYSTEMS DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. WE DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE MATERIALS ON THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. WE DO NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF ANY CONTENT IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. CUSTOMER FURTHER AGREES THAT BENTLEY SYSTEMS IS NOT RESPONSIBLE FOR ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SERVICES, DUE TO ANY BUGS, VIRUSES, TROJAN HORSES, OR SIMILAR AILMENTS, WHICH MAY BE TRANSMITTED TO OR THROUGH OUR WEBSITE BY ANY THIRD PARTY.
14. **General.**
 - 14.1. **Relationship between Customer and BENTLEY SYSTEMS.** BENTLEY SYSTEMS represents and warrants that it is an independent contractor with no authority to contract for Customer or in any way to bind or to commit Customer to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of Customer. Under no circumstances shall BENTLEY SYSTEMS, or any of its staff, if any, hold itself out as or be considered an agent employee, joint venture, or partner of Customer. In recognition of BENTLEY SYSTEMS's status as independent contractor, Customer shall carry no Workers' Compensation insurance or any health or accident insurance to cover BENTLEY SYSTEMS or BENTLEY SYSTEMS's agents or staff, if any. Customer shall not pay any contributions to Social Security, unemployment insurance, federal or state withholding taxes, any other applicable taxes whether federal, state, or local, nor provide any other contributions or benefits which might be expected in an employer-employee relationship. Neither BENTLEY SYSTEMS

nor its staff, if any, shall be eligible for, participate in, or accrue any direct or indirect benefit under any other compensation, benefit, or pension plan of Customer.

- 14.2. Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to its conflict of laws rules. The normal rule of construction that any ambiguity or uncertainty in a writing shall be interpreted against the party drafting the writing shall not apply to any action on this Agreement.
- 14.3. Venue.** All suits permitted to be brought in any court shall be venued in Philadelphia, Pennsylvania.
- 14.4. Arbitration.** Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Philadelphia, Pennsylvania, before one arbitrator. At the option of the first to commence an arbitration, the arbitration shall be administered either by JAMS pursuant to its Streamlined Arbitration Rules and Procedures or by an alternate provider as agreed upon by the parties. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The arbitrator may, in the Award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party.
- 14.5. Attorney's Fees.** In the event of litigation relating to the subject matter of this Agreement, the prevailing party shall be entitled to recover all reasonable attorney fees and costs resulting therefrom.
- 14.6. Notice.** All notices, requests, instructions, consents and other communications to be given pursuant to this Agreement shall be in writing and shall be deemed received (i) on the same day if delivered in person, by same-day courier or by telegraph, telex, facsimile or email transmission (ii) on the next day if delivered by overnight mail or courier, or (iii) on the day indicated on the return receipt, or if there is no such receipt, on the third calendar day (excluding Sundays) if delivered by certified or registered mail, postage prepaid, to the party for whom intended to the following addresses:

If to Customer:	Name:	_____
	Address:	_____ _____ _____
	Phone:	_____
	Email:	_____

If to BENTLEY SYSTEMS:	BENTLEY SYSTEMS, INCORPORATED 685 Stockton Drive, Exton, PA 19341 1 610-458-5000 Attention: Legal Department
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- 14.7. Assignment of Agreement.** Neither this Agreement, nor any right, interest, duty nor obligation hereunder may be assigned, transferred or delegated by Customer, without the express written consent of BENTLEY SYSTEMS. For purposes of this Agreement, any sale or

transfer of 50% or more of Customer's stock or equity shall constitute an assignment hereunder.

14.8. Counterparts; Facsimile, Email, Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The Parties agree that a facsimile or electronic signature may substitute for and have the same legal effect as the original signature.

14.9. Entire Agreement. This Agreement and its attached exhibits constitute the entire agreement between the parties and supersede any and all previous representations, understandings, or agreements between Customer and BENTLEY SYSTEMS as to the subject matter hereof. This Agreement may only be amended by an instrument in writing signed by the parties. In the case of conflict, and solely as to the parties to this Agreement, the terms of this Agreement shall prevail over the terms of the User License Agreement.

Executed on the dates set forth below by the undersigned authorized representatives of the parties to be effective as of the Effective Date.

CUSTOMER ("Customer")

BENTLEY SYSTEMS, INCORPORATED ("Service Provider")

Signed: _____

Signed: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A

BENTLEY SYSTEMS, INCORPORATED SERVICE LEVEL AGREEMENT

This Service Level Agreement (the "SLA") sets forth the standards that will apply to hosted Construction Management Software Services (the "Services"). This Agreement shall be incorporated in and governed by the terms of the **BENTLEY SYSTEMS, INCORPORATED SERVICES AGREEMENT** (the "Agreement") by and between **CUSTOMER** ("Customer") and **BENTLEY SYSTEMS, INCORPORATED** ("BENTLEY SYSTEMS" or "Service Provider"). Unless expressly provided for in this SLA, in the event of a conflict between the provisions contained in the Agreement and those contained in this SLA, the provisions contained in the Agreement shall prevail.

1. **System Availability.** BENTLEY SYSTEMS guarantees the Services will be available with 99.9% uptime, excluding scheduled maintenance. Customer will be notified seventy-two (72) hours in advance of scheduled maintenance. Unscheduled downtime shall not exceed 525.6 minutes per year.
2. **Support Resolution Time.**

Level 1	System is impaired and users cannot access EADOC Services due to BENTLEY SYSTEMS issue:
	A. Issue will be identified and resolved within one (1) hour.
Level 2	Users can access EADOC Services, but a piece of functionality is not performing:
	A. If issue relates to data integrity a resolution will be developed and released in two (2) hours.
	B. If issue relates to reports, navigation, or other general usability; a resolution will be developed and deployed within twenty-four (24) hours.
Level 3	Customization request: BENTLEY SYSTEMS will make the Customer's requested configuration changes within seventy-two (72) hours of receiving the request and all supporting documentation.
Level 4	Enhancement request: BENTLEY SYSTEMS will review the requirements with the client within five (5) days. Upon completing the review, the enhancement will be assigned to a release within two (2) weeks that is scheduled for release within six (6) months.

3. **Customer Notification and Credits.** At the time Customer believes that a Service impacting condition has occurred, Customer must initiate a trouble ticket by contacting BENTLEY SYSTEMS support in accordance with the method of contact set forth below (see Section 4.1 below). Once a ticket has been opened, BENTLEY SYSTEMS will notify Customer of the situation and initiate diagnostic testing and fault isolation activities to determine the nature of the service condition. A Credit (see Section 4.2 below) will be applied to Customer's first invoice subsequent to BENTLEY SYSTEMS' determination that a service impacting condition that lies within the scope of coverage has occurred.

4.1. Notification Procedure.

- If Customer can access the BENTLEY SYSTEMS' application: File a support request through the support module in the EADOC application
- If Customer unable to access the application: email: support@eadocsoftware.com
- If Customer unable to access the application and email: call: 877-305-3844

4.2. Credits.

- Level 1 One (1) day credit for each one (1) hour the Service is down.
- Level 2A One (1) day credit for each one (1) hour past the two (2) hour response time
- Level 2B One (1) day credit for each one (1) day delay after the first twenty-four (24) hours
- Level 3 No credit.
- Level 4 No credit

5. BENTLEY SYSTEMS Notifications.

5.1. Scheduled Maintenance. To maintain the performance of BENTLEY SYSTEMS Services and be able to respond to changes in technology and security risks, BENTLEY SYSTEMS must occasionally take the EADOC application off line to perform maintenance. These outages will only occur during the scheduled maintenance windows defined below:

Maintenance Windows:	Friday 8pm PST – Sunday 11:59pm PST
Notification:	Customers will be notified seventy-two (72) hours in advance of these scheduled shut downs.
Duration:	Outages will never exceed twenty four (24) hours.

- 6. Customer Data.** At the end of the contract Customer can schedule a download of all their Project Data ("Data") from the BENTLEY SYSTEMS servers. Customer Data will be converted into .pdf documents, customer files will be returned in their original format. This download will occur within thirty (30) days of the Customer request. Customer must complete a support request in the EADOC application requesting this download. Customers are provided one free copy upon the completion of the project. Additional data downloads are available for an additional fee.
- 7. Service Level Updates.** Notwithstanding Section 14.9 of the Master Services Agreement, BENTLEY SYSTEMS may periodically update these Service Levels. While BENTLEY SYSTEMS may attempt to notify you when material changes are made, we suggest that Customers regularly review http://eadocsoftware.com/wp-content/uploads/2014/08/support/EADOC_Service_Level_Agreement-1.pdf to stay current.
- 8. Contact.** For questions about this agreement or any other feedback, comments, requests for technical support please contact BENTLEY SYSTEMS' customer support through support@eadocsoftware.com
- 9. Except where expressly provided otherwise, this SERVICE LEVEL AGREEMENT is subject to all terms and conditions of the BENTLEY SYSTEMS, INCORPORATED MASTER SERVICES AGREEMENT.**

SOUTH SAN FRANCISCO UNIFIED SCHOOL DISTRICT

Memorandum

TO: Board of Trustees
FROM: Shawnterra Moore, Ed.D., Superintendent
THRU: Michael Krause, Assistant Superintendent – Business Services
DATE: November 5, 2015
RE: Measure J- Cabinets for Parkway Heights Middle School

BACKGROUND:

In Phase One of the Measure J Bond Program, an art room exploratorium was built at Alta Loma. Extra cabinetry was installed. In order to duplicate this room at Parkway, Project Frog has submitted a price for this cabinetry work.

FISCAL IMPLICATIONS:

The cost of these services, \$11,053.00, is an appropriate expenditure of the Measure J Bond funds.

RECOMMENDATION:

It is recommended that the South San Francisco Unified School District Board of Trustees approve the attached Project Frog proposal for the Parkway Heights Art Room Exploratorium cabinetry.

Samad, Seleh "Salom"

From: Keiron Ryan <kryan@projectfrog.com>
Sent: Friday, October 9, 2015 3:08 PM
To: Samad, Seleh "Salom"
Subject: FW: Parkway Art Room & mag catches
Attachments: image002.jpg; Art Room Proposal.pdf; Glass Cabinet Shops.pdf

Salom,

Per your request, I have attached the proposal from our casework supplier along with the shop drawings for the glass cabinets.

Here is a breakdown of the total costs:

Fabrication:	\$6,349.00
Shipping:	\$2,103.00
Installation:	\$2,075.00
PFI Fee:	<u>\$ 526.00</u>
Total:	\$11,053.00

Per our conversation, please have a purchase order issued and we will place the order once we have receive it.

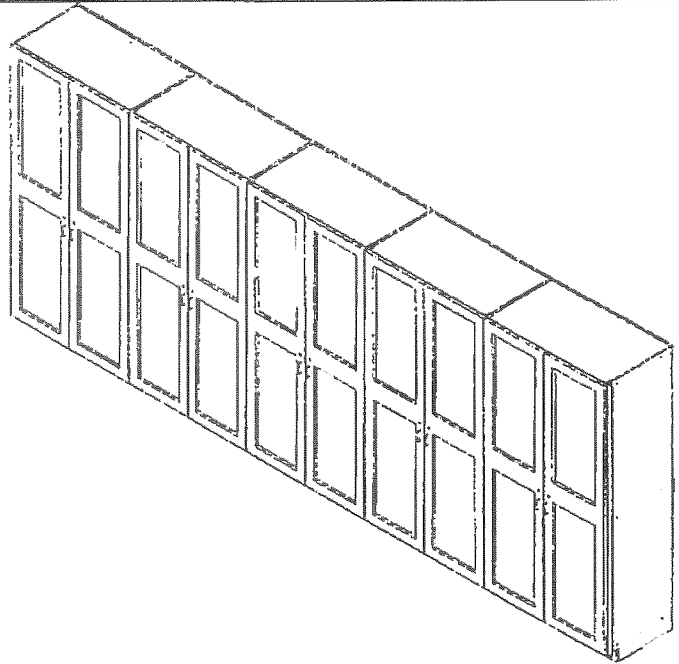
Keiron Ryan
Senior Project Manager

projectfrog

Project Frog, Inc.
501 Second Street, Suite 120
San Francisco, California 94107
Mobile: 415.297.1265

Project Frog featured in [The IA rune11](#)
[Raising \\$20M. Project Frog Ramps Up Production On Its Energy Efficient Buildings](#)

projEj rog



CASEWORK DESIGN:

PROJECT FROG
502 2ND STREET
SUITE 120
SAN FRANCISCO, CA 94108

CASEWORK MANUFACTURED BY:

CREATIVE MERCHANDISING SYSTEMS
4044 BROCKTON DRIVE SE
GRAND RAPIDS MICHIGAN 49512
PHONE: (616) 698-6200
FAX: (616) 698-8188



CreativeMerthandisi._

The information contained in this drawing is
proprietary and SHALL NOT be used or disclosed
withou the expressed writes consent of Creative Merchandising Systems

REVISION HISTORY				SHEET 3 OF 18
REV	DESCRIPTION	DATE	APPROVED	
1	MADE DETAIL VIEWS CLEAR ON DRAWING	2/13/2015	PF	1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13.
2	CHANGED REAR SCRIBE ON GLASS DISPLAY UNIT FROM 2" TO 1/2"	2/13/2015	PF	
3	CHANGED DOORS ON GLASS DISPLAY UNIT FROM MULTI PIECE LUMBER TO 1 PIECE 1" MELAMINE	2/13/2015	CMS	
4	ADDED CENTER PANEL LOOK TO GLASS DISPLAY DOORS	2/13/2015	PF	
5	LENGTHENED COUNTERTOP BY 3/4" TO BE FLUSH ON BOTH ENDS	2/13/2015	PF	
6	CHANGED UTILITY CABINET OPENING TO 24" AND REDUCED STILE WIDTH TO 3/4"	2/13/2015	PF	
7	CHANGED NAILER ON OPEN CABINET FROM INSIDE TO BACKSIDE	2/13/2015	CMS	
8	REMOVED DADOS FROM OPEN CABINET'S BACK PANEL	2/13/2015	CMS	
9	ADDED RABBETS TO THE OPEN CABINET'S TOP / BOTTOM TO ALLOW THE BACK PANEL TO SLIDE IN	2/13/2015	CMS	
10	WIDENED RABBETS ON THE OPEN CABINETS SIDE PANELS TO CAPTURE BACK PANEL AND NAILER	2/13/2015	CMS	
11	ADDED NAILER TO BOTTOM OF OPEN CABINET	2/13/2015	PF	
12	DROPPED THE HEIGHT OF THE UPPERS FROM 24 1/2" TO 23"	2/13/2015	PF	
13				

211 Creative Merchandising Systems, Inc. 4098 BROOKLYN DRIVE, SE - GRAND RAPIDS, MI 49512 PHONE: (616) 659-6000 FAX: (616) 659-6188
PROJECT NO 14-087C
DRAWN BY A_HAUACK
DATE 2/11/2015



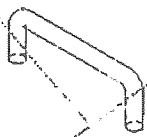
32mm SEISMIC SHELF CLIP
CMS PART # PSSC-431



2 MALE CONNECTOR BOLT
USED ON CABINET TO CABINET ATTACHMENT
ALSO USED TO ATTACH SIDE PANEL TO CUT AWAY GLU LAM PANEL

12 FEMALE CONNECTOR BOLT
USED ON CABINET TO CABINET ATTACHMENT
ALSO USED TO ATTACH SIDE PANEL TO CUT AWAY GLU LAM PANEL

Use 4" liberty pull

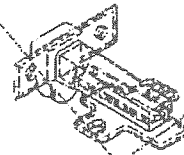


CA-PH
3" PULL
USED ON CABINET DOORS AND DRAWERS



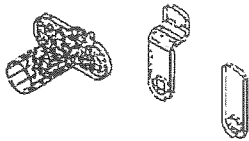
Clymus
CL689431
CS EX LOCK 280
USED ON ALL CABINETS THAT RECEIVE CALLS

Use Clymus lock



TYP OVERLAY CABINETS WITH 0 DEGREE HINGE PLATE
USED ON NET DOORS

Use lockford knuckle inoe



THICK PANEL LOCK
CB-170

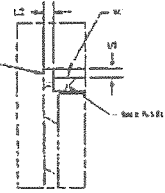
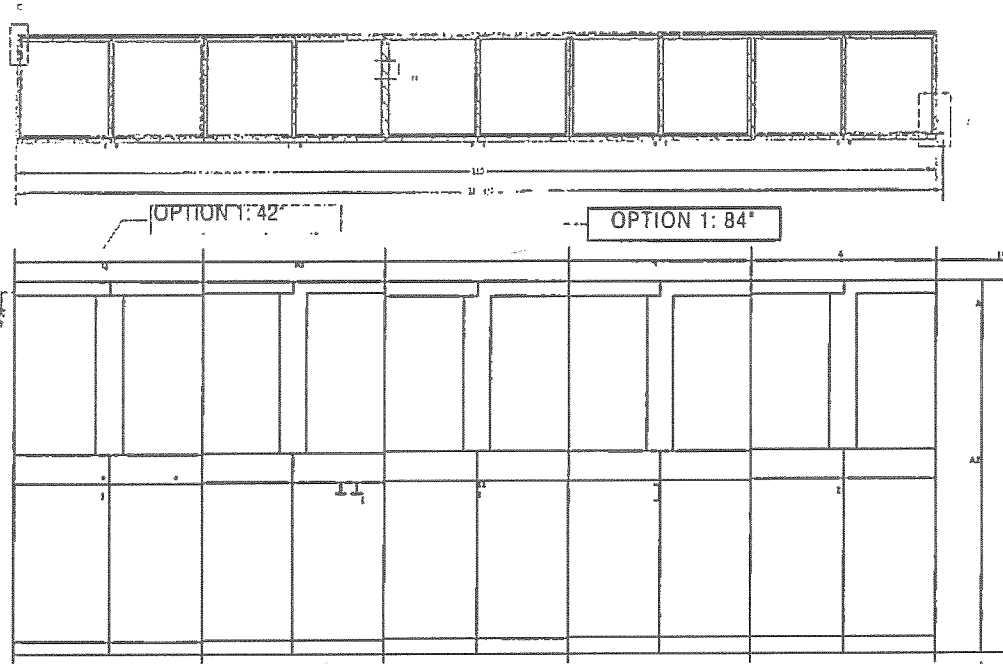
CMS
Crestech Mechanical Systems Inc.
4911 BRACKTON DRIVE SE CALAHAN, NC 28512
PHONE: (616) 896-6700 FAX: (616) 258-0180

PROJECT NO:
14-087C
DRAWN BY:
A_HAUCK
DATE:
2/11/2015

GLASS DISPLAY CABINETS

SECTION A-A

LEFT AND RIGHT
ELEMENTS ARE IDENTICAL



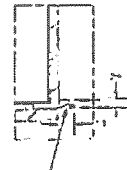
WALL C
05131/3

FRONT LIP - SPECIAL BOLT
UNDER CLIP 1 CAP-NUTS ON INSIDE



SMIL D
1008 1

DURA
ACM 7



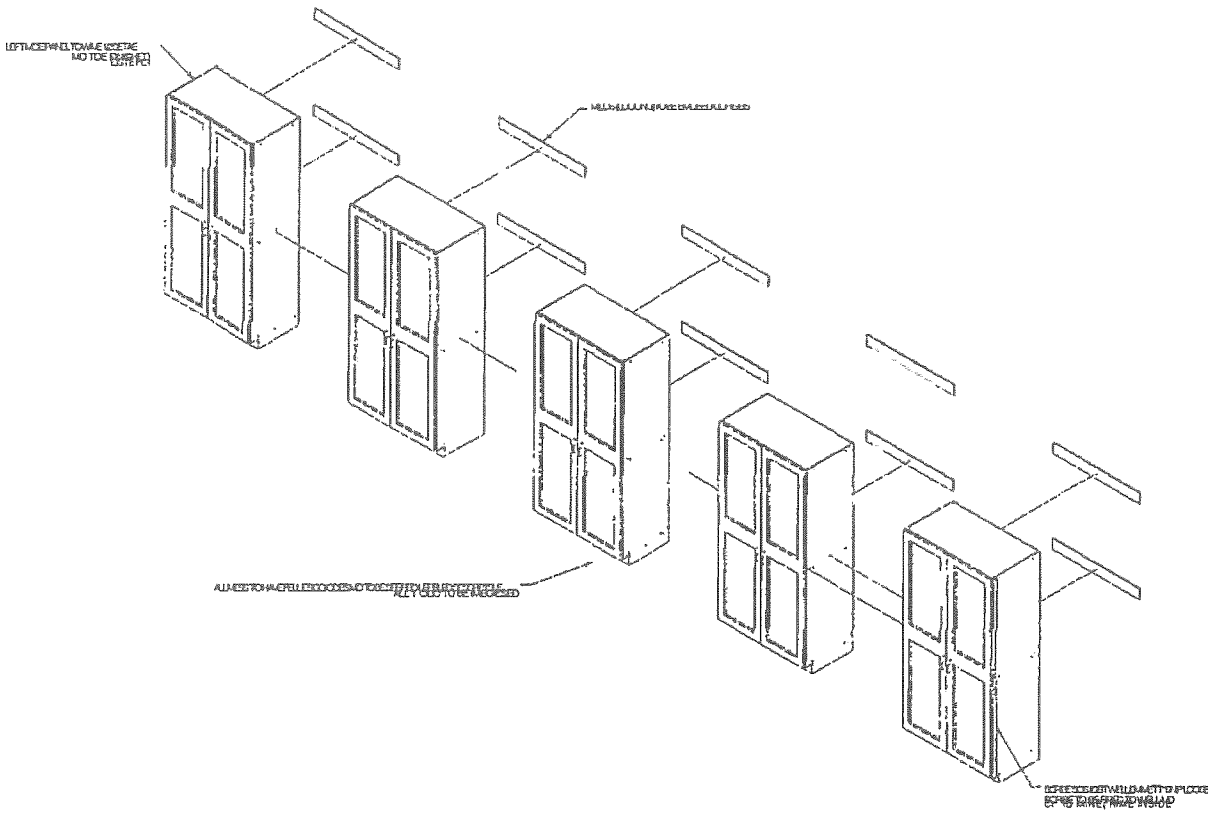
1 1/2\"/>

RELEASED TO BE ACCESSED
AND CONTACTS FROM THE OWNER AND
SIGNED FROM THE OWNER IN PROXY PRICE

SHEETS OF J.15	
04	
GVS GVS (Glass Vitrines Systems) Inc. 4011 BRIDGETON DRIVE SE - GRAND RAPIDS, MI 49512 PHONE: (616) 996-6210 FAX: (616) 998-8188	
PROJECT NO.	18-050C
DRAWN BY	A. EMOCK
DATE	2/11/2015

EXPLODED VIEW OF GLASS DISPLAY CABINETS

SHEET 7 OF 18



Check with Member for details on pricing and availability. For more information, contact your local distributor or call 1-800-845-1111.

Check with Member for details on pricing and availability. For more information, contact your local distributor or call 1-800-845-1111.

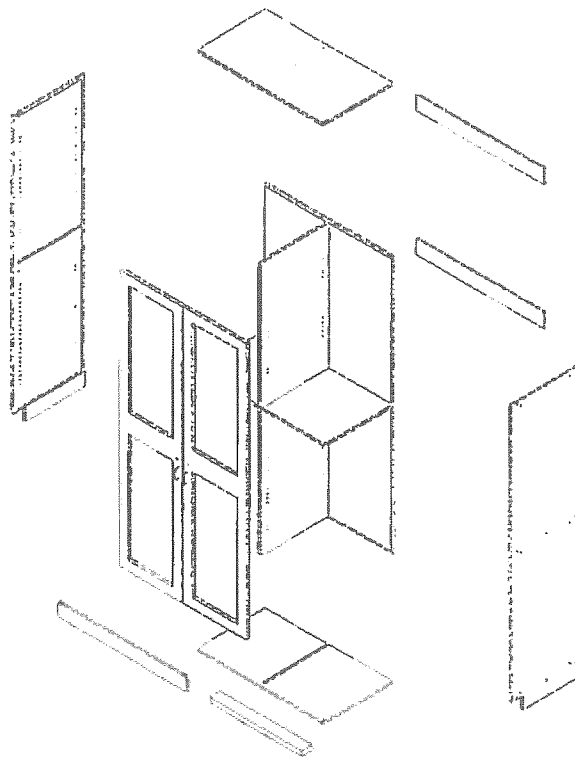
Check with Member for details on pricing and availability. For more information, contact your local distributor or call 1-800-845-1111.

14087C
 DRAWN BY
 A. NAJICK
 DATE
 2/11/2015

TYPICAL GLASS DISPLAY CABINET CONSTRUCTION

SHEET 8 OF 18

** RIGHT SIDE FINISHED CABINET SHOWN**
 EXPLODED VIEW SHOWN WITHOUT SHELVES



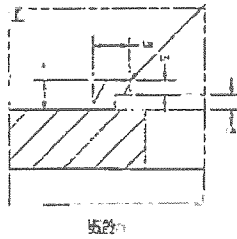
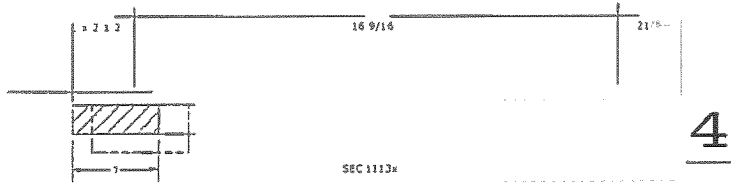
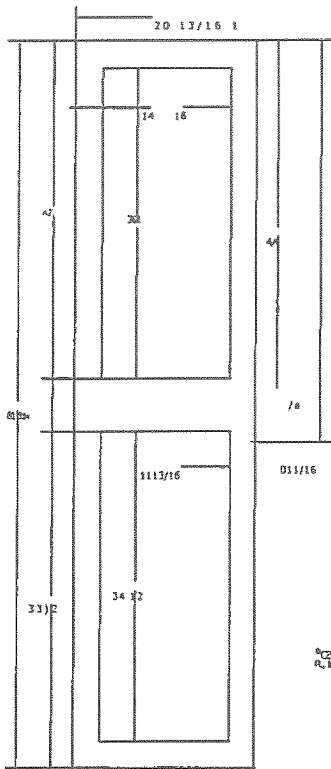
ALL LAMINATE TO BE MATTE FINISH
 DOOR FRONTS TO BE LAMINATED PL 1
 ALL FINISHED ENDS TO BE LAMINATED PL 1
 ALL CABINET EDGES TO BE 1mm BRIGHT WHITE EDGE BAND
 ALL CABINET INTERIORS TO BE WHITE MELAMINE
 ALL PULLS TO BE CHROME

SLATS
 Creation/Inch/Out/Ch/PS/Systems, Inc.
 1411 BRACKTON DRIVE SE - GANNON RAUNCH, MI 48813
 PHONE: (616) 693-5300 - FAX: (616) 698-8126

PROJECT NO
 14-087C
 DRAWN BY
 A. HALLICK
 DATE
 2/11/2015

TYPICAL GLASS DISPLAY CABINET DOOR

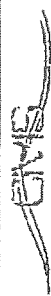
SHEET 9 OF 14



DO NOT DRILL
TO BE DRILLED TO SPEC
CLEARANCE PER SPEC

SEE ALL DRILL
C. 101142E

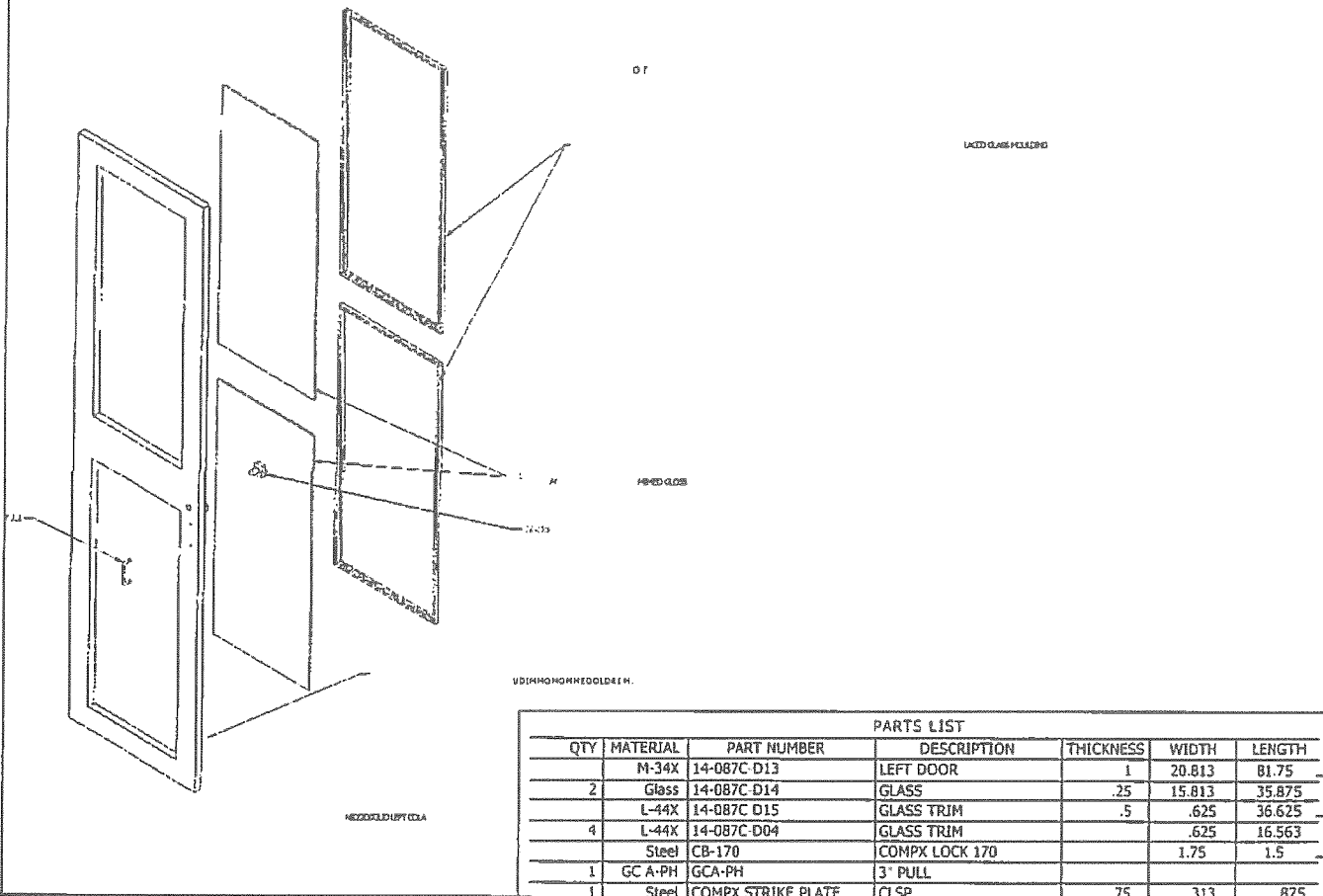
4


Cross-Steel Manufacturing Systems, Inc.
4 BUCKINGHAM SE • GRAND RAPIDS, MI 49512
PHONE: (616) 528-6200 FAX: (616) 698-8108

PROJECT NO
4-087C
DRAWN BY
A. HAUCK
DATE
2/11/2015

TYPICAL GLASS DISPLAY CABINET DOOR CONSTRUCTION

SHEET 10 OF 1



PARTS LIST						
QTY	MATERIAL	PART NUMBER	DESCRIPTION	THICKNESS	WIDTH	LENGTH
1	M-34X	14-087C D13	LEFT DOOR	1	20.813	81.75
2	Glass	14-087C D14	GLASS	.25	15.813	35.875
	L-44X	14-087C D15	GLASS TRIM	.5	.625	36.625
4	L-44X	14-087C D04	GLASS TRIM		.625	16.563
	Steel	CB-170	COMPX LOCK 170		1.75	1.5
1	GC A-PH	GCA-PH	3" PULL			
1	Steel	COMPX STRIKE PLATE	CLSP	.75	.313	.875

Precision Manufacturing Systems, Inc.
 4144 ROCKFORD DRIVE SE - GRAND RAPIDS, MI
 49508 - (616) 654-2100 - FAX: (616) 654-8115

PROJECT NO
 14-087C
 DRAWN BY
 A_HAJLOK
 DATE
 2/11/2015

SOUTH SAN FRANCISCO UNIFIED SCHOOL DISTRICT

Memorandum

TO: Board of Trustees
FROM: Shawnterra Moore, Ed.D., Superintendent
THRU: Michael Krause, Assistant Superintendent – Business Services
DATE: November 5, 2015
RE: OpTerra Energy Services Agreement

BACKGROUND:

In 2010, the District partnered with OpTerra Energy Services (OpTerra) to design, construct and maintain a comprehensive energy efficiency and solar program at select District school sites. The project was funded through Measure J to improve school infrastructure and enhance the student-learning environment.

The project will reduce the district's utility costs by \$20 million over 25 years through the annual production of 1.68 megawatts of electricity, directly offsetting much of the district's energy needs at each site. Additionally, the original project created over 100 local union construction jobs under the Measure J Project Labor Agreement and is reducing the District's carbon emissions by more than 1,500 metric tons, equivalent to the carbon sequestered by 330 acres of pine trees.

OpTerra completed this project on time, within the budget, and with no change orders. The project continues to perform as originally estimated and costs savings are meeting and exceeding annual targets, as presented to the Board on March 26, 2015. OpTerra continues to provide ongoing maintenance and monitoring services to the District.

CURRENT PROJECT OVERVIEW:

In April 2015, the District began discussions with OpTerra regarding the use of Proposition 39 State funds to complete an additional scope of work including renewable energy and energy efficiency projects at select District sites. The projects identified included installing LED lighting and solar at specific schools sites, high-efficiency LED stadium lighting at El Camino High School's stadium, as well as designing a District-wide STEM education program to tie-in to Career

Pathways, CTE programs, and foundational K-8 learning. Additionally, the stadium lighting project will require the completion of ADA-compliant access upgrades at El Camino High School required by the Division of the State Architect (DSA).

At the August 13, 2015 Board of Trustee meeting, the Board unanimously approved a Program Development Agreement with OpTerra for design-development and comprehensive engineering services associated with the following proposed project categories:

South San Francisco Unified School District							Solar Projects	LED Lighting	ADA Access Upgrades	LED Stadium Lighting	STEM Education
Building Name	Address	Square Feet	Annual Electric Billing	Annual Gas Billing	Total Yearly Billing	Total Billing per SF					
Serra Vista	257 Longford Dr.	24,000	\$ 22,795	\$ 5,826	\$ 28,621	\$ 1.19	X	X			X
Hillside Campus	1400 Hillside Blvd.	38,000	\$ 20,176	\$ 3,610	\$ 23,786	\$ 0.63	X	X			X
El Camino High School	1320 Mission Rd.	165,000	\$ 4,462	\$ 24,272	\$ 28,734	\$ 0.17		X	X	X	X
South San Francisco High School	398 B. St.	200,000	\$ 135,318	\$ 40,752	\$ 176,070	\$ 0.88	X				X
Other Schools	District-Wide	-	\$ -	\$ -	\$ -	\$ -					X
		\$ 639,700	\$ 266,269	\$ 125,681	\$ 391,950	\$ 0.61					

As per the schedule, OpTerra has completed the design-development and comprehensive engineering analysis, as well as conducted a competitive bidding process for all product, construction, and financing needs according to the District's procurement policies and requirements.

The OpTerra team has worked closely with Assistant Superintendent Michael Krause, Assistant Superintendent Leticia Bhatia, and Director of Facilities and Safety Jeff Bonner to ensure the scopes of work were aligned with District needs and site plans, as well as the requirements of Prop. 39 and the DSA. The next step is to move forward with approving an Energy Services Contract, which will allow construction teams to begin implementation, working closely with District staff and facilities leadership throughout with frequent updates to the Board of Trustees.

This proposed scope accomplishes the following important objectives:

- Incorporate and leverage Prop. 39 State funds to accomplish high-priority energy infrastructure projects at sites not fully covered by Measure J projects completed to date:
 - Interior and exterior LED lighting upgrades and installation of Solar PV to reduce energy usage and costs.
- Expanded STEM Mission and 'living laboratory' program:
 - STEM Pathway would be aligned with NGSS and Common Core standards;

- Incorporate professional development, hands-on learning, career exposure, and 'Real-Time' data analysis from District projects;
 - Tie-in to the existing computer science and bio-tech pathways, and create learning experiences for K-8 students to build foundational skills for STEM success.
- Install high-efficiency LED Stadium Lighting at El Camino HS to support night games, increase safety on and off the field, improve the overall athletic program; and achieve the following benefits:
 - Allow El Camino's student athletes to compete when their parents, teachers, and community members can attend;
 - Bring the school's stadium lighting up to existing and recently approved standards within the Peninsula Athletic League;
 - Create a safe environment for evening sporting events and special events such as graduation;
 - Reduce early class dismissals for student athletes;
 - Engage the community in the ongoing design process for feedback and ideas through a series of community meetings and the use of pilot program utilizing temporary lighting this season.
- Complete ADA-compliant upgrades at El Camino HS Stadium in order to satisfy previous DSA requirements for ramp access improvements that were previously granted a waiver due to the school's implementation of electric cart accessibility services for handicap stadium visitors.
- Create local jobs
 - Invest public funds back into the community by creating green construction jobs for skilled local men and women employed by San Mateo County based union contractors.
- Develop a funding plan for the Energy Services Scope of Work that maximizes the impact of the Prop. 39 State funds and does not utilize any funding sources which would otherwise be invested in students, classrooms, or teachers.

FISCAL IMPLICATIONS:

The proposed Energy Services Scope of Work will not require any General Fund expenditure by the District and is expected to produce over \$2.0 million in net program savings through a combination of available PG&E rebates, reduced energy consumption, and avoided utility costs. The projects will be funded through a combination of the following sources:

- \$1.9 million in Prop. 39 State funding allocations to the District;
- \$10,157 in PG&E rebates;

- Tax-exempt financing which will be paid back through net program savings, and allows the District to leverage the Prop. 39 State funding to its greatest benefit.

The ADA upgrades, which are required by DSA for the El Camino campus, will be partially funded with the energy savings from the above scope of work and with \$300,000 from the District's deferred maintenance fund.

Consistent with the first phase of work, OpTerra conducted a competitive bidding process for all product, construction, and financing needs according to the District's procurement policies and requirements and outlined in the Measure J Project Labor Agreement. District staff will work closely with OpTerra and make the final determination on all selected bidders.

OpTerra will also manage all administrative requirements on behalf of the District regarding Prop. 39 State funds, PG&E rebates, and DSA/OPSC submittals. Their project and construction team will be on-site throughout the entire construction process to manage sub-contractors and work closely with principals, staff, and the community to ensure seamless implementation. Post-construction, OpTerra will provide a guarantee on system performance, manage all warranties for equipment, conduct training for staff, and continue to provide ongoing operations and maintenance (O&M) work.

RECOMMENDATION:

It is recommended that the South San Francisco Unified School District Board of Trustees authorize the Assistant Superintendent of Business Services to negotiate and execute the attached Energy Services Agreement with OpTerra Energy Services.

ENERGY SERVICES CONTRACT

"Customer": South San Francisco Unified School District Customer Address: 398 B Street
 South San Francisco, CA 94080

Contract Effective Date:

"Contract Amount" (refer to Attachment F):

This Energy Services Contract ("Contract") is made and entered into as of the Contract Effective Date by and between **OpTerra Energy Services, Inc. ("OpTerra ES")**, a Delaware corporation, having its principal offices at 500 Twelfth Street, Suite 300, Oakland, CA 94607, and the Customer identified above, for the purposes of providing comprehensive energy services. "OpTerra ES" and the "Customer" may singularly be identified as "Party" and collectively as "Parties." The attachments listed below as being attached are attached hereto and fully incorporated herein.

ATTACHMENTS TO CONTRACT

Attachment	Title	Attached	Not Applicable/	
			Not Attached	
A	General Terms and Conditions	Attached		
B	Design/Build Terms and Conditions	Attached		
C	Customer's Facilities and Existing Equipment	Attached		
D	Scope of Work	Attached		
E	Project Schedule	Attached		
F	Progress Payment Schedule	Attached		

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto subscribe their names to this Contract by their duly authorized officers on the date first above written.

OPTERRA ES:
OpTerra Energy Services, Inc.

CUSTOMER:
South San Francisco Unified School District

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

**ATTACHMENT A
GENERAL TERMS AND CONDITIONS**

CONTRACT RECITALS

WHEREAS, Customer owns and/or operates certain public facilities specifically described in Attachment C ("Facilities") and Customer wishes to reduce its Facilities' energy consumption and costs by contracting to implement certain new and upgraded energy system related equipment and materials; and

WHEREAS, OpTerra ES is a full-service energy services company with the technical capabilities to provide services to the Customer including, but not limited to, engineering, procurement, construction management, installation, construction, and training (collectively, "Services"); and

WHEREAS, the Customer executed a Design Development Agreement with OpTerra ES to perform an assessment and present the Customer with a proposal ("Proposal") and recommended energy plan to implement certain Energy Conservation Measures ("ECMs"). The Proposal identified potential energy and operational savings opportunities at the identified Customer's Facilities and identified estimated program costs to implement the recommended ECMs and presented an overall potential energy cost and consumption savings of implementing the ECM recommendations; and

WHEREAS, Customer accepted OpTerra ES's Proposal and recommended ECMs and has determined that the anticipated cost to Customer to implement the recommended ECMs will be less than the anticipated cost to the Customer for thermal, electrical, and other energy and other operational and maintenance savings that would have been consumed by Customer without the implementation of the recommended ECM's in compliance with California Government Code Section 4217.10 through 4217.18; and

WHEREAS, pursuant to Section 4217.12 of the California Government Code the Customer's Board held a public hearing at a regularly scheduled public hearing on [date], of which two weeks advance public notice was given regarding this Contract and its subject matter, and

WHEREAS, based upon the foregoing findings and public hearing, the Customer's Board has determined that entering into an energy services contract to implement the ECM recommendations is in the best interests of the Customer and pursuant to California Government Code Section 4217.10 et seq. allows the Customer to enter into this Energy Services Contract with OpTerra ES to implement the measures recommended in the ECMs; and

WHEREAS, the Customer's Board, by adoption of Resolution No. _____ at its meeting of [date], approved this Energy Services Contract by and between OpTerra ES and the Customer and authorized the _____ to execute this Energy Services Contract on behalf of the Customer.

NOW, THEREFORE, the Customer and OpTerra ES hereby agree as follows:

SECTION 1. PERFORMANCE OF THE WORK

Section 1.1. Performance of Work. All the Work to be performed hereunder will be provided in accordance with the terms of this Contract.

Section 1.2. Scope of Work. The Scope of Work to be provided hereunder for implementation of the ECMs identified in the Proposal, including all engineering, equipment and material procurement, and installation and construction, is attached hereto as **Attachment D, "Scope of Work"**.

Section 1.3. Project Schedule/ Notice to Proceed. The preliminary project schedule is presented in Attachment E, "Project Schedule" ("Project Schedule"). Within ten (10) calendar days after the Customer has secured financing as set forth in Section 1.5 below, Customer will issue to OpTerra ES a written Notice to Proceed ("Notice to Proceed" or "NTP"). If the Customer fails to issue the Notice to Proceed within ten (10) calendar days after financing is secured or such additional time as mutually agreed to in writing pursuant to Section 1.5 below, the Parties agree that the Notice to Proceed shall be deemed to have been issued on the tenth (10th) calendar day after financing is secured. OpTerra ES shall begin Work within thirty (30) calendar days of OpTerra ES's receipt of the Notice to Proceed.

Section 1.4. Additional Work. During the Contract Term, the Parties hereto may mutually agree to add additional Work and/or Projects to the Scope of Work by a written Change Order, executed by both Parties; and such work shall be performed in accordance with the terms and conditions of this Contract, as amended. Such Change Order work shall comply with the requirements of California Government Code Section 4217.10 through 4217.18 wherein the cost to implement the additional work shall be less than the anticipated cost to the Customer for thermal, electrical, and other energy and other operational and maintenance savings that would have been consumed by Customer without the implementation of the additional work and such additional work and Change Order must be approved by the Customer at a regularly scheduled public hearing, of which two weeks advance public notice was given regarding proposed Change Order and its subject matter.

Section 1.5. Finance Contingency. It is hereby agreed by OpTerra ES and the Customer that this Contract, and any obligations of the Customer hereunder, are expressly contingent upon the ability of the Customer to secure financing for the payments to be made by Customer hereunder, including payments for the cost of the Work to be performed by OpTerra ES, upon terms acceptable to the Customer. Upon execution of this Contract, the Customer shall have thirty (30) days to obtain such financing. If financing is not

secured by the Customer within such period, for any reason, this Contract shall be null and void unless the parties mutually agree in writing to extend such financing period. It is acknowledged and agreed that OpTerra ES will not commence performance of the Work unless and until financing has been secured.

SECTION 2. CUSTOMER'S ENERGY AND OPERATIONAL RECORDS AND DATA

Within 10 business days of the Effective Date, Customer shall provide OpTerra ES with its Energy Usage Data (as defined below) for the twelve (12) months preceding the Effective Date, and shall make commercially reasonable efforts to provide the Energy Usage Data for the thirty six (36) months preceding the Effective Date, to the extent such Energy Usage Data has not already been provided to OpTerra ES. Energy Usage Data shall mean all of the Customer's records and complete data requested by OpTerra ES concerning, without limitation, energy usage, energy-related maintenance, and other related costs for the Facilities, and including without limitation utility records; occupancy information; descriptions of any changes in the building structure or its heating, cooling, lighting or other systems or energy requirements; descriptions of all energy consuming or saving equipment used in the Facilities; applicable building drawings, specifications, existing AutoCAD files, O&M manuals, and as-builts; bills and records relating to operation and maintenance of systems and equipment within the Facilities, and a description of operation and management procedures presently utilized. Customer agrees that OpTerra ES may rely on the foregoing data as being accurate in all respects. If requested, Customer shall also provide any prior energy audits of the Facilities, and copies of Customer's financial statements and records related to energy usage and operational costs for said time period at the Facilities, and shall authorize its agents and employees to provide and freely discuss such records and to make themselves available for consultations and discussions with authorized representatives, employees, subcontractors, and agents of OpTerra ES.

SECTION 3. CONTRACT TERM

The term of the Contract shall commence on the Contract Effective Date and end on [____], unless terminated early as provided in this Contract.

SECTION 4. PAYMENTS

Payments by Customer to OpTerra ES under this Contract shall be in the form of monthly progress payments as discussed below and specifically described in Attachment F, "Progress Payment Schedule".

Section 4.1. Monthly Progress Payments. Upon execution of this Contract, OpTerra ES shall invoice the Customer for the fees detailed on Attachment F. In addition, OpTerra ES shall submit to the Customer for approval its request for a monthly progress payment per the Draw Schedule in Attachment F ("Request for Payment"). The Customer shall approve and pay each Request for Payment, less a five percent (5%) retainage amount ("Retainage"), within thirty (30) calendar days after its receipt thereof. A failure to timely approve and pay a Request for Payment hereunder shall be a material default by Customer under this Contract. Upon Substantial Completion, the Retainage amount shall be reduced to two percent (2%) of the total Contract Amount, and OpTerra ES shall invoice and Customer shall pay this amount within forty (40) calendar days of receipt of such invoice.

Section 4.2 Final Payment. The final Request for Payment of all Retainage may be made after Final Completion.

Section 4.3 Disputed Invoices/Late Payments. Customer may in good faith dispute any Request for Payment, or part thereof, within thirty (30) calendar days after the date the Request for Payment was rendered. In the event that Customer disputes all or a portion of any Request for Payment, Customer shall pay the undisputed portion when due and provide OpTerra ES a written notice and explanation of the basis for the dispute and the amount of the Request for Payment being withheld related to the dispute. Customer shall be deemed to have waived and released any dispute known to it with respect to a bill if such notice and written explanation is not provided within thirty (30) calendar days after the date the Request for Payment was rendered. If any amount disputed by Customer is finally determined to be due to OpTerra ES, either by agreement between the Parties or as a result of dispute resolution pursuant to Section 16 below, it shall be paid to OpTerra ES within ten (10) Business Days of such final determination, plus Interest, from the date billed or claimed until such amount is paid.

Section 4.4 Rebate Programs. OpTerra ES will assist Customer in the preparation and submission to the applicable agencies of applications and documentation necessary for the following energy efficiency rebate, incentive, and/or loan program(s) _____ . OpTerra ES makes no guarantee that Customer will receive funding from California Proposition 39 or any other energy efficiency rebate, incentive, and/or loan program(s), including those listed above (collectively, "Incentive Funds"), or any portion thereof; OpTerra ES expressly disclaims any liability for Customer's failure to receive any portion of the Incentive Funds, and Customer acknowledges and agrees that OpTerra ES will have no liability for any failure to receive all or any portion of the Incentive Funds. Procurement, or lack thereof, of the Incentive Funds will not alter the Contract Amount of this Contract or the payment timeline associated with payment of the Contract Amount.

SECTION 5. WARRANTY/LIMITATION OF LIABILITY

OpTerra ES warrants its workmanship provided hereunder, including its subcontractors' workmanship, shall be free of material defects for a period of one (1) year from the date of Substantial Completion as indicated on the executed Certificate of Substantial Completion, or the date of Beneficial Use as indicated on the executed Certificate of Beneficial Use ("OpTerra ES Warranty"). All warranties hereunder, including without limitation those for defects, whether latent or patent, in design, engineering, or construction, shall terminate one (1) year from the date of Substantial Completion or Beneficial Use; and thereafter, OpTerra ES will have no liability for breach of any warranty or for any latent or patent defect of any kind pursuant to California Code of Civil Procedure Sections 337.15 and 338. Equipment and material warranties that exceed the one (1) year warranty period shall be provided directly by the equipment and/or

material manufacturers and such warranties shall be assigned directly to the Customer, after the one (1) year period. During the one (1) year OpTerra ES warranty period, OpTerra ES shall be the Customer's agent in working with the equipment and material manufacturers in resolving any equipment or material warranty issues. Other than for lamps and ballasts, any material defects that are discovered within the one (1) year OpTerra ES warranty period, OpTerra ES, or OpTerra ES's subcontractors, will correct its defects, and/or OpTerra ES will work with the equipment or material manufacturer as the Customer's agent to facilitate the manufacturer's correction of the equipment or material defect. For typical industry standard lamp and ballast failures during the one (1) year OpTerra ES warranty period, the Customer will replace such failed lamps/ballasts with replacement stock provided by OpTerra ES, provided, however, Customer shall return the failed lamps/ballasts to the manufacturer in order to ensure that sufficient quantities of replacement stock are available during the one year warranty period. Such warranty services shall be performed in a timely manner and at the reasonable convenience of the Customer. This warranty expressly excludes any remedy for damage or defect caused by improper use, improper or inadequate maintenance, operations of the installed equipment by users other than OpTerra ES or its subcontractors, corrosion, erosion, deterioration, abuse, modifications or repairs not performed by an authorized OpTerra ES subcontractor, improper operation, or normal wear and tear under normal usage. If a warranty issue arises on any equipment or material installed after the one (1) year OpTerra ES warranty period, and the equipment or material has a warranty period that exceeds one (1) year, the Customer shall contact the manufacturer directly to resolve such warranty issues and Customer acknowledges that the manufacturer shall have sole responsibility for such issues.

EXCEPT FOR THE WARRANTY PROVIDED IN SECTION 5 HEREIN, CUSTOMER EXPRESSLY AGREES THAT OPTERRA ES MAKES NO OTHER WARRANTIES AND ASSUMES NO OTHER LIABILITIES, WHETHER IN CONTRACT OR IN TORT (INCLUDING NEGLIGENCE), IN CONNECTION WITH THE WORK PROVIDED HEREUNDER WHETHER EXPRESS OR IMPLIED, IN LAW OR IN COMMUNICATION BETWEEN OPTERRA ES AND CUSTOMER. OPTERRA ES SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES AGAINST INFRINGEMENT. CUSTOMER SHALL HAVE NO REMEDIES AGAINST EITHER OPTERRA ES OR ANY OPTERRA ES SUBCONTRACTOR OR VENDOR FOR ANY DEFECTIVE WORK INSTALLED EXCEPT FOR THE REPAIR OR REPLACEMENT OF SUCH EQUIPMENT IN ACCORDANCE WITH THE WARRANTY INDICATED ABOVE. SPECIFICALLY, OPTERRA ES, OR OPTERRA ES'S SUBCONTRACTORS OR VENDORS, SHALL NOT BE LIABLE TO CUSTOMER FOR LOSS OF PROFITS OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY.

SECTION 6. GOVERNMENTAL PERMITS AND APPROVALS: COORDINATION

Section 6.1. Permits and Approvals. Customer will cooperate fully with and assist OpTerra ES in obtaining all permits and approvals OpTerra ES is responsible for obtaining under this Contract. OpTerra ES is responsible for obtaining permits and approvals required for the building, installation, and start-up of the Work hereunder which are required as of the Contract Effective Date. The Customer shall be responsible for obtaining any other permits or approvals that may be required, including annual operating permits and any approvals or exemptions required by the California Environmental Quality Act ("CEQA"), as applicable.

Section 6.2. Coordination During Installation. Customer and OpTerra ES shall make commercially reasonable efforts to coordinate the activities of OpTerra ES and OpTerra ES's subcontractors and suppliers with those of Customer, its employees, and agents.

SECTION 7. [Optional]

SECTION 8. OWNERSHIP OF CERTAIN PROPERTY AND EXISTING EQUIPMENT

Section 8.1. Ownership of Certain Proprietary Property Rights. Customer shall not, by virtue of this Contract, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the equipment. OpTerra ES shall grant to Customer a perpetual, irrevocable royalty-free license for any and all software or other intellectual property rights necessary for Customer to continue to operate, maintain, and repair the equipment in a manner that will yield maximal energy consumption reductions.

Section 8.2. Ownership of Any Existing Equipment. Ownership of any equipment and materials presently existing at the Facilities at the time of execution of this Contract shall remain the property of the Customer even if it is replaced or its operation made unnecessary by work performed by OpTerra ES pursuant to this Contract. If applicable, OpTerra ES shall advise Customer in writing of all equipment and materials that will be replaced at the Facilities and Customer shall, within five (5) business days of OpTerra ES's notice, designate in writing to OpTerra ES which replaced equipment and materials should not be disposed of off-site by OpTerra ES (the "Retained Items"). Customer shall be responsible for and designate the location and storage for the Retained Items. OpTerra ES shall be responsible for the disposal of replaced equipment and materials, except for the Retained Items. OpTerra ES shall use commercially reasonable efforts to remove the Retained Items in such a manner as to avoid damage thereto, or if it is unreasonable to avoid damage altogether, to minimize the damage done. OpTerra ES shall not be responsible for the removal and/or disposal of any Hazardous Materials or substances except as required by the Scope of Work attached hereto.

SECTION 9. LOCATION AND ACCESS

Customer will provide sufficient space at the Facilities for the performance of the Work and the installation, storage, and operation of any equipment and materials and will take reasonable steps to protect any such equipment and materials from harm, theft and misuse. Customer shall provide access to the Facilities, including parking permits and identification tags, for OpTerra ES and subcontractors to perform its Work hereunder during regular business hours, or such other reasonable hours as may be requested by OpTerra ES and acceptable to Customer. The Customer shall also either provide a set or sets of keys to OpTerra ES and its subcontractors (signed out per Customer policy) or provide a readily available security escort to unlock and lock doors. Customer shall not unreasonably restrict OpTerra ES's access to Facilities to make emergency repairs or corrections as it may determine are needed.

SECTION 10. INDEMNIFICATION / INSURANCE / BONDS

Section 10.1. Indemnification. To the full extent permitted by Applicable Laws, each Party shall indemnify, hold harmless, release and defend the other Party, its officers, employees, and agents from and against any and all actions, claims, demands, damages, disability, losses, expenses including attorney's fees and other defense costs and liabilities of any nature ("Losses") that may be asserted by any person or entity in whole or in part, arising out of that Party's performance or activities hereunder, including the performance or activities of other persons employed or utilized by that Party in the performance of this Contract excepting liabilities due to the negligence or willful misconduct of the indemnified Party. This indemnification obligation shall continue to bind the parties after termination of this Contract.

Section 10.2 Waiver of Consequential Damages and Limitation of Liability. The liability of a defaulting Party shall be limited to direct, actual damages only and all other damages and remedies are waived. Under no circumstances will either Party be liable to the other Party for any special, indirect, incidental, consequential or punitive damages, lost profits or business interruption damages, however caused and on any theory of liability. "Consequential damages" includes, but is not limited to, operational losses in the performance of business including lost revenues and any increase in operating expense, and any lost profits. It is expressly understood and agreed to by both Parties that each Party's liability to the other shall be limited to reimbursement of only those Losses arising solely from a Party's breach of this Contract, negligence or willful misconduct.

Section 10.3 OpTerra ES Insurance. OpTerra ES shall maintain, or cause to be maintained, for the duration of this Contract, the insurance coverage outlined in (i) through (vii) below, and all such other insurance as required by Applicable Law. Evidence of coverage will be provided to Customer via a Certificate of Insurance.

(i) Workers' Compensation/Employers Liability for states in which OpTerra ES is not a qualified self-insured. Limits as follows:

- * Workers' Compensation: Statutory
- * Employers Liability: Bodily Injury by accident \$1,000,000 each accident
Bodily Injury by disease \$1,000,000 each employee
Bodily Injury by disease \$1,000,000 policy limit

(ii) Commercial General Liability insurance with limits of:

- * \$1,000,000 each occurrence for Bodily Injury and Property Damage
- * \$1,000,000 General Aggregate - other than Products/Completed Operations
- * \$1,000,000 Products/Completed Operations Aggregate
- * \$1,000,000 Personal & Advertising Injury
- * \$ 100,000 Damage to premises rented to OpTerra ES

Coverage to be written on a claims-made form. Coverage to be at least as broad as ISO form CG 0001 (04/13) or its equivalent forms, without endorsements that limit the policy terms with respect to: (1) provisions for severability of interest or (2) explosion, collapse, underground hazard.

(iii) Auto Liability insurance for owned, hired and non-owned vehicles with limits of \$1,000,000 per accident. Coverage to be written on an occurrence form.

(iv) Professional Liability insurance with limits of:

- * \$1,000,000 per occurrence
- * \$1,000,000 aggregate

Coverage to be written on a claims-made form.

(v) Excess Liability insurance. Limits as follows:

- * \$1,000,000 each occurrence
- * \$1,000,000 aggregate

Coverage terms and limits to apply excess of the per occurrence and/or aggregate limits provided for Commercial General Liability and Professional Liability written on a claims made form. Coverage terms and limits also to apply in excess of those required for Employers Liability and Auto Liability written on an occurrence form.

(vi) Policy Endorsements.

- * The insurance provided for Workers' Compensation and Employers' Liability above will contain waivers of subrogation rights against Customer, but only to the extent of the indemnity obligations contained in this Contract.
- * The insurance provided for Commercial General Liability and Auto Liability above will:
 - (i) include Customer as an additional insured with respect to Work performed under this Contract, but only to the extent of the indemnity obligations contained in this Contract, and
 - (ii) provide that the insurance is primary coverage with respect to all insureds, but only to the extent of the indemnity obligations contained in this Contract.

Section 10.4 Performance and Payment Bonds. Prior to commencing Work under this Contract, OpTerra ES shall furnish a performance bond in an amount equal to one hundred percent (100%) of the Contract Amount, and a payment bond to guarantee payment of all claims for labor and materials furnished, in an amount equal to one hundred percent (100%) of the Contract Amount

(collectively, the "Contract Bonds"). The Contract Bonds shall be maintained in full force and effect until Final Completion; provided that upon the achievement of Substantial Completion, the value of the Contract Bonds shall be reduced to the value of the Retainage being withheld by Customer. The Contract Bonds are not being furnished to cover the performance of any energy guaranty or guaranteed savings under this Contract, nor to cover any equipment and/or material manufacturer's warranty or other third-party warranty being assigned to Customer. Customer agrees that upon Final Completion, the Contract Bonds shall be released and all obligations arising thereunder shall be terminated. The surety supplying the bond shall be an "admitted surety insurer," as defined by Section 995.120 of the Code of Civil Procedure authorized to do business in the State of California, and reasonably satisfactory to Customer.

SECTION 11. CONDITIONS BEYOND CONTROL OF THE PARTIES

Section 11.1 Force Majeure Events. In the event that any Party is delayed in, or prevented from, performing or carrying out its obligations under this Contract by reason of any event of Force Majeure, such circumstance shall not constitute an Event of Default, and such Party shall be excused from performance hereunder and shall not be liable to any other Party for or on account of any loss, damage, injury or expense resulting from, or arising out of, such delay or prevention. Notwithstanding the foregoing, no Party shall be excused from any payment obligations under this Contract as a result of an event of Force Majeure.

Section 11.2 Utility Work. Customer expressly understands and agrees that the definition "Force Majeure" above also includes any Interconnection Facilities work that may need to be performed by the local Utility ("Utility") in order for OpTerra ES to fully implement the Project. "Interconnection Facilities" shall mean any distribution or transmission lines and other facilities that may be required to connect equipment supplied under this Contract to an electrical distribution/transmission system owned and maintained by the Utility. Any Interconnection Facilities work that may be required will be performed by the Utility under a separate contract between Customer and the Utility.

SECTION 12. EVENTS OF DEFAULT

Section 12.1. Events of Default by Customer. Each of the following events or conditions shall constitute an "Event of Default" by Customer:

(i) any failure by Customer to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein, and such failure continues for thirty (30) calendar days after notice to Customer demanding that such failure to perform be cured; provided that (i) such failure to perform shall not be deemed a default hereunder if it is due to a Force Majeure pursuant to Section 11 above; and (ii) if such cure cannot be effected in thirty (30) calendar days, Customer shall be deemed to have cured the default upon the commencement of a cure within thirty (30) calendar days and diligent subsequent completion thereof; or

(ii) any representation or warranty furnished by Customer in this Contract which was false or misleading in any material respect when made; or

(iii) any failure by Customer to pay any amount to OpTerra ES which is not paid within ten (10) days of written notice from OpTerra ES that the amount is past due.

Section 12.2. Events of Default by OpTerra ES. Each of the following events or conditions shall constitute an "Event of Default" by OpTerra ES:

(i) any failure by OpTerra ES to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein, and such failure continues for thirty (30) calendar days after notice to OpTerra ES demanding that such failure to perform be cured; provided that (i) such failure to perform shall not be deemed a default hereunder if it is due to a Force Majeure pursuant to Section 11 above, and (ii) if such cure cannot be effected in thirty (30) calendar days, OpTerra ES shall be deemed to have cured the default upon the commencement of a cure within thirty (30) calendar days and diligent subsequent completion thereof; or

(ii) any representation or warranty furnished by OpTerra ES in this Contract which was false or misleading in any material respect when made.

SECTION 13. REMEDIES UPON DEFAULT

Section 13.1. Remedies upon Default by Customer. If an Event of Default by Customer occurs, OpTerra ES will be entitled to obtain any available legal or equitable remedies through arbitration proceedings instituted pursuant to Section 16 below including, without limitation, terminating this Contract or recovering amounts due and unpaid by Customer, and/or damages which shall include OpTerra ES's reasonable, actual, direct out-of-pocket losses incurred by reason of such Event of Default and any cost of funding; loss of anticipated payment obligations; legal fees and arbitration costs; and any payment or delivery required to have been on or before the date of the Event of Default and not made, including Interest (as defined in Attachment B, Article 1) on any sums due, and losses and costs incurred as a result of terminating this Contract and all costs and expenses reasonably incurred in exercising the foregoing remedies.

Section 13.2. Remedies Upon Default by OpTerra ES. If an Event of Default by OpTerra ES occurs, Customer shall be entitled to obtain any available legal or equitable remedies through arbitration proceedings instituted pursuant to Section 16 below, including, without limitation, terminating this Contract, or recovering amounts due and unpaid by OpTerra ES and/or damages, which shall include Customer's reasonable, actual, direct out-of-pocket losses incurred by reason of such Event of Default and any cost of funding; loss of anticipated payment obligations; legal fees and arbitration costs; and any payment or delivery required to have been paid on or before the date of the Event of Default and not made, including Interest on any sums due, and losses and costs incurred as a result of terminating this Contract and all costs and expenses reasonably incurred in exercising the foregoing remedies.

SECTION 14. ASSIGNMENT

Section 14.1. Assignment. This Contract may not be assigned by either party in whole or in part without the prior written consent of the other party, which consent may not be unreasonably withheld or delayed; provided however, that OpTerra ES may assign this Contract and all related contracts without the consent of Customer (i) to an affiliate; (ii) to an entity that is controlled by, controls, or is under common control with OpTerra ES; or (iii) pursuant to a merger, consolidation, transfer of substantially all its assets, or by operation of law; and provided further that OpTerra ES may assign its rights, but not its obligations, under this Contract and all related contracts without the consent of Customer to (x) a lender providing financing to OpTerra ES, or (y) a special purpose entity that is an affiliate of or is controlled by such lender. This Contract will be binding on, enforceable by, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns. Any assignment made in contravention of this clause shall be void and unenforceable.

SECTION 15. SUBCONTRACTORS

Section 15.1 Authority to Subcontract. OpTerra ES may delegate its duties and performance under this Contract, and shall have the right to enter into agreements with any subcontractors and other service or material providers as OpTerra ES shall select in its sole discretion to perform the Work hereunder. OpTerra ES shall not be required to enter into any subcontracts with parties whom OpTerra ES has not selected or subcontractors whom OpTerra ES has objection to using.

Section 15.2 Prompt Payment of Subcontractors. OpTerra ES shall promptly pay, when due, all amounts payable for labor and materials furnished in the performance of this Contract so as to prevent any lien or other claim under any provision of Applicable Law from arising against any Customer property, against OpTerra ES's rights to payments hereunder, or against Customer.

Section 15.3 Responsibility. OpTerra ES shall, at all times, be responsible for the negligent acts, errors and/or omissions of its subcontractors and agents. Nothing in this Contract shall constitute any contractual relationship between OpTerra ES's subcontractors and the Customer or any obligation on the part of the Customer to pay, or to be responsible for the payment of, any sums to any OpTerra ES subcontractors.

Section 15.4 Prevailing Wages. All employees of OpTerra ES and OpTerra ES's subcontractors performing Work for this Project shall be paid the per diem prevailing wages for the employee's job classification in the locality in which the Work is performed, in accordance with the requirements of California Labor Code Section 1771.

SECTION 16. DISPUTE RESOLUTION

Section 16.1 Dispute Resolution. In the event of a dispute, claim, or controversy ("Dispute") arising out of or in connection with this Contract, the Parties will confer and attempt to resolve the matter informally. If such Dispute cannot be resolved in this manner within ten (10) Business Days after notice of the Dispute is given to the other Party, then the exclusive method to settle the Dispute shall be arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration shall be heard by one arbitrator, who shall have experience in the general subject matter to which the dispute relates. The arbitration shall take place at the AAA office geographically closest to the site where the Work has been performed.

Section 16.2 Attorneys' Fees. The prevailing Party in any action or arbitration proceeding brought to enforce the terms of this Contract or arising out of this Contract (including actions to enforce an arbitration award) may recover its reasonable costs and attorneys' fees expended in connection with such an action or arbitration proceeding from the other Party.

SECTION 17. REPRESENTATIONS AND WARRANTIES

Each Party warrants and represents to the other that:

- (i) it has all requisite power, authority, licenses, permits, or otherwise, to execute and deliver this Contract and perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (ii) the execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, OpTerra ES's and Customer's governing entity, as applicable, and this Contract has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;
- (iii) its execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under any Contract, lease or instrument to which it is a Party or by which it or its properties may be bound or affected; and
- (iv) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any Applicable Laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

Customer warrants and represents to OpTerra ES that the process for entering into this Contract with OpTerra ES, and performing Customer's obligations hereunder, complies with the requirements of California Public Resources Code §26235(c) and Customer's own procurement regulations and procedures. Customer agrees to release, defend, indemnify, and hold OpTerra ES harmless from and against any claims, costs, or damages arising out of or related to a violation of California Public Resources Code §26235(c), viz., the "sole source" prohibition of Proposition 39. This provision will survive the termination of this Contract.

SECTION 18. WAIVER OF LIENS

Upon request from Customer, OpTerra ES shall provide Customer with Progress Payment Waivers and Releases for Work OpTerra ES has been paid up to that date. Upon receipt by OpTerra ES of final payment for the Work (including payment of any retentions), OpTerra ES will provide Customer with a Final, Unconditional Waiver and Release.

SECTION 19. TERMINATION

Section 19.1 Termination for Cause. If there is an Event of Default by either Party under this Contract, pursuant to the provisions of Section 12 unless such Event of Default has been cured within the applicable time periods for a cure set forth in such Section 12 in addition to the remedies provided for in Section 13 the non-defaulting Party may terminate this Contract by providing three (3) business days' notice to the defaulting Party in the case of a monetary default and ten (10) business days' notice to the defaulting Party in the case of a non-monetary default. Upon termination of this Contract, each Party shall promptly return to the other all papers, materials, and property of the other held by such Party in connection herewith. Each Party shall also assist the other in the orderly termination of this Contract and the transfer of all aspects hereof, tangible and intangible, as may be necessary for the orderly, non-disrupted business continuation of each Party. If the Contract is so terminated, OpTerra ES shall be entitled to payment for Work satisfactorily performed, earned profit and overhead, and costs incurred in accordance with this Contract up to the date of termination.

Section 19.2 Termination for Convenience. Both OpTerra ES and Customer have the right to terminate this Contract upon mutual written agreement by both Parties hereto. If the Contract is so terminated by mutual agreement, OpTerra ES shall be entitled to payment for all Work performed, earned profit and overhead, and costs incurred in accordance with this Contract up to the date of termination.

SECTION 20. CONSTRUCTION OF CONTRACT

This Contract is the result of arms-length negotiations between two sophisticated parties and ambiguities or uncertainties in it shall not be construed for or against either Party, but shall be construed in a manner that most accurately reflects the intent of the Parties when such Contract was executed. Each of the Parties acknowledges and agrees that neither Party has provided the other any legal, accounting, regulatory, financial or tax advice with respect to any of the transactions contemplated hereby, and each Party has consulted its own legal, accounting, regulatory, financial and tax advisors to the extent it has deemed appropriate.

SECTION 21. BINDING EFFECT

Except as otherwise provided herein, the terms and provisions of this Contract shall apply to, be binding upon, and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and permitted assigns.

SECTION 22. INDEPENDENT CONTRACTOR

The Parties hereto agree that OpTerra ES, and any agents and employees of OpTerra ES, its subcontractors and/or consultants, in the performance of this Contract, shall act in an independent capacity and not as officers, employees, or agents of Customer.

SECTION 23. NO WAIVER

The failure of OpTerra ES or Customer to insist upon the strict performance of the terms and conditions of this Contract shall not constitute or be construed as a waiver or relinquishment of either Party's right to thereafter enforce the same in accordance with this Contract in the event of a continuing or subsequent default on the part of OpTerra ES or Customer.

SECTION 24. SEVERABILITY

In the event that any clause or provision of this Contract or any part thereof becomes or shall be declared by a court of competent jurisdiction invalid, illegal, void, or unenforceable, this Contract shall continue in full force and effect without said provisions, provided that no such severability shall be effective if it materially changes the benefits or obligations of either Party hereunder.

SECTION 25. APPLICABLE LAW

This Contract and the construction and enforceability thereof shall be interpreted under the laws of the State of California. The Parties consent to personal jurisdiction and venue of the State and Federal Courts within the City and County of San Francisco, California, and, by execution and delivery of this Contract, each of the Parties hereby (i) accepts the jurisdiction of the foregoing courts for purposes of enforcement of any such arbitral award and (ii) irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venues of any suit, action or proceedings with respect hereto brought in any such court, and further irrevocably waives to the fullest extent permitted by law any claim that any such suit, action or proceedings brought in any such court has been brought in an inconvenient forum.

SECTION 26. NOTICE

Any notice required or permitted hereunder shall be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice.

TO OPTERRA ES: OpTerra Energy Services
500 Twelfth Street, Suite 300
Oakland, CA 94607
Tel: 415-733-4500
Attention: Steven Ramirez, Senior Project Manager

With a COPY TO: Legal Department
OpTerra Energy Services
150 East Colorado Boulevard, Suite 360
Pasadena, CA 91105
Tel: 626-377-4948
Attention: Contract Administrator

TO CUSTOMER: South San Francisco Unified School District
398 "B" Street
South San Francisco, CA 94080-4423
Tel: (650) 877-8702
Fax: (650) 866-4719
Attention:

SECTION 27. HEADINGS

Headings and subtitles used throughout this Contract are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

SECTION 28. CONFLICTS OF INTEREST

Conflicts of interest relating to this Contract are strictly prohibited. Except as otherwise expressly provided herein, no Party nor any director, employee or agent of any Party shall give to or receive from any director, employee or agent of any other Party any gift, entertainment or other favor of significant value, or any commission, fee or rebate in connection with this Contract. Likewise, no Party nor any director, employee or agent of any Party, shall without prior notification thereof to all Parties enter into any business relationship with any director, employee or agent of another Party or of any Affiliate of another Party, unless such person is acting for and on behalf of the other Party or any such Affiliate. A Party shall promptly notify the other Parties of any violation of this section and any consideration received as a result of such violation shall be paid over or credited to the Party against whom it was charged. Any representative of any Party, authorized by that Party, may audit the records of the other Parties related to this Contract, including the expense records of the Party's employees involved in this Contract, upon reasonable notice and during regular business hours, for the sole purpose of determining whether there has been compliance with this Section.

SECTION 29. CREDITWORTHINESS

If, at any time, Customer's credit rating falls below investment grade as defined by Moody's Investors Services (or other nationally-recognized independent rating agency), Customer agrees to provide OpTerra ES with current information regarding its creditworthiness upon the request of OpTerra ES. At its sole option, OpTerra ES may then require Customer to provide security satisfactory to OpTerra ES, and the Work may be withheld until such security is received. If Customer deposits the contract amount into a third-party escrow account with an escrow agent and agreement acceptable to OpTerra ES, then the terms of this paragraph are not applicable.

SECTION 30. GREENHOUSE GAS REDUCTIONS

As authorized by Section 1605(b) of the Energy Policy Act of 1992 (42 U.S.C. 13385(B)) the U.S. Department of Energy has issued, and may issue in the future, guidelines for the voluntary reporting of Greenhouse Gas emissions ("DOE Guidelines"). "Greenhouse Gases" shall mean those gases and other particles as defined in the DOE Guidelines. Customer hereby assigns and transfers to OpTerra ES, and its affiliates and assigns, any Greenhouse Gas emission reduction credits that result from the Work under this Contract.

SECTION 31. MUNICIPAL ADVISOR; AMERICAN RECOVERY AND REINVESTMENT ACT

In the event Customer is using American Recovery and Reinvestment Act ("ARRA") funding, in whole or in part, to pay for the Scope of Work set forth in this Contract, Customer acknowledges and agrees that the supplies and services hereunder are being procured and purchased under state or local procurement laws and OpTerra ES is a vendor hereunder. As such, Customer agrees that OpTerra ES is not a recipient, subrecipient, awardee, or subawardee of ARRA funds hereunder. In the event that after Contract execution the awarding agency or a court of proper jurisdiction determines that OpTerra ES is a recipient, subrecipient, awardee, or subawardee under the ARRA funded grant rather than a vendor, OpTerra ES reserves the right to terminate this Contract at its discretion pursuant to the termination for convenience provision set forth in the Contract. Customer agrees to release, defend, indemnify, and hold OpTerra ES harmless from and against any claims, costs, or damages arising out of or related to such a determination notwithstanding any other provisions in the Contract.

THE PARTIES ACKNOWLEDGE AND AGREE THAT OPTERRA ES IS NOT A MUNICIPAL ADVISOR AND CANNOT GIVE ADVICE TO CUSTOMER WITH RESPECT TO MUNICIPAL SECURITIES OR MUNICIPAL FINANCIAL PRODUCTS ABSENT CUSTOMER BEING REPRESENTED BY, AND RELYING UPON THE ADVICE OF, AN INDEPENDENT REGISTERED MUNICIPAL ADVISOR. OPTERRA ES IS NOT SUBJECT TO A FIDUCIARY DUTY WITH REGARD TO CUSTOMER OR THE PROVISION OF INFORMATION TO CUSTOMER. CUSTOMER WILL CONSULT WITH AN INDEPENDENT REGISTERED MUNICIPAL ADVISOR ABOUT THE FINANCING OPTION APPROPRIATE FOR CUSTOMER'S SITUATION.

THE PARTIES ACKNOWLEDGE AND AGREE THAT OPTERRA ES CANNOT GIVE LEGAL ADVICE TO CUSTOMER REGARDING COMPLIANCE WITH CALIFORNIA PUBLIC RESOURCES CODE §26235(C). CUSTOMER SHOULD CONSULT ITS OWN LEGAL COUNSEL.

SECTION 32. TRADE SECRETS

If any materials or information provided by OpTerra ES to Customer under this Contract are designated by OpTerra ES as a "trade secret" or otherwise designated by OpTerra ES as exempt from disclosure under the Public Records Act (California Government Code Section 6250 et seq., the "Act") and in the event a third party makes a request for disclosure of the materials under the Act, as soon as practical (but not later than five (5) calendar days) after receipt of such request, Customer shall notify OpTerra ES of such request and advise OpTerra ES whether Customer believes that there is a reasonable possibility that the materials may not be exempt from disclosure. Within ten (10) calendar days of a third party's request for disclosure of materials under the Act, OpTerra ES shall (i) authorize Customer to release the documents or information sought; or (ii) if OpTerra ES reasonably believes that the information is exempt from disclosure, advise Customer not to release the materials.

SECTION 32. CONSENTS; COOPERATION

Whenever a Party's consent, approval, satisfaction, or determination will be required or permitted under this Contract, and this Contract does not expressly state that the Party may act in its sole discretion, such consent, approval, satisfaction, or determination will not be unreasonably withheld, qualified, conditioned, or delayed, whether or not such a "reasonableness" standard is expressly stated in this Contract. Whenever a Party's cooperation is required for the other Party to carry out its obligations hereunder, each Party agrees that it will act in good faith and reasonably in so cooperating with the other Party or its designated representatives or assignees or subcontractors. Each Party will furnish decisions, information, and approvals required by this Contract in a timely manner so as not to delay the other Party's performance under this Contract.

ATTACHMENT B DESIGN/BUILD TERMS AND CONDITIONS

ARTICLE 1. DEFINITIONS

For purposes of the Energy Services Contract, and its Attachments, the defined terms herein shall have the meaning set forth as follows:

1. **Applicable Laws:** "Applicable Laws" shall mean all laws, building codes, rules, regulations, or orders of any federal, state, county, local, or other governmental body, agency, or other authority having jurisdiction over the performance of the Work, as may be in effect at the time the Work is undertaken.
2. **Applicable Permits:** "Applicable Permits" shall mean all permits, waivers, authorizations, or licenses issued or required to be issued by any federal, state, county, local, or other governmental body, agency, or other authority having jurisdiction over the performance of the Work, as may be in effect at the time the Work is undertaken.
3. **Beneficial Use:** "Beneficial Use" shall mean when major new equipment and systems included in the Scope of Work are properly installed, inspected, operational, and are being used for their intended purpose. A Certificate of Beneficial Use, which identifies when Customer took Beneficial Use of the Work, shall be prepared and issued by OpTerra ES to the Customer and Subcontractor. Beneficial Use of equipment/systems criteria shall be established as defined in Attachment D, "Scope of Work" attached hereto.
4. **Change:** "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 Work that is specified by the Contract. An unforeseen condition experienced by OpTerra ES during the course of the Work is included within the definition of "Change".
5. **Change Order:** "Change Order" shall mean a written document signed by both OpTerra ES and the Customer that authorizes OpTerra ES to perform a change and/or modification to the Scope of Work. The Change Order shall modify the Scope of Work and shall identify: (1) the change and/or modification to the Scope of Work; (2) any additional compensation to be paid to OpTerra ES to perform such change and/or modification; and (3) any extensions of Time to the Project Schedule to perform such change and/or modification.
6. **Construction:** "Construction" shall mean any Work to be performed that involves any and all construction, alteration, repair, installation or removal of equipment, addition to, subtraction from, improving, moving, wrecking or demolishing any building, parking facility, excavation, or other structure or improvement, or any part thereof.
7. **Construction Documents:** "Construction Documents" shall mean the final designs, drawings, and specifications that are used for construction, and any Change Orders affecting those documents, that describe the technical requirements for the installation of all the materials and equipment pursuant to the Contract and its Attachments.
8. **Contract:** "Contract" shall mean the Contract and all Attachments attached thereto which are incorporated therein, as it may be amended or modified from time to time in accordance with the provisions thereof.
9. **Contract Amount:** "Contract Amount" shall mean the amount of compensation, exclusive of [_____], that shall be paid by Customer to OpTerra ES for performing the Work in accordance with the Scope of Work, attached hereto as Attachment D.
10. **Contract Term:** The "Contract Term" shall commence on the Contract Effective Date and end on the last day of the Energy Savings Term, unless terminated earlier.
11. **Contract Documents:** "Contract Documents" shall mean the Energy Services Contract, its Attachments, Construction Documents, Change Orders, and any amendments thereto.
12. **Contract Effective Date:** "Contract Effective Date" means the date first set forth above.
13. **Excusable Delay:** "Excusable Delay" shall mean OpTerra ES shall be entitled to an extension of Time and/or additional compensation caused by an Excusable Delay that shall be defined as (1) by an act or failure to act of, or other delay caused by, Customer or its agents or employees; (2) by failures of any governmental authorities to make timely inspection of the Work or by unanticipated efforts necessary to secure governmental approvals for the Project; (3) by delays resulting from the securing of permits for the Work; (4) by labor disputes, fire, vandalism, delay in manufacturing and deliveries; (5) by adverse weather conditions not reasonably anticipated; (6) by unforeseen site conditions, including discovery or existence of Hazardous Substances; (7) by unavoidable casualties or other causes beyond OpTerra ES's control; (8) by delays caused by processing Change Orders requested by or agreed to by Customer, or resulting from the implementation of any Change Order; or (9) by delay caused by pending arbitration, or (10) any other cause outside OpTerra ES's control.
14. **Final Completion:** "Final Completion" shall mean when 100% of the engineering and construction Work as identified in the Scope of Work has been completed, including completion of all required training, and delivery to the Customer of the final close-out documentation (as-built drawings, O&M Manuals, warranty documentation and final DSA submittal). Administrative closeout by the DSA (Division of State Architects) is not a condition to achieving Final Completion. A Certificate of Final Completion may be executed for an individual subcontract, a specific building, site, or a portion of the Work. A Certificate of Final Completion will be executed at the Final Completion of the entire Work.
15. **Force Majeure:** "Force Majeure" shall mean those events caused beyond the control of the affected Party and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which it has been unable to overcome, including acts of God and the public enemy; relocation or construction of transmission facilities or the shutdown of such facilities for the purpose of necessary repairs; work by local Utility; flood, earthquake, tornado, storm, fire; civil disobedience, labor disputes, strikes, labor or material shortages, delay in manufacturing and deliveries of equipment; sabotage; restraint by court order or public authority (whether valid or

invalid), and/or inability to obtain or keep in force the necessary governmental authorizations, permits, licenses, certificates or approvals if not caused by the fault of the Party asserting the Force Majeure.

16. **Hazardous Substances:** "Hazardous Substances" shall mean any hazardous, toxic, or dangerous wastes, substances, chemicals, constituents, contaminants, pollutants, and materials and any other carcinogenic, liquids, corrosive, ignitable, radioactive, reactive, toxic, or otherwise hazardous substances or mixtures (whether solids, liquids, gases) now or at any time subject to regulation, control, remediation, or otherwise addressed under Applicable Laws; (i) any "hazardous substance" as defined by the Resource, Conservation and Recovery Act of 1976 (42 United States Code ("U.S.C."), Section 6901 et seq.), as amended, and regulations promulgated thereunder; (ii) any "hazardous, toxic or dangerous waste, substance or material" specifically defined as such in U.S.C. Section 9601 et seq.), as amended and regulations promulgated thereunder; and (iii) any hazardous, toxic or dangerous waste, substance, or material as defined in any so-called "superfund" or "superlien" law.
17. **Installation:** "Installation" shall mean the setting up, construction, and placement of any equipment or materials in the manner it will be operated, in accordance with the Scope of Work and in accordance with all Applicable Laws.
18. **Interest:** "Interest" shall mean interest calculated at the lesser of the per annum rate of interest announced from time to time by Citibank, at its "prime" rate for commercial loans plus two percent (2%) or the maximum rate permitted by Applicable Laws.
19. **Losses:** "Losses" shall mean claims, actions, damages, losses, liabilities, costs, and/or expenses including reasonable attorney's fees.
20. **Material Changed Condition:** "Material Changed Condition" shall mean one or more of the following conditions that impact the Project Schedule and/or the Contract Amount: (i) parties outside the control of OpTerra ES caused delays in Project Schedule; (ii) the discovery of differing and unexpected site conditions not previously disclosed by Customer and could not have been readily discoverable by OpTerra ES prior to start of Work; (iii) the discovery of Hazardous Substances not previously disclosed; (iv) adverse weather conditions not reasonably anticipated; (v) delay in equipment and material deliveries outside OpTerra ES's control; and (vi) any other condition that could not have been reasonably anticipated by the Parties and is outside OpTerra ES's control.
21. **Party or Parties:** "Party" or "Parties" shall mean OpTerra ES, Customer, each or both of them, as the context may require pursuant to the terms and conditions of the Contract.
22. **Project:** "Project" shall mean the entirety of Work to be performed by OpTerra ES pursuant to the terms and conditions of the Scope of Work, and any Change Orders, as well as all efforts of Customer, and other entities, all as an integrated whole.
23. **Project Location:** "Project Location" shall mean that area or areas where the Project materials and equipment and any other energy related equipment as described in the Scope of Work shall be performed and/or installed.
24. **Scope of Work:** "Scope of Work" shall mean the Work to be performed hereunder by OpTerra ES, and/or OpTerra ES's subcontractors, pursuant to the Scope of Work (as amended by Change orders), attached hereto as Attachment D, and in accordance with the terms and conditions of the Contract and its Attachments, as amended.
25. **Substantial Completion:** "Substantial Completion" shall mean the stage in the progress of the Work or portion of the Work, where the Work or portion of the Work is sufficiently complete in accordance with the Contract Documents so that Customer can utilize and take beneficial use of the Work for its intended use or purpose. A Certificate of Substantial Completion may be executed for an individual subcontract, a specific building, a portion of the Work, or the entire Work.
26. **Time:** "Time" shall mean the time period within which OpTerra ES shall complete the Work in accordance with the Project Schedule.
27. **Work:** "Work" shall mean the design, procurement, installation and/or construction required for the Project and includes all labor necessary to produce such services, all materials, fabrication, assemblies, and equipment incorporated or to be incorporated in such construction necessary to achieve Final Completion of the Project, including such materials and equipment which may be consumed or use but not actually incorporated in such construction. The Work may include design, supplying, installing, constructing, maintaining, operating, and warranting certain materials and equipment, and providing any other energy-related services specified in the Scope of Work.

ARTICLE 2. PROJECT IMPLEMENTATION - GENERAL

1. **Project Meetings/Status Updates.** During the Design and Construction Phases of the Project, OpTerra ES will meet with Customer to review equipment, scope of work, and installation plans that relate to the design and construction of the Project. Also during the course of the Work, OpTerra ES will periodically provide reports to the Customer of the general status and progress of the Work.
2. **Project Location Access.** Customer hereby grants to OpTerra ES, without cost to OpTerra ES, all rights of ingress and egress at the Project Location identified in the Scope of Work, necessary for OpTerra ES to perform all Work and provide all services contemplated by the Contract and the Scope of Work. OpTerra ES shall provide 24 hour advanced notice to Customer for access to any Customer Facilities.
3. **Project Schedule.** The Project Schedule attached hereto as Attachment E, "Project Schedule", is a preliminary, estimated Project Schedule. During the course of Project implementation, both the Customer and OpTerra ES shall perform their respective obligations in an expeditious manner that is consistent with reasonable skill and care for the type of project described in the Scope of Work and in keeping with the orderly progress of the Work pursuant to the terms of the Scope of Work. The estimated Project Schedule will be finalized during the completion of the Construction Documents, provided that such Final Schedule will be subject to amendment and revision to take into account any Excusable Delays (as defined herein). Subject to any such Excusable Delays, OpTerra ES and its subcontractors shall work diligently to implement the Project in accordance with the Project Schedule and OpTerra ES shall notify Customer regarding any and all revisions to the Project Schedule necessitated by such delay.

4. **Education Code Section 45125.** OpTerra ES will comply with the requirements of California Education Code Section 45125.2 with respect to all of its employees and all of its subcontractors' employees who may have contact (other than limited contact) with District pupils in the course of providing Services pursuant to the Contract.

ARTICLE 3. FINAL DESIGN PHASE – CONSTRUCTION DOCUMENTS / EQUIPMENT PROCUREMENT.

1. General Provisions.

- (a) As soon as possible after the Contract Effective Date, OpTerra ES will proceed with the preparation of any necessary designs, drawings, and specifications related to the Scope of Work identified in Attachment D.
- (b) Upon the issuance of the Notice to Proceed and upon completion of the design phase, OpTerra ES shall order the equipment identified in the Scope of Work, and any other necessary materials and supplies in order to meet the Project Schedule.
- (c) Customer shall designate a single-point representative with whom OpTerra ES shall consult on a reasonable, regular basis and who is authorized to act on Customer's behalf with respect to the Project design. Customer's representative shall render decisions in a timely manner with regard to any documents submitted by OpTerra ES and to other requests made by OpTerra ES in order to avoid unreasonable delay in the orderly and sequential progress of OpTerra ES's design services.
- (d) Within ten (10) business days of OpTerra ES's request, Customer shall:
 - 1) furnish all surveys or other information in Customer's possession that describe the physical characteristics, legal limitations, and utility locations in and around the Project Location;
 - 2) disclose any prior environmental review documentation and all known information in its possession concerning subsurface conditions, including without limitation the existence of any known Hazardous Substances, in or around the general area of the Project Location where the Work will be performed pursuant to the Scope of Work;
 - 3) supply OpTerra ES with all relevant information in Customer's possession, including any as-built drawings and photographs, of prior construction undertaken in the general area where the Work will be performed pursuant to the Scope of Work; and
 - 4) obtain 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 Project Location site essential to the execution of the Work.
- (e) All information furnished pursuant to this section shall be supplied at Customer's expense, and OpTerra ES is entitled to rely upon the accuracy and completeness of all information provided. Customer acknowledges that any failure to provide the information specified in subsection (d) above to OpTerra ES may result in an Excusable Delay as defined herein.
- (f) In the event that any information is disclosed under this section that constitutes a Change to the Work and/or is a Material Changed Condition, OpTerra ES will provide notice to Customer within ten (10) business days after receipt of this information, and the parties will meet and confer with respect to those Changes. If Customer authorizes a Change Order, OpTerra ES shall be compensated, and receive an extension of Time for performance, if necessary, to perform the additional Work in accordance with Terms and Conditions. If the parties are unable to agree on whether Customer's disclosed information constitutes a Change to the Work or a Material Changed Condition, those disputes shall be resolved in accordance with Section 16 of Attachment A of the Contract.
- (g) OpTerra ES contemplates that it will not encounter any Hazardous Substances at the Project Location, except as has been disclosed as a Pre-Existing Condition by the Customer prior to the execution of the Contract. However, any disclosure of Hazardous Substances that will affect the performance of the Work after the execution of the Contract shall constitute a valid basis for a Change Order pursuant to these Terms and Conditions.
- (h) Customer agrees that for the Work on the Project hereunder, OpTerra ES shall be the "designer" as that term is identified in the Energy Policy Act of 2005, and OpTerra ES shall have the exclusive right to report to any federal, state, or local agency, authority or other party, including without limitation under Section 179(b) of the Energy Policy Act of 2005, any tax benefit associated with the Work. Upon Final Completion, Customer agrees to execute a Written Allocation including a Declaration related to Section 179D of the Internal Revenue Code. OpTerra ES will prepare the Declaration and all accompanying documentation. OpTerra ES will be designated the Section 179D beneficiary.
- (i) Prior to issuing the Notice to Proceed, Customer must register the Project with the California Department of Industrial Relations, using Form PWC-100.

2. Review of Construction Documents.

- (a) OpTerra ES will prepare and submit all designs, drawings, and specifications to the Customer for review. Customer shall review the documents and provide any comments in writing to OpTerra ES within ten (10) business days after receipt of documents. OpTerra ES will incorporate appropriate Customer comments into the final designs, drawings, and specifications, as applicable. The terms and conditions of any permit approvals required for the Project will be provided. OpTerra ES reserves the right to issue the designs, drawings, and specifications in phases to allow the construction to be performed in phases. If Customer fails to provide written comments within the ten (10) business day period, Customer shall be deemed to have no comments regarding the documents.

3. **Permits and Approvals.** The respective obligations of the Parties in obtaining permits and approvals are as specified in Section 6 of Attachment A of the Contract. Customer shall agree to any nonmaterial changes to the designs, drawings, and specifications required by any governmental authority having jurisdiction over the Work. The Contract Amount provided for in the Scope of Work shall be increased by any additional cost incurred by OpTerra ES due to a change required by a governmental authority and the time required to complete the Work pursuant to the Project Schedule will be increased by the number of additional days required to complete the Work because of a governmentally imposed change in the Project.

5. **Changes During Final Design Phase.** If during the design phase Customer requests changes and/or modifications to the Work identified in the Scope of Work and/or there are Material Changed Conditions, as defined in Article 1 above, Customer shall be responsible for payment of the extra costs caused by such modifications and/or changes. Valid bases for additional compensation and/or Time extension include, but are not limited to: (i) Customer requests changes and/or modifications to the Project Scope of Work during the Project Design Phase; (ii) Customer caused delays during OpTerra ES's design work; (iii) the discovery of subsurface or other site conditions that were not reasonably anticipated or disclosed as of the Contract Effective Date; (iv) the discovery of Hazardous Substances at or impacting the Project Location; (v) changes to the Scope of Work required to obtain certain permits; (vi) damage to any equipment or other Work installed by OpTerra ES caused by the act or omission of Customer, its agents or employees; (vii) changes and/or modifications to Scope of Work ordered by any governmental authority having jurisdiction over the Project; and (viii) any other condition that would not reasonably have been anticipated by OpTerra ES that modifies and/or changes the Scope of Work that increases the agreed upon Contract Amount or increases in the Time needed to complete the Work identified in the Scope of Work.
6. **Unconcealed Site Conditions.** OpTerra ES will use commercially reasonable efforts to identify unconcealed conditions specific to the Scope of Work in the areas within which OpTerra ES is working during the design phase and notify the Customer of any conditions as to which mitigation is required by law, code or regulation. The Customer will provide mitigation prior to OpTerra ES construction, which mitigation shall constitute an Excusable Delay. OpTerra ES will have no duty to notify the Customer of conditions to be mitigated which are not required by law, code or regulation. OpTerra ES assumes no responsibility for mitigation of those items identified to the Customer, nor does OpTerra ES warrant that the items identified are a comprehensive list of all possible substandard conditions.

ARTICLE 4. CONSTRUCTION PHASE.

1. **General Provisions.** Upon securing necessary permits, pursuant to Section 6 of Attachment A of the Contract, and final approval of Final Construction Documents by Customer, OpTerra ES will commence the construction of the Project in accordance with the Final Construction Documents. The construction will be performed by OpTerra ES and/or one or more licensed subcontractors qualified to perform the Work. The construction will be performed in accordance with all Applicable Laws and Applicable Permits. Delay by DSA in approving OpTerra ES's Construction Documents for reasons attributable to Customer, such as open A numbers, that prevents OpTerra ES from proceeding with Construction, will constitute a valid basis for a Change Order. OpTerra ES will also be compensated, and receive an extension of time for performance, if necessary, to the extent expressed in the relevant Change Order.
2. **OpTerra ES's Responsibilities During Construction Phase.**
 - (a) As an independent contractor to Customer, OpTerra ES will be responsible for providing, or causing to be provided by OpTerra ES's subcontractor(s), all labor, materials, equipment, tools, transportation, and other facilities and services necessary for the proper execution, construction, and completion of the Work as defined in the Scope of Work and any Change Orders. OpTerra ES is hereby required to purchase in advance all necessary materials and supplies for the construction of the Project in order to assure the prompt and timely delivery of the completed Work pursuant to the Project Schedule. OpTerra ES will also be responsible for all means, methods, techniques, sequences, and procedures employed for the construction required by the final Construction Documents.
 - (b) OpTerra ES will make all reasonable efforts to coordinate construction activities and perform the Work to minimize disruption to Customer's operations at the Project Location. OpTerra ES will provide at least thirty (30) calendar days written notice to Customer of any planned power outages that will be necessary for the construction. OpTerra ES will cooperate with Customer in scheduling such outages, and Customer agrees to provide its reasonable approval of any scheduled outage.
 - (c) OpTerra ES will be responsible for initiating and maintaining safety precautions and programs in connection with its construction of the Project. OpTerra ES will take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to: (1) employees of OpTerra ES and subcontractors performing Work under this Contract; (2) OpTerra ES's property and other materials to be incorporated for the Project, under the care, custody, and control of OpTerra ES or its subcontractors; and (3) other property at or adjacent to the Project Location not designated for removal, relocation, or replacement during the course of construction. OpTerra ES shall provide temporary fencing as required for the parking canopy and ground mount PV installation areas. OpTerra ES will not be responsible for Customer's employees' safety unless OpTerra ES's negligence in the performance of its Work is the proximate cause of the employee's injury.
 - (d) Based on the final Construction Documents, OpTerra ES will obtain required building permits for Project Construction. Customer will cooperate with OpTerra ES in securing such permits.
 - (e) OpTerra ES will maintain in good order at the Project Location copies of the Scope of Work, all Change Orders, the Contract (with all Attachments), one record copy of all drawings, specifications, product data, samples, manufacturer's operation & maintenance manuals, and other pertinent construction-related documents.
 - (f) **Systems Startup and Equipment Commissioning.** OpTerra ES shall provide notice to Customer of any scheduled test(s) of installed equipment, and Customer and/or its designees shall have the right to be present at any or all such tests conducted by OpTerra ES, any subcontractor, and/or manufacturers of the equipment. OpTerra ES shall be responsible for correcting and/or adjusting all deficiencies in systems and equipment operations that OpTerra ES provided and installed that may be observed during equipment commissioning procedures.
 - (g) The following duties shall be performed by OpTerra ES:
 - Organize and conduct a pre-construction meeting with the Customer and each subcontractor.
 - Organize and conduct regularly scheduled progress meetings throughout the installation period.
 - Schedule and manage all subcontractors and related work.
 - Provide the Customer a single point of contact and responsibility of all work related to the project.
 - Investigate and resolve design, construction, and field issues as they arise during the project

- Coordinate on-site work, and schedule accordingly with Customer.
- Perform progress inspections throughout the installation period. Provide the Customer and Subcontractor with results of findings.
- Identify any existing Customer equipment that is found during implementation of the work not to be functioning properly, and notify in writing to Customer.
- Provide regular status reports to the Customer.
- When appropriate, initiate a thorough inspection of the work with the Customer and Subcontractor to obtain substantial completion.
- Check, test, and start-up each item of equipment.
- Perform a point-by-point hardware commissioning of the OpTerra ES installed energy management system. Identify any EMS items that are not functioning properly, and include on the punch list.
- Identify any existing Customer equipment that is found during EMS commissioning not to be functioning properly, and notify in writing to Customer.
- Perform a complete software/programming commissioning of the energy management system. Identify any EMS items that are not programmed per specification, and include on the punch list.
- With the Customer and Subcontractor, perform final inspection of the Work.
- Review subcontractor invoices and authorize payment as appropriate.
- Obtain/prepare final as-built documentation for the project, and deliver to the Customer. Documentation shall include O&M manuals as appropriate, warranty information, and as-built drawings and related information.
- Obtain a certificate of final completion, signed by the Customer, Subcontractor, and OpTerra ES.

3. Customer's Responsibilities During Construction Phase.

- (a) Customer shall designate a single-point representative authorized to act on Customer's behalf with respect to Project construction and/or equipment installation. Customer may from time to time change the designated representative and shall provide notice to OpTerra ES of such change. Any independent review of the construction shall be undertaken at Customer's sole expense, and it shall be performed in a timely manner so as to not unreasonably delay the orderly progress of OpTerra ES's Work. Any independent review of the construction by Customer shall not relieve OpTerra ES of any of its obligations or responsibilities hereunder.
- (b) Customer shall provide temporary staging areas for OpTerra ES, or its subcontractors, to use during the construction phase to store and assemble equipment for completion of the Work, if needed. Customer and OpTerra ES will meet and confer at the beginning of the construction phase to discuss OpTerra ES's requirements for staging and to develop a mutually acceptable plan at each campus and at the District Office parking lot.
- (c) Customer shall remain responsible for the maintenance of the portion of the Project Location that is not directly affected by OpTerra ES's Work. OpTerra ES will perform daily clean up of the designated Project Location and staging area for the Project at the end of each working day. The Customer shall keep the designated Project Location and staging area for the Project free of obstructions, waste, and materials within the control of Customer.
- (d) Customer shall be solely responsible for obtaining any required environmental clearance from and any special permits required by any federal, state, and local jurisdictions prior to scheduled construction start date.
- (e) Customer shall be responsible for the preparation of the designated Project Location site for construction, as follows:
 - Customer will shut down all computers, remove any refrigerated contents, and secure the fire alarm system and security alarm systems during electrical shut downs.
 - Customer will ensure that only authorized personnel have access to the campus areas while fire/life systems are in shutdown mode.
 - OpTerra ES will notify Customer of any Customer assets that need to be moved to facilitate work being done.
 - Should underground obstructions be located during construction that could not be detected using reasonable means, standards and records, OpTerra ES will notify the Customer of the issue and request further direction from the Customer.
 - Only vegetation that conflicts with the installation and operation of the PV systems will be removed by OpTerra ES. All other changes will be the responsibility of the Customer. OpTerra ES will be responsible for removing the trees circled in red in the PV aerial layouts. OpTerra ES will use commercially reasonable efforts to avoid existing Customer utility lines and pipes.
 - OpTerra ES will work with the Customer to salvage any materials the Customer wishes to retain. It is the Customer's responsibility to load, transport and store all salvaged materials.
- (f) Customer shall be solely responsible for the removal of any Hazardous Substances either known to Customer prior to the commencement of the Work or encountered by OpTerra ES during the construction of the Project, if necessary in order for the Work to progress safely, that was not knowingly released or brought to the site by OpTerra ES. OpTerra ES will respond to the discovery of Hazardous Substances at or around the Project Location during the course of OpTerra ES's construction in accordance with Section 6, "Hazardous Substances", below.
- (g) Customer shall coordinate the Work to be performed by OpTerra ES with its own operations and with any other construction project that is ongoing at or around the Project Location, with the exception that OpTerra ES will coordinate the Interconnection Facilities work, if any, that will be performed by the local utility.
- (h) Customer shall allow OpTerra ES and its Subcontractors access to and reasonable use of necessary quantities of Customer's water and other utilities, including electrical power, as needed for the construction of the Work, at no extra cost to OpTerra ES.

- (i) Customer will provide OpTerra ES and/or its Subcontractors with reasonable access to the Project Location to perform the Work, including without limitation and at no extra cost to OpTerra ES, access to perform Work on Saturdays, Sundays, legal holidays, and non-regular working hours.
- (j) The Customer shall also do the following:
 - Attend the regularly scheduled progress meetings. Participate as needed regarding scheduling of work.
 - When appropriate, participate in the job inspection walk-through with OpTerra ES and the subcontractor to determine Substantial Completion or beneficial use of major equipment. Sign the Certificate of Substantial Completion, as appropriate.
 - Perform a final walk-through of the project. Upon receipt of the O&M Manuals and as-built drawings, sign the Certificate of Final Completion for the related Work.
 - The Customer is encouraged to provide a staff member(s) (HVAC technician, etc.) to accompany OpTerra ES during the EMS Commissioning. This is an excellent opportunity to learn in-depth the operation and installation of the EMS.
 - Provide knowledgeable staff to participate in the training programs, which will be scheduled in advance for proper coordination.
 - Upon the completion of the entire Scope of Work as listed in Attachment D, including training, and close-out documents, sign a Certificate of Final Completion for Entire Implementation Project.

4. Changes During Construction.

- (a) Change Orders Generally. Changes and/or modifications to the Scope of Work shall be authorized by a written Change Order signed by both Customer and OpTerra ES. The Change Order shall state the change and/or modification to the Scope of Work, any additional compensation to be paid, or extension of Time, if needed, to OpTerra ES to perform such change and/or modification. OpTerra ES may, at its election, suspend performance of that portion of the Work affected by any proposed Change Order until an agreement has been reached with the Customer regarding the Change Order. OpTerra ES will use its reasonable efforts to continue other portions of the Work not affected or impacted by such proposed Change Order until such time as the Change Order is resolved. In addition, if Customer requests a proposal from OpTerra ES for a change to the Scope of Work and Customer subsequently elects to not proceed with such change, Customer agrees that a Change Order shall be issued to reimburse OpTerra ES for any costs reasonably incurred for estimating services, design services, and/or preparation of the proposal requested by the Customer.
- (b) Change Orders Requiring Additional Compensation. If during construction Customer requests changes and/or modifications to the Work identified in the Scope of Work, there are Excusable Delays, and/or there are Material Changed Conditions, as defined in Article 1 above, Customer shall be responsible for payment of the extra costs caused by such modifications and/or changes and OpTerra ES shall be entitled to additional compensation for the following reasons, that include, but are not limited to: (1) Customer requests changes and/or modifications to the Project Scope of Work during the construction phase of the Project; (2) Customer caused delays during OpTerra ES's construction work; (3) discovery of subsurface or other site conditions that were not reasonably anticipated or disclosed prior to the commencement of the Work; (4) discovery of Hazardous Substances at or impacting the Project Location; (5) changes and/or modifications to the Scope of Work required to obtain required permits and approvals as required by any governmental authority having jurisdiction over the project; (6) damage to any equipment or other Work installed by OpTerra ES caused by the act or omission of Customer, its agents or employees; (7) changes and/or modifications to Scope of Work ordered by any governmental authority having jurisdiction over the Project; and (8) any other condition that would not reasonably have been anticipated by OpTerra ES that modifies and/or changes the Scope of Work agreed upon in the Scope of Work that increases the agreed upon Contract Amount identified in the Scope of Work.
- (c) Change Orders Requiring Additional Time / Excusable Delays. If during construction Customer requests changes and/or modifications to the Work identified in the Scope of Work and/or there are Material Changed Conditions, as defined in Article 1 above, the parties agree that a reasonable extension of Time to the Project Schedule may be necessary to perform such modifications and/or changes. In addition, if OpTerra ES is delayed at any time in the progress of the Work for any reason beyond its control, including, but not limited to, any of the following (each defined as an "Excusable Delay"): (1) by an act or failure to act of, or other delay caused by, Customer or its agents or employees; (2) by failures of any governmental authorities to make timely inspection of the Work or by unanticipated efforts necessary to secure governmental approvals for the Project; (3) by delays resulting from the securing of permits for the Work; (4) delays caused by changes and/or modifications to the Scope of Work as required by any governmental authority having jurisdiction over the project; (5) by labor disputes, fire, vandalism; (6) by adverse weather conditions not reasonably anticipated; (7) by unforeseen site conditions, including discovery or existence of Hazardous Substances; (8) by unavoidable casualties or other causes beyond OpTerra ES's control; (9) by delays caused by processing Change Orders requested by or agreed to by Customer, or resulting from the implementation of any Change Order; or (10) by delay caused by pending arbitration, then the targeted milestone dates set forth in the Project Schedule shall be reasonably extended by a Change Order, executed by both Customer and OpTerra ES. Prior to the extension of such milestone dates, OpTerra ES will use reasonable efforts to make up such delays, including authorizing overtime payments (provided that Customer has issued a Change Order authorizing any such overtime payment and has specifically agreed to pay all costs, including administrative charges and expenses, associated therewith).
- (d) Material Changed Conditions/ Conditions Beyond OpTerra ES's Control. OpTerra ES will provide written notice to Customer of any Material Changed Condition and or any Force Majeure event, as such terms are defined in Article 1 above, within ten (10) business days of OpTerra ES's first discovery of such Material Changed Condition. In the event that OpTerra ES's notice concerns unanticipated subsurface conditions, including soil conditions, or Hazardous Substances, OpTerra ES will not disturb the condition until said notice has been given to Customer, and Customer has had a reasonable opportunity to investigate the condition. If there is a disagreement between Customer and OpTerra ES as to whether a Change Order should be issued and executed because of the Material Changed Condition and/or condition beyond OpTerra ES's control, those disputes shall be resolved in accordance with the provisions of Section 16, "Dispute Resolution", of Attachment A of the Contract. Pending the resolution of any dispute between

OpTerra ES and Customer concerning a Material Changed Condition and/or change beyond OpTerra ES's control, OpTerra ES reserves the right to suspend Work pending the resolution of the dispute.

(e) Change Order – Savings Effect. OpTerra ES shall calculate the energy impact of any Customer change orders.

5. Minor Changes to Scope of Work. OpTerra ES shall have authority to make minor changes that do not change the total Contract Amount and are consistent with the intent of the final Construction Documents, as amended by Change Order, without prior notice to Customer. OpTerra ES will either promptly inform Customer, in writing, of any minor changes made during the implementation of the Project, or make available to Customer at the site a set of as-built drawings that will be kept current to show those minor changes.
6. Hazardous Substances. OpTerra ES will promptly provide written notice to Customer if OpTerra ES observes any Hazardous Substance, as defined herein, at or around the Facilities during the course of construction or installation of any equipment which have not been addressed as part of the Scope of Work. OpTerra ES shall have no obligation to investigate the Facilities for the presence of Hazardous Substances prior to commencement of any work unless otherwise specified in the Scope of Work. Customer shall be solely responsible for investigating Hazardous Substances and determining the appropriate removal and remediation measures with respect to the Hazardous Substances. Customer shall be responsible for complying with all Applicable Laws with respect to the identification, removal and proper disposal of any Hazardous Substances known or discovered at or around the Facilities, and in such connection shall execute all generator manifests with respect thereto. OpTerra ES shall comply with all Applicable Laws in connection with the use, handling, and disposal of any Hazardous Substances in the performance of its Work. In connection with the foregoing, Customer shall provide OpTerra ES, within ten (10) business days of the execution of this Contract, a written statement that represents and warrants (i) whether or not, to its knowledge, there are Hazardous Substances either on or within the walls, ceiling or other structural components, or otherwise located in the Work area, including, but not limited to, asbestos-containing materials; (ii) whether or not, to its knowledge, no conditions or situations exist at the Facilities which are subject to special precautions or equipment required by federal, state, or local health or safety regulations; and (iii) whether or not, to its knowledge, there are no unsafe working conditions at the Facilities.

Customer shall indemnify, defend, and hold OpTerra ES harmless from and against any and all claims and costs of whatever nature, including but not limited to, consultants' and attorneys' fees, damages for bodily injury and property damage, fines, penalties, cleanup costs, costs associated with delay or work stoppage, and third party claims (hereinafter "Liability"), that in any way result from or arise under from such Customer owned or generated hazardous materials and substances, except for liabilities due to OpTerra ES's, or its subcontractors, agents representatives, and employees', negligent or willful misconduct in handling, disturbance, or release of Hazardous Materials or Substances. This indemnification shall survive any termination of this Contract.

7. Pre-Existing Conditions. Certain pre-existing conditions may be present within the Customer's facilities that (i) are non-compliant with applicable codes, (ii) may become non-compliant with applicable codes upon completion of OpTerra ES's Work, (iii) may cause OpTerra ES's completed Work to be non-compliant with applicable codes, (iv) may prevent the Customer from realizing the full benefits of OpTerra ES's Work, (v) may present a safety or equipment hazard, or (vi) are otherwise outside the scope of OpTerra ES's Work. Regardless of whether or not such conditions may have been readily identifiable prior to the commencement of Work, OpTerra ES shall not be responsible for repairing such pre-existing conditions unless such is expressly provided for in the Scope of Work or an approved change thereto. OpTerra ES, in its sole discretion, may determine whether it will bring said pre-existing conditions into compliance by agreeing to execute a change order with the Customer for additional compensation and, if appropriate, an extension of time. Examples of pre-existing conditions include, but are not limited to, the following:
- With respect to lighting equipment maintenance and/or lamp and ballast retrofit work, the Customer shall be responsible for properly grounding lighting fixtures before OpTerra ES commences work in compliance with applicable codes.
 - With respect to installation of new lighting fixture installations, prior to commencement of the lighting fixture installation, the Customer shall be responsible for providing an existing or new grounding conductor or solidly grounded raceway with listed fittings at the lighting fixture junction box that is properly connected to the facility grounding electrode system in compliance with the latest National Electrical Code ("NEC"). OpTerra ES's Scope of Work shall include properly terminating the lighting fixtures to the existing grounding conductor or to the existing solidly grounded raceway with listed fittings at the lighting fixture junction box.
 - Where OpTerra ES's Scope of Work includes pulling new wiring for lighting fixtures from an existing lighting panel, a grounding conductor shall be included in the lighting circuits. The Customer is responsible for providing an existing or new grounding conductor terminal bar at the lighting panel that is properly connected to the facility grounding electrode system in compliance with the latest NEC.
 - With respect to OpTerra ES projects with new equipment connecting to the facility's existing electrical distribution system, OpTerra ES shall not be responsible for the electrical integrity of the existing electrical system, e.g., the condition and proper termination of current-carrying, grounded, and grounding conductors, bus taps, protective elements, the proper protection of existing wire through knockouts, or missing components. The Customer is responsible for providing and maintaining the facility's electrical distribution system that meets the latest NEC and Guidelines.
 - OpTerra ES is not responsible for repairing or replacing existing damaged, blocked, or leaky ductwork, or cleaning dirt or mildew.
 - OpTerra ES shall not be responsible for existing damaged pipes, valves, and related parts and components due to a lack of water treatment.
 - Existing pneumatic control systems that remain in place shall be properly maintained (use of air dryer, clean filter, etc.) by the Customer such that oil or moisture does not reach the control and operating devices.

- Unless specifically included in the Scope of Work, existing valves, dampers, linkages, and piping specialties to which new controls/building automation system are being connected are to be in proper functioning condition. If existing device is found to be improperly functioning, Customer may repair or compensate OpTerra ES for repair / replacement of the device.

ARTICLE 5. PROJECT COMPLETION.

1. **Substantial Completion / Reduction of Retention:** At the time the Work is Substantially Complete in conformance with the Scope of Work and Construction Documents, OpTerra ES will supply to Customer a written Certificate of Substantial Completion. Customer shall within ten (10) business days of receipt of the Certificate of Substantial Completion, review the Work for the sole purpose of determining that it is substantially complete and in substantial conformance with the Scope of Work, final Construction Documents and any Change Orders, and sign and return the Certificate of Substantial Completion to OpTerra ES acknowledging and agreeing: (1) that the Work is substantially complete in accordance with the Scope of Work so Customer can occupy or utilize the Work for its intended use; (2) the date of such Substantial Completion; (3) that from the date of Substantial Completion Customer will assume responsibility for the security of, insurance coverage for, maintenance, utilities for, and damage to or destruction of the Work. Customer agrees that approval of the Certificate of Substantial Completion shall not be unreasonably withheld. Title to any and all of the materials and equipment installed shall pass from OpTerra ES to Customer upon the date of Substantial Completion. At such time, the retention withheld by Customer shall be reduced to five (5%) percent.
2. **Final Completion:** When OpTerra ES considers the Work to be fully complete in accordance with the Scope of Work, OpTerra ES will notify the Customer that the Work is fully complete and ready for final inspection. The Customer shall inspect the Work to verify the status of Final Completion within ten (10) business days after its receipt of OpTerra ES's certification that the Work is Complete. If Customer does not verify the Final Completion of the Work with this period, the Work shall be deemed fully completed. If Customer determines that any Work is incomplete and/or defective, the Customer shall promptly notify OpTerra ES in writing of such incomplete and/or defective work, itemizing and describing such remaining items with reasonable particularity. OpTerra ES will, in a reasonable amount of time, complete any incomplete items or remedy defective items after which OpTerra ES shall provide written notice to the Customer that the Work is fully complete. Customer shall re-inspect all work completed or remedied by OpTerra ES within ten (10) business days of OpTerra ES's notice of completion from OpTerra ES that the Work is complete. If the Customer does not re-inspect the Work within the ten (10) business day period, the Work shall be deemed fully complete. When the Customer agrees that the Work is fully completed in accordance with the Scope of Work, Customer shall give OpTerra ES written notice of acceptance of the Work and Final Completion and will issue a Final Completion Certificate to OpTerra ES. At that time, Customer shall pay OpTerra ES any remaining Contract Amount due and any outstanding retainage being withheld by the Customer.

**ATTACHMENT C
CUSTOMER'S FACILITIES & EXISTING EQUIPMENT**

The following Customer Facilities are included under the Scope of Work as listed below:

Facility	Location	Sq. Footage

**ATTACHMENT D
SCOPE OF WORK**

ATTACHMENT E
PROJECT SCHEDULE

ATTACHMENT F PROGRESS PAYMENT SCHEDULE

A mobilization fee (includes general conditions, mobilization, bonds and insurance) will be invoiced to the Customer upon both parties signing the Energy Services Contract and is due and payable as detailed in Contract Attachment A.

Subsequent to Contract execution, OpTerra ES, with input from Customer, will establish a project schedule of values (SOV). Monthly billing will be invoiced on AIA-style (American Institute of Architects) invoice forms according to earned value (i.e. percent completion) against the SOV.