

**CITY OF COACHELLA**



**REQUEST FOR PROPOSALS  
FOR THE CITY OF COACHELLA  
SOLAR PHOTOVOLTAIC PARKING CANOPY SYSTEM  
AND  
ELECTRIC VEHICLE CHARGING STATIONS  
DESIGN-BUILD CONTRACT**

*Government Code section 4217.10 et seq.*

**Site Walk: December 12, 2013 at 10:00 a.m.**

**Proposals Due by: January 21, 2014 at 5:00 p.m.**

*This Request for Proposals was prepared as a result of work paid for, in whole or in part, by a grant from the South Coast Air Quality Management District ("SCAQMD"). The opinions, findings, conclusions and recommendations are those of the author and do not necessarily represent the views of SCAQMD. SCAQMD, its officers, employees, contractors, and subcontractors make no warranty, expressed or implied, and assume no legal liability for the information in this Request for Proposals. SCAQMD has not approved or disapproved this Request for Proposals, nor has SCAQMD passed upon the accuracy or adequacy of the information contained herein.*

## **SECTION 1: PROJECT OVERVIEW AND OBJECTIVES**

The City of Coachella (“City”) seeks proposals from qualified firms to design, fabricate, deliver and install an approximately 150 KiloWatt (“KW”) solar photovoltaic parking canopy system (“Solar Carport”) and two (2) electric vehicle charging stations (“EV Stations”) at its Corporate Yard Facility site located at 53462 Enterprise Way, Coachella, California and as identified in Exhibit “A” (“Site”) owned by the City utilizing a design-build delivery method as authorized by California Government Code section 4217.10 *et seq.* (“Project”). The City anticipates that the Solar Carport for the Site shall produce 100% of the City’s demand load at the Site, including the demand for the EV Stations. The City desires for the Solar Carport size to optimize the generation of electricity so as to minimize utility demand charges and to maximize the energy cost savings from the Project. The City will own the Project and will finance the Project utilizing approximately \$978,850 in funding from the South Coast Air Quality Management District (“SCAQMD”) AB 1318 Mitigation Fees Funds.

The Project is made possible by a grant from the SCAQMD AB 1318 Mitigation Fees Fund to reduce or mitigate emissions within Coachella Valley. As such, the successful Proposer shall be required to comply with any and all SCAQMD AB 1318 requirements (including compliance with the California Environmental Quality Act) and all applicable SCAQMD AB 1318 deadlines. SCAQMD AB 1318 requirements and deadlines are set forth in Section 3 of this RFP and in the related SCAQMD Contract No. 14042 and City Proposal, which are attached hereto as Exhibit “E”, incorporated herein by this reference. To the extent there is a conflict between this Request for Proposals and any of the documents contained in Exhibit “E,” Exhibit “E” shall govern. References to a compressed natural gas fueling station and/or compressed natural gas vehicles in Exhibit “E” or any of the other provisions of this Request for Proposals should be ignored; the City anticipates issuing separate procurements for those scopes of work as the City views those activities as separate and distinct projects from Solar Carport and EV Stations project.

The primary objective of this Request for Proposal (“RFP”) is to identify and select the most qualified, cost-effective turnkey supplier/contractor (“Proposer”) for the design and installation of grid-connected Solar Carport and EV Stations at the Site. Upon selection of the successful Proposer, the City intends to enter into with the successful Proposer a Design-Build Contract attached hereto and incorporated herein as Exhibit “B”. With respect to this Project, the City will not consider proposals which include a power purchase agreement approach component as one of the primary objectives of this RFP is for the City to own the Solar Carport and EV Stations.

Proposers shall submit a proposal at a competitive price to design-build the Project (which shall include an estimate for any necessary work to comply with the California Environmental Quality Act) in accordance with the scope of services contemplated herein and discussed in more detail in Section 2 below. Proposers shall provide their pricing based on the terms and conditions of the Design-Build Contract attached as Exhibit “B”, which the successful Proposer shall be expected to execute with the City without substantive revision or negotiation. Any exceptions or proposed deviations from the proposed Design-Build Contract shall be expressly noted in the Proposal submitted to the City and may render a Proposal non-responsive, in the City’s sole discretion.

The successful Proposer shall be responsible for applying, on behalf of the City and the Project, for the California Solar Initiative (“CSI”) funds from the Imperial Irrigation District (“IID”), including, but not limited to, coordinating the completion and submission of all requisite CSI paperwork. IID’s CSI program is currently oversubscribed for 2013 and for 2014, IID plans on utilizing a lottery system to select CSI recipients. As such CSI program funds are not guaranteed for this Project and are not a condition of this Project moving forward. The successful Proposer shall pay for the reimbursable CSI reservation fee in submitting an application to IID for such CSI funds. Any CSI funds received from IID for this Project shall be assigned and made payable to SCAQMD.

Record drawings and “as-built” plans that show the Site’s existing utility and electrical information are available on the City’s website: <http://www.coachella.org/departments/engineering/bids-rfps>.

As specified in further detail in the attached Design-Build Contract, the Proposer shall complete the Project and otherwise comply with all SCAQMD and CSI timelines, as may be applicable.

## **SECTION 2: PROJECT SCOPE OF SERVICES**

### **2.1. General**

The scope of services provided by the Proposer is set forth in Exhibit “E”, Attachment 1, Task Items 7-17, including the “Deliverables” identified in Attachment 1, and shall include all tasks required to comply with the California Environmental Quality Act and to design, fabricate, deliver, and install the Solar Carport and EV Stations for the City. The scope of services shall also include, but not be limited to, securing all clearances, permits, and approvals from governing agencies, all labor, including but not limited to the payment of prevailing wages, taxes, services, and equipment necessary to produce fully operational Solar Carport and EV Stations.

- (a) Solar Carport. The successful Proposer shall design, procure, engineer, install, interconnect and commission a 150 KW photovoltaic solar system on top of a newly constructed canopy carport, which carport shall also be designed, procured, engineered, and installed by the successful Proposer. The Solar Carport will shade vehicles while the solar panels will generate electricity to serve the demand load at the Corporate Yard Facility and the new EV Stations. The solar installation will be connected to the broader electrical grid such that the facility can be a net energy producer during times of strong sunlight.

Table 1 provides the approximate annual electrical usage for the Corporate Yard building and the projected electricity usage of the Project’s two electric vehicle charging stations.

**Table 1. Projected Electricity Usage at the Corporate Yard Building.**

<b>Component</b>	<b>Annual Electricity Usage (kWh)</b>
<b>Corporate Yard Building</b>	285,000
<b>EV Stations (2)</b>	11,200
<b>Total</b>	<b>296,200</b>

Approximately 10,000 square feet of the solar panel will be required to meet the Project goal of maximizing the amount of electricity produced to serve the Corporate Yard Building and EV Stations. This surface area will be achieved by constructing a single story carport over the existing parking lot. Final design of the Solar Carport is a part of the scope of work of this Project.

- (b) EV Stations. The successful Proposer will also design, procure, engineer, install, interconnect and commission of two (2) publically accessible EV Stations. Electricity to operate the EV Stations will be provided by the Solar Carport. Both EV Stations will be available to the public and will be used by City-owned electric vehicles. At this time, the City will consider Level 2 EVSE with a non-proprietary network, Coulomb Tech (Model CT2025), or equivalent, charging station will be installed. At this time, the City requires that the EV Stations deliver 7.2KW of power at 240 volts and 30 amps and provide a standard electric vehicle with a complete charge in no less than seven (7) hours, although, as specified below, the City will consider alternative technologies offering a faster charge time. The dual charging stations can be used by two (2) vehicles simultaneously and is compatible with the standard electric vehicle connector (SAE J1772TM ). Notwithstanding the preceding, to the extent that Proposers have more economical and/or efficient technologies and/or vendors offering EV Stations, Proposers are welcome to submit alternatives to the above-specified requirements.

**2.2. Design, Engineering, and Permitting**

The Proposer shall design/engineer the Solar Carport to maximize the solar energy resources, taking into consideration the City’s electrical demand and load patterns, proposed installation Site, available solar resources, existing site conditions, proposed future site improvements, and other relevant factors.

The Proposer shall provide design documents that provide the following minimum information for the Site:

- (a) Solar Carport and EV Stations description
- (b) Equipment details and description

- (c) Layout of installation and equipment
- (d) Specifications for equipment procurement and installation
- (e) All engineering associated with structural and mounting details
- (f) Performance of equipment components, and subsystems
- (g) Integration of Solar Carport and EV Stations with other power sources
- (h) Electrical grid interconnection requirements
- (i) Controls, monitors, and instrumentation
- (j) Solar Carport and EV Stations performance monitoring

The Proposer shall submit design documents to the City for review and approval prior to fabrication or delivery. All underground conduits may be either hot-dipped, galvanized steel conduit, bichromate-coated inside and out after galvanizing or may be rigid nonmetallic Schedule 40 PVC conduit, as may be deemed appropriate by the Proposer.

The Proposer shall identify an appropriate location for the and EV Stations, Solar Carports and solar PV inverter equipment and their related components and environmental control systems that will meet the following criteria:

- (a) Ease of maintenance and monitoring
- (b) Efficient operation
- (c) Low operating losses
- (d) Secured location and hardware
- (e) Compatibility with existing facilities
- (f) Avoidance of flood-prone areas

The Proposer shall secure from governing agencies and the utility company all required rights, clearances, permits, approvals, and interconnection agreements, including all clearances under the California Environmental Quality Act, at no additional cost to the City. The City requires two sets of plans and calculations to be submitted to City Staff prior to issuing a building permit. There will be no cost to the proposer for issuance of the City building permit. The City will become the signatory on clearances, applications, permits, and utility agreements where necessary. The Proposer shall complete and submit in a timely manner all documentation required to qualify for available grants, rebates and incentives.

### **2.3. Site Access or Use Restrictions**

The proposed Site is an active corporate yard site, used for the storage of materials by the City and, as such, the safety of the City employees and public is of utmost importance in proceeding with the installation of the Solar Carport and EV Stations.

The Proposer shall design and permit the Project to construct the Project only during the following Monday – Friday: October thru April 6:00 a.m. – 5:30 p.m.; May thru September 5:00 a.m. – 7:00 p.m. As the Project is located on an active City site, Proposer’s proposal to the City shall include a proposed site use map which will identify relevant staging areas, laydown areas, if any, as well as Site access and delivery points.

#### **2.4. Installation**

The Proposer shall supply all equipment, materials, and labor necessary to install the Solar Carport and EV Stations and integrate them with other power sources. Proposer shall be responsible for repair, replacement, patching and finishing to match existing all areas affected by the work.

#### **2.5. Electrical Interconnections**

The Proposer shall supply and install all equipment required to interconnect the Solar Carport and EV Stations to the Imperial Irrigation District (IID) distribution system. The Proposer shall fulfill all application, studies, and testing procedures to complete the interconnection process. All costs associated with utility interconnection shall be borne by the Proposer.

#### **2.6. Commissioning and Acceptance Testing**

During the start-up, the City, and/or its independent engineer, shall observe and verify Solar Carport and EV Stations performance. Required commissioning and acceptance test services include:

- (a) Starting up the Solar Carport and EV Stations until it achieves the performance requirements
- (b) Conducting the performance testing over a consecutive twenty-four (24) hour period
- (c) Conducting the successful delivery of power within thirty (30) days following completion of the Solar Carport and EV Stations.

#### **2.7. Operation and Maintenance Manuals and As-Built Drawings**

The Proposer shall provide three (3) sets of operation, maintenance, and parts manuals for the Solar Carport and EV Stations. The manual shall cover all components, options, and accessories supplied. It shall include maintenance, trouble-shooting, and safety precautions specific to the supplied equipment. The Proposer shall also provide three (3) sets of as-built drawings. These requirements shall be delivered prior to acceptance of the Solar Carport and EV Stations.

#### **2.8. Monitoring**

Monitoring of Solar Carport and EV Stations performance. The successful Proposer shall provide a turnkey data acquisition and website that allows the City to monitor, analyze, and display historical and live solar electricity generation data.

Data should be collected and archived on a 15 minute interval. The regularly collected data should reflect, but not be limited to, the following:

- (a) Solar Carport performance
- (b) Solar Carport availability

- (c) Average and accumulated output
- (d) Capacity factor / degradation
- (e) Solar irradiance
- (f) Weather related parameters including ambient and cell temperatures and wind speed and direction

The data acquisition system shall be designed for turnkey, remote operation. Data shall be transmitted via Internet or telephone from the site to a server managed by the Proposer. Data storage, management, and display will be the responsibility of the Proposer. The data acquisition system must not require a dedicated or always-on personal computer.

### **2.9. Warranties and Guarantees**

The Proposer shall identify the warranties to be transferred to the City as required by Section 4.9 below. The Proposer shall also identify any warranty required to qualify a Solar Carport and EV Stations for available rebates or incentives, including qualification for Renewable Energy Credits.

## **SECTION 3: SCAQMD REQUIREMENTS**

### **3.1. Legal Requirements**

Proposers and its employees and subcontractors and their employees shall comply with all applicable laws, including but not limited to those provisions of law identified in the attached Design-Build Contract, set forth as Exhibit "B," and the following:

- (a) **Licensing.** Each Proposer shall be a licensed contractor pursuant to the Business and Professions Code and shall be licensed in the following appropriate classification(s) of contractor's license(s), for the Project, and must maintain the license(s) throughout the duration of the Project: Class B. By submitting a proposal, Proposers certify that they are authorized to do business in the State of California and attest that they are in good tax standing with the California Franchise Tax Board. The successful Proposer shall obtain and maintain the required licenses, permits and all other appropriate legal authorizations for all applicable federal, state and local jurisdictions (including California Environmental Quality Act clearance) and pay all applicable fees associated therewith. The successful Proposer shall immediately notify the City in writing of any change in its licensing status during the term of its agreement with the City.
- (b) **Ineligible Contractors.** Pursuant to Public Contract Code section 6109, a Proposer, who is ineligible to perform work on the public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code, may not submit a proposal or work on this Project.
- (c) **Prevailing Wages.** Proposers are hereby alerted to the prevailing wage requirements of California Labor Code section 1720 et seq. The Director

of Industrial Relations has determined the general prevailing rate of per diem wages in the locality in which this work is to be performed, copies of which are on file and will be made available to any interested party upon request at the office of the City or online at <http://www.dir.ca.gov/dlsr>. The successful Proposer shall post these rates at the job site. The successful Proposer and its subcontractors shall comply with all applicable Labor Code provisions, including but not limited to, employment of apprentices, hours of labor and debarment of contractors. The successful Proposer shall indemnify, defend and hold harmless the City and SCAQMD against any and all claims, demands, damages, defense costs or liabilities based on failure to adhere to the above referenced statutes.

- (d) Pursuant to Public Contract Code Section 22300, the successful Proposer may substitute certain securities for funds withheld by the City.
- (e) The successful Proposer will be required to furnish the City with a Payment and a Performance Bond equal to 100% of the Design-Build Contract price, prior to execution of the Design-Build Contract. All bonds are to be secured from a surety that meets all of the State of California bonding requirements, as defined in Code of Civil Procedure Section 995.120. Proposals shall include the cost of obtaining such bonds.
- (f) Proposers shall execute the “Non-Collusion Declaration” attached hereto as Exhibit “D.”
- (g) In the performance of the Design-Build Contract, the successful Proposer and its subcontractors shall not discriminate in recruiting, hiring, promotion, demotion or termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age, or physical or mental disability and shall comply with the provisions of the California Fair Employment & Housing Act (Government Code Section 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, Executive Order No. 11246 (30 Federal Register 12319), and all administrative rules and regulations issued pursuant to said Acts and Order.
- (h) The successful Proposer and its subcontractors shall warrant that they fully comply with all laws regarding the employment of aliens and others, and that its employees performing services hereunder meet the citizenship or alien status requirements contained in federal and state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L. 99-603). The successful Proposer and its subcontractors shall obtain from all covered employees performing services hereunder all verification and other documentation of employees’ eligibility status required by federal statutes and regulations as they currently exist and as they may be hereafter amended. The successful Proposer and its subcontractors shall have a continuing obligation to verify

and document the continuing employment authorization and authorized alien status of employees performing services under this Contract to ensure continued compliance with all federal statutes and regulations. Notwithstanding the above, the successful Proposer, in the performance of the Design-Build Contract shall not discriminate against any person in violation of 8 USC Section 1324b. The successful Proposer and its subcontractors shall retain such documentation for all covered employees for the period described by law. The successful Proposer shall indemnify, defend and hold harmless the City and SCAQMD and their officers and employees from employer sanctions and other liability which may be assessed against the successful Proposer, its subcontractors the City and/or SCAQMD, in connection with any alleged violations of federal statutes or regulations pertaining to the eligibility for employment of persons performing services under the Design-Build Contract.

### **3.2. Insurance**

The successful Proposer shall furnish evidence to SCAQMD and the City of:

- (a) Workers' compensation insurance for each of its employees, in accordance with California law prior to the commencement of any work under the Design-Build Contract.
- (b) General liability insurance with a limit of at least \$1,000,000 per occurrence, and \$2,000,000 in a general aggregate prior to commencement of any work under the Design-Build Contract. SCAQMD and the City shall be named as additional insureds on any such liability policy, and thirty (30) days written notice prior to cancellation of any such insurance shall be given by the successful Proposer to the City.
- (c) Automobile liability insurance with limits of at least \$100,000 per person and \$300,000 per accident for bodily injuries, and \$50,000 in property damage, or \$1,000,000 combined single limit for bodily injury or property damage, prior to commencement of any work on this Contract. SCQAMD and the City shall be named as additional insureds on any such liability policy, and thirty (30) days written notice prior to cancellation of any such insurance shall be given by the successful Proposer to the City.
- (d) If the successful Proposer fails to maintain the required insurance coverage set forth above, SCAQMD reserves the right either to purchase such additional insurance and to deduct the cost thereof from any payments owed to the successful Proposer or terminate the Design-Build Contract for breach.
- (e) All insurance certificates should be mailed to (1) the City and (2) to SCQAMD Risk Management, 21865 Copley Drive, Diamond Bar, CA

91765-4178. The SCAQMD Number (Contract No. 14042) must be included on the face of the certificate.

- (f) The successful Proposer shall provide updates on the insurance coverage throughout the term of the Design-Build Contract to ensure that there is no break in coverage during the period of contract performance. Failure to provide evidence of current coverage shall be grounds for termination for breach of contract.

### **3.3. Indemnification**

The successful Proposer shall hold harmless, defend and indemnify the City and SCAQMD as set forth in the proposed Design-Build Contract.

### **3.4. On Site Inspections and Audit**

SCAQMD or its designee(s) shall have the right to conduct on-site inspections of the Project and to audit records related to the Project during the term of the Design-Build Contract and for three (3) years thereafter, unless the City or SCAQMD notifies the successful Proposer that a longer period is required. Upon written request from SCAQMD, the successful Proposer shall provide detailed documentation of all expenses incurred on the Project, at any time through the records retention period. The successful Proposer agrees to include a similar right for SCAQMD to conduct on-site inspections and audits in any subcontract.

### **3.5. Records Retention**

The successful Proposer shall maintain records related to this Project and retain these records for at least three years beyond the Design-Build Contract term.

### **3.6. Reporting Requirements**

The successful Proposer shall submit reports to SCAQMD and the City as set forth herein and the Design-Build Contract. Proposers shall comply with the reporting requirements set forth in Task Items 7 through 17 in Exhibit "E" as well as the section entitled, "Deliverables" in Attachment 1 of Exhibit "E." All reports shall be submitted in an environmentally-friendly format: recycled paper, stapled, not bound, black and white, double-sided print and no three-ring spiral or plastic binders or cardstock covers. SCAQMD and the City reserve the right to review, comment and request changes to any report produced as a result of the Design-Build Contract.

### **3.7. Invoicing**

All invoices submitted to the City for payment must be prepared in duplicate, on company letterhead and list "Contract No. 14042", the period covered by the invoice and the successful Proposer's social security number or Employer Identification Number. Charges for equipment, material and supply costs, subcontractor or other charges must be itemized by the successful Proposer.

### **3.8. Security Interest**

Per Section 15 of SCAQMD Contract No. 14042, the successful Proposer shall grant to SCAQMD a security interest in any and all equipment purchased in whole or in part with SCAQMD funding. The successful Proposer acknowledges and agrees that SCAQMD shall have all lien rights as a secured creditor on any and all equipment purchased in whole or in part by the successful Proposer, under this RFP. SCAQMD shall have lien rights in effect until the successful Proposer satisfies all terms under the Design-Build Contract, including but not limited to, the use and reporting requirements. Accordingly, the successful Proposer further agrees that SCAQMD is authorized to file a UCC filing statement or similar security instrument to secure its interests in the equipment that are the subject of this RFP. In the event that the successful Proposer files for bankruptcy protection, the successful Proposer shall notify SCAQMD within 10 business days of such filing.

### **3.9. Intellectual Property Rights**

Title and full ownership rights to any documents, or reports developed under the Design-Build Contract shall at all times remain with SCAQMD. Such material is agreed to be SCAQMD proprietary information. SCAQMD shall have the unlimited right to use technical data, including material designated as a trade secret, resulting from the performance of services by the successful Proposer under the Design-Build Contract. The successful Proposer will have the right to use technical data for its own benefit. The successful Proposer agrees to grant SCAQMD a royalty-free, non-exclusive, irrevocable license to produce, translate, publish, use and dispose of all copyrightable material first produced or composed in the performance of the Design-Build Contract.

### **3.10. Use of SCAQMD Name**

The successful Proposer shall not use any name, trade name, trademark, logo or other designation of the SCAQMD (including contraction, abbreviation or simulation) in advertising, publicity, promotion, or any other activities or context without the express written consent of the SCAQMD in each case.

### **3.11. Media/Publication**

The parties shall work cooperatively on any communications to the media, including press statements and press conferences related to this Project. The Parties agree that announcements, news releases and other communication materials describing the Project shall acknowledge, "The Project was made possible by a grant from the South Coast Air Quality Management District AB 1318 Mitigation Fees Fund to reduce or mitigate emissions within Coachella Valley." Information, data, documents or reports developed by the successful Proposer, pursuant to the Design-Build Contract and this RFP, shall be a part of SCAQMD public record unless otherwise indicated. Upon written approval of SCAQMD, the successful Proposer may use or publish, at its own expense, such information, data, documents or reports provided to SCAQMD. The following acknowledgement of support and disclaimer must appear in each publication of materials, whether copyrighted or not, based upon or developed under this Contract:

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The successful Proposer shall inform its officers, employees, and subcontractors involved in the performance of the Design-Build Contract of the restrictions contained herein and require compliance with the above.

#### **SECTION 4: PROJECT REQUIREMENTS**

##### **4.1. Examination of the Site**

The Proposer shall visit the Site and determine the local conditions which may in any way affect the performance of the work; familiarize itself with all federal, state and local laws, ordinances, rules, regulations, and codes affecting the performance of the work, including the cost of clearances, permits, and licenses required for the work; make such surveys and investigations, including investigation of subsurface or latent physical conditions at the Site or where work is to be performed, as it may deem necessary for performance of the work at its proposal price; determine the character, quality, and quantities of the work to be performed and the materials and equipment to be provided; and correlate its observations, investigations, and determinations.

##### **4.2. Contractor's License**

The City requires that: (a) the Proposer installing the Solar Carport and EV Stations be properly licensed in the State of California and hold a Class B license, (b) the contractor license appear clearly on the Proposal, and (c) the license expiration date appear on the proposal.

##### **4.3. Proposer's Insurance**

The Proposer shall not commence the work until it has obtained all insurance required herein and as specified in the attached Design-Build Contract (Exhibit “B”), and obtained City approval of such required insurance as to form, amount, and carrier. The Proposer shall not allow any subcontractor to commence work on its subcontract until any such subcontractor has obtained the same insurance coverage required of the Proposer.

#### **4.4. Design Survey**

The City shall make the site utility plans available for review and duplication. Notwithstanding the preceding, it is the Proposer's responsibility to contact and coordinate all public utilities (e.g. IID, Verizon, Southern California Gas Company, Time Warner Cable, etc.) to determine the location of their utilities within the project area. The availability of the site utility plans shall not be deemed to confer any responsibility for the location of the utilities upon the City. As such, Proposer shall perform all design surveys to a level of accuracy appropriate to provide sufficient ground truth for all facilities. Proposer's plans shall show all the existing property lines, public right-of-way, easements, and utilities.

#### **4.5. Geotechnical & Geo-Hazards Investigation**

The successful Proposer shall provide a geotechnical & geohazards investigation as an integral part of the design of all proposed facilities. The successful Proposer shall evaluate subsurface conditions which will influence bearing capacities, expansiveness, and settlement potential. The level of effort involved shall be sufficient to enable the Proposer to ascertain significant over-excavation, backfill compaction, corrosion protection, seismic, and other special requirements, and provide design criteria recommended for the Project design. The successful Proposer shall provide a soils report to the City for the Project describing test methods, results, and conclusions.

#### **4.6. Underground Facility Verification**

Potholing of existing utilities that may be in conflict with this design will be required. The Proposer shall pothole the areas needed to prepare the design. The Proposer shall provide the surveying and coordination with utility companies to have the utilities marked out prior to potholing. The Proposer shall also be responsible for obtaining necessary encroachment permits for the potholing. The Proposer shall prepare all traffic control plans required in conjunction with encroachment permits for potholing. The Proposer will be held responsible to repair or replace any marked utility and all affected areas disturbed by their digging.

#### **4.7. CEQA**

The successful Proposer shall be responsible for preparation of all necessary California Environmental Quality Act (CEQA) documentation on the City's behalf. The City will act as the lead agency in approval of the project and the corresponding CEQA documentation. Accordingly, the City will exercise its independent judgment over any and all CEQA documentation provided by the successful Proposer. The City has yet to determine the appropriate level of CEQA review for the proposed project. Thus, the successful Proposer shall outline potential costs and timing associated with preparation of each possible level of CEQA documentation (e.g., Exemption, Negative Declaration, Mitigated Negative Declaration, Environmental Impact Report, etc.). The City requests an initial kick-off meeting with the successful Proposer as soon as possible after award of contract to discuss the CEQA compliance approach.

#### **4.8. Codes, Standards, and Methodologies**

All products and components outlined herein must conform to the following codes, standards, and rating methodologies:

- (a) PV modules specified in the RFP must be certified by the California Energy Commission Emerging Technologies Buydown Program and be listed on the following web site: <http://gosolarcalifornia.org/equipment/>
- (b) If PV modules using hazardous materials are to be provided by the Proposer, then the environmental impact of the hazardous material usage must be discussed, including any special maintenance requirements and proper disposal/recycling of the modules at the end of their useful life. Modules containing hazardous materials must comply with the EPA Landfill Disposal Requirements. Any additional costs and/or City responsibilities related to PV modules containing hazardous materials must be clearly identified in the proposal.
- (c) Rated Solar Carport capacity – must be specified in direct current (DC) kilowatts peak STC, PTC, and SO (system output).
  - (1) The STC rating, or standard test conditions rating, assumes direct current, standard test conditions. (kWdc-stc). It is also referred to as kilowatts peak, or kWp. Specific PV module manufacturer maximum and minimum power data must be specified for this rating.
  - (2) The PTC rating, or PV USA Test Conditions rating, is based on 1000 Watts/square meter solar irradiance, 20 degree Celsius ambient temperature and 1 meter/second wind speed.
- (d) The mathematical method for specifying Solar Carport output in kWh must be typical system alternating current (AC) power rating of the proposed Solar Carport using the California Solar Initiative (“CSI”) calculator.
  - (1) Calculate the annual kWh for the Solar Carport, using CSI web-based performance calculator, found at: <http://www.csi-epbb.com/default.aspx>
  - (2) Specify annual degradation expected over 25 years (in percentage degradation per year).
- (e) UL certification.
- (f) National Electrical Code - 2008.
- (g) PV module efficiency and how calculated.

- (h) Must comply with wind uplift requirements per the American Society of Civil Engineers Standard for Minimum Design Loads for Buildings and Other Structures (ASCE 7), and must be able to withstand design wind speeds of at least 85 mph (3-second gusts).
- (i) All outdoor enclosures should be at minimum rated NEMA 3R.
- (j) All Occupational Health and Safety Administration (OSHA) directives.
- (k) All IID and California Solar Initiative requirements.
- (l) All applicable Building Codes and Fire Codes

**4.9. Warranty Requirements**

Proposers shall provide (or transfer from the manufacturer as applicable) minimum warranty coverage as follows:

- (a) Standard manufacturer’s warranty coverage should be at least twenty-five (25) years for any PV panels, at least ten (10) years for all inverters, or consistent with current CSI Guidelines for Solar Carport warranty requirements, whichever is greater.
- (b) Upon completion of the Project, Proposer shall transfer and convey to the City, all warranty documentation and shall assist the City in completing any warranty or submittal forms which are required in order to effectuate coverage of the warranties required herein and all may otherwise be available to the City.
- (c) All work performed by Proposer must not render void, violate, or otherwise jeopardize any preexisting City facility or building warranties.

**SECTION 5: PROPOSAL REQUIREMENTS / FORMAT**

Proposals submitted in response to this RFP must be as specific as possible concerning each of the areas identified herein. Each respondent must provide sufficient information to enable the City to understand the overall proposal, the materials and services to be provided, and any potential adverse impacts of the proposal. The City reserves the right to deem any proposal as non-responsive and to give it no further consideration. The City also reserves the right to request clarification and/or additional information from any respondent.

**5.1. Binding Transmittal Letter**

Each Proposal shall include a binding transmittal letter signed by a party authorized to obligate the Proposer (and respective team members) to perform the commitments included in the Proposal and to sign binding agreements for the project as described by this RFP. If a team of firms is submitting the Proposal, then the Proposal must clearly identify the lead or prime member of the team. The binding transmittal letter must also identify the contact person

for future communications and the person responsible for future negotiations with the City, if selected. The binding transmittal letter shall clearly indicate that the Proposer has carefully read all the provisions in the RFP. The binding transmittal letter must state a 120-day validity period for the Proposal.

**5.2. Detailed Scope of Work**

The proposal shall contain a detailed explanation of the complete proposed Project and a delineation of all work tasks to be performed by the Proposer.

**5.3. Proposer Qualifications**

Please provide the following information:

- (a) Status (private/publicly-held)
- (b) Number of employees
- (c) States and countries in which you do business
- (d) Year in which company was established
- (e) Target customers (residential, commercial, industrial, government, etc.)  
Green E certification status
- (f) Project team profile, including:
  - (1) Resumes of personnel to be directly involved with the development of the proposed Solar Carport and EV Stations and preparation of the necessary CEQA documentation.
  - (2) Team leader identification for the entire Proposal, including full contact information.
  - (3) Identification of each entity, sub-contractor, person or firm involved in the Proposal and their role/responsibility, e.g. design, installation, permitting, equipment supply by component, operations and maintenance.
  - (4) Identification of the lead person responsible for each of the entities or firms described in above.

**5.4. Proposer Experience and References**

Please provide the following information:

- (a) Overview of the firm(s) commercial grid-connected PV experience (do not include residential PV experience)

- (1) Commercial MWp of grid-connected PV installed to date by your company.
  - (2) Breakdown by application (roof mounted, carport vs. ground mounted) installed by your company.
  - (3) Average commercial grid-connected Solar Carport size installed by your company during the last three years.
  - (4) Total commercial MWp of grid-connected Solar Carport installed by your company.
- (b) Overview of the firm(s) experience with drafting CEQA compliance documentation
- (c) Experience/References: List commercial grid-connected PV projects installed in the United States over the last five years by the Proposer or lead/prime firm if a team proposal. Include for each project:
- (1) Exact role(s) your organization performed for the project (e.g. material supplier, lead contractor, electrical subcontractor, design, consulting, etc.).
  - (2) Location.
  - (3) Application description.
  - (4) Product name/type.
  - (5) Customer name and contact information.
  - (6) Date installed.
  - (7) Project cost.
  - (8) PV module used.
  - (9) KWp rating.
  - (10) Cumulative kWh produced since Solar Carport installation.
  - (11) Current operational status of Solar Carport.
  - (12) Has your firm(s) or any of the executive officers of your firm been a party to a lawsuit involving the performance of any equipment it has installed? If so, please include a summary of the issues and the status of the lawsuit.

- (13) Proposals shall demonstrate a proven, robust data acquisition Solar Carport that includes tracking of site-specific actual kWh production and actual meteorological data including tracking of solar irradiance, ambient temperature, and module temperature, with data available remotely.
- (14) Proposals shall provide evidence that the proposed technology and equipment would meet or exceed all currently applicable and proposed safety and interconnection standards. All equipment components must be UL certified, and meet existing facility structural and fire safety requirements.
- (15) Proposals shall provide evidence that the proposed technology and equipment would meet or exceed all currently applicable and proposed environmental standards.

#### **5.5. Project Implementation Schedule**

Please submit a detailed implementation schedule for the described Solar Carport design/build project indicating the expected milestones and timing, with each task referenced from the notice to proceed.

#### **5.6. Pricing**

Provide pricing for a turnkey (design/build) Solar Carport and EV Stations as indicated in the pricing tables in Exhibit "C."

#### **5.7. Technical Approach and Product/Technology Description**

Respondents shall either a) state that their Solar Carport will comply with all of the requirements of the RFP, or b) list the items that would not comply and provide reason(s) why.

Describe the technology (or technologies) that your company proposes for carport-based / shade structure applications, including at least the following information:

- (a) Photovoltaic module description, brand(s) and model numbers.
- (b) Inverter type and brand(s) and efficiency (in %).
- (c) Balance of Solar Carport components including tracker drive and control systems.
- (d) Civil engineering and foundations.
- (e) Technology patents, if any, held by your company for the proposed Solar Carport.

- (f) For each technology described above, please describe any other benefits your Solar Carport provides that other Solar Carport might not provide, but only if such benefits can be readily measured and agreed to by an independent engineer.
- (g) For each technology described above, define the maximum wind speed that the technology has been tested for, and the testing authority.
- (h) For each technology described above, provide AutoCAD drawings and pdf versions thereof showing the proposed Solar Carport layout on available open land at the proposed Site.

#### **5.8. Operation and Maintenance Service Information**

Provide an overview of your proposed Solar Carport output performance verification methodology. Is it remote? Is it web-based? Describe the end-user interface.

Provide an overview of your firm's on-site operation and maintenance service program for the Solar Carport and EV Stations.

#### **SECTION 6: PROPOSAL PROTESTS**

A Proposer may protest a Contract award if the Proposer believes that the award was inconsistent with City policy or this RFP was not in compliance with the law. A protest must be filed in writing with the City within five (5) working days after receipt of notification of the Contract award. The Proposer shall submit all documents supporting or justifying the protest. A Proposer's failure to timely file a protest shall constitute a waiver of its right to protest the award of the Contract. Any Proposer submitting a Proposal may file a protest of the City's intent to award the Contract provided that each and all of the following conditions are met:

- (a) The protest must be submitted in writing to the City (e-mail is not acceptable), before 2 p.m. of the fifth business day following notification of the proposed Contract award.
- (b) The initial protest document must contain a complete statement of any and all basis for the protest, including without limitation all facts, supporting documentation, legal authorities and argument in support of the grounds for the protest; any matters not set forth in the written protest shall be deemed waived.
- (c) All factual contentions must be supported by competent, admissible and creditable evidence.
- (d) The protest must refer to the specific portions of all documents which form the basis for the protest.
- (e) The protest must include the name, address, email, and telephone number of the person representing the protesting party.

Any protest not conforming to the preceding shall be rejected by the City as invalid. Provided that a protest is filed in strict conformity with the foregoing, the City shall review and evaluate the basis of the protest. The City shall provide the Proposer submitting the protest with a written statement concurring with or denying the protest. The City Council will render a final determination and disposition of a protest by taking action to adopt, modify or reject the disposition of a Contract award. Action by the City Council relative to a Contract award shall be final and not subject to appeal or reconsideration. The action by the City Council to adopt, modify or reject the disposition of the Contract award reflected in such written statement shall be an express condition precedent to the institution of any legal or equitable proceedings relative to the Proposal process, the City's intent to award the Contract, the City Council's disposition of any protest or the City's decision to reject all Proposals. The procedure and time limits set forth in this paragraph are mandatory and are the Proposer's sole and exclusive remedy in the event of protest. Failure to comply with these procedures shall constitute a waiver of any right to further pursue the protest, including filing a Government Code claim or legal proceedings.

### **SECTION 7: PROPOSAL EVALUATION AND AWARD SCHEDULE**

Each respondent to this RFP should demonstrate that it satisfies the minimum requirements described in this RFP in order to be selected as an eligible Proposer. The City will evaluate the proposals utilizing the following factors, which the City shall weigh in its sole discretion:

1. Project Cost
2. Project/System Aesthetics (compatibility with City Site)
3. Proposed technology used in monitoring system
4. Demonstrated competence and expertise of Proposer
5. Other factors the City might deem relevant following its review of the proposals

The City will solely perform all Proposal reviews and will select the winning Proposer(s); the City will provide Contract administration and support immediately after the winning Proposer is selected. The City may elect to hold interviews with the firms with the highest ranked proposals or may solely rely on proposals to make its selection. The City reserves the right to waive minor irregularities and omissions in the information contained in the Proposal submitted and to make all final determinations. There is no appeal from the City's decision not to review a Proposal due to an incomplete or late Proposal submission. The Proposal, its completion and submission by the Proposer, and its use by the City, shall not give rise to any liability on the part of the City to the Proposer or any third party or person. This is not a solicitation for bid. No guarantees are made or implied that the Project will be constructed, either in part or whole. The Proposer accepts all risk and cost associated with the completion of the Proposal without financial guarantee.

Responses to this RFP must be submitted in writing and signed by an authorized officer of the respondent. The City must receive **FOUR (4)** hard copies of the respondent's Proposal package no later than **5:00 p.m. on January 21, 2014**. Responses submitted after this date cannot be accepted, and responses that are incomplete or do not conform to the requirements of this RFP will not be considered.

Proposals shall be submitted to:

**Jonathon Hoy, P.E.**  
**City Engineer**  
**City of Coachella**  
**1515 Sixth Street**  
**Coachella, CA 92236**

All questions related to this RFP shall be directed in writing by e-mail, no later than **December 23, 2013 at 5:00 p.m.**, to: [mnieman@coachella.org](mailto:mnieman@coachella.org) **and** to: [jhoy@coachella.org](mailto:jhoy@coachella.org).

Proposals shall clearly identify the name of the Proposer, the “City of Coachella Solar Carport and EV Stations Project” on the exterior of the proposals and shall include the “Non-Collusion Declaration” attached hereto as Exhibit “D.”

Proposers shall bear their own costs and expenses in preparing their Proposals. In addition to the information provided by the Proposer in this RFP, it is mandatory that the Proposers attend the scheduled Site Walk to the proposed solar facility location, so that proposers may assess the Site. The City shall not schedule other Site Walks beyond that which is set forth in the table below. It is the Proposers’ sole responsibility and cost to attend the scheduled Site Walk. It is the Proposers’ sole responsibility to validate the feasibility of the proposed Project and the available area for the facility based on the information provided and the Site visit.

Key action dates are anticipated as follows but may be modified at any time, without notice by the City, in its sole discretion:

<b>MILESTONE/ACTION ITEM</b>	<b>DATE</b>
Request for Proposal (RFP) released	11/23/2013
Site Walk	12/12/2013
RFP written questions submitted	12/23/2013
Answers to proposers’ questions	01/14/2014
<b>Proposals due</b>	<b>01/21/2014</b>
Interviews	01/28/2014
Contract negotiation phase completed	02/04/2014
Contract awarded	02/12/2014

The City reserves the right to interview any or all respondents to this RFP, or to ask for additional information or clarifications. The City reserves the right, at its sole discretion, to accept a response that does not satisfy all requirements but which, in the City's sole judgment, sufficiently demonstrates the ability to produce, deliver, design, permit, and install a turnkey grid-connected PV project and to satisfy the major requirements set forth in this RFP. The City

expects to complete its evaluation process to select a qualified Proposer, but reserves the right to change key dates and action as the need arises.

The City intends to award the Project and the related annual maintenance contract to one Proposer, however, the City retains the right to award one or more separate Design-Build Contracts to one or more Proposers as well as a separate maintenance contract, in the City's sole discretion.



**EXHIBIT “B”**  
**DESIGN-BUILD CONTRACT**

*[ATTACHED BEHIND THIS COVER PAGE]*

**DESIGN-BUILD CONTRACT  
BETWEEN  
THE CITY OF COACHELLA  
AND**

**FOR THE SOLAR PHOTOVOLTAIC PARKING CANOPY SYSTEM  
AND ELECTRIC VEHICLE CHARGING STATIONS PROJECT**

This Design-Build Contract (“Contract”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the by and between the **CITY OF COACHELLA** (the “City”), a California municipality, and **[INSERT NAME OF DESIGN-BUILD ENTITY]** (the “Design-Build Entity”), for the purpose of designing and constructing the **SOLAR PHOTOVOLTAIC PARKING CANOPY SYSTEM AND ELECTRIC VEHICLE CHARGING STATIONS PROJECT** (the “Project”). The City and the Design-Build Entity are herein collectively referred to as the “Parties.”

**RECITALS**

A. City issued a Request for Proposals (“RFP”) seeking proposals from qualified firms to design, fabricate, deliver and install an approximately 150 KiloWatt (“KW”) solar photovoltaic parking canopy system (“Solar Carport”) and two (2) electric vehicle charging stations (“EV Stations”) at its Corporate Yard Facility site located at 53462 Enterprise Way, Coachella, California owned by the City utilizing a design-build delivery method as authorized by California Government Code section 4217.10 et seq. (“Project”).

B. The Project is made possible by a grant from the South Coast Air Quality Management District (“SCAQMD”) AB 1318 Mitigation Fees Fund to reduce or mitigate emissions within Coachella Valley.

C. As such, Design-Build Entity shall be required to comply with any and all SCAQMD AB 1318 requirements (including compliance with the California Environmental Quality Act) and all applicable SCAQMD AB 1318 deadlines.

D. SCAQMD AB 1318 requirements and deadlines are set forth in Section 3 of the RFP and the related SCAQMD Contract No. 14042 and the City Proposal, which are attached hereto as Attachment “1” attached hereto and incorporated herein by this reference.

E. The Design-Build Entity submitted a Proposal for the Project, which was selected as providing the best-value for the Project, and is prepared to enter into this Contract.

In consideration of the above recitals and the mutual covenants and conditions set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby set forth their mutual covenants and understandings as follows:

**AGREEMENT**

**1. TERMS.**

**1.1 Incorporation of Documents.** This Contract includes and hereby incorporates in full by reference the following Contract Documents, including all exhibits, drawings, specifications and documents therein, and attachments and addenda thereto (with the first listed documents having the highest priority):

- a. Attachment 1 to this Contract – SCAQMD Contract No. 14042 and City Proposal
- b. All City approved Change Orders
- c. Contract and all mutually agreed upon addenda
- d. General Conditions
- e. Attachment 2 to this Contract - Cost of Extra Work
- f. Attachment 3 to this Contract - Performance Bond
- g. Attachment 4 to this Contract - Payment Bond
- h. Attachment 5 to this Contract - Escrow Agreement for Security *(optional)*

**1.1.1 Acknowledgement of Contract Documents.** The above documents constitute and may hereinafter be referred to as the “Contract Documents.” In addition to signing this Contract, the Design-Build Entity shall review and execute where appropriate all the Attachments to this Contract described above. Also, the Design-Build Entity shall initial this paragraph immediately below acknowledging that he or she has read, understood and agrees with all of the terms of the Contract Documents, including, but not limited to, provisions of the General Conditions relating to indemnification, insurance, standards of performance, termination, compensation and time of the essence performance. the Design-Build Entity shall not disclaim knowledge of the meaning and effect of any term or provision of the Contract Documents, and agrees to strictly abide by their meaning and intent.

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**Design-Build Entity’s Initials**

**1.1.2 The Design-Build Entity's Basic Obligation.** The Design-Build Entity promises and agrees, at its own cost and expense, to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately complete the Project as described in the Contract Documents (hereinafter the "Scope of Work"), for a Guaranteed Maximum Price (“GMP”) of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) as stated in the Cost Proposal Form submitted by the Design-Build Entity and as attached to the RFP. Unless otherwise stated in the Contract Documents, the GMP shall pay for all costs and expenses required to design and construct the Project.

**1.1.3 Extra Work.** Extra Work shall have the meaning given to it in the General Conditions. Extra Work shall be compensated at the rates set forth in Attachment 1 to this Contract, and shall be initiated only upon written approval by the City as described in the General Conditions.

**1.2 Standard of Performance.** The Design-Build Entity's performance shall be consistent with the standards set forth in the Contract and the General Conditions.

**1.3 Period of Performance, Liquidated Damages, and Performance Incentive.** The Design-Build Entity guarantees that it shall perform and complete all work necessary for Final Completion of the Project, as defined in the General Conditions, by the Guaranteed Completion Date of [INSERT DATE] ("GCD").

1. The Design-Build Entity agrees that liquidated damages will apply in the amount of [STO BE DETERMINED] for each and every calendar day beyond the GCD that Final Completion of the Project has not been achieved. Notwithstanding the preceding, the Design-Build Entity shall bear the risk of the California Solar Initiative rebate if available and reserved through the Imperial Irrigation District and, notwithstanding the Liquidated Damages specified herein, shall be liable to the City for any CSI rebate funds that are lost due to the Design-Build Entity's sole negligence, delay, act or omission.

**1.4 The City's Basic Obligation.** The City agrees to engage and do hereby engage the Design-Build Entity as an independent contractor to furnish all materials and to perform all work described in the Scope of Work for the Project according to the terms and conditions herein contained for the GMP set forth above. Except as otherwise provided in the Contract, the City shall pay to the Design-Build Entity, as full consideration for the satisfactory performance by the Design-Build Entity of the services and obligations required by this Contract, the above referenced compensation in accordance with compensation provisions set forth in the Contract.

**1.5 City's Representative.** The City hereby designates [INSERT NAME], as the person to act as its representative for the performance of this Contract ("City's Representative"). The City's Representative shall be authorized to act as liaison between City and the Design-Build Entity in the administration of this Contract and all work on the Project. The City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. City may designate new and/or different individuals to act as City's Representative from time to time upon written notice to the Design-Build Entity.

**1.6 Design-Build Entity's Representative.** The Design-Build Entity hereby designates [INSERT NAME], or his or her designee, to act as its representative for the performance of this Contract ("Design-Build Entity's Representative"). Design-Build Entity's Representative shall have full authority to represent and act on behalf of the Design-Build Entity for all purposes under this Contract. The Design-Build Entity's Representative shall supervise and direct all work on the Project, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the work pursuant to this Contract.

**1.7 Design-Build Entity's Licensing.** The Design-Build Entity shall have only appropriately licensed contractors performing work on the Project as required by the Business and Professions Code. The Design-Build Entity hereby designates [INSERT NAME OF CONTRACTOR] (License No. \_\_\_\_\_) to act as the licensed general contractor for the Project. Design-Build Entity's general contractor shall perform all services required

under the Contract Documents in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform such services in the same discipline in the State of California, and the Design-Build entity shall be fully responsible to the City for any damages and/or delays to the Project as specified in the indemnification provisions of the Contract. Any change in the general contractor shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new general contractor shall be of at least equal competence as the prior general contractor. In the event that City and Design-Build Entity cannot agree as to the substitution of a new general contractor, the City shall be entitled to terminate this Contract as described in the General Conditions. The Design-Build Entity shall be licensed in the following appropriate classification(s) of contractor's license(s), for the Project, and must maintain the license(s) throughout the duration of the Project: Class B. By its signature hereunder, the Design-Build Entity certifies that it is authorized to do business in the State of California and attests that it is in good tax standing with the California Franchise Tax Board. The Design-Build Entity shall obtain and maintain the required licenses, permits and all other appropriate legal authorizations for all applicable federal, state and local jurisdictions (including California Environmental Quality Act clearance) and pay all applicable fees associated therewith. The Design-Build Entity shall immediately notify the City in writing of any change in its licensing status during the term of its agreement with the City.

**1.8 Ineligible Contractors.** Pursuant to Public Contract Code section 6109, no contractor who is ineligible to perform work on the public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code, may work on this Project.

**1.9 Prevailing Wages/Labor Code.** This Project is subject to the prevailing wage requirements of California Labor Code section 1720 et seq. The Director of Industrial Relations has determined the general prevailing rate of per diem wages in the locality in which this work is to be performed, copies of which are on file and will be made available to any interested party upon request at the office of the City or online at <http://www.dir.ca.gov/dlsr>. The Design-Build Entity shall post these rates at the job site. The Design-Build Entity shall comply with all applicable Labor Code provisions, including but not limited to, employment of apprentices, hours of labor and debarment of contractors. The Design-Build Entity shall indemnify, defend and hold harmless the City and SCAQMD against any and all claims, demands, damages, defense costs or liabilities based on failure to adhere to the above referenced statutes.

**1.10 Substitution of Securities.** Pursuant to Public Contract Code Section 22300, the Design-Build Entity may substitute certain securities for funds withheld by the City utilizing Attachment 5 for this purpose.

**1.11 Performance and Payment Bonds.** The Design-Build Entity will be required to furnish the City with a Payment and a Performance Bond equal to 100% of the Design-Build Contract price, prior to execution of the Design-Build Contract. All bonds are to be secured from a surety that meets all of the State of California bonding requirements, as defined in Code of Civil Procedure Section 995.120. The GMP includes the cost of obtaining such bonds.

**1.12 Discrimination Prohibited.** In the performance of the Design-Build Contract, the Design-Build Entity shall not discriminate in recruiting, hiring, promotion, demotion or termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age, or physical or mental disability and shall comply with the provisions of the California Fair Employment & Housing Act (Government Code Section 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, Executive Order No. 11246 (30 Federal Register 12319), and all administrative rules and regulations issued pursuant to said Acts and Order.

**1.13 Immigration Reform Act Requirements.** The Design-Build Entity shall warrant that it fully complies with all laws regarding the employment of aliens and others, and that its employees performing services hereunder meet the citizenship or alien status requirements contained in federal and state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L. 99-603). The Design-Build Entity shall obtain from all covered employees performing services hereunder all verification and other documentation of employees' eligibility status required by federal statutes and regulations as they currently exist and as they may be hereafter amended. The Design-Build Entity shall have a continuing obligation to verify and document the continuing employment authorization and authorized alien status of employees performing services under this Contract to ensure continued compliance with all federal statutes and regulations. Notwithstanding the above, the Design-Build Entity, in the performance of the Design-Build Contract shall not discriminate against any person in violation of 8 USC Section 1324b. The Design-Build Entity shall retain such documentation for all covered employees for the period described by law. The Design-Build Entity shall indemnify, defend and hold harmless the City and SCAQMD and their officers and employees from employer sanctions and other liability which may be assessed against the Design-Build Entity, the City and/or SCAQMD, in connection with any alleged violations of federal statutes or regulations pertaining to the eligibility for employment of persons performing services under the Design-Build Contract.

**1.14 Design-Build Entity's Architect of Record.** The Design-Build Entity shall name a specific person to act as the Architect of Record as described in the General Conditions, subject to the approval of the City. The Design-Build Entity hereby designates **[INSERT NAME OF ARCHITECT] (License No. \_\_\_\_\_)** to act as the Architect of Record for the Project. Design-Build Entity's Architect of Record shall perform all services required under the Contract Documents in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform such services in the same discipline in the State of California, and the Design-Build entity shall be fully responsible to the City for any damages and/or delays to the Project as specified in the indemnification provisions of the Contract. Any change in the Architect of Record shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new Architect of Record shall be of at least equal competence as the prior Architect of Record. In the event that City and Design-Build Entity cannot agree as to the substitution of a new Architect of Record, the City shall be entitled to terminate this Contract as described in the General Conditions.

**1.15 Design-Build Entity's Indemnification.** The Design-Build Entity agrees to protect, save, defend and hold harmless, (with counsel of the City's choosing) to the greatest

extent provided by law, the SCAQMD, City, their governing bodies and each member thereof, their officers, agents and employees (“Indemnified Parties”) from any and all loss, damage, costs, lawsuits, claims, liabilities, demands, causes of action judgments, reasonable expenses or damages of any nature, including reasonable attorney’s fees, for injury or death of any person, or damage to property, or from third party claims’ interference with the use of property, arising out of the actual or alleged negligent acts, errors or omission, or willful misconduct by the Design-Build Entity, the Design-Build Entity’s agents, officers, employees, sub-consultants, or independent consultants hired by the Design-Build Entity to provide services pursuant to this Contract. The only exception to the Design-Build Entity’s responsibility to protect, save, defend and hold harmless the Indemnified Parties is where a claim, liability, expense or damage occurs due to the sole negligence, willful misconduct or active negligence of the Indemnified Parties. This hold harmless provision shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable. Insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Design-Build Entity. Notwithstanding the foregoing, to the extent Design-Build Entity’s Scope of Work is subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Design-Build Entity.

2. In claims against any person or entity indemnified under this provision, that are made by an employee of the Design-Build Entity or any subcontractor, a person indirectly employed by the Design-Build Entity or any subcontractor, or anyone for whose acts the Design-Build Entity or any subcontractor may be liable, the indemnification obligation under this provision shall not be limited by any limitation on amount or type of damages, compensation, or benefits payable by or for Design-Build Entity or any subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts or any other insurance limitations. The indemnification obligations under this provision shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non delegable duty.

3. Joint and several liability shall apply to the Design-Build Entity. In the event the Design-Build Entity and one or more than one other party is connected with an accident or occurrence covered by this indemnification, then all such parties shall be jointly and severally responsible to each of the indemnitees for indemnification, and the ultimate responsibility among such indemnifying parties for the loss and expense of any such indemnification shall be resolved without jeopardy to any indemnitee listed herein.

4. To the extent that the indemnification clause above and the indemnification clause set forth in SCAQMD Contract No. 14042 conflict, notwithstanding any language to the contrary herein, this Section 1.15 shall govern.

**1.16 The Design-Build Entity's Labor Certification.** By its signature hereunder, the Design-Build Entity maintains that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of all work described in the Scope of Work for the Project.

**1.17 Reporting Requirements.** The Design-Build Entity shall comply with all reporting requirements as required by applicable law and as set forth in Attachment 1 SCAQMD Contract No. 14042 and City Proposal as well as within this Contract.

**1.18 Press Releases.** The Parties shall work cooperatively on any communications to the media, including press statements and press conferences related to this Project. The Parties agree that announcements, news releases and other communication materials describing the Project shall acknowledge, “The Project was made possible by a grant from the South Coast Air Quality Management District AB 1318 Mitigation Fees Fund to reduce or mitigate emissions within Coachella Valley.” Information, data, documents or reports developed by the Design-Build Entity, pursuant to this Design-Build Contract, shall be a part of SCAQMD public record unless otherwise indicated. Upon written approval of SCAQMD, the Design-Build Entity may use or publish, at its own expense, such information, data, documents or reports provided to SCAQMD. The following acknowledgement of support and disclaimer must appear in each publication of materials, whether copyrighted or not, based upon or developed under this Contract:

*This report was prepared as a result of work paid for, in whole or in part, by a grant from the South Coast Air Quality Management District (“SCAQMD”). The opinions, findings, conclusions and recommendations are those of the author and do not necessarily represent the views of SCAQMD. SCAQMD, its officers, employees, contractors, and subcontractors make no warranty, expressed or implied, and assume no legal liability for the information in this Request for Proposals. SCAQMD has not approved or disapproved this Request for Proposals, nor has SCAQMD passed upon the accuracy or adequacy of the information contained herein.*

5. The Design-Build Entity shall inform its officers, employees, and subcontractors involved in the performance of the Design-Build Contract of the restrictions contained herein and require compliance with the above.

**1.19 Attorneys’ Fees.** If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Contract, the prevailing party in such action shall be entitled to have and recover from the losing party reasonable attorneys’ fees and all other costs of such action.

**1.20 Successors.** The parties do for themselves, their heirs, executors, administrators, successors, and assigns agree to the full performance of all of the provisions contained in this Contract. The Design-Build Entity may not either voluntarily or by action of law, assign any obligation assumed by the Design-Build Entity hereunder without the prior written consent of the City.

**1.21 Notices.** All notices hereunder and communications regarding interpretation of the terms of the Agreement or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

**DESIGN-BUILD ENTITY:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

**CITY:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

6. Any notice so given shall be considered received by the other party three (3) days after deposit in the U.S. Mail, first class postage prepaid, addressed to the party at the above address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

**1.22 Attachments.** All Attachments referenced in this Contract are incorporated into the Contract by this reference.

**1.23 Recitals.** The above referenced recitals are true and correct and are incorporated into this Contract by this reference.

**1.24 No State Liability.** As between the City and the State of California, the Design-Build Entity agrees that the State of California, including the State Allocation Board, is not liable for any damages of any kind arising out of this Contract. The Design-Build Entity's sole remedy is against the City or other third parties, and only the City and those other third parties may be liable for any injury the Design-Build Entity may suffer under this Contract.

**1.25 Authority of Signatories.** The persons executing this Contract on behalf of their respective Parties represent and warrant that they have the authority to do so under law and from their respective Parties.

*[SIGNATURES CONTINUED ON NEXT PAGE]*

**ON BEHALF OF THE DESIGN-BUILD ENTITY:**

**ON BEHALF OF THE CITY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Federal Tax ID No. \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTACHMENT 1**

**SCAQMD CONTRACT NO. 14042 AND CITY PROPOSAL**

[ATTACHED AS EXHIBIT E TO REQUEST FOR PROPOSALS]

**ATTACHMENT 2**  
**HOURLY RATE SCHEDULE FOR EXTRA WORK**

**\*\* Design-Build Entity shall apply mark-ups as allowed in Article VII of the General Conditions for Overhead and Profit on design change directives.**

**ATTACHMENT 3  
PERFORMANCE BOND**

WHEREAS the **City of Coachella** (also herein "Obligee") have awarded to \_\_\_\_\_  
\_\_\_\_\_ (hereinafter the "Design-Build Entity"), a contract for  
work consisting of but not limited to, furnishing all labor, materials, tools, equipment, services,  
and incidentals for the construction of the \_\_\_\_\_  
\_\_\_\_\_ Project and all other required structures and facilities within the rights-of-way,  
easements and permits;

WHEREAS, the Work to be performed by the Design-Build Entity is more particularly  
set forth in that certain contract for the said Public Work dated \_\_\_\_\_  
(hereinafter the "Public Work Contract"); and

WHEREAS, the Design-Build Entity is required by said Public Work Contract to  
perform the terms thereof and to provide a bond both for the performance and guaranty thereof,

NOW, THEREFORE, we \_\_\_\_\_, the  
undersigned the Design-Build Entity, as Principal, and \_\_\_\_\_,  
a corporation organized and existing under the laws of the State of \_\_\_\_\_,  
and duly authorized to transact business under the laws of the State of California, as Surety, are  
held and firmly bound unto the Obligee in the sum of \_\_\_\_\_  
\_\_\_\_\_ dollars, \$\_\_\_\_\_, said  
sum being not less than 100% of the total amount payable by the said Obligee under the terms of  
the said Public Work Contract, for which payment well and truly to be made, we bind ourselves,  
our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by  
these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal, his or its  
heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by,  
and well and truly keep and perform the covenants, conditions and Contracts in the said Public  
Work agreements and any alteration thereof made as therein provided, on his or their part, to be  
kept and performed at the time and in the manner therein specified, and in all respects according  
to their intent and meaning; and shall faithfully fulfill the one-year guarantee of all materials and  
workmanship; and indemnify and save harmless the Obligee, its officers and agents, as stipulated  
in the said Public Work Contract, then this obligation shall become null and void; otherwise it  
shall be and remain in full force and effect. In the event legal action is required to enforce the  
provisions of this Contract, the prevailing party shall be entitled to recover reasonable attorneys'  
fees in addition to court costs, necessary disbursements, and other damages.

In case legal action is required to enforce the provisions of this bond, the prevailing party  
shall be entitled to recover reasonable attorneys' fees in addition to court costs, necessary  
disbursements and other consequential damages.

The said Surety, for value received, hereby stipulates and agrees that no change,  
extensions of time, alteration or addition to the terms of the Public Work Contract or to the Work

EXHIBIT B

to be performed thereunder, or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the Work or to Specifications.

IN WITNESS WHEREOF, we have hereto set our hands and seals this \_\_\_\_ day on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Design-Build Entity

By: \_\_\_\_\_  
President

\_\_\_\_\_  
Surety

By: \_\_\_\_\_  
Attorney-in-Fact

The rate of premium on this bond is \_\_\_\_\_ per thousand.

The total amount of premium charged, \$\_\_\_\_\_.

(The above must be filled in by corporate surety.)

STATE OF CALIFORNIA            )  
  )  
COUNTY OF \_\_\_\_\_        )        ss.

On this \_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me,  
\_\_\_\_\_, a Notary Public in and for said state,  
personally appeared \_\_\_\_\_, known to me (or  
proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to  
the within instrument as the Attorney-in-Fact of the \_\_\_\_\_  
(surety) and acknowledged to me that he subscribed the name of the  
\_\_\_\_\_ (surety) thereto and his own name as  
Attorney-in-Fact.

\_\_\_\_\_  
Notary Public in and for said State

(SEAL)

My Commission expires \_\_\_\_\_.

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_  
\_\_\_\_\_  
Secretary of the corporation named as  
principal to the within bond; that \_\_\_\_\_ who  
signed the said bond on behalf of the principal was then \_\_\_\_\_  
of said corporation; that I know his signature, and his signature thereto is genuine; and that said  
bond was duly signed, sealed and attested for and in behalf of said corporation by authority of its  
governing Board.

(Corporate Seal)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**NOTE: A copy of the power of attorney to local representatives of the bonding company  
may be attached hereto.**

**ATTACHMENT 4**  
**PAYMENT (MATERIAL & LABOR) BOND**

WHEREAS the City of Coachella (hereinafter "Obligee") have awarded to \_\_\_\_\_ (hereinafter the "Design-Build Entity"), a contract for work consisting of but not limited to, furnishing all labor, materials, tools, equipment, services, and incidentals for the construction of the \_\_\_\_\_ Project and all other required structures and facilities within the rights-of-way, easements and permits;

WHEREAS, the Work to be performed by the Design-Build Entity is more particularly set forth in that certain contract for the said Public Work dated \_\_\_\_\_, (hereinafter the "Public Work Contract"); and

WHEREAS, the Design-Build Entity is required to furnish a bond in connection with said Public Work Contract providing that if the Design-Build Entity or any of his or its subcontractors shall fail to pay for any materials, provisions, or other supplies, or terms used in, upon, for or about the performance of the Work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the provisions of 3248 of the California Civil Code, with respect to such work or labor, that the Surety on this bond will pay the same together with a reasonable attorney's fee in case suit is brought on the bond.

NOW, THEREFORE, we \_\_\_\_\_, the undersigned Design-Build Entity(s), as Principal and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_ and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the Obligee and to any and all material men, persons, companies or corporations furnishing materials, provisions, and other supplies used in, upon, for or about the performance of the said Public Work, and all persons, companies or corporations renting or hiring teams, or implements or machinery, for or contributing to said Public Work to be done, and all persons performing work or labor upon the same and all persons supplying both work and materials as aforesaid excepting the Design-Build Entity, the sum of \_\_\_\_\_ Dollars, \$\_\_\_\_\_, said sum being not less than 100% of the total amount payable by said Obligee under the terms of the said Public Work Contract, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal, his or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies or machinery used in, upon, for or about the performance of the Work contracted to be done, or for work or labor thereon of any kind, or fail to pay any of the persons named in California Civil Code Section 3181, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and

EXHIBIT B

labor, and all other applicable laws of the State of California and rules and regulations of its agencies, then said Surety will pay the same in or to an amount not exceeding the sum specified herein.

In case legal action is required to enforce the provisions of this bond, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to court costs, necessary disbursements and other consequential damages. In addition to the provisions hereinabove, it is agreed that this bond will inure to the benefit of any and all persons, companies and corporations entitled to make claims under Sections 3110, 3111, 3112 and 3181 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

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

IN WITNESS WHEREOF, we have hereto set our hands and seals this \_\_\_\_ day on \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Design-Build Entity

By: \_\_\_\_\_  
President

\_\_\_\_\_  
Surety

By: \_\_\_\_\_  
Attorney-in-Fact

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_) ss.

On this \_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public in and for said state, personally appeared \_\_\_\_\_, known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument as the Attorney-in-Fact of the \_\_\_\_\_ (surety) and acknowledged to me that he subscribed the name of the \_\_\_\_\_ (surety) thereto and his own name as Attorney-in-Fact.

\_\_\_\_\_  
Notary Public in and for said State

(SEAL)

My Commission Expires \_\_\_\_\_

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ Secretary of the corporation named as principal in the attached bond, that \_\_\_\_\_ who signed the said bond on behalf of the principal was then \_\_\_\_\_ of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed and attested for and in behalf of said corporation by authority of its governing Board.

(Corporate Seal)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**NOTE: A copy of the power of attorney to local representatives of the bonding company may be attached hereto.**

**ATTACHMENT 5**  
**ESCROW AGREEMENT FOR SECURITY**

This Escrow Contract is made and entered into by and between the City of Coachella, whose address is [INSERT ADDRESS OF CITY] (hereinafter called the "City") and \_\_\_\_\_ whose address is [\*\*\*INSERT ADDRESS\*\*\*] (hereinafter called "the Design-Build Entity") and \_\_\_\_\_ whose address is [\*\*\*INSERT ADDRESS\*\*\*] (hereinafter called "Escrow Agent").

For the consideration hereinafter set forth, the City, the Design-Build Entity, and Escrow Agent agree as follows:

(1) Pursuant to Section 22300 of the Public Contract Code of the State of California, the Design-Build Entity has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by City pursuant to the Construction Contract entered into between the City and the Design-Build Entity for the [\*\*\*INSERT PROJECT NAME\*\*\*] Project in the amount of \$[\*\*\*INSERT AMOUNT\*\*\*] dated [\*\*\*INSERT DATE\*\*\*] (hereinafter referred to as the "Contract"). Alternatively, on written request of the Design-Build Entity, the City shall make payments of the retention earnings directly to the Escrow Agent. When the Design-Build Entity deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the City within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the City and the Design-Build Entity. Securities shall be held in the name of the City, and shall designate the Design-Build Entity as the beneficial owner.

(2) The City shall make progress payments to the Design-Build Entity for those funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.

(3) When the City makes payment of retention earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Design-Build Entity until the time that the escrow created under this Escrow Contract is terminated. The Design-Build Entity may direct the investment of the payments into securities. All terms and conditions of this Escrow Contract and the rights and responsibilities of the parties shall be equally applicable and binding when the City pays the Escrow Agent directly.

(4) The Design-Build Entity shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the City. These expenses and payment terms shall be determined by the City, the Design-Build Entity and Escrow Agent.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of the Design-Build Entity and shall be subject to withdrawal by the Design-Build Entity at any time and from time to time without notice to the City.

EXHIBIT B

(6) The Design-Build Entity shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the City to the Escrow Agent that City consents to the withdrawal of the amount sought to be withdrawn by the Design-Build Entity.

(7) The City shall have a right to draw upon the securities in the event of default by the Design-Build Entity. Upon seven days' written notice to the Escrow Agent from the City of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the City.

(8) Upon receipt of written notification from the City certifying that the Contract is final and complete, and that the Design-Build Entity has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to the Design-Build Entity all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.

(9) Escrow Agent shall rely on the written notifications from the City and the Design-Build Entity pursuant to Sections (5) to (8), inclusive, of this Escrow Contract and the City and the Design-Build Entity shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the City and on behalf of the Design-Build Entity in connection with the foregoing, and exemplars of their respective signatures are as follows:

**ON BEHALF OF THE CITY:**

**ON BEHALF OF THE DESIGN-BUILD ENTITY:**

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

**ON BEHALF OF ESCROW AGENT:**

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

At the time the Escrow Account is opened, the City and the Design-Build Entity shall deliver to the Escrow Agent a fully executed counterpart of this Escrow Contract.

IN WITNESS WHEREOF, the parties have executed this Escrow Contract by their proper officers on the date first set forth above.

CITY:

DESIGN-BUILD ENTITY

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**GENERAL CONDITIONS  
DESIGN-BUILD CONTRACT  
SOLAR PHOTOVOLTAIC PARKING CANOPY SYSTEM  
AND ELECTRIC VEHICLE CHARGING STATIONS PROJECT**

**ARTICLE 1 GENERAL PROVISIONS**

**1.1 BASIC DEFINITIONS**

**1.1.1 APPLICABLE CODE REQUIREMENTS.** The term “Applicable Code Requirements” means all laws, statutes, the most recent building codes, ordinances, rules, regulations, and lawful orders of all public authorities having jurisdiction over the City, the Design-Build Entity, any Subcontractor, the Project, the Project Site, or the prosecution of the work on the Project.

**1.1.2 APPLICATION FOR PAYMENT.** The term “Application For Payment” means the submittal from the Design-Build Entity wherein payment for certain portions of the completed work on the Project is requested.

**1.1.3 CALIFORNIA SOLAR INITIATIVE.** The term “California Solar Initiative” or “CSI” shall mean the rebate made available through the State of California and administered by the Utility, as defined below, which is paid over time on a performance-basis as the completed and interconnected Solar Photovoltaic System, defined below, generates electricity.

**1.1.4 CEQA.** The term “CEQA” means the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.* All CEQA compliance documentation prepared for the Project has been provided to the Design-Build Entity.

**1.1.5 CERTIFICATE FOR PAYMENT.** The term “Certificate For Payment” means the form signed by the City’s Representative attesting to the Design-Build Entity’s right to receive payment for certain completed portions of the work on the Project as set forth herein.

**1.1.6 CERTIFICATE OF SUBSTANTIAL COMPLETION.** See Section 10.1, Substantial Completion, of the General Conditions.

**1.1.7 CHANGE ORDER.** The term “Change Order” means a Contract Document which authorizes, in accordance with Section 4.2, changes to the Scope of Work, GCD and/or the Guaranteed Maximum Price.

**1.1.8 CHANGE ORDER REQUEST.** The term “Change Order Request” means a proposal for a Change Order submitted by the Design-Build Entity to the City, either at the request of the City, or at the Design-Build Entity’s own initiative.

**1.1.9 CITY.** The term “City” shall mean the City of Coachella.

**1.1.10 CITY'S REPRESENTATIVE.** The term "City's Representative" means the person or firm identified as the City's primary contact person as designated in the Contract.

**1.1.11 CONSTRUCTION DOCUMENTS.** The term "Construction Documents" shall mean the plans and specifications prepared by the Design-Build Entity for the Project, approved by the City. The Construction Documents shall set forth in detail all items necessary to complete the construction (other than such details customarily provided by others during construction) of the Project in accordance with the Contract Documents (subject to their completion following commencement of the Construction Phase). All amendments and modifications to the Plans and Specifications must be approved by the City in writing.

**1.1.12 CONSTRUCTION DOCUMENTS PHASE.** The term "Construction Documents Phase" shall mean the second of three phases of the Scope of Work and will commence with the issuance of the approval of the Schematic Design Phase.

**1.1.13 CONSTRUCTION PHASE.** The term "Construction Phase" shall mean the third phase of the Scope of Work and will commence upon final approval of the plans and specifications by the City.

**1.1.14 CONSTRUCTION WORK.** The term "Construction Work" shall mean that portion of the work on the Project consisting of the provision of labor, materials, furnishings, equipment and services in connection with the construction of the Project as set forth in the Contract Documents.

**1.1.15 CONTRACT.** The term "Contract" means the written agreement between the Design-Build Entity and the City set forth in the Contract Documents.

**1.1.16 CONTRACT DOCUMENTS.** The "Contract Documents" consist of the Contract and attachments thereto, including but not limited to, the General Conditions, the Performance Bond, Payment Bond and Required Certifications and Forms

**1.1.17 CONTRACT SCHEDULE.** The term "Contract Schedule" means the graphical representation of a practical plan to complete the work on the Project within the Guaranteed Completion Date submitted by the Design-Build Entity for the City's approval.

**1.1.18 DAY.** The term "day," shall mean calendar day, unless otherwise specifically provided.

**1.1.19 DEFECTIVE WORK.** The term "Defective Work" means work that is unsatisfactory, faulty, omitted, incomplete, deficient, or does not conform to the requirements of the Contract Documents, directives of the City's Representative, or the requirements of any inspection, reference standard, test, or approval specified in the Contract Documents.

**1.1.20 DESIGN-BUILD ENTITY.** The term "the Design-Build Entity" means the person or firm identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number.

**1.1.21 DESIGN-BUILD ENTITY REPRESENTATIVE.** The Design-Build Entity Representative shall mean the person or firm identified as the primary contact person and representative of the Design-Build Entity as designated in the Contract.

**1.1.22 DESIGN MATERIALS.** The term “Design Materials” shall mean any and all documents, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by, or for, the Design-Build Entity: (1) to the City under the Contract Documents or; (2) developed or prepared by or for the Design-Build Entity specifically to discharge its duties under the Contract Documents.

**1.1.23 DESIGN PROFESSIONAL.** The term “Design Professional” shall mean that person identified in the Design-Build Entity’s Proposal that is licensed in the State of California and is part of the Design-Build Entity.

**1.1.24 DESIGN WORK.** The term “Design Work” shall mean the portion of the work on the Project consisting of the Design services and design deliverables required to be provided in connection with the Design of the Project as set forth in the Contract Documents.

**1.1.25 DRAWINGS.** The term “Drawings” means the graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the work to be done on the Project, generally including plans, elevations, sections, details, schedules, and diagrams prepared as part of the Design Materials.

**1.1.26 ENERGY.** The term “Energy shall mean electricity produced by the Solar Photovoltaic System delivered to the City at the Energy Delivery Point.

**1.1.27 ENERGY DELIVERY POINT.** The term “Energy Delivery Point” means the physical location, to be set forth in the final approved set of Construction Documents, where the alternating current (AC) production immediately leaves the inverter but not including any cables or equipment downstream of the inverter.

**1.1.28 EQUIPMENT MANUFACTURER.** The term “Equipment Manufacturer” shall mean any Separate Contractor that fabricates and/or supplies any of the City’s provided equipment which is installed in the Project by the Design-Build Entity.

**1.1.29 EXTRA WORK.** The term “Extra Work” means work beyond or in addition to the work required by the Contract Documents, pursuant to Section 4.2 of the General Conditions.

**1.1.30 FORCE MAJEURE.** The term shall include but not be limited to: acts of God; acts of government agencies; strikes; labor disputes; fires; explosions or other casualties; thefts; vandalism; riots or war; acts of terrorism; electrical power outages; interruptions or degradations in telecommunications, computer, or electronic communications systems; changes in Laws; or other acts or occurrences outside the Parties’ control, such as the unavailability of specific parts, materials or supplies, so long as such parts, materials or supplies

were ordered within thirty (30) days of the City’s issuance of the Notice to Proceed. Force Majeure shall not include the replacement of defective materials, parts, supplies, unless there is a delay in obtaining replacement parts, materials and supplies, which is outside the control of the Parties’ and the parts, materials and supplies, were ordered within five (5) calendar days of the determination of the defect.

**1.1.31 FINAL COMPLETION.** The term “Final Completion” means the point at which the work on the Project has been fully completed in accordance with the Contract Documents as determined by the City’s Representative and as set forth in Section 10.2.

**1.1.32 GOVERNMENTAL APPROVALS.** The term “Governmental Approvals” means those governmental (including agency) actions required to be obtained by the City and necessary for the completion of the Project.

**1.1.33 GUARANTEED COMPLETION DATE.** The term “Guaranteed Completion Date” also referred to as “GCD” herein, shall mean the date by which the Design-Build Entity guarantees that all work described in the Scope of Work shall be completed, as is set forth in Section 8 of the Contract.

**1.1.34 GUARANTEED MAXIMUM PRICE.** The term “Guaranteed Maximum Price” shall mean the Guaranteed Maximum Price the City will pay for the completion of all work described in the Scope of Work as is set forth in Section 4 of the Contract.

**1.1.35 HAZARDOUS MATERIALS.** The term “Hazardous Materials” means any substance: the presence of which requires investigation or remediation under any federal, state or local law, statute, regulation, ordinance, order, action, policy or common law; which is or becomes defined as a “hazardous waste,” “hazardous substance,” pollutant or contaminant under any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto, including, without limitations, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. (“CERCLA”), as amended, or the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq. (“RCRA”); which is petroleum, including crude oil or any fraction thereof not otherwise designated as a “hazardous substance” under CERCLA, including without limitation gasoline, diesel fuel or other petroleum hydrocarbons; which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any regulatory agency or instrumentality or the United States; the presence of which on the Project Site causes or threatens to cause a nuisance upon the Project Site or to the adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Project Site; the presence of which on adjacent properties could constitute a trespass by the Design-Build Entity or the City; or as defined in the California Health and Safety Code.

**1.1.36 LIQUIDATED DAMAGES.** The term “Liquidated Damages” shall mean the amount specified in the Contract.

**1.1.37 LOSSES.** The term “Losses” means any and all losses, costs, liabilities, claims, damages, and expenses.

**1.1.38 NOTICE TO PROCEED.** The term “Notice to Proceed” shall mean the written notice given by the City to the Design-Build Entity advising that the Project Site is available to the Design-Build Entity and directing the Design-Build Entity to commence work on the Project.

**1.1.39 PROJECT.** The term "Project" means the design and construction of a solar photovoltaic systems at the Sites identified in Attachments 4 and 6 of the Contract as approved and authorized by the City, as set forth herein, which may be the whole, or a part, and which may include separate design or construction work performed by the City or by Separate Contractors.

**1.1.40 PROJECT SITE.** The term “Project Site” refers to the location identified in Attachment 4 to the Contract upon which the Solar Photovoltaic System will be located.

**1.1.41 SCHEMATIC DESIGN PHASE.** The term “Schematic Design Phase” shall mean the first of three phases of the Scope of Work.

**1.1.42 SCOPE OF WORK.** The term “Scope of Work” shall mean all the all labor, materials, and services required to be performed or provided by the Design-Build Entity pursuant to the Contract Documents necessary to design, construct, and complete the Project, including but not limited to, any mitigation measures adopted by the City following environmental review of the Project pursuant to CEQA.

**1.1.43 SCAQMD.** The term “SCAQMD” shall mean the South Coast Air Quality Management District.

**1.1.44 SEPARATE CONTRACTOR.** The term “Separate Contractor” means a person, or firm, under separate contract with the City performing other work at the Project Site which may affect the work performed under the Contract Documents.

**1.1.45 SOLAR PHOTOVOLTAIC SYSTEM.** The term “Solar Photovoltaic System” means the solar panels, racking system, mounting hardware, footers, wiring, inverters, conduits, the public interface kiosks, wiring for the public interface kiosks, the monitoring equipment, metering equipment and any and all materials and equipment required to construct a turnkey, operational solar photovoltaic system, interconnected to the grid on a net-metering basis which meets the requirements of the CSI as well as any and all applicable laws and the Contract Documents.

**1.1.46 SPECIFICATIONS.** The term “Specifications” means that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the work on the Project, and performance of related services.

**1.1.47 SUBCONTRACTOR.** The term “Subcontractor” means any person or firm that has a contract with the Design-Build Entity or with a Subcontractor of the Design-Build Entity to perform a portion of the work on the Project. Unless otherwise specifically provided, the term Subcontractor includes Subcontractors of all tiers.

**1.1.48 SUBSTANTIAL COMPLETION.** See Section 10.1, Substantial Completion, herein.

**1.1.49 SUPERINTENDENT.** The term “Superintendent” means the person designated by the Design-Build Entity to represent the Design-Build Entity at the Project Site, in accordance with Article 3.

**1.1.50 TERM.** “Term” shall have the meaning set forth in the Contract.

**1.1.51 TIER.** The term “tier” means the contractual level of a Subcontractor or supplier or consultant with respect to the Design-Build Entity. For example, a first tier Subcontractor is under subcontract with the Design-Build Entity, a second tier Subcontractor is under subcontract with a first tier Subcontractor, and so forth.

**1.1.52 UTILITY.** The term “Utility” shall mean Imperial Irrigation District or IID, as the local utility.

## **1.2 OWNERSHIP AND USE OF CONSTRUCTION DOCUMENTS**

**1.2.1** The Construction Documents, and all copies thereof, furnished to, or provided by, the Design-Build Entity are the property of the City. The City and the Design-Build Entity explicitly agree that all materials and documents developed in the performance of this Contract are the property of the City. The City shall have unlimited rights, for the benefit of the City, in all drawings, designs, specifications, notes and any other documentation and other work developed in the performance of this Contract for the Project, including the right to re use details of the Design on any other the City work at no additional cost to the City. The Design-Build Entity agrees to, and hereby does, grant to the City a royalty free license to all such data that the Design-Build Entity may cover by copyright and to all designs as to which the Design-Build Entity may assert any right or establish any claim to under the patent or copyright laws. The Design-Build Entity, for a period up to five (5) years from the Date of Completion of the Project, agrees to furnish and to provide access to the originals or copies of all such materials immediately upon the written request of the City. Any use or reuse by City of the Construction Documents on any project other than this Project without employing the services of the Design-Build Entity shall be at City’s own risk with respect to third parties. If City uses or reuses the Construction Documents on any project other than this Project, they shall remove the Design-Build Entity’s architect’s seal from the Construction Documents and hold harmless Design-Build Entity and its officers, directors, agents and employees from claims arising out of the use or reuse of the Construction Documents on such other project. Design-Build Entity shall not be responsible or liable for any revisions to the Construction Documents made by any party other than the Design-Build Entity, a party for which the Design-Build Entity is legally responsible or liable, or anyone approved by the Design-Build Entity.

## **1.3 INTERPRETATION OF DOCUMENTS**

**1.3.1** The intent of the Contract Documents is to include all necessary criteria to establish the scope and quality for completion of the work on the Project by the Design-Build Entity. The Contract Documents are complementary and what is required by one

shall be as binding as if required by all. Performance by the Design-Build Entity shall be required to the extent consistent with the Contract Documents.

**1.3.2** The City and the Design-Build Entity acknowledge that the Contract Documents may differ in some respect(s) from the other documents included in the Design-Build Proposal Package upon which the Design-Build Entity based its response(s) to Request for Proposal. Prior to the commencement of construction on the Project, the Parties shall confirm, in writing, the final form of the Contract Documents that are to be utilized.

**1.3.3** Organization of the Specifications into various subdivisions and the arrangement of the Drawings shall not control the Design-Build Entity in dividing portions of the work necessary for the Project among Subcontractors or in establishing the extent of work to be performed by any trade.

**1.3.4** Unless otherwise stated in the Contract Documents, technical words and abbreviations contained in the Contract Documents are used in accordance with commonly understood design professional and construction industry meanings; non technical words and abbreviations are used in accordance with their commonly understood meanings.

**1.3.5** The Contract Documents may omit modifying words such as “all” and “any,” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The use of the word “including,” when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters, whether or not non limiting language (such as “without limitation,” “but not limited to,” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.

**1.3.6** Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include corporation, partnership, trust, or other legal entity, whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only for reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.

**1.3.7** Each and every provision of law required by law to be inserted in the Contract Documents shall be deemed to be inserted herein, and the Contract Documents shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either Party the Contract shall be amended in writing to make such insertion or correction.

**1.3.8** Before commencing any work on the Project, the Design-Build Entity shall check and review the plans and specifications and Contract Documents for such portion for conformance and compliance with all laws, ordinances, codes, rules and regulations of all governmental authorities and public utilities affecting the construction and operation of the Project, including but not limited, all quasi-governmental and other regulations affecting the

construction and operation of the Project, and other special requirements, if any, designated in the Contract, including but not limited to the SCAQMD requirements set forth in Attachment 1 of the Contract. In the event the Design-Build Entity observes any violation of any law, ordinance, code, rule or regulation, or inconsistency with any such restrictions or special requirements of the Contract, the Design-Build Entity shall immediately notify the City's Representative in writing of same and shall cause to be corrected any such violation or inconsistency in the manner provided hereunder. The Design-Build Entity shall be solely liable for any such violation, inconsistency or special requirement, if Design-Build Entity fails to conduct such review or notification to the City.

**1.3.9** The Design-Build Entity shall be responsible for applying, on behalf of the City and the Project, for the CSI funds from the Utility, including, but not limited to, coordinating the completion and submission of all requisite CSI paperwork. The Utility's CSI program is currently oversubscribed for 2013 and for 2014, the Utility plans on utilizing a lottery system to select CSI recipients. As such CSI program funds are not guaranteed for this Project and are not a condition of this Project moving forward. The Design-Build Entity shall pay for the reimbursable CSI reservation fee in submitting an application to the Utility for such CSI funds. Any CSI funds received from the Utility for this Project shall be assigned and made payable to SCAQMD.

**1.3.10** Before commencing any work on the Project, the Design-Build Entity shall carefully examine all Specifications, Contract, Contract Documents and other information given to the Design-Build Entity as to Project requirements. The Design-Build Entity shall immediately notify the City's Representative of any perceived or alleged error, inconsistency, ambiguity, or lack of detail or explanation in such documents in writing. Neither the Design-Build Entity nor any Subcontractor shall take advantage of any apparent error or omission which may be found in the Specifications, the Contract, Contract Documents or other information given to Design-Build Entity. If the Design-Build Entity or its Subcontractors, material or equipment suppliers, or any of their officers, agents, and employees performs, permits, or causes the performance of any work under the Contract, which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, the Design-Build Entity shall bear any and all costs arising there from including, without limitation, the cost of correction thereof without increase or adjustment to the Guaranteed Maximum Price or the Guaranteed Completion Date. In no case shall any Subcontractor proceed with work if uncertain without the Design-Build Entity's written direction and/or approval.

## **ARTICLE 2 CITY**

### **2.1 FEE AND PERMIT REQUIREMENTS**

**2.1.1** Cost for on-site inspection shall be borne by the City. Design-Build Entity shall obtain and pay for local building permits, inspection fees, plan checking fees, and certain utility fees, including but not limited to the CSI rebate reservation fee, if applicable and any Rule 21 interconnection fees and costs. Except as otherwise provided in the Contract Documents, the Design-Build Entity will identify, prepare and submit on behalf of the City the applications for the following necessary permits, easements, fees and/or other government approvals in connection with the work on the Project, including but not limited to,

interconnection agreements and net-metering applications with the Utility. The City will pay for such permits and fees which the Design-Build Entity shall be responsible for obtaining on the City's behalf

- (a) Plan check and/or approval fees
- (b) Electrical connection and service fees
- (c) Other connection or service fees expressly authorized by the City

**2.2 ACCESS TO PROJECT SITE**

**2.2.1** The City will provide, as reasonably required by the work on the Project, but in no event later than the date designated in the Notice to Proceed, access to the lands and facilities upon which the Construction Work is to be performed, including such access to other lands and facilities designated in the Contract Documents for use by the Design-Build Entity, subject to the hours of work specified by the City.

**2.3 THE CITY'S RIGHT TO REPLACE THE CITY'S REPRESENTATIVE**

**2.3.1** The City may at any time and from time to time, without prior notice to or approval of the Design-Build Entity, replace the City's Representative with a new the City's Representative. Upon receipt of notice from the City informing the Design-Build Entity of such replacement and identifying the new the City's Representative, the Design-Build Entity shall recognize such person or firm as the City's Representative for all purposes under the Contract Documents.

**2.4 CEQA REVIEW**

**2.4.1** The City has conducted environmental review of the Projects pursuant to CEQA based on the preliminary scope of work proposed by the Design-Build Entity. At its [INSERT DATE OF MEETING], meeting, the Council approved categorical exemptions for the Project and directed City staff to file the Notices of Exemption with the County Clerk within five (5) working days. Pursuant to CEQA, any challenges to the Projects must be filed within thirty-five (35) days of the date upon which the Notices of Exemption were filed with the County Clerk.

**ARTICLE 3 DESIGN-BUILD ENTITY**

**3.1 DESIGN-BUILD ENTITY RESPONSIBILITY; INDEPENDENT CONTRACTOR**

**3.1.1** The Design-Build Entity shall be responsible to the City for acts and omissions of the Design-Build Entity's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of work on the Project under direct or indirect contract with the Design-Build Entity or any of its Subcontractors. The City retains the Design-Build Entity on an independent contractor basis. The Design-Build Entity is not an employee, agent or representative of the City. The Design-

Build Entity represents that it is fully experienced and properly qualified to perform the class of work provided for in this Contract and that it is properly licensed, equipped, organized, and financed to perform work on the Project. The Design-Build Entity shall maintain complete control over its employees and its subcontractors and shall pay all wages, salaries and other amounts due such personnel in connection with their performance as required by law. The Design-Build Entity shall be responsible for all reports and obligations respecting such personnel, including but not limited to, social security taxes, income tax withholdings, unemployment insurance, and workers' compensation insurance.

### **3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY THE DESIGN-BUILD ENTITY; SINGLE POINT RESPONSIBILITY OF THE DESIGN-BUILD ENTITY**

**3.2.1** In addition to the examination and reviews performed, and obligations assumed, the Design-Build Entity shall study and compare each of the Contract Documents provided by the City with the others and with information furnished by the City, and shall promptly report in writing to the City's Representative any errors, inconsistencies, or omissions in the Contract Documents provided by the City or inconsistencies with Applicable Code Requirements observed by the Design-Build Entity.

**3.2.2** The Design-Build Entity is responsible for the design and construction of the Project and shall use the design and engineering standards of care applicable to projects, buildings or work of similar size, complexity, quality and scope in performing work on the Project. The Design-Build Entity shall take field measurements, verify field conditions, and carefully compare with the Contract Documents such field measurements, conditions, and other information known to the Design-Build Entity before commencing work on the Project. Errors, inconsistencies, or omissions discovered at any time shall be promptly reported in writing to the City's Representative.

**3.2.3** If the Design-Build Entity performs any design and/or construction activity which it knows, or should know, involves an error, inconsistency, or omission referred to in Sections 3.2.1 and 3.2.2, without notifying and obtaining the written consent of the City's Representative, the Design-Build Entity shall be responsible for the resultant Losses, including, without limitation, the costs of correcting Defective Work.

**3.2.4** The City does not assume any obligation to employ the Design-Build Entity's services or pay the Design-Build Entity royalties of any type as to future programs that may result from work performed under this Contract.

**3.2.5** The Design-Build Entity shall be responsible for all plotting, printing, copying and distribution costs of any and all documents required in connection with work on the Project.

**3.2.6** The Design-Build Entity agrees that it has single point responsibility for the Design and construction of this Project, and agrees to utilize the standard of design, engineering and construction practices used by other professionals on similar projects.

### **3.3 DESIGN, SUPERVISION AND CONSTRUCTION PROCEDURES**

**3.3.1** The Design-Build Entity shall supervise, coordinate, and direct all work on the Project using the Design-Build Entity's best skill and attention. The Design-Build Entity shall be responsible for, and have control over, the entire design effort, construction means, methods, techniques, sequences, procedures, and the coordination of all portions of work on the Project.

**3.3.2** The Design-Build Entity shall be responsible to the City for acts and omissions of the Design-Build Entity, its agents, employees, and Subcontractors, and their respective agents and employees.

**3.3.3** The Design-Build Entity shall not be relieved of its obligation to perform all work on the Project in accordance with the Contract Documents either by acts or omissions of the City or the City's Representative in the administration of the Contract, or by tests, inspections, or approvals required, or performed, by persons or firms other than the Design-Build Entity.

**3.3.4** The Design-Build Entity shall be responsible for inspection of all portions of work on the Project, including those portions already performed under this Contract, to determine that such portions conform to the requirements of the Contract Documents and are ready to receive subsequent work.

**3.3.5** To facilitate communications and the management of the Design process, the Design-Build Entity shall meet on a regular basis with the City and utilize electronic design communication to the extent practical.

**3.3.6** The Design-Build Entity shall provide the appropriate management and design staff in the local office to provide the City with the current status of, and the capability to properly update, the Design documents.

**3.3.7** The Design-Build Entity is required to deliver to the City, if requested, any and all design materials including, but not limited to, calculations, preliminary drawings, construction drawings, electronic media data, tenant improvement documents, sketches, illustrations, specifications, descriptions, models, mock ups, and other information developed, prepared, furnished, or delivered in the prosecution of the Design Work.

**3.3.8** The Design-Build Entity shall at all times participate in, implement, and comply with the CEQA documentation prepared for the Project and provided to the Design-Build Entity in order to ensure conformance with the requirements of CEQA as required in the Contract Documents.

**3.3.9** The Design-Build Entity is responsible for preparation of the Construction Documents for the entire Project. The Design-Build Entity shall not undertake any work on the Project without first obtaining the written authorization and approval of the proposed Construction Documents from the City's Representative.

**3.3.10** The Design-Build Entity is responsible for construction of the entire Project as required by the Contract Documents.

**3.3.11** The Design-Build Entity shall at all times maintain good discipline and order among its employees and subcontractors. The Design-Build Entity shall provide competent, fully qualified personnel to perform all work on the Project.

**3.4 LABOR AND MATERIALS**

**3.4.1** Unless otherwise provided in the Contract Documents, the Design-Build Entity shall provide and pay for all professional services, services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Scope of Work on the Project, whether temporary or permanent and whether or not incorporated or to be incorporated in work on the Project.

**3.5 TRAINING OF CITY EMPLOYEES**

**3.5.1** The Design-Build Entity shall provide training and materials to no more than four (4) City employees on the operation and maintenance of the Solar Photovoltaic System within two weeks of the filing of the Notice of Completion, to prepare the City employees in the event that the City is required to maintain or otherwise operate the Solar Photovoltaic System under an emergency circumstance. The Design-Build Entity shall provide the City with four (4) bound operations manuals for this purpose.

**3.6 TAXES**

**3.6.1** The Design-Build Entity shall pay all sales, consumer, use, income, payroll and similar taxes for the work or portions thereof provided by the Design-Build Entity.

**3.7 PERMITS, FEES, AND NOTICES**

**3.7.1** Except for the permits and approvals which are to be obtained on behalf of the City or the requirements with respect to which the City is not subject, as provided in Section 2.1.1, the City, and not the Design-Build Entity, shall be responsible for securing, and paying for, all other permits, approvals, government fees, licenses, and inspections necessary for the proper execution and performance of work on the Project.

**3.8 APPLICABLE CODE REQUIREMENTS**

**3.8.1** The Design-Build Entity shall perform all work on the Project in accordance with the following Applicable Code Requirements and all code requirements listed in the Scope of Work:

(a) All laws, statutes, the most recent building codes, ordinances, rules, regulations, and lawful orders of all public authorities having jurisdiction over the City, the

Design-Build Entity, any Subcontractor, the Project, the Project Site, the work on the Project, or the prosecution of the work on the Project.

(b) All requirements of any insurance company issuing insurance required hereunder.

(c) Applicable sections in the State of California Labor Code.

(d) All Applicable Code Requirements relating to nondiscrimination, payment of prevailing wages, payroll records, apprentices, and work day.

**3.8.2** All products and components outlined herein must conform to all applicable codes, standards, and rating methodologies, including but not limited to, the following:

(a) PV modules must be certified by the California Energy Commission Emerging Technologies Buydown Program and be listed on the following web site: [http://gosolarcalifornia.org/equipment/pv\\_modules.php](http://gosolarcalifornia.org/equipment/pv_modules.php)

(b) If PV modules using hazardous materials are to be provided by the Design-Build Entity, then the environmental impact of the hazardous material usage must be discussed, including any special maintenance requirements and proper disposal/recycling of the modules at the end of their useful life. Modules containing hazardous materials must comply with the EPA Landfill Disposal Requirements. Any additional costs and/or City responsibilities related to PV modules containing hazardous materials must be clearly identified in the proposal.

(c) UL certification.

(d) National Electrical Code - 2011.

(e) Wind uplift requirements per the American Society of Civil Engineers Standard for Minimum Design Loads for Buildings and Other Structures (ASCE 7), and must be able to withstand design wind speeds of at least 85 mph (3-second gusts).

(f) All outdoor enclosures should be at minimum rated NEMA 3R.

(g) All Occupational Health and Safety Administration (OSHA) directives.

(h) All SCAQMD Contract No. 14042 requirements.

(i) All Utility and California Solar Initiative requirements.

(j) All applicable Building Codes and Fire Codes.

**3.8.3** The Design-Build Entity shall comply with and give notices required by all Applicable Code Requirements, including all environmental laws and all notice requirements. The Design-Build Entity shall promptly notify the City's Representative in writing if the Design-Build Entity becomes aware during the performance of work on the Project that the Contract Documents are at variance with Applicable Code Requirements.

**3.8.4** If the Design-Build Entity performs work which it knows or should know is contrary to Applicable Code Requirements, without prior notice to the City and the City's Representative, the Design-Build Entity shall be responsible for such work and any resulting damages including, without limitation, the costs of correcting Defective Work.

### **3.9 SUPERINTENDENT**

**3.9.1** The Design-Build Entity shall employ a competent Superintendent satisfactory to the City who shall be in attendance at the Project Site at all times during the performance of the Construction Work. Superintendent shall represent the Design-Build Entity and communications given to, and received from, Superintendent shall be binding on the Design-Build Entity. Failure to maintain a Superintendent on the Project Site at all times work on the Project is in progress shall be considered a material breach of this Contract, entitling the City to terminate the Contract or, alternatively, issue a stop work order until the Superintendent is on the Project Site. If, by virtue of issuance of said stop work order, the Design-Build Entity fails to complete the Contract on time, the Design-Build Entity will be assessed Liquidated Damages in accordance with the Contract.

**3.9.2** Any changes to the assignment of the Superintendent shall receive prior written approval from the City. In addition, the Design-Build Entity will provide all key personnel identified in the Contract for the time periods stipulated.

### **3.10 PROJECT STAFFING**

**3.10.1** The Design-Build Entity and each Subcontractor shall: furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the work on the Project; organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the work; and keep an adequate force of skilled and fit workers on the job to complete all work on the Project in accordance with all requirements of the Contract.

**3.10.2** The City shall have the right, but not the obligation, to require the removal from the Project of the Design-Build Entity's Representative, or any other superintendent, staff member, agent, or employee of any contractor, Subcontractor, material or equipment supplier, or any other entity working on the Project. Removal may be required for any reason designated by the City, including but not limited to, failure or refusal to perform work on the Project in a manner acceptable to the City, uncooperative or incompetent performance on the Project, threatening the adequate or timely completion of the Project, or threatening the safety of persons or property.

### **3.11 TOXIC MATERIALS**

**3.11.1** The Design-Build Entity not responsible for unforeseen site conditions and toxic materials unless they are described in the Contract Documents. The City shall provide any information in its possession, custody, or control.

### 3.12 HAZARDOUS MATERIALS

**3.12.1** The Design-Build Entity agrees that it is solely responsible for investigating and performing remedial actions on all hazardous materials and other related environmental requirements located on the Project site. For the purposes of this Contract, hazardous materials shall also include, but are not limited to, underground storage tanks. Any hazardous materials that are encountered beyond those described in the Contract Documents or Proposal Requirements, or which reasonably could not have been discovered within the time permitted, may properly be the subject of a Change Order Request. The City agrees that the Design-Build Entity cannot be considered a hazardous materials generator of any such materials in existence on the Site at the time it is given possession of the Site.

**3.12.2** "Hazardous materials" means any substance: the presence of which requires investigation or remediation under any federal, state or local law, statute, regulation, ordinance, order, action, policy, or common law; which is or becomes defined as a "hazardous waste," "hazardous substance," pollutant, or contaminant under any federal, state or local law, statute, regulation, rule or ordinance, or amendments thereto, including, without limitations, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. ("CERCLA"), as amended, or the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq. ("RCRA"); which is petroleum, including crude oil or any fraction thereof not otherwise designated as a "hazardous substance" under CERCLA including, without limitation, gasoline, diesel fuel, or other petroleum hydrocarbons; which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any regulatory agency or instrumentality or the United States; the presence of which on the Site causes or threatens to cause a nuisance upon the Site or to the adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Site; the presence of which on adjacent properties could constitute a trespass by the Design-Build Entity or the City; or as defined in the California Health and Safety Code.

**3.12.3** "Underground Storage Tank" shall have the Definition assigned to that term by Section 9001 of RCRA, 42 U.S.C. Section 6991, and also shall include: any tank of one thousand one hundred (1,100) gallons or less capacity used for storing motor fuel; any tank used for storing heating oil for consumption on the premises where stored; any septic tank; and any pipes connected to the above items.

**3.12.4** "Environmental Requirements" means all applicable laws, statutes, regulations, rules, ordinances, codes, licenses, permits, orders, and similar items of all governmental agencies or other instrumentality's of the City, State of California, and United States and all applicable judicial, administrative and regulatory decrees, judgments, and orders relating to the protection of human health or the environment including, without limitation: all requirements including, but not limited to, those pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of hazardous materials into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of hazardous materials; and all requirements pertaining to the protection of the health and safety of employees or the public.

### **3.13 COMPLIANCE WITH STATE STORMWATER PERMIT FOR CONSTRUCTION**

**3.13.1** The Design-Build Entity shall be required to comply with all conditions of the State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Stormwater Runoff Associated with Construction Activity ("Permit") for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. The Design-Build Entity shall be responsible for filing the Notice of Intent and for obtaining the Permit. The Design-Build Entity shall be solely responsible for preparing and implementing a Stormwater Pollution Prevention Plan ("SWPPP") prior to initiating work on the Project. It shall be the Design-Build Entity's responsibility to evaluate the cost of procuring the Permit and preparing the SWPPP, as well as complying with the SWPPP and any necessary revision to the SWPPP to address Stormwater impacts. The Design-Build Entity shall comply with all requirements of the State Water Resources Control Board. The Design-Build Entity shall include all costs of compliance with specified requirements in the Guaranteed Maximum Price.

**3.13.2** The Design-Build Entity shall be responsible for procuring, implementing, and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring, and reporting requirements as required by the Permit. The Design-Build Entity shall provide copies of all reports and monitoring information to the City's Representative.

**3.13.3** The Design-Build Entity shall comply with the lawful requirements of any applicable municipality, the county, drainage City, and other local agencies regarding discharges of Stormwater to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal Stormwater management programs.

### **3.14 CONSTRUCTION DOCUMENTS**

**3.14.1** Upon receipt of the Notice to Proceed, the Design-Build Entity shall instruct the Design Professional to commence the design and the preparation of the Construction Documents. The Construction Documents shall provide information customarily necessary in documents for projects of similar size, complexity, and quality. The Construction Documents shall include all information required by the building trades to complete the construction of the Project, other than such details customarily developed by others during construction. The City's review of the Construction Documents shall be conducted in accordance with the approved Contract Schedule. Such review shall not relieve the Design-Build Entity from its responsibilities under the Contract. Such review shall not be deemed an approval or waiver by the City of any deviation from, or of the Design-Build Entity's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the Document submitted by the Design-Build Entity and approved by the City.

**3.14.2** However, it is acknowledged by the Parties hereto that inherent in a Design-Build concept, bridging or otherwise, the production and review of Construction Documents may be a continuing process with portions thereof completed at different times. The Design-Build Entity will limit the Construction Document packages submitted to the City for review and approval for construction to five (5), unless approved in writing by the City. The Contract Schedule shall indicate the times for the City to review the completion of each such portion of the Construction Documents and a reasonable time for review of same.

**3.14.3** The Design-Build Entity shall submit completed packages of the Construction Documents for review by the City's Representative and any other regulating agencies to permit sufficient time for their review. Meetings between the Design-Build Entity and the City to review the Construction Document packages shall be scheduled and held so as not to delay work on the Project. The Design-Build Entity shall not begin the performance of any work on the Project without the City's approval of the applicable Construction Documents.

**3.14.4** Does not apply to this project.

### **3.15 GEOTECHNICAL AND SURVEY**

**3.15.1** The Design Work shall be consistent with the findings and recommendations of the geotechnical report, if any, and legal description and project survey.

**3.15.2** The Design-Build Entity shall verify the location and depth (elevation) of all existing utilities and services before performing any excavation work.

**3.15.3** Any additional tests, borings, etc necessary to support the Construction Documents shall be the responsibility of the Design-Build Entity.

### **3.16 MONTHLY REPORT**

**3.16.1** The Design-Build Entity shall prepare and submit to the City, during both the Construction Documents Phase and the Construction Phase, monthly reports on the work accomplished during the prior monthly period. Such reports shall be prepared in a manner and in a format approved by the City. Reports shall be furnished at the time of submission of each monthly Application For Payment. The monthly report shall also set forth the Design-Build Entity's projected progress for the forthcoming month.

### **3.17 OTHER REPORTS**

**3.17.1** The Design-Build Entity shall prepare periodic project reports required by state or federal agencies, including but not limited to, SCAQMD and the reporting and submittal requirements set forth in Contract No. 14042. While the City may provide information to the Design-Build Entity as may be required for such reports, the primary responsibility shall be with the Design-Build Entity for complying with the requirements of Contract No. 14042.

### **3.18 GUARANTEE**

**3.18.1** The Design-Build Entity shall complete all work in accordance with the requirements of the Contract Documents, and such work shall remain free of defects in workmanship and materials for a period of one (1) year from the date of Substantial Completion. The Design-Build Entity shall repair or replace any and all work, together with any adjacent work that may have been damaged or displaced, which was not in accordance with the requirements of the Contract Documents, or that may be defective in its workmanship or material within the guarantee period specified in the Contract Documents, without any expense whatsoever to the City; ordinary wear and tear and abuse excepted.

**3.18.2** The Design-Build Entity further agrees, within fourteen (14) days, or as such shorter period as may be designated for emergency repairs, after being notified in writing by the City, of any work not in accordance with the requirements of the Contract Documents or any defects in the work on the Project, that the Design-Build Entity shall commence and execute, with due diligence, all work necessary to fulfill the terms of the warranty. If the City finds that the Design-Build Entity fails to perform any of the work under the warranty, the City may elect to have the work completed at the Design-Build Entity's expense and the Design-Build Entity will pay costs of the work upon demand. The City will be entitled to all costs, including reasonable attorneys' fees and consultants' expenses necessarily incurred upon the Design-Build Entity's refusal to pay the above costs.

**3.18.3** Notwithstanding the foregoing Section, in the event of an emergency constituting an immediate hazard to health or safety of the City employees, property, or licensees, the City may undertake, at the Design-Build Entity's expense and without prior notice, all work necessary to correct such condition(s) when it is caused by work of the Design-Build Entity not being in accordance with the requirements of the Contract Documents.

### **3.19 WARRANTY**

**3.19.1** The Design-Build Entity warrants to the City that all Design Work will be performed in accordance with the highest professional standards and degree of care applicable to those design professionals who specialize in designing and providing services for projects of the type, scope, quality, and complexity of the Project utilizing the Design-Build contracting mode. The Design-Build Entity warrants to the City that all labor, materials, equipment and furnishings used in, or incorporated into, the Construction Work will be of good quality, new (unless otherwise required or permitted by the Contract Documents), and all work will be free of liens, claims and security interests of third parties; that the work will be of the highest quality and free from defects and that all work will conform with the requirements of the Contract Documents. If required by the City's Representative, the Design-Build Entity shall furnish satisfactory evidence of compliance with this warranty. Further, the type, quality and quantum of such evidence shall be within the sole discretion of the City's Representative.

**3.19.2** Design-Build shall forward to City and provide to SCAQMD prior to installation and construction of the Project the manufacturer's equipment warranty coverage certificates and information, which warranties shall be as follows:

(a) Standard warranty coverage should be at least twenty-five (25) years for any PV panels, at least twenty (20) years for all inverters, or consistent with current CSI Guidelines for Solar Photovoltaic System warranty requirements, whichever is greater.

(b) Upon completion of the Project, Design-Build Entity shall provide City with all warranty documentation and shall assist the City in completing any warranty or submittal forms which are required in order to effectuate coverage of the warranties required herein and all may otherwise be available to the City.

(c) All work performed by Design-Build Entity must not render void, violate, or otherwise jeopardize any preexisting City facility or building warranties.

**3.19.3** In addition to the foregoing, all solar energy equipment for electricity generation, including PV modules, inverters, solar collectors, tracking mechanisms, heat exchanges, pumps, and heat driven cooling systems provided hereunder (hereinafter “System Equipment”) shall have a warranty of 10 years to protect against defects and undue degradation of electrical generation output of more than fifteen percent (15%) from the System Equipment’s originally rated electrical output in accordance with the terms of California Public Utility Code 387.5(d)(4) (hereinafter “System Equipment Warranty”). The System Equipment Warranty shall include no-cost repair and replacement of the system for any expenses not otherwise covered by the manufacturer. Meters provided by Design-Build Entity under this Agreement shall have a one-year warranty to ensure against defective workmanship, system or component breakdown, or degradation in electrical output of more than fifteen percent (15%) from their originally rated electrical output during the warranty period.

### **3.20 SCHEDULES REQUIRED OF THE DESIGN-BUILD ENTITY**

**3.20.1** The Design-Build Entity shall plan, develop, supervise, control, and coordinate the performance of the work on the Project so that its progress and the sequence and timing of Work activities achieve completion by the GCD. The Design-Build Entity shall continuously obtain from Subcontractors information and data about the planning for, and progress of, the work on the Project and the delivery of equipment. The Design-Build Entity shall coordinate and integrate such information and data into updated Contract Schedules, and shall monitor the progress of the work on the Project and the delivery of equipment. The Design-Build Entity shall act as the expediter of potential and actual delays, interruptions, hindrances, or disruptions for its own forces and those forces of Subcontractors, regardless of tier. The Design-Build Entity shall cooperate with the City’s Representative in the development of all contract schedules and updated contract schedules.

**3.20.2** Failure of the City’s Representative to discover errors or omissions in schedules that it has reviewed, or to inform the Design-Build Entity that the Design-Build Entity, Subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the Contract Schedule shall not relieve the Design-Build Entity from its sole responsibility to perform and complete all work on the Project within the Guaranteed Completion Date and shall not be a cause for an adjustment of the Guaranteed Completion Date or the Guaranteed Maximum Price.

**3.20.3** The Design-Build Entity shall perform all work on the Project in accordance with the current accepted Contract Schedule.

**3.21 AS-BUILT DOCUMENTS**

**3.21.1** The Design-Build Entity shall maintain one (1) set of As-Built drawings and specifications, which shall be kept up to date during the work of the Contract. All changes which are incorporated into the work on the Project which differ from the Documents as drawn and written and approved shall be noted on the As-Built set. Notations shall reflect the actual materials, equipment and installation methods used for the work on the Project and each revision shall be initialed and dated by Superintendent. Prior to filing of the Notice of Completion, each drawing and the specification cover shall be signed by the Design-Build Entity and dated, attesting to the completeness of the information noted therein. As-Built Documents shall be turned over to the City's Representative and shall become part of the Record Documents as required by the Scope of Work.

**3.22 DOCUMENTS AND SAMPLES AT PROJECT SITE**

**3.22.1** The Design-Build Entity shall maintain the following at the Project Site:

- (a) One current copy of the Contract Documents (including Construction Documents), in good order and marked to record current changes and selections made during construction.
- (b) One copy of the prevailing wage rates applicable to the Project.
- (c) The current accepted Contract Schedule.
- (d) One current copy of all documents required by 3.20.1 (As-Built documents.)
- (e) All other required submittals.

**3.22.2** These shall be available to the City's Representative and shall be delivered to the City's Representative for submittal to the City upon the earlier of Final Completion or termination of the Contract.

**3.23 USE OF SITE AND CLEAN UP**

**3.23.1** The Design-Build Entity shall confine operations at the Project Site to areas permitted by law, ordinances, permits, and the Contract Documents. The Design-Build Entity shall not unreasonably encumber the Project Site with materials or equipment.

**3.23.2** The Design-Build Entity shall, during performance of work on the Project, keep the Project Site and surrounding area free from the accumulation of excess dirt, waste materials, and rubbish caused by the Design-Build Entity. The Design-Build Entity shall remove all excess dirt, waste material, and rubbish caused by the Design-Build Entity; tools; equipment; machinery; and surplus materials from the Project Site and surrounding area at the completion of the Project.

**3.23.3** Personnel of the Design-Build Entity and Subcontractors shall not occupy, live upon, or otherwise make use of the Project Site during any time that work is not being performed at the Project Site, except as otherwise provided in the Contract Documents.

**3.24 ACCESS TO WORK**

**3.24.1** The City, the City's Representative, their consultants, and other persons authorized by the City will at all times have access to the work on the Project wherever it is in preparation or progress. The Design-Build Entity shall provide safe and proper facilities for such access and for inspection.

**3.25 ROYALTIES AND PATENTS**

**3.25.1** The Design-Build Entity shall pay all royalties and license fees required for the performance of work on the Project. The Design-Build Entity shall defend suits or claims resulting from the Design-Build Entity's or any Subcontractor's infringement of patent rights and shall Indemnify the City and the City's Representative from Losses on account thereof.

**3.26 LIABILITY FOR AND REPAIR OF DAMAGED WORK**

**3.26.1** Except as otherwise provided in the Contract Documents, the Design-Build Entity shall be liable for any and all damages and losses to the Project (whether by fire, theft, vandalism, earthquake, flood or otherwise) prior to the City's acceptance of the Project as fully completed.

**ARTICLE 4 ADMINISTRATION OF THE CONTRACT**

**4.1 ADMINISTRATION OF THE CONTRACT BY THE CITY'S REPRESENTATIVE**

**4.1.1** The City's Representative will have authority to act on behalf of the City only to the extent provided in the Contract Documents.

**4.1.2** The City shall designate in the Contract one or more representatives authorized to act on the City's behalf with respect to the Project, together with the scope of his/her respective authority. If the City's Representative(s) changes, the City shall notify the Design-Build Entity in writing as provided in the Contract. Functions for which this Contract Documents provide will be performed by the City may be delegated by the City only by written notice to the Design-Build Entity from the City. The Design-Build Entity shall not be entitled to rely on directions (nor shall it be required to follow the Directions) from anyone outside the scope of that person's authority as set forth in written authorization pursuant to this Design-Build Contract. Directions and decisions made by the City Representatives of the City shall be binding on the City.

**4.1.3** During the Term of this Design-Build Contract, the City's Representative shall have the right to review the Design Professionals' work at such intervals as deemed appropriate by the City's Representative. However, no actions taken during such review

or site visit by the City's Representative, shall relieve the Design-Build Entity of any of its obligations of single point responsibility for the Design and construction of this Project, nor form the basis for a Claim, if such actions extend beyond the Guaranteed Completion Date.

**4.1.4** The City's Representative will not have control over, will not be in charge of, and will not be responsible for design or construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work on the Project, since these are solely the Design-Build Entity's responsibility.

**4.1.5** Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, the City and the Design-Build Entity shall communicate through the City's Representative. Communications by the Design-Build Entity with the City's consultants and the City's Representative's consultants shall be through the City's Representative. Communications by the City and the City's Representative with Subcontractors will be through the Design-Build Entity. Communications by the Design-Build Entity and Subcontractors with Separate Contractors shall be through the City's Representative. The Design-Build Entity shall not rely on oral or other non written communications.

**4.1.6** Based on the City's Representative's Project Site visits, review of Design Work, and evaluations of the Design-Build Entity's Applications For Payment, the City's Representative will recommend amounts, if any, due the Design-Build Entity and will issue Certificates For Payment in such amounts.

**4.1.7** The City's Representative will have the authority to reject work on the Project, or any portion thereof, which does not conform to the Contract Documents. The City's Representative will have the authority to stop work on the Project, or any portion thereof. Whenever the City's Representative considers it necessary, or advisable, for implementation of the intent of the Contract Documents, the City's Representative will have the authority to require additional inspection or testing of the work on the Project in accordance with the Contract Documents, whether or not such work is fabricated, installed, or completed. However, no authority of the City's Representative conferred by the Contract Documents nor any decision made in good faith either to exercise, or to not exercise such authority, will give rise to a duty or responsibility of the City or the City's Representative to the Design-Build Entity, or any person or entity claiming under, or through, the Design-Build Entity.

**4.1.8** The City's Representative will have the authority to conduct inspections and to determine the Dates of Substantial Completion and Final Completion; will receive for review and approval any records, written warranties, and related documents required by the Contract Documents and assembled by the Design-Build Entity; and will issue a final Certificate For Payment upon the Design-Build Entity's compliance with the requirements of the Contract Documents.

**4.1.9** The City's Representative will be, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of performance thereunder by the Design-Build Entity. Should the Design-Build Entity discover any conflicts, omissions, or errors in the Construction Documents or the Contract Documents; have any questions about the interpretation or clarification of the Contract Documents; question whether

work is within the scope of the Contract Documents; then, before proceeding with the work affected, the Design-Build Entity shall notify the City's Representative in writing and request interpretation, or clarification. The City's Representative's response to questions and requests for interpretations, clarifications, instructions, or decisions will be made with reasonable promptness. Should the Design-Build Entity proceed with the work affected before receipt of a response from the City's Representative, any portion of the work on the Project which is not done in accordance with the City's Representative's interpretations, clarifications, instructions, or decisions shall be removed or replaced and the Design-Build Entity shall be responsible for all resultant losses.

## **4.2 CHANGE ORDERS**

**4.2.1** The Parties, without invalidating the Contract, may request changes in the Work to be performed under the Contract, consisting of additions, deletions, or other revisions to the scope ("Change Order Request"). The Change Order Request shall state that it is a Change Order Request, state and justify the reason for the request, and specify the amount of any requested adjustment to the Guaranteed Maximum Price and/or GCD. Upon request of the City's Representative, the Design-Build Entity shall submit such additional information as may be requested by the City's Representative for the purpose of evaluating the Change Order Request. Such additional information may include a cost proposal meeting the requirements of this Section 4.2 hereunder and written documentation demonstrating the Design-Build Entity's entitlement to a time extension. If the other Party determines that pursuant to the Contract, that the Change Order Request is valid, the applicable price and payment terms, time for performance and, if necessary, the output requirements, shall be equitably adjusted by the mutual written agreement of both Parties in a written Change Order. In the event that the Design-Build Entity may not delay performance until the Parties agree upon and execute a Change Order. If the Parties are unable to agree upon the terms and conditions of a Change Order, the City may issue an unilateral change order which directs the Design-Build Entity to perform the work prior to the Parties' final agreement on the terms and conditions of the Change Order. Any Change Order must be signed by an authorized representative of each Party. If concealed or unknown conditions are encountered at the Project, differing from the conditions represented by City or otherwise disclosed by City to Design-Build Entity prior to the commencement of the work, price and payment terms, time for performance and, if necessary, the output requirements may be equitably adjusted. Claims for equitable adjustment shall be asserted in writing within 10 calendar days from the date a Party becomes aware of a change to the Work.

**4.2.2** Any increase to the Guaranteed Maximum Price for Extra Work shall be limited to the actual costs incurred by the Design-Build Entity and each Subcontractor regardless of tier involved, and shall be limited to the following (to the extent the Design-Build Entity demonstrates that they were actually incurred):

(a) Overhead and Profit not to exceed 15% of the Cost of the Extra Work (not more than 10% Overhead and 5% Profit) and straight time wages or salaries for employees employed at the Project site, or at fabrication sites off the Project site, in the direct performance of the Extra Work. Design-Build Entity is entitled to an additional 5% overhead and profit for Work subcontracted, above and beyond the 15% noted herein.

(b) Fringe Benefits and Payroll Taxes for employees employed at the Project site, or at fabrication sites off the Project site, in the direct performance of the Extra Work.

(c) Overtime wages or salaries, specifically authorized in writing by The City's Representative, for employees employed at the Project site, or at fabrication sites off the Project site, in the direct performance of the Extra Work.

(d) Fringe Benefits and Payroll Taxes for overtime Work specifically authorized in writing by the City's Representative, for employees employed at the Project site, or at fabrication sites off the Project site, in the direct performance of the Extra Work.

(e) Costs of materials and consumable items which are furnished and incorporated into the Extra Work, as approved by the City's Representative. Such costs shall be charged at the lowest price available to the Design-Build Entity but in no event shall such costs exceed competitive costs obtainable from other subcontractors, suppliers, manufacturers, and distributors in the area of the Project site. All discounts, rebates, and refunds and all returns from sale of surplus materials and consumable items shall accrue to the City and the Design-Build Entity shall make provisions so that they may be obtained.

(f) Sales taxes on the costs of materials and consumable items which are incorporated into and used in the performance of the Extra Work.

(g) Rental charges for necessary machinery and equipment, whether owned or hired, as authorized in writing by the City's Representative, exclusive of hand tools, used directly in the performance of the Extra Work. Such rental charges shall not exceed the current U.S. Army Corp. of Engineers scheduled charges for the area in which the work is performed. The Design-Build Entity shall attach a copy of said schedule to the Cost Proposal. The charges for any machinery and equipment shall cease when the use thereof is no longer necessary for the Extra Work.

(h) Additional costs of royalties and permits due to the performance of the Extra Work.

(i) Cost for revisions in the Construction Documents, when such revisions are inconsistent with approvals or instructions previously given by the City. Revisions made necessary by adjustments in the City's program or project budget such costs to be computed as set forth herein.

(j) The cost for Insurance and Bonds shall not exceed 1 % of the cost of the Extra Work.

**4.2.3** Cost of Extra Work shall not include any of the following unless such Extra Work also results in an extension of the GCD:

- (a) Superintendent(s).
- (b) Assistant Superintendent(s).
- (c) Project Manager(s).
- (d) Office expenses including staff, materials and supplies.
- (e) On site or off site trailer and storage rental and expenses.

- (f) Site fencing.
- (g) Utilities including gas, electric, sewer, water, telephone, facsimile, copier equipment.
- (h) Data processing personnel and equipment.
- (i) Federal, state, or local business income and franchise taxes.
- (j) Overhead and Profit in excess of the amounts set forth in Section 4.2.2.
- (k) Costs and expenses of any kind or item not specifically and expressly included in Section 4.2.2.

**4.2.4** Compensation for Extra Work as an adjustment to the Guaranteed Maximum Price, authorized by Change Order shall be computed as specified herein.

**4.2.5** As a condition to the Design-Build Entity's right to an adjustment of the Guaranteed Maximum Price, the Design-Build Entity must keep daily detailed and accurate records itemizing each element of cost and shall provide substantiating records and documentation, including time cards and invoices. Such records and documentation shall be submitted to and approved by the City's Representative on a daily basis.

**4.2.6** For work to be deleted by Change Order, the reduction of the Guaranteed Maximum Price shall be computed on the basis of one or more of the following:

- (a) Unit prices stated in the Contract or an Attachment thereto.
- (b) Unit prices agreed upon by the City and the Design-Build Entity.
- (c) A lump sum agreed upon by the City and the Design-Build Entity, based upon the actual costs which would have been incurred in performing the deleted portions of the work on the Project.

**4.2.7** If any one Change Order involves both additional scope and deleted work in the same portion of the work on the Project, the Guaranteed Maximum Price shall not be increased if the deductive cost exceeds the additive cost. If the additive cost exceeds the deductive cost, an increase in the Guaranteed Maximum Price will be allowed only on the difference between the two amounts.

**4.2.8** The Guaranteed Maximum Price will be adjusted for a delay if, and only if, the Design-Build Entity demonstrates that the delay results in an extension of the GCD and the delay is caused solely by one, or more of the following:

- (a) An error or omission in the Contract Documents caused by the City and not as a result of the Design-Build Entity's failure to conform to criteria documents, performance standards, Construction Documents, or Contract Documents; or
- (b) The City's decision to change the Scope of the Work, where such decision is not the result of any default or misconduct of the Design-Build Entity; or

(c) The City's decision to suspend work on the Project, where such decision is not the result of any default or misconduct of the Design-Build Entity; or

**4.2.9** The failure of the City or the City's Representative to timely perform any contract obligation where the failure to so perform is not the result of any default or misconduct of the Design-Build Entity.

## **ARTICLE 5 ASSERTION OF CLAIMS**

### **5.1 CLAIMS BY THE DESIGN-BUILD ENTITY SHALL BE FIRST SUBMITTED TO THE CITY'S REPRESENTATIVE FOR DECISION.**

**5.1.1** Notwithstanding the making of any Claim or the existence of any dispute regarding any Claim, unless otherwise directed by the City's Representative, the Design-Build Entity shall not cause any delay, cessation, or termination in or of the Design-Build Entity's performance of work on the Project, but shall diligently proceed with performance of the work in accordance with the Contract Documents. The City will continue to make payments in accordance with the Contract Documents.

**5.1.2** The Design-Build Entity shall submit a Claim in writing, together with the supporting data, to the City's Representative as soon as possible but not later than thirty (30) days after the Date the claim arises.

**5.1.3** The Design-Build Entity agrees that strict compliance with these contractual requirements is an express condition precedent to the Design-Build Entity's right to arbitrate or litigate a Claim. The Design-Build Entity specifically agrees to assert no Claims in arbitration or litigation unless there has been strict compliance with the provisions set forth herein.

### **5.2 DECISION OF THE CITY'S REPRESENTATIVE ON CLAIMS**

**5.2.1** The City's Representative will timely review Claims submitted by the Design-Build Entity pursuant to Section 5.3.2.

### **5.3 ALTERNATE DISPUTE RESOLUTION OF CLAIMS**

**5.3.1** In accordance with Public Contract Code Section 20104 *et seq.* and other applicable law, public works claims of \$375,000 or less which arise between the Design-Build Entity and the City shall be resolved under the following the statutory procedure unless the City has elected to resolve the dispute pursuant to Public Contract Code Section 10240 *et seq.*

**5.3.2** All Claims: All claims shall be submitted in writing and accompanied by substantiating documentation. Claims must be filed on or before the date of final payment unless other notice requirements are provided in the contract. "Claim" means a separate demand by the claimant for (1) a time extension, (2) payment of money or damages arising from work done by or on behalf of the claimant and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled, or (3) an amount the payment of which is disputed by the City.

**5.3.3** Claims Under \$50,000: The City shall respond in writing to the claim within forty-five (45) days of receipt of the claim, or, the City may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the City may have. If additional information is needed thereafter, it shall be provided upon mutual agreement of the City and the claimant. The City's written response shall be submitted fifteen (15) days after receiving the additional documentation, or within the same period of time taken by the claimant to produce the additional information, whichever is greater.

**5.3.4** Claims over \$50,000 but less than or equal to \$375,000: The City shall respond in writing within sixty (60) days of receipt, or, may request in writing within thirty (30) days of receipt of the claim, any additional documents supporting the claim or relating to defenses or claims the City may have against the claimant. If additional information is needed thereafter, it shall be provided pursuant to mutual agreement between the City and the claimant. The City's response shall be submitted within thirty (30) days after receipt of the further documents, or within the same period of time taken by the claimant to produce the additional information or documents, whichever is greater. The Design-Build Entity shall make these records and documents available at all reasonable times, without any direct charge.

**5.3.5** The Design-Build Entity will submit the claim justification in the following format:

- (a) Summary of claim merit and price, and Contract clause pursuant to which the claim is made.
- (b) List of documents relating to claim including, but not limited to:
  - i. Specifications
  - ii. Drawings
  - iii. Clarifications (Requests for Information)
  - iv. Schedules
  - v. Chronology of events and correspondence
  - vi. Analysis of claim merit
  - vii. Analysis of claim cost
  - viii. Analysis of time impact analysis in CPM format
  - ix. Cover letter and certification of validity of the claim

**5.3.6** If the claimant disputes the City's response, or if the City fails to respond within the statutory time period(s), the claimant may so notify the City within fifteen (15) days of the receipt of the response or the failure to respond, and demand an informal conference to meet and confer for settlement. Upon such demand, the City shall schedule a meet and confer conference within thirty (30) Days.

**5.3.7** If following the meet and confer conference, the claim or any portion thereof remains in dispute, the claimant shall file a claim pursuant to Government Code

900 et seq. and Government Code 910 et seq. For purposes of those provisions, the time within which a claim must be filed shall be tolled from the time the claimant submits the written claim until the time the claim is denied, including any time utilized for the meet and confer conference.

**5.3.8** Submission of a claim, properly certified, with all required supporting documentation, and written rejection or denial of all or part of the claim by City, is an express condition precedent to any action, proceeding, litigation, suit, general conditions claim, or demand for arbitration by Design-Build Entity.

## **ARTICLE 6 SUBCONTRACTORS**

### **6.1 SUBCONTRACTUAL RELATIONS**

**6.1.1** Any part of the work on the Project performed for the Design-Build Entity by a first tier Subcontractor shall be pursuant to a written subcontract. Each such subcontract shall require the Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to the Design-Build Entity by the terms of the Contract Documents, to assume toward the Design-Build Entity all the obligations and responsibilities which the Design-Build Entity assumes towards the City by the Contract Documents, and to perform such portion of the work on the Project in accordance with the Contract Documents. Each such subcontract shall preserve and protect the rights of the City under the Contract Documents, with respect to the work to be performed by Subcontractor, so that subcontracting thereof will not prejudice such rights. The Design-Build Entity shall cause each such subcontract to expressly include the following requirements:

(a) Contractor shall ensure that each subcontractor waives all rights that subcontractor may have against the City for damages caused by fire or other perils covered by builder's risk property insurance carried by Design-Build Entity or the City.

(b) The Design-Build Entity is responsible for reviewing and coordinating the work of and among his subcontractors and Design Professionals. This review and coordination includes, but is not limited to, resolution of any inconsistencies, errors or omissions.

**6.1.2** Upon the request of the City, the Design-Build Entity shall promptly furnish to the City a true, complete, and executed copy of any subcontract.

**6.1.3** Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the City, except when, and only to the extent that, the City elects to accept the assignment of the subcontract with such Subcontractor.

## **ARTICLE 7 CONSTRUCTION BY THE CITY OR BY SEPARATE CONTRACTORS**

### **7.1 THE CITY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

**7.1.1** The City reserve the right to award separate contracts for, or to perform with its own forces, construction or operations related to the work or other construction

or operations at or affecting the Project Site, including portions of work on the Project which have been deleted by Change Order. The Design-Build Entity shall cooperate with the City's forces and Separate Contractors.

**7.1.2** The City will provide coordination of the activities of the City's forces and of each Separate Contractor with the work of the Design-Build Entity. The Design-Build Entity shall participate with the City and Separate Contractors in joint review of construction schedules and Project requirements when directed to do so. The Design-Build Entity shall make necessary revisions to the Contract Schedule after such joint review.

## **7.2 MUTUAL RESPONSIBILITY**

**7.2.1** The Design-Build Entity shall afford the City and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities. The Design-Build Entity shall connect, schedule, and coordinate its construction and operations with the construction and operations of the City and Separate Contractors as required by the Contract Documents.

**7.2.2** If a portion of the work on the Project is dependent upon the proper execution or results of other construction or operations by the City or Separate Contractors, the Design-Build Entity shall inspect such other design or construction or operations before proceeding with that portion of the work on the Project. The Design-Build Entity shall promptly report to the City's Representative apparent discrepancies or defects which render the other design, construction or operations unsuitable to receive the work on the Project. Unless otherwise directed by the City's Representative, the Design-Build Entity shall not proceed with the portion of the work on the Project affected until apparent discrepancies or defects have been corrected. Failure of the Design-Build Entity to so report within a reasonable time after discovering such discrepancies or defects shall constitute an acknowledgment that the other construction or operations by the City or Separate Contractors is suitable to receive the work on the Project, except as to defects not then reasonably discoverable.

## **7.3 THE CITY'S RIGHT TO CLEAN UP**

**7.3.1** If a dispute arises between the Design-Build Entity and Separate Contractors as to the responsibility under their respective contracts for maintaining the Project Site and surrounding areas free from waste materials and rubbish, the City may clean up and allocate the cost between those firms the City deem to be responsible.

## **ARTICLE 8 COMMENCEMENT OF WORK ON THE PROJECT**

### **8.1 TIMELY COMPLETION**

**8.1.1** The date of commencement of the Scope of Work shall be set forth in the Notice To Proceed. The date of commencement for the Scope of Work shall not be postponed by the failure of the Design-Build Entity, Subcontractors, or of persons or firms for whom the Design-Build Entity is responsible, to act. The Design-Build Entity represents to the City that the GCD is reasonable for performing the Scope of Work and that the Design-Build Entity is able to perform and complete the Scope Work by the GCD. The Design-Build Entity

shall not commence work under this Contract prior to the effective date of the insurance and performance and payment bonds required under this Contract. Design-Build Entity's failure to timely obtain such insurance and bonds shall not be cause to extend the GCD.

**8.1.2** The Design-Build Entity shall proceed expeditiously with adequate forces and shall achieve full completion of the work by the GCD.

## **8.2 DELAY**

**8.2.1** If the Design-Build Entity is delayed in the commencement, performance, or completion of the Work by causes beyond its control and without its fault, including but not limited to, inability to access property; concealed or unknown conditions encountered at the Project, differing from the conditions represented by City in the Contract Documents or otherwise disclosed by City to Design-Build Entity prior to the commencement of the Work; a Force Majeure (as defined below) condition; failure by City to perform its obligations under this Agreement; or failure by City to cooperate with Design-Build Entity in the timely completion of the Work, Design-Build Entity shall provide written notice to City of the existence, extent of, and reason for such delays and impacts. Only if such a delay is critical, in that such delay slows down a work activity that cannot be delayed without delaying completion of the entire Project beyond the GCD as stated in the Notice to Proceed, or as amended by Change Order then the Parties may execute a Change Order for the equitable adjustment in the time for performance, price and payment terms, and the output guarantee shall be made, if appropriate.

**8.2.2** Neither Party will be responsible to the other for damages, loss, injury, or delay caused by Force Majeure.

## **ARTICLE 9 PAYMENT**

### **9.1 PROGRESS PAYMENT**

**9.1.1** The City agrees to pay monthly to the Design-Build Entity, subject to Section 9.3, an amount equal to 90% of the sum of the following:

(a) Cost of the Construction Work in permanent place as of the end of the preceding month.

(b) Cost of materials not yet incorporated in the Construction Work, as approved by the City as set forth herein.

(c) Less amounts previously paid.

(d) During the Design Work, the City shall pay the Design-Build Entity monthly a uniform amount prorated, based on the Guaranteed Completion Date and Guaranteed Maximum Price associated with either Schematic Design or Construction Documents Phase.

## **9.2 APPLICATION FOR PAYMENT**

**9.2.1** Within ten (10) days after plan approval, the Design-Build Entity shall submit to the City's Representative a detailed Cost Breakdown/Schedule of Values ("Cost Breakdown") of the portion of the Guaranteed Maximum Price applicable to that phase of the work in a form reasonably approvable to the City. Each such Cost Breakdown shall itemize as separate line items the cost of each work activity for the applicable phase and all associated costs, including but not limited to warranties, as built documents, overhead expenses, and the total allowance for profit. Insurance and bonds shall each be listed as separate line items. The total of all line items shall at all times be consistent with the Guaranteed Maximum Price. The Cost Breakdown, when approved by the City's Representative, shall become part of the Contract Documents and shall be the basis for determining the cost of the work performed for the Design-Build Entity's Applications for Payment.

**9.2.2** The Design-Build Entity warrants that, prior to payment by the City pursuant to the payment schedule in the Contract, all work on the Project, for which Certificates For Payment have been previously issued and payment has been received from the City, shall be free and clear of all claims, stop notices, security interests, and encumbrances in favor of the Design-Build Entity, Subcontractors, or other persons or firms entitled to make claims by reason of having provided labor, materials, or equipment relating to work on the Project.

**9.2.3** At the sole discretion of the City, the City's Representative may approve for inclusion in the Application For Payment the cost of materials not yet incorporated in the Construction Work but already delivered and suitably stored either at the Project site or at some other appropriate location acceptable to the City's Representative. In such case, the Design-Build Entity shall furnish evidence satisfactory to the City's Representative (1) of the cost of such materials and (2) that such materials are under the exclusive control of the Design-Build Entity. Only materials to be incorporated in the work on the Project will be considered for payment. Any payment shall not be construed as acceptance of such materials nor relieve the Design-Build Entity from sole responsibility for the care and protection of such materials; nor relieve the Design-Build Entity from risk of loss to such materials from any cause whatsoever; nor relieve the Design-Build Entity from its obligation to complete the work on the Project in accordance with the Contract; nor act as a waiver of the right of the City to require fulfillment of all terms of the Contract.

**9.2.4** Subject to the withholding provisions of Section 9.2, the City will pay the Design-Build Entity the amount set forth in the Certificate For Payment no later than 15 days after the issuance of the Certificate For Payment.

**9.2.5** Neither the City nor the City's Representative will have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

**9.2.6** Neither a Certificate For Payment nor a progress payment made by the City will constitute acceptance of Defective Work.

### 9.3 WITHHOLDING PAYMENT

**9.3.1** The City may decide to withhold payment in whole, or in part, to the extent reasonably necessary to protect the City if, in the City's opinion, the representations to the City required of the Design-Build Entity pursuant to the Contract Documents cannot be made. Failure by the City to deduct any sums from a progress payment shall not constitute a waiver of the City's right to such sums. The City may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefore, to the payment of any expenses, losses, or damages as determined by the City, incurred by the City for which the Design-Build Entity is liable under the contract. For instance, the City may withhold payment, in whole or in part, to such extent as may be necessary to protect the City from loss because of:

- (a) Failure to provide requested supporting documents, including those noted in Section;
- (b) Defective work not timely remedied;
- (c) Stop Notices. If any Stop Notice or other lien is filed on the Project for labor, materials, supplies, equipment or any other thing of value claimed to have been furnished to or incorporated into the work on the Project, or for other alleged contribution thereto, the City shall retain from payments otherwise due the Design-Build Entity, in addition to other amounts properly withheld under this Section or under other provisions of the Contract, an amount equal to 125 percent (125%) of the amount claimed under such Stop Notice; provided, however, that the City may release such funds upon receipt of evidence satisfactory to the City to the effect that the Design-Build Entity has resolved such claim, by settlement, Stop Notice Bond or otherwise. All other provisions of state law with respect to stop notices shall also apply;
- (d) Reasonable doubt that the work on the Project can be completed for the unpaid balance of any Guaranteed Maximum Price or within the Guaranteed Completion Date;
- (e) Damage to the City, another the Design-Build Entity, or subcontractor, including any sums expended by or on behalf of the City in performing any of the Design-Build Entity's obligations under the Contract which the Design-Build Entity has failed to perform or has performed inadequately;
- (f) Unsatisfactory prosecution of the work by the Design-Build Entity;
- (g) Failure to store and properly secure materials;
- (h) Failure of the Design-Build Entity to submit on a timely basis, proper and sufficient documentation required by the Contract, including, without limitation, monthly progress schedules, shop drawings, submittal schedules, schedule of values, product data and samples, proposed product lists, executed change orders, and verified reports;
- (i) Failure of the Design-Build Entity to maintain record drawings;
- (j) Erroneous estimates by the Design-Build Entity of the value of the work on the Project performed, or other false statements in an Application for Payment;
- (k) Unauthorized deviations from the Contract Documents;

(l) Failure of the Design-Build Entity to prosecute the work on the Project in a timely manner in compliance with established progress schedules and completion dates; or

(m) Forfeiture of funds pursuant to California Labor Code Section 1727. The City shall retain and transfer those funds pursuant to California Labor Code Section 1730.

#### **9.4 DEPOSIT OF SECURITIES IN LIEU OF RETENTION AND DEPOSIT OF RETENTION INTO ESCROW**

**9.4.1** At the request and expense of the Design-Build Entity, a substitution of securities may be made for any monies retained by the City under Section 9.2 to ensure performance under the Contract Documents. Securities equivalent in value to the retention amount required by the Contract Documents for each Certificate For Payment shall be deposited by the Design-Build Entity with a state or federally chartered bank in the State of California (“Escrow Agent”), which shall hold such securities pursuant to the escrow Contract referred to in Section 9.3.3 until final payment is due. Securities shall be valued as often as conditions of the securities market warrant, but in no case less than once per month. The Design-Build Entity shall deposit additional securities so that the current market value of the total of all deposited securities shall be at least equal to the total required amount of retention.

**9.4.2** Alternatively to Section 9.3.1, and at the request and expense of the Design-Build Entity, the City will deposit retention directly with Escrow Agent. The Design-Build Entity may direct the investment of such deposited retention into interest bearing accounts or securities, and such deposits or securities shall be held by Escrow Agent upon the same terms provided for securities deposited by the Design-Build Entity.

**9.4.3** A prerequisite to the substitution of securities in lieu of retention or the Deposit of retention into escrow shall be the execution by the Design-Build Entity, the City, and Escrow Agent of an Escrow Contract for Deposit of Securities in Lieu of Retention and Deposit of Retention in the form set forth in the Public Contract Code. The terms of such escrow Contract are incorporated into the requirements of this Section 9.3.

### **ARTICLE 10 COMPLETION**

#### **10.1 SUBSTANTIAL COMPLETION**

**10.1.1** When the Design-Build Entity gives notice to the City’s Representative that the Construction Work is substantially complete, unless the City’s Representative determines that the Construction Work is not sufficiently complete to warrant an inspection to determine Substantial Completion, the City’s Representative will inspect the Construction Work, and prepare and give to the Design-Build Entity a comprehensive list of items to be completed or corrected before establishing Substantial Completion. The Design-Build Entity shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Design-Build Entity to complete all Construction Work in accordance with the Contract Documents. The City’s Representative will make an inspection to determine whether the Construction Work is substantially complete. If the

City's Representative's inspection discloses any item, whether or not included on the list, which must be completed or corrected before Substantial Completion, the Design-Build Entity shall, before issuance of the Certificate of Substantial Completion, complete or correct such item. The Design-Build Entity shall then submit a request for another inspection by the City's Representative to determine Substantial Completion. Costs for additional inspection by the City's Representative shall be deducted from any monies due and payable to the Design-Build Entity. When the City's Representative determines that the Construction Work is substantially complete, the Design-Build Entity will prepare and submit a Certificate of Substantial Completion to the City, which, when signed by the City, shall establish the Date of Substantial Completion and the responsibilities of the City and the Design-Build Entity for security, maintenance, utilities, insurance, and damage to the Construction Work. Unless otherwise provided in the Certificate of Substantial Completion, the Guarantee To Repair Period for the work on the Project covered by the Certificate of Substantial Completion, shall commence on the Date of Substantial Completion of the Construction Work except that Substantial Completion shall not commence the Guarantee to Repair Period for any equipment or systems that:

- (a) Are not fully operational (equipment or systems shall not be considered fully operational if they are intended to provide service to any portion of the building which the City has neither Beneficially Occupied nor accepted as Substantially Complete); or
- (b) Are not accepted by the City.

**10.1.2** The Guarantee To Repair Period for systems which become fully operational and accepted subsequent to Substantial Completion will begin on the Date of their acceptance by the City. The Certificate of Substantial Completion shall be submitted to the City and the Design-Build Entity for their written acceptance.

## **10.2 FINAL COMPLETION AND FINAL PAYMENT**

**10.2.1** Upon receipt of notice from the Design-Build Entity that the work on the Project is ready for final inspection, the City's Representative will make such inspection. Final Completion shall be when the City's Representative determines that the work on the Project is fully completed and in accordance with the Contract Documents. The City will file a Notice of Completion within 10 days after Final Completion. After receipt of the final Application For Payment, if the City's Representative determines that Final Completion has occurred, the City's Representative will issue the final Certificate For Payment.

**10.2.2** Neither final payment nor any retention shall become due until the Design-Build Entity submits the following items to the City's Representative:

- (a) The final Application For Payment and all submittals required.
- (b) All guarantees and warranties procured by the Design-Build Entity from Subcontractors, all operating manuals for equipment installed in the Project, interconnection agreement with the Utility, net-energy metering agreement with the Utility, As-Built documents, and all other submittals required by the Contract Documents.
- (c) The final payment shall be made, subject to the satisfaction of all other legal conditions to final payment, 35 days after the filing of the Notice of Completion.

**10.2.3** Acceptance of final payment by the Design-Build Entity shall constitute a waiver of all claims, except those previously made in writing and identified by the Design-Build Entity as unsettled at the time of the final Application For Payment, and Design-Build Entity shall submit a waiver of all such claims, in a form reasonably acceptable to the City, at the time of final payment.

## **ARTICLE 11 PROTECTION OF PERSONS AND PROPERTY**

### **11.1 SAFETY PRECAUTIONS AND PROGRAMS**

**11.1.1** The Design-Build Entity shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

### **11.2 SAFETY OF PERSONS AND PROPERTY**

**11.2.1** The Design-Build Entity shall take adequate precautions for safety of and shall provide adequate protection to prevent damage, injury, or loss to the following:

- (a) Employees involved in the Construction Work and other persons who may be affected thereby.
- (b) The Construction Work in place and materials and equipment to be incorporated therein, whether in storage on or off the Project Site, under care, custody, or control of the Design-Build Entity or Subcontractors.
- (c) Other property at the Project Site and adjoining property.

**11.2.2** The Design-Build Entity shall erect and maintain, as required by existing conditions and performance of the work on the Project, adequate safeguards for safety and protection, including providing adequate lighting and ventilation, posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying City and users of adjacent sites and utilities.

**11.2.3** When use or storage of explosives, other hazardous materials, equipment, or unusual methods are necessary for execution of the Construction Work, the Design-Build Entity shall exercise the utmost care and carry on such activities only under the supervision of properly qualified personnel.

**11.2.4** The Design-Build Entity shall designate a responsible member of the Design-Build Entity's organization at the Project Site whose duty shall be the prevention of accidents. That person shall be the Superintendent, unless otherwise designated by the Design-Build Entity in writing to the City and the City's Representative.

**11.2.5** The Design-Build Entity shall not load or permit any part of the Construction Work or the Project Site to be loaded so as to endanger the safety of persons or property.

### 11.3 EMERGENCIES

**11.3.1** In an emergency affecting the safety of persons or property, the Design-Build Entity shall act to prevent or minimize damage, injury, or loss. The Design-Build Entity shall promptly notify the City's Representative, which notice may be oral followed by written confirmation, of the occurrence of such an emergency and the Design-Build Entity's action.

## ARTICLE 12 INSURANCE AND BONDS

### 12.1 THE DESIGN-BUILD ENTITY'S INSURANCE

#### 12.1.1 Minimum Scope of Insurance.

(a) *General Liability ("CGL"):* Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001) or equivalent.

(b) *Builder's All-Risk:* Builder's Risk [ "All Risk" ] extended coverage insurance on all work, material, equipment, appliances, tools, and structures which are a part of the Contract and subject to loss or damage by fire, and vandalism and malicious mischief, in an amount to cover 100% of the replacement cost for the benefit of the City. Builder's All-Risk coverage shall not include flood or earthquake coverage. The City accepts no responsibility until the Contract is formally accepted by the Governing Board for the work. The Design-Build Entity is required to file with the City a certificate evidencing fire insurance coverage.

(c) *Automobile Liability:* Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto).

(d) *Workers' Compensation and Employers' Liability:* Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(e) *Professional Liability:* Professional Liability Insurance insuring the Design-Build Entity, its officers, directors, stockholders, employees, agents, or partner against any and all liabilities arising out of or in connection with the negligent acts, errors or omissions of any of the foregoing in connection with the carrying out of their professional responsibilities described in this Contract. Professional Liability Insurance shall be renewed and shall be so certified to the City by the insurer, for a period of three (3) years after the termination of this Contract and the completion of all of the Design-Build Entity's services hereunder.

#### 12.1.2 Minimum Limits of Insurance.

(a) *General Liability:* The CGL policy shall be issued on an occurrence basis, written on a commercial general liability form, and shall include coverage for liability arising from Contractor's or its Subcontractor's acts or omissions in the performance of the Work, including contractual liability and completed operations, with limits of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate, as well as an excess Umbrella Liability policy in the amount of \$2,000,000, providing excess coverage of the above. The CGL policy must name SCAQMD and the City as an additional insured for all liability arising out of the operations, ongoing and completed, by or on

behalf of the named insured, and must protect SCAQMD, the City, its governing body, officers, employees, and agents against any and all liability for personal injury, death, or property damage or destruction arising directly or indirectly in the performance of the Contract. Said completed operations coverage shall remain in place for two years after the completion of the Project. The CGL coverage may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella policies, provided each such policy complies with the requirements set forth herein.

(b) *Builder's All-Risk*: See Section 12.1.1(b) above.

(c) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage. The policy must name SCAQMD and the City as an additional insured.

(d) *Workers' Compensation and Employers' Liability*: Workers' compensation limits as required by the Labor Code of the State of California. Employers Liability limits of \$1,000,000 per accident for bodily injury or disease.

(e) *Professional Liability Insurance*: \$2,000,000 per claim and in the aggregate.

(f) *All Coverages*: Each insurance policy required shall be endorsed to state that coverage shall not be canceled except after thirty (30) days prior written notice by mail, has been given to the City.

**12.1.3** Verification of Coverage. The Design-Build Entity shall provide to City certificates of insurance and endorsements effecting coverage required by this Contract. All insurance is to be placed with insurers with a current A.M. Best's rating no less than A-:VII, authorized to do business in California, and satisfactory to the City. All insurance required by this Section shall also contain standard separation of insureds provisions and shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents and volunteers. All policies shall contain a provision stating that such policies are primary insurance and that the insurance of City or any named insured shall not be called upon to contribute to any loss except to the extent any loss, claim or action is caused by the negligence of one or more of the additional insureds. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on industry standard forms (such as an ISO CG 2010 (or insurer's equivalent), and a certificate of insurance (Acord form 25-S or equivalent) with additional insured endorsements attached) , and acceptable to the City. All certificates and endorsements must be received and approved by the City within five (5) calendar days of the date of the Letter of Award. Contractor shall ensure that each Subcontractor is required to maintain the appropriate insurance policies, with respect to its operations, including those requirements related to the additional insureds and waiver of subrogation and provide the City Certificate of Insurance and Additional Insured endorsement accordingly. Such insurance shall require thirty (30) days prior written notice to the City and SCAQMD prior to cancellation of any policies.

**12.1.4** Endorsements. The CGL, Builder's All-Risk and Automobile Liability policies must include an Additional Insured endorsement, as applicable, providing that the carrier agrees to waive any right of subrogation it may have against City. The CGL Policy and the Builder's Risk Policy must include the following specific provisions: (a) The inclusion of more than one insured shall not operate to impair the rights of one insured against another, and

the coverages afforded shall apply as though separate policies have been issued to each insured, except for the policy limits; and (b) This policy does not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.

**12.1.5** All insurance certificates should be mailed to: SCAQMD Risk Management, 21865 Copley Drive, Diamond Bar, CA 91765-4178. SCAQMD Contract No. 14042 must be included on the face of the certificate.

**12.1.6** Other Insurance. The Design-Build Entity shall provide all other insurance required to be maintained under applicable laws, ordinances, rules, and regulations.

## **12.2 PERFORMANCE BOND AND PAYMENT BOND**

**12.2.1** The Design-Build Entity shall furnish bonds covering the faithful performance of the Contract, (Performance Bond) and payment of obligations arising thereunder (Payment Bond) on the forms contained in the exhibits to the Contract.

**12.2.2** The Payment Bond and Performance Bond shall each be in the amount of the Guaranteed Maximum Price.

**12.2.3** The Payment Bond and Performance Bond shall be in effect on the Date the Contract is signed by the City.

**12.2.4** The Design-Build Entity shall promptly furnish such additional security as may be required by the City to protect its interests and those interests of persons or firms supplying labor or materials to the Project.

**12.2.5** Surety companies used by the Design-Build Entity shall be, on the Date the Contract is signed by the City, listed in the latest published State of California, Department of Insurance list of “Insurers Admitted to Transact Surety Insurance in this State.”

**12.2.6** The premiums for the Payment Bond and Performance Bond shall be paid by the Design-Build Entity.

**12.2.7** The Design-Build Entity maintains and agrees that it has executed Payment and Performance Bonds in the amounts and manner required by the Bid Documents.

**12.2.8** No payment will be made to the Design-Build Entity until the Design-Build Entity’s Payment Bond and Performance Bond have been approved by the City.

**12.2.9** Should, in the City’s sole opinion, any bond become insufficient or Surety found to be unsatisfactory, the Design-Build Entity shall renew or replace the effected bond within 10 days of receiving notice from the City.

**12.2.10** In the event the Surety or the Design-Build Entity intends to reduce or cancel any required bonds, at least thirty (30) days prior written notice shall be given to the City, and the Design-Build Entity shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will

be made under this Contract until any replacement bonds required by this Section are accepted by the City.

**12.2.11** To the extent, if any, that the Guaranteed Maximum Price is increased in accordance with the Contract, the Design-Build Entity shall, upon request of the City, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City.

**12.2.12** To the extent available, the bonds shall further provide that no change or alteration of the Contract (including, without limitation, an increase in the Guaranteed Maximum Price, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Design-Build Entity will release the surety. If the Design-Build Entity fails to furnish any required bond, the City may terminate the Contract for cause.

## **ARTICLE 13 UNCOVERING AND CORRECTION OF CONSTRUCTION WORK**

### **13.1 UNCOVERING OF WORK ON THE PROJECT**

**13.1.1** If a portion of the Construction Work is covered contrary to the City's Representative's request or direction, or contrary to the requirements of the Contract Documents, it must, if required in writing by the City's Representative, be uncovered for the City's Representative's observation and be replaced at the Design-Build Entity's expense without adjustment of the Guaranteed Completion Date or the Guaranteed Maximum Price.

**13.1.2** If a portion of the Construction Work has been covered, which is not required by the Contract Documents to be observed or inspected prior to its being covered and which the City's Representative has not specifically requested to observe prior to its being covered, the City's Representative may request to see such Construction Work and it shall be uncovered and replaced by the Design-Build Entity. If such Construction Work is in accordance with the Contract Documents, the costs of uncovering and replacing the Construction Work shall be added to the Guaranteed Maximum Price by Change Order; and if the uncovering and replacing of the Construction Work extends the Guaranteed Completion Date, an appropriate adjustment of the Guaranteed Completion Date shall be made by Change Order. If such Construction Work is not in accordance with the Contract Documents, the Design-Build Entity shall pay such costs and shall not be entitled to an adjustment of the Guaranteed Completion Date or the Guaranteed Maximum Price.

### **13.2 CORRECTION OF DEFECTIVE WORK**

**13.2.1** The Parties understand and agree that the Design-Build Entity has provided certain warranties as identified in Section 3.27 herein. As a part of such warranties, City agrees to provide Design-Build Entity reasonable access to the Sites to take action necessary, in Design-Build Entity's sole discretion, to maintain and adjust the equipment. Such reasonable access shall include the right for Design-Build Entity to (a) repair equipment, (b) replace equipment, or (c) add additional equipment and materials to the Project.

**ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT****14.1 TERMINATION BY THE DESIGN-BUILD ENTITY**

**14.1.1** Subject to Section 14.1.2, the Design-Build Entity shall have the right to terminate the Contract only upon the occurrence of one of the following:

(a) The work on the Project is stopped for ninety (90) consecutive days, through no act or fault of the Design-Build Entity, any Subcontractor, or any employee or agent of the Design-Build Entity or any Subcontractor, due to an issuance of an order of a court or other public authority having jurisdiction or due to an act of government, such as a declaration of a national emergency making material unavailable.

(b) The City fails to perform any material obligation under the Contract Documents and fails to cure such default within thirty (30) days after receipt of notice from the Design-Build Entity stating the nature of such default.

(c) Repeated suspensions by the City, other than such suspensions as are agreed to by the Design-Build Entity under Section 14.3, which constitute in the aggregate more than 20% of the Guaranteed Completion Date or ninety (90) days, whichever is larger.

**14.1.2** Upon the occurrence of one of the events listed in Section 14.1.1, the Design-Build Entity may, upon ten (10) days additional notice to the City and the City's Representative, and provided that the condition giving rise to the Design-Build Entity's right to terminate is continuing, terminate the Contract.

**14.1.3** Upon termination by the Design-Build Entity, the City will pay to the Design-Build Entity the sum determined by Section 14.4.4. Such payment will be the sole and exclusive remedy to which the Design-Build Entity is entitled in the event of termination of the Contract by the Design-Build Entity pursuant to Section 14.1; and the Design-Build Entity will be entitled to no other compensation or damages and expressly waives the same.

**14.2 TERMINATION BY THE CITY FOR CAUSE**

**14.2.1** The City will have the right to terminate the Contract for cause at any time after the occurrence of any of the following events:

(a) The Design-Build Entity becomes insolvent or files for relief under the bankruptcy laws of the United States.

(b) The Design-Build Entity makes a general assignment for the benefit of its creditors or fails to pay its debts as the same become due.

(c) A receiver is appointed to take charge of the Design-Build Entity's property.

(d) The Design-Build Entity abandons work on the Project.

**14.2.2** Upon the occurrence of any of the following events, the City will have the right to terminate the Contract for cause if the Design-Build Entity fails to promptly commence to cure such default and diligently prosecute such cure within thirty(30) days after notice from the City, or within such longer period of time as is reasonably necessary to complete such cure:

(a) The Design-Build Entity disregards Applicable Code Requirements.

(b) The Design-Build Entity persistently or materially fails to execute the work on the Project in accordance with the Contract Documents.

(c) The Design-Build Entity is in default of any other material obligation under the Contract Documents.

(d) The Design-Build Entity persistently or materially fails to comply with applicable safety requirements.

**14.2.3** Upon any of the occurrences referred to in Sections 14.2.1 and 14.2.2, the City may, at its election and by notice to the Design-Build Entity, terminate the Contract and take possession of the Project Site and all materials, supplies, equipment, tools, and construction equipment and machinery thereon owned by the Design-Build Entity; accept the assignment of any or all of the subcontracts; and then complete the Project by any method the City may deem expedient. If requested by the City, the Design-Build Entity shall remove any part or all of the Design-Build Entity's materials, supplies, equipment, tools, and construction equipment and machinery from the Project Site within seven (7) days of such request; and if the Design-Build Entity fails to do so, the City may remove or store, and after ninety (90) days sell, any of the same at the Design-Build Entity's expense.

**14.2.4** If the unpaid balance of the Guaranteed Maximum Price exceeds the cost of completing the Project, including all additional costs and expenses made necessary thereby, including costs for the City staff time, plus all Losses sustained, the lost CSI rebate, if applicable, such excess shall be paid to the Design-Build Entity. If such costs, expenses, Losses, and lost CSI rebate, exceed the unpaid balance of the Guaranteed Maximum Price, the Design-Build Entity shall pay such excess to the City.

**14.2.5** No termination or action taken by the City after termination shall prejudice any other rights or remedies of the City provided by law or by the Contract Documents upon such termination; and the City may proceed against the Design-Build Entity to recover all Losses suffered by the City.

### **14.3 SUSPENSION BY THE CITY FOR CONVENIENCE**

**14.3.1** The City may, at any time and from time to time, without cause, order the Design-Build Entity, in writing, to suspend, delay, or interrupt the work on the Project in whole or in part for such period of time, up to ninety (90) days, as the City may determine, with such period of suspension to be computed from the Date of delivery of the written order. Such order shall be specifically identified as a "Suspension Order" under this Section 14.3. The

work on the Project may be stopped for such further period as the Parties may agree. Upon receipt of a Suspension Order, the Design-Build Entity shall, at the City's expense, comply with its terms and take all reasonable steps to minimize costs allocable to the work covered by the Suspension Order during the period of work stoppage. Within ninety (90) days after the issuance of the Suspension Order, or such extension to that period as is agreed upon by the Design-Build Entity and the City, the City shall either cancel the Suspension Order or delete the work covered by such Suspension Order by issuing a Change Order.

**14.3.2** If a Suspension Order is canceled or expires, the Design-Build Entity shall continue with the work on the Project. A Change Order will be issued to cover any adjustments of the Guaranteed Maximum Price or the Guaranteed Completion Date necessarily caused by such suspension. Any Claim by the Design-Build Entity for an adjustment of the Guaranteed Maximum Price or the Guaranteed Completion Date shall be made within twenty-one (21) days after the end of the work suspension. The Design-Build Entity agrees that submission of its claim within said twenty-one (21) days is an express condition precedent to its right to Arbitrate or Litigate such a claim.

**14.3.3** The provisions of this Section 14.3 shall not apply if a Suspension Order is not issued by the City. A Suspension Order shall not be required to stop the work on the Project as permitted or required under any other provision of the Contract Documents.

#### **14.4 TERMINATION BY THE CITY FOR CONVENIENCE**

**14.4.1** The City may, at its option, terminate this Contract, in whole or from time to time in part, at any time by giving notice to the Design-Build Entity. Upon such termination, the Design-Build Entity agrees to waive any claims for damages, including loss of anticipated profits, on account thereof; and, as the sole right and remedy of the Design-Build Entity, the City shall pay the Design-Build Entity in accordance with Section 14.4.4.

**14.4.2** Upon receipt of notice of termination under this Section 14.4, the Design-Build Entity shall, unless the notice directs otherwise, do the following:

(a) Immediately discontinue the work on the Project to the extent specified in the notice.

(b) Place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of such portion of the work on the Project as is not discontinued.

(c) Promptly cancel, on the most favorable terms reasonably possible, all subcontracts to the extent they relate to the performance of the Discontinued portion of the work on the Project.

(d) Thereafter do only such work as may be necessary to preserve and protect work on the Project already in progress and to protect materials, plants, and equipment on the Project Site or in transit thereto.

**14.4.3** Upon such termination, the obligations of the Contract shall continue as to portions of the work on the Project already performed and, subject to the Design-Build Entity's obligations under Section 14.4.2, as to bona fide obligations assumed by the Design-Build Entity prior to the Date of termination.

**14.4.4** Upon such termination, the City shall pay to the Design-Build Entity the sum of the following:

(a) The amount of the Guaranteed Maximum Price allocable to the portion of the work on the Project properly performed by the Design-Build Entity as of the Date of termination, less sums previously paid to the Design-Build Entity.

(b) Plus previously unpaid costs of any items delivered to the Project Site which were fabricated for subsequent incorporation in the work on the Project.

(c) Plus any proven Losses with respect to materials and equipment directly resulting from such termination.

(d) Plus reasonable demobilization costs.

(e) Plus reasonable costs of preparing a statement of the aforesaid costs, expenses, and Losses in connection with such termination.

**14.4.5** The above payment shall be the sole and exclusive remedy to which the Design-Build Entity is entitled in the event of termination of the Contract by the City pursuant to Section 14.4; and the Design-Build Entity will be entitled to no other compensation or damages and expressly waives same.

## **ARTICLE 15 STATUTORY REQUIREMENTS**

### **15.1 HOURS OF WORK**

**15.1.1** The Design-Build Entity and Subcontractors shall furnish sufficient forces to ensure the prosecution of the work on the Project in accordance with the Construction Schedule and in such a manner to allow for the full and adequate completion of the Project within the Guaranteed Completion Date.

**15.1.2** Work on the Project shall be performed during regular working hours, except that in the event of an emergency or when required to complete the work on the Project in accordance with job progress, work may be performed outside of regular working hours with advance written notice to the City. Regular working hours shall be per local ordinance and shall not be changed except with consent of the City.

**15.1.3** As provided in Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Design-Build Entity or by any Subcontractor on any subcontract under this Contract, upon the work or upon any part of the work contemplated by this Contract, is limited and restricted to eight (8) hours during any one

calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provision hereinabove set forth, work performed by employees of Design-Build Entity in excess of eight (8) hours per day and forty (40) hours during any one week shall be permitted upon this public work compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay.

**15.1.4** The Design-Build Entity shall pay to the City a penalty of Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Contract by the Design-Build Entity, or by any Subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one (1) calendar week, in violation of the provisions of Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation for the workers so employed by Design-Build Entity is not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

**15.1.5** If the work done after hours is required by the Contract to be done outside the Design-Build Entity's or the Inspector's regular working hours, the costs of any inspections, if required to be done outside normal working hours, shall be borne by the City.

**15.1.6** If the City allows the Design-Build Entity to do work outside regular working hours for the Design-Build Entity's own convenience, the costs of any inspections required outside regular working hours shall be invoiced to the Design-Build Entity by the City and deducted from the next Progress Payment.

**15.1.7** If the Design-Build Entity elects to perform work outside the Inspector's regular working hours, costs of any inspections required outside regular working hours shall be invoiced to the Design-Build Entity by the City and deducted from the next Progress Payment.

**15.1.8** No work on the Project or other activities by or on behalf of the Design-Build Entity which presents a hazard or unreasonable disruption to the City's operations. The determination as to whether work on the Project or some other activity presents a hazard or constitutes an unreasonable disruption to the City's operations shall be made by and pursuant to the sole discretion of the City's representative. Neither the Design-Build Entity nor its subcontractors or anyone working on behalf of the Design-Build Entity or subcontractors shall be entitled to additional compensation or Guaranteed Completion Date for having to arrange their work schedule so as not to violate the provisions of this Section. The Design-Build Entity, subcontractors and persons working on behalf of the Design-Build Entity and subcontractors shall be expected to arrange such work and other activities in advance so as to avoid creating monetary or time impacts.

## **15.2 WAGE RATES, TRAVEL, AND SUBSISTENCE**

**15.2.1** The Design-Build Entity is aware of the requirements of California Labor Code Sections 1720 *et seq.* and 1770 *et seq.*, as well as California Code of Regulations, Title 8, section 16000 *et seq.* ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and

“maintenance” projects. Since this Project involves an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, the Design-Build Entity agrees to fully comply with such Prevailing Wage Laws. The Design-Build Entity shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Contract from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at [www.dir.ca.gov/dlsr/](http://www.dir.ca.gov/dlsr/). In the alternative, the Design-Build Entity may view a copy of the prevailing rates of per diem wages at the City’s Business Office. The Design-Build Entity shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform work on the Project available to interested Parties upon request, and shall post copies at the Design-Build Entity’s principal place of business and at the Project Site. The Design-Build Entity shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. As requested by City and as may be required by State law, Design-Build Entity shall prepare and provide to the City and shall cause each Subcontractor performing any portion of the Work under this Contract to prepare and provide to the City an accurate and certified payroll record, showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Contractor and/or each Subcontractor in connection with the Work.

**15.2.2** Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half (1½) times the above specified rate of *per diem* wages, unless otherwise specified. Holidays shall be defined in the Collective Bargaining Contract applicable to each particular craft, classification, or type of worker employed.

**15.2.3** The Design-Build Entity shall pay and shall cause to be paid each worker engaged in work on the Project not less than the general prevailing rate of *per diem* wages determined by the Director, regardless of any contractual relationship which may be alleged to exist between the Design-Build Entity or any Subcontractor and such workers.

**15.2.4** The Design-Build Entity shall pay and shall cause to be paid to each worker needed to execute the work on the Project travel and subsistence payments, as such travel and subsistence payments are defined in the applicable collective bargaining Contracts filed with the Department of Industrial Relations in accordance with Labor Code § 1773.8.

**15.2.5** If during the period this cost proposal is required to remain open, the Director of Industrial Relations determines that there has been a change in any prevailing rate of *per diem* wages in the locality in which this public work is to be performed, such change shall not alter the wage rates in the Notice calling for Bids or the contract subsequently awarded.

**15.2.6** Pursuant to Labor Code § 1775, the Design-Build Entity shall as a penalty to the City, forfeit Fifty Dollars (\$50.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing rate of *per diem* wages, determined by the Director, for such craft or classification in which such worker is employed for any public work done under the Contract by the Design-Build Entity or by any Subcontractor under it. The amount of the penalty shall be determined by the Labor Commission and shall be based on consideration of the Design-

Build Entity's mistake, inadvertence, or neglect in failing to pay the correct prevailing rate of *per diem* wage, the previous record of the Design-Build Entity in meeting his or her prevailing rate of *per diem* wage obligations, or the Design-Build Entity's willful failure to pay the correct prevailing rate of *per diem* wages. A mistake, inadvertence, or neglect in failing to pay the correct prevailing rate of *per diem* wage is not excusable if the Design-Build Entity had knowledge of it or the obligations under this part. The difference between such prevailing rate of *per diem* wage and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing rate of *per diem* wage shall be paid to each work by the Design-Build Entity.

**15.2.7** Any worker employed to perform work on the Project, which work is not covered by any craft or classification listed in the general prevailing rate of *per diem* wages determined by the Director, shall be paid not less than the minimum rate of wages specified therein for the craft or classification which most nearly corresponds to the work on the Project to be performed by them, and such minimum wage rate shall be retroactive to time of initial employment of such person in such craft or classification.

**15.2.8** Pursuant to Labor Code § 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Labor Code § 1773.8.

**15.2.9** The Design-Build Entity shall post at appropriate conspicuous points on the Project Site, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned.

**15.2.10** The Design-Build Entity, or any subcontractor working under the Design-Build Entity may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Section 1777.1 or Section 1777.7 of the California Labor Code. Any contract on a public works project entered into between the Design-Build Entity and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by the Design-Build Entity on the project shall be returned to the City. The Design-Build Entity shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the project.

### **15.3 APPRENTICES**

**15.3.1** All apprentices employed by the Design-Build Entity to perform services under the Contract shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is employed, and shall be employed only at the work of the craft or trade to which he or she is registered. Only apprentices, as defined in § 3077 of the Labor Code, who are in training under apprenticeship standards and written apprenticeship Contracts under Chapter 4 (commencing with § 3070) of Division 3, are eligible to be employed under this Contract. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice Contracts under which he or she is training.

**15.3.2** When the Design-Build Entity to whom the Contract is awarded by the City, or any Subcontractor under him or her, in performing any of the work on the Project under the Contract or subcontract, employs workers in any apprenticeable craft or trade, the Design-Build Entity and Subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the Project Site, for a certificate approving the Design-Build Entity or Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. The joint apprenticeship committee or committees, subsequent to approving the subject the Design-Build Entity or Subcontractor, shall arrange for the dispatch of apprentices to the Design-Build Entity or Subcontractor in order to comply with this Section. The Design-Build Entity and every Subcontractor shall submit the contract award information to the applicable joint apprenticeship committee which shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. There shall be an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the crafts or trade in the area of the Project Site of the public work, to ensure equal employment and affirmative action and apprenticeship for women and minorities. The Design-Build Entities or Subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen, who shall be employed in the craft or trade on the Project, may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but, except as otherwise provided in this Section, in no case shall the ratio be less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman. However, the minimum ratio for the land surveyor classification shall not be less than one (1) apprentice for each five (5) journeymen.

**15.3.3** Any ratio shall apply during any day or portion of a day when any journeyman, or the higher standard stipulated by the joint apprenticeship committee, is employed at the Project Site and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the land surveyor classification. The Design-Build Entity shall employ apprentices for the number of hours computed as above before the end of the Contract. However, the Design-Build Entity shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the Project Site. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a joint apprenticeship committee, may order a minimum ratio of not less than one (1) apprentice for each five (5) journeymen in a craft or trade classification.

**15.3.4** The Design-Build Entity or Subcontractor, if he or she is covered by this Section upon the issuance of the approval certificate, or if he or she has been previously approved in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the Design-Build Entity that he or she employs apprentices in the craft or trade in the state on all of his or her contracts on an annual average of not less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman, or in the land surveyor classification, one (1)

apprentice for each five (5) journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the Design-Build Entity from the 1-to-5 hourly ratio as set forth in this Section. This Section shall not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor, when the contracts of general contractors or those specialty contractors involve less than Thirty Thousand Dollars (\$30,000) or twenty (20) Days. Any work performed by a journeyman in excess of eight (8) hours per day or forty (40) hours per week, shall not be used to calculate the hourly ratio required by this Section.

(a) "Apprenticeable craft or trade" as used in this Section means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the Design-Build Entity from the 1-to-5 ratio set forth in this Section when it finds that any one of the following conditions is met:

(b) Unemployment for the previous three-month period in the area exceeds an average of fifteen percent (15%).

i. The number of apprentices in training in such area exceeds a ratio of 1-to-5.

ii. There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth (1/30) of its journeymen annually through the apprenticeship training, either on a statewide basis or on a local basis.

iii. Assignment of an apprentice to any work performed under this contract would create a condition which would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

**15.3.5** When exemptions are granted to an organization which represents the Design-Build Entity in a specific trade from the 1-to-5 ratio on a local or statewide basis, the Design-Build Entity will not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

#### **15.4 THIRD-PARTY CLAIMS (PUB. CONTRACT CODE § 9201.)**

**15.4.1** The City will provide the Design-Build Entity with timely notice of any third party claim relating to the Contract for the Project. The City also retain full authority to compromise or otherwise settle any claim related to the Contract for the Project.

## **15.5 ANTI-TRUST CLAIM ASSIGNMENT (PUB. CONTRACT CODE §7103.5.)**

**15.5.1** The City shall provide the Design-Build Entity with timely notification of the receipt of any third-party claim, relating to the Contract and the City is entitled to recover its reasonable costs incurred in providing such notification.

**15.5.2** At final payment, contractor or subcontractor must agree to assign awarding party all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract.

## **ARTICLE 16 MISCELLANEOUS PROVISIONS**

### **16.1 GOVERNING LAW**

**16.1.1** This Contract shall be governed by the laws of the State of California, venue shall be in the locale of the Project

### **16.2 WAIVER**

**16.2.1** A waiver of, or failure by, the City or the City's Representative to enforce any requirement in the Contract Documents, including, but not limited to, the Contract requirements relating to Change Orders, Delays, and/or Claims, shall not constitute a waiver of, and shall not preclude the City or the City's Representative from enforcing such requirements with regard to other Contract requirement, including, but not limited to, the Contract requirements relating to other Change Orders, Delays, and/or Claims,

### **16.3 SUCCESSORS AND ASSIGNS**

**16.3.1** The City and the Design-Build Entity respectively bind themselves and their successors, permitted assigns, and legal representatives to the other Party and to the successors, permitted assigns, and legal representatives of such other Party in respect to covenants, Contracts, and obligations contained in the Contract Documents. Neither Party to the Contract shall assign the Contract, in whole or in part, without prior written consent of the other Party. Notwithstanding any such assignment, each of the original contracting Parties shall remain legally responsible for all of its obligations under the Contract.

### **16.4 RIGHTS AND REMEDIES**

**16.4.1** All the City's rights and remedies under the Contract Documents will be cumulative and in addition to, and not in limitation of, all other rights and remedies of the City under the Contract Documents or otherwise available at law or in equity.

**16.4.2** No action or failure to act by the City or the City's Representative will constitute a waiver of a right afforded them under the Contract, nor will such action or

failure to act constitute approval of or acquiescence in a condition or breach thereunder, except as may be specifically agreed in writing. No waiver by the City or the City's Representative of any condition, breach or default will constitute a waiver of any other condition, breach or default; nor will any such waiver constitute a continuing waiver.

**16.4.3** No provision contained in the Contract Documents shall create or give to third parties any claim or right of action against the City, the City's Representative, or the Design-Build Entity.

## **16.5 SURVIVAL**

**16.5.1** The provisions of the Contract which by their nature survive termination of the Contract or Final Completion, including all warranties, indemnities, payment obligations, and the City's right to audit the Design-Build Entity's books and records, shall remain in full force and effect after Final Completion or any termination of the Contract.

## **16.6 COMPLETE CONTRACT**

**16.6.1** The Contract Documents constitute the full and complete understanding of the Parties and supersede any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract may be modified only by a written instrument signed by both Parties or as provided in Section 4.2.

## **16.7 SEVERABILITY OF PROVISIONS**

**16.7.1** If any one or more of the provisions contained in the Contract Documents should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

## **16.8 RIGHT TO AUDIT**

**16.8.1** The City shall have access to and the right to audit the Design-Build Entity's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to this Project ("Records") as provided for by applicable law. Design-Build Entity shall retain and maintain its Records in accordance with applicable law.

## **16.9 NOTICES**

**16.9.1** Except as otherwise provided, all notices, requests, demands, and other communications to be given under the Contract Documents shall be in writing and shall be transmitted by one of the following methods:

- (a) Personally delivered.
- (b) Sent by telecopy where receipt is confirmed.

(c) Sent by courier where receipt is confirmed.

(d) Sent by registered or certified mail, postage prepaid, return receipt requested.

**16.9.2** Such notices and other communications shall be deemed given and received upon actual receipt in the case of all except registered or certified mail; and in the case of registered or certified mail, on the Date shown on the return receipt or the Date delivery during normal business hours was attempted. Such notices and communications shall be given at the respective street addresses set forth in the Contract. Such street addresses may be changed by notice given in accordance with this Section 16.9.

## **16.10 TIME OF THE ESSENCE**

**16.10.1** Time limits stated in the Contract Documents are of the essence of the Contract.

## **16.11 STATUTORY LIMITATION**

**16.11.1** Commencement of statutory limitation periods and statute of repose periods shall be as follows:

(a) As to acts or failures to act occurring prior to Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Final Completion.

**16.11.2** As to acts or failures to act occurring after the Date of Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the Date of any act or failure to act by the Design-Build Entity pursuant to any applicable warranty, the Date of any correction of work on the Project or failure to correct work by the Design-Build Entity, or the Date of actual commission of any other act or failure to perform any duty or obligation by the Design-Build Entity or the City, whichever occurs last.

(a) The time period for the applicable Statute of Repose shall commence to run at Final Completion of the Project.

## **16.12 CORRECTION OF ERRORS AND OMISSIONS**

**16.12.1** The Design-Build Entity agrees to correct any error or omission in the Construction Documents or Contract Documents at no additional cost to The City.

## **16.13 INTERPRETATION**

**16.13.1** This Contract shall not be construed in favor of or against any Party, but shall be construed as if all Parties prepared this Contract.

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**EXHIBIT "C"**  
**PROPOSAL / BID SHEET**

**Pricing Table**

<b>Item</b>	<b>Price Proposal</b>
<b>Solar Carport</b>	
<b>EV Stations</b>	
<b>Total Amount Bid</b>	<hr/> <b>Written form</b> <hr/> (\$ _____)

**Request for Proposals #P2012-17  
Volume II Cost Proposal**

**Priority Project Three  
Renewable Energy and Alternative Fueling Facility Project**

**Prepared for:  
Procurement Unit  
South Coast Air Quality Management District  
21865 Copley Drive  
Diamond Bar, CA 91765-4178**

**Prepared by:  
Jonathan Hoy, P.E.  
City Engineer**



**City of Coachella  
1515 Sixth Street  
Coachella, CA 92236**

City of Coachella  
1515 Sixth Street, Coachella, CA 92236

Volume II – Cost Proposal  
Renewable Energy and Alternative  
Fueling Facility Project

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City of Coachella  
1515 Sixth Street, Coachella, CA 92236

Volume II – Cost Proposal  
Renewable Energy and Alternative  
Fueling Facility Project

## Section 1 Labor

Although it is premature to fully claim to know the actual anticipated labor hours for this project, Table 1 represents the City's best estimate, based on previous experience, of the labor hours for contractor-city staff broken down by project milestone.

A total of 1,112 contractor-city staff hours at \$165 per hour results in \$103,125 in city staff labor cost. Table 1 identifies the estimated project hours by contractor-city staff.

**Table 1 Estimated Project Hours by Contractor-City Staff**

Staff	Design Phase	Bid Advertisement & Award	Procurement of Electric and CNG Vehicles	Construction	Total Hours	Cost @ \$165/hr
Jonathan Hoy	40	5	5	40	90	\$ 14,850
Robert Fisher	30	0	0	160	190	\$ 31,350
Luis Lopez	30	0	0	40	70	\$ 11,550
Mark Chappel	60	10	5	80	155	\$ 25,575
Bill Lukehart	50	10	20	40	120	\$ 19,800
<b>Total</b>	<b>210</b>	<b>25</b>	<b>30</b>	<b>360</b>	<b>625</b>	<b>\$ 103,125</b>



City of Coachella  
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**Section 2      Supplies, Hardware, Equipment**

The City will need to procure alternative fuel vehicles as part of the proposed Project. Additional equipment and building materials will be required as part of the construction/installation of the compressed natural gas (CNG) fueling station, solar car port, and electric vehicle charging stations. These costs are summarized below under the Construction task.

**Table 2 Equipment Cost by Task**

Task ID	Task	Equipment	Estimated Cost
<b>3</b>	<b>Procurement of Electric and CNG Vehicles</b>		
3.1		CNG Medium Duty Truck (2) - Ford F-250 CNG	\$ 57,750
3.2		Electric Vehicle (2) - Nissan Leaf	\$ 76,540
<b>4</b>	<b>Construction</b>		
4.2		Install CNG Station	\$ 755,130
4.3		Install Solar Panel Carport	\$ 629,736
4.4		Electric Vehicle (EV) Charging Station	\$ 10,000
4.5		System Testing and Closeout	\$ 3,000
<b>Total</b>			<b>\$ 1,532,156</b>



**Section 3 Subcontractor Costs**

The proposed project may require expertise in multiple technical areas, and therefore, qualified subcontractors will be procured by the general contractor that is awarded the bid. Table 3 identifies the anticipated labor cost for subcontractors by project milestone.

**Table 3 Anticipated Labor Hours for Sub-Contractors and Cost by Milestone**

Task ID	Main Task	Sub-Task	Sub Contractor Labor Estimate (hrs)	Cost
<b>1</b>	<b>Design Phase</b>			
<b>1.1</b>	<b>CNG Station</b>			
1.1.1		80% Design	500	\$ 60,000.00
1.1.2		80% Design Review		
1.1.3		100% Design	200	\$ 24,000.00
1.1.4		100% Design Review		
<b>1.2</b>	<b>Solar Panel Carport/EV Charging Station</b>			
1.2.1		80% Design	500	\$ 60,000.00
1.2.2		80% Design Review		
1.2.3		100% Design	200	\$ 24,000.00
1.2.4		100% Design Review		
<b>2</b>	<b>Bid Advertisement &amp; Award</b>			
2.1		Compile Bid Packages including Scope and T&Cs		
2.2		Issue RFQs		
2.3		Bid Development by Bidders		



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Task ID	Main Task	Sub-Task	Sub Contractor Labor Estimate (hrs)	Cost
2.4		Review Bids and Select Subcontractors		
<b>3</b>	<b>Procurement of Electric and CNG Vehicles</b>			
3.1		Develop Vehicle Specifications		
3.2		Select Vendors and Supply Specifications		
3.3		Vendors Prepare Bids		
3.4		Collect and Review Bids		
3.5		Select Bids and Create Purchase Order		
3.6		Delivery of Vehicles		
<b>4</b>	<b>Construction</b>			
4.1		Mobilize Construction	0	
4.2		Install CNG Station	1200	\$ 144,000.00
4.3		Install Solar Panel Carport	1200	\$ 144,000.00
4.4		Install EV Charging Station	200	\$ 24,000.00
4.5		System Testing and Closeout	35	\$ 4,200.00
		<b>Total</b>	<b>4035</b>	<b>\$ 484,200.00</b>



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**Section 4      Travel Costs**

There are no anticipated travel costs associated with this project.



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**Section 5 Other Direct Costs**

The City anticipates a series of other direct costs associated with this project. Table 4 identifies several expected administrative costs.

**Table 4 Anticipated Administrative Costs**

Expenses	Rate	Design Phase	Bid Advertisement & Award	Procurement of Electric and CNG Vehicles	Construction	Total Units	Total Cost
Printing	0.15	200	100	20	100	420	\$ 63
Reproduction	0.15	600	200	20	200	1020	\$ 153
Postage/Mailing	5.00	10	10	0	10	30	\$ 150
Mileage Reimbursement	0.51	100	100	0	100	300	\$ 153
<b>Total</b>							<b>\$ 519</b>



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## Section 6 Payment Schedule

Table 5 includes the proposed payment schedule for the project. The date of the payment cannot be established at this point.

Table 5 Proposed Payment Schedule by Project Milestone

Task ID	Main Task	Sub-Task	Cost	Payment Schedule	Date
1	<b>Design Phase</b>				
1.1	<b>CNG Station</b>		\$ 203,560	\$ 203,560	9/4/2012
1.1.1		80% Design			
1.1.2		80% Design Review			
1.1.3		100% Design			
1.1.4		100% Design Review			
1.2	<b>Solar Panel Carport/EV Charging Station</b>				
1.2.1		80% Design			
1.2.2		80% Design Review			
1.2.3		100% Design			
1.2.4		100% Design Review			
2	<b>Bid Advertisement &amp; Award</b>				
2.1		Compile Bid Packages including Scope and T&Cs	\$ 4,535	\$ 4,535	2/5/13
2.2		Issue RFQs			
2.3		Bid Development by Bidders			
2.4		Review Bids and Select Subcontractors			



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Task ID	Main Task	Sub-Task	Cost	Payment Schedule	Date
3	Procurement of Electric and CNG Vehicles				
3.1		Develop Vehicle Specifications	\$ 139,280	\$ 139,280	2/5/13
3.2		Select Vendors and Supply Specifications			
3.3		Vendors Prepare Bids			
3.4		Collect and Review Bids			
3.5		Select Bids and Create Purchase Order			
3.6		Delivery of Vehicles			
4	Construction				
4.1		Mobilize Construction	\$ 1,772,625	\$ 1,772,625	5/20/13
4.2		Install CNG Station			
4.3		Install Solar Panel Carport			
4.4		Install EV Charging Station			
4.5	System Testing and Close-out				
<b>Total</b>			<b>\$ 2,120,000</b>	<b>\$ 2,120,000</b>	



## EXHIBIT "D"

### NON-COLLUSION DECLARATION

This Non-Collusion Declaration shall be executed by the Proposer and shall be submitted with its Proposal.

The undersigned declares:

I am the \_\_\_\_\_ of \_\_\_\_\_, the party making the foregoing bid .

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_\_ [date], at \_\_\_\_\_ [city], \_\_\_\_\_ [state].

Signed: \_\_\_\_\_

Print Name: \_\_\_\_\_

**EXHIBIT “E”**  
**SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT**  
**CONTRACT NO. 14042**

[ATTACHED BEHIND THIS COVER PAGE]



**South Coast  
Air Quality Management District**

Contract No. 14042  
AB 1318

This Contract consists of 29 pages.

1. **PARTIES** - The parties to this Contract are the South Coast Air Quality Management District (referred to here as "SCAQMD") whose address is 21865 Copley Drive, Diamond Bar, California 91765-4178, and the City of Coachella (referred to here as "CONTRACTOR") whose address is 1515 Sixth Street, Coachella, California 92236.
2. **RECITALS**
  - A. SCAQMD is the local agency with primary responsibility for regulating stationary source air pollution within the geographical boundaries of the South Coast Air Quality Management District in the State of California. SCAQMD is authorized to enter into this Contract under California Health and Safety Code Section 40489. SCAQMD desires to contract with CONTRACTOR for services described in Attachment 1 - Statement of Work, attached here and made a part here by this reference. CONTRACTOR warrants that it is well-qualified and has the experience to provide such services on the terms set forth here.
  - B. In June 2011, the SCAQMD Governing Board approved the establishment of the AB 1318 Mitigation Fees Fund (Fund 58). This special revenue fund is to be used to finance emission reduction projects, pursuant to the requirements of AB1318 (V.M. Perez), which was codified into law at California Health and Safety Code section 40440.14. The mitigation fees are for the transfer of emission offsets from SCAQMD's internal offset accounts to CPV Sentinel, LLC, for the construction and operation of the CPV Sentinel Energy power plant located in Desert Hot Springs. CONTRACTOR was awarded a grant to implement an emission reduction project in the Coachella Valley that will have a direct impact on the air quality and health of residents, while aiding in regional air quality goals.
  - C. CONTRACTOR is authorized to do business in the State of California and attests that it is in good tax standing with the California Franchise Tax Board.
  - D. All parties to this Contract have had the opportunity to have this Contract reviewed by their attorney.
  - E. "Equipment," as used in this Contract, means the equipment described in Attachment 1 - Statement of Work and funded in whole or in part by AB 1318 Mitigation Fees Funds, which may include, but is not limited to, vehicles, retrofit devices, fueling stations, and electrification infrastructure, as applicable.
3. **PERFORMANCE REQUIREMENTS**
  - A. CONTRACTOR agrees to obtain and maintain the required licenses, permits, and all other appropriate legal authorizations from all applicable federal, state and local jurisdictions and pay all applicable fees. CONTRACTOR further agrees to immediately notify SCAQMD in writing of any change in its licensing status which has a material impact on the CONTRACTOR's performance under this Contract.
  - B. CONTRACTOR shall submit reports to SCAQMD as outlined in Attachment 1 - Statement of Work. All reports shall be submitted in an environmentally friendly format: recycled paper; stapled, not bound; black and white, double-sided print; and no three-ring, spiral, or plastic binders or cardstock covers. SCAQMD reserves the right to review, comment, and request changes to any report produced as a result of this Contract.

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- C. CONTRACTOR shall perform all tasks set forth in Attachment 1 - Statement of Work, and shall not engage, during the term of this Contract, in any performance of work that is in direct or indirect conflict with duties and responsibilities set forth in Attachment 1 - Statement of Work.
  - D. CONTRACTOR must ensure that the project, including the Equipment to be purchased or installed, is in compliance with all applicable federal, state, and local air quality rules and regulations, and that it will maintain compliance for the full Contract term.
  - E. CONTRACTOR shall be responsible for exercising the degree of skill and care customarily required by accepted professional practices and procedures subject to SCAQMD's final approval which SCAQMD will not unreasonably withhold. Any costs incurred due to the failure to meet the foregoing standards, or otherwise defective services which require re-performance, as directed by SCAQMD, shall be the responsibility of CONTRACTOR. CONTRACTOR's failure to achieve the performance goals and objectives stated in Attachment 1- Statement of Work, is not a basis for requesting re-performance unless work conducted by CONTRACTOR is deemed by SCAQMD to have failed the foregoing standards of performance.
  - F. CONTRACTOR shall require its subcontractors to abide by the requirements set forth in this Contract.
4. TERM - The term of this Contract is for forty eight (48) months from the date of execution by both parties, unless further extended by amendment of this Contract in writing.
5. TERMINATION
- A. In the event any party fails to comply with any term or condition of this Contract, or fails to provide services in the manner agreed upon by the parties, including, but not limited to, the requirements of Attachment 1 – Statement of Work, this failure shall constitute a breach of this Contract. The non-breaching party shall notify the breaching party that it must cure this breach or provide written notification of its intention to terminate this contract. Notification shall be provided in the manner set forth in Clause 17. The non-breaching party reserves all rights under law and equity to enforce this contract and recover damages.
  - B. SCAQMD reserves the right to terminate this Contract, in whole or in part, without cause, upon thirty (30) days' written notice. Once such notice has been given, CONTRACTOR shall, except as and to the extent or directed otherwise by SCAQMD, discontinue any Work being performed under this Contract and cancel any of CONTRACTOR's orders for materials, facilities, and supplies in connection with such Work, and shall use its best efforts to procure termination of existing subcontracts upon terms satisfactory to SCAQMD. Thereafter, CONTRACTOR shall perform only such services as may be necessary to preserve and protect any Work already in progress and to dispose of any property as requested by SCAQMD.
  - C. CONTRACTOR shall be paid in accordance with this Contract for all Work performed before the effective date of termination under Clause 5.B. Before expiration of the thirty (30) days' written notice, CONTRACTOR shall promptly deliver to SCAQMD all copies of documents and other information and data prepared or developed by CONTRACTOR under this Contract with the exception of a record copy of such materials, which may be retained by CONTRACTOR.
6. STOP WORK – SCAQMD may, at any time, by written notice to CONTRACTOR, require CONTRACTOR to stop all or any part of the work tasks in this Contract. A stop work order may be issued for reasons including, but not limited to, the project exceeding the budget, out of scope work, delay in project schedule, or misrepresentations. Upon receipt of the stop work order, CONTRACTOR shall immediately take all necessary steps to comply with the order. CONTRACTOR shall resume the

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work only upon receipt of written instructions from SCAQMD cancelling the stop work order. CONTRACTOR agrees and understands that CONTRACTOR will not be paid for performing work while the stop work order is in effect, unless SCAQMD agrees to do so in its written cancellation of the stop work order.

7. ALTERNATIVE FUEL USE – The purpose of this project is to reduce emissions from the Equipment through the use of alternative fuels. To achieve this purpose, CONTRACTOR agrees to utilize Compressed Natural Gas and the Equipment as specified in the Statement of Work, for the duration of this Contract and the life of the Equipment. CONTRACTOR shall use alternative fuel for at least 75% of the annual mileage or engine hours of operation within the geographical boundaries of the Coachella Valley. In the case of a dual fuel vehicle, CONTRACTOR agrees to demonstrate use of alternative fuel over 75% of the vehicle's operating cycle, and 75% of the annual mileage or engine hours. Exceptions to these requirements are vehicle(s) out of service for an extended period because of accident or repair or unavailability of fuel. CONTRACTOR is required to provide data regarding vehicle mileage accumulation and fuel purchased as part of the quarterly and annual reports.
8. INSURANCE
  - A. CONTRACTOR shall furnish evidence to SCAQMD of workers' compensation insurance for each of its employees, in accordance with either California or other states' applicable statutory requirements prior to commencement of any work on this Contract.
  - B. CONTRACTOR shall furnish evidence to SCAQMD of general liability insurance with a limit of at least \$1,000,000 per occurrence, and \$2,000,000 in a general aggregate prior to commencement of any work on this Contract. SCAQMD shall be named as an additional insured on any such liability policy, and thirty (30) days written notice prior to cancellation of any such insurance shall be given by CONTRACTOR to SCAQMD.
  - C. CONTRACTOR shall furnish evidence to SCAQMD of automobile liability insurance with limits of at least \$100,000 per person and \$300,000 per accident for bodily injuries, and \$50,000 in property damage, or \$1,000,000 combined single limit for bodily injury or property damage, prior to commencement of any work on this Contract. SCAQMD shall be named as an additional insured on any such liability policy, and thirty (30) days written notice prior to cancellation of any such insurance shall be given by CONTRACTOR to SCAQMD.
  - D. If CONTRACTOR fails to maintain the required insurance coverage set forth above, SCAQMD reserves the right either to purchase such additional insurance and to deduct the cost thereof from any payments owed to CONTRACTOR or terminate this Contract for breach.
  - E. All insurance certificates should be mailed to: SCAQMD Risk Management, 21865 Copley Drive, Diamond Bar, CA 91765-4178. **The SCAQMD Contract Number must be included on the face of the certificate.**
  - F. CONTRACTOR must provide updates on the insurance coverage throughout the term of the Contract to ensure that there is no break in coverage during the period of contract performance. Failure to provide evidence of current coverage shall be grounds for termination for breach of Contract.
9. INDEMNIFICATION - CONTRACTOR agrees to hold harmless, defend and indemnify SCAQMD, its officers, employees, agents, representatives, and successors-in-interest against any and all loss, damage, costs, lawsuits, claims, demands, causes of action judgments, attorney's fees, or any other expenses arising from or related to any third party claim against SCAQMD, its officers, employees, agents, representatives, or successors in interest that arise or result in whole or in part, from any

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actual or alleged act or omission of CONTRACTOR, its employees, subcontractors, agents or representatives in the performance of this Contract.

10. ON-SITE INSPECTIONS AND AUDIT - SCAQMD, or its designee(s), shall have the right to conduct on-site inspections of the project and to audit records related to this project during the term of the Contract and for a period of three years thereafter, unless SCAQMD notifies CONTRACTOR that a longer period of record retention is necessary. Upon written request from SCAQMD, CONTRACTOR shall provide detailed documentation of all expenses incurred on the project, at any time throughout the records retention period. CONTRACTOR agrees to include a similar right for SCAQMD to conduct on-site inspections and audits in any subcontract.
11. RECORDS AND RECORDS RETENTION – CONTRACTOR shall maintain records related to this project and retain these records for at least three years beyond the Contract term.
12. REPORTING REQUIREMENTS - CONTRACTOR shall submit reports in accordance with Attachment 1, attached here and incorporated herein by reference. Non-compliance with the reporting requirements of this Contract may result in the implementation of on-site monitoring by the SCAQMD.
13. CO-FUNDING - CONTRACTOR shall provide co-funding in the amount of One Hundred Twenty One Thousand Three Hundred Fifty Six Dollars (\$121,356) for this project. If CONTRACTOR fails to provide this co-funding, then SCAQMD reserves the right to renegotiate or terminate this Contract.
14. PAYMENT
  - A. SCAQMD shall reimburse CONTRACTOR up to a total amount of One Million Eight Hundred Ninety Five Thousand Dollars (\$1,895,000) in accordance with Attachment 2 – Payment Schedule, expressly incorporated herein by this reference and made a part hereof of this Contract.
  - B. In no event shall the reimbursement for the total of all project costs, including all subcontractor costs, administrative costs, and other direct and indirect costs, exceed One Million Eight Hundred Ninety Five Thousand Dollars (\$1,895,000). In addition, if the actual costs are less than this amount, SCAQMD's total reimbursement commitment will be limited to that of the actual documented costs of the project, unless CONTRACTOR provides, at least 30 days prior to the termination date of this Contract, a request to expand the scope of the project up to the not-to-exceed reimbursement level. If the request is approved by the SCAQMD Executive Officer or his designee, the parties shall enter into an amendment to this Contract. However, no work within the expanded scope of the project shall be done prior to execution of the amendment.
  - C. Any funds not expended upon early contract termination or contract completion shall revert back to the AB Mitigation Fees 1318 Fund. Payment of charges shall be made by SCAQMD to CONTRACTOR within thirty (30) days after approval by SCAQMD of an itemized invoice prepared and furnished by CONTRACTOR, referencing the task completed or a percent of work accomplished and detailing line item expenditures as listed in Attachment 2 - Payment Schedule, and the amount of charge claimed.
  - D. An invoice submitted to SCAQMD for payment must be prepared in duplicate, on company letterhead, and list SCAQMD's contract number, period covered by invoice, and CONTRACTOR'S social security number or Employer Identification Number and submitted to:

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South Coast Air Quality Management District  
21865 Copley Drive  
Diamond Bar, CA 91765-4178  
Attn: Drue Hargis, Technology Advancement

- E. SCAQMD's payment of invoices shall be subject to the following limitations and requirements:
1. Charges for equipment, material, and supply costs, travel expenses, subcontractors, and other charges, as applicable, must be itemized by CONTRACTOR. Reimbursement for equipment, material, supplies, subcontractors, and other charges shall be made at actual cost. Supporting documentation must be provided for all individual charges (with the exception of direct labor charges provided by CONTRACTOR).
  2. CONTRACTOR'S failure to provide receipts shall be grounds for SCAQMD's non-reimbursement of such charges. SCAQMD may reduce payments on invoices by those charges for which receipts were not provided.
- F. SCAQMD shall pay CONTRACTOR for travel-related expenses only if such travel is expressly set forth in Attachment 2 - Payment Schedule of this Contract or pre-authorized by SCAQMD in writing. CONTRACTOR must submit final invoice no later than ninety (90) days after the termination date of this Contract or invoice may not be paid.
15. SECURITY INTEREST - CONTRACTOR hereby grants SCAQMD a security interest in any and all Equipment, including vehicles purchased in whole or in part with funding provided by SCAQMD pursuant to this Contract. CONTRACTOR acknowledges and agrees that SCAQMD shall have all lien rights as a secured creditor on any and all Equipment and/or vehicles purchased in whole or in part by the CONTRACTOR, under this Contract or any amendments thereto. The SCAQMD shall have lien rights in effect until the CONTRACTOR satisfies all terms under the Contract, including but not limited to, the use and reporting requirements. **Accordingly, CONTRACTOR further agrees that SCAQMD is authorized to file a UCC filing statement or similar security instrument to secure its interests in the Equipment and/or vehicles that are the subject of the Contract.** In the event CONTRACTOR files for bankruptcy protection, CONTRACTOR shall notify SCAQMD within 10 business days of such filing.
16. INTELLECTUAL PROPERTY RIGHTS - Title and full ownership rights to any documents, or reports developed under this Contract shall at all times remain with SCAQMD. Such material is agreed to be SCAQMD proprietary information.
- A. Rights of Technical Data - SCAQMD shall have the unlimited right to use technical data, including material designated as a trade secret, resulting from the performance of services by CONTRACTOR under this Contract. CONTRACTOR shall have the right to use technical data for its own benefit.
  - B. Copyright - CONTRACTOR agrees to grant SCAQMD a royalty-free, nonexclusive, irrevocable license to produce, translate, publish, use, and dispose of all copyrightable material first produced or composed in the performance of this Contract.
17. NOTICES - Any notices from either party to the other shall be given in writing to the attention of the persons listed below, or to other such addresses or addressees as may hereafter be designated in writing for notices by either party to the other. Notice shall be given by certified, express, or registered mail, return receipt requested, or by electronic mail and shall be effective as of the date of receipt. For

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notices given by electronic mail, the same notice shall be sent within five (5) days by certified, express, or registered mail, return receipt requested.

SCAQMD: South Coast Air Quality Management District  
21865 Copley Drive  
Diamond Bar, CA 91765-4178  
Attn: Larry Watkins, [lwatkins@aqmd.gov](mailto:lwatkins@aqmd.gov) (for fueling station)  
Attn: Patricia Kwon, [pkwon@aqmd.gov](mailto:pkwon@aqmd.gov) (for solar system)  
Attn: Phil Barroca, [pbarroca@aqmd.gov](mailto:pbarroca@aqmd.gov) (for vehicles)

CONTRACTOR: City of Coachella  
1515 Sixth St.  
Coachella, CA 92236  
Attn: Mitch Nieman, [mnieman@coachella.org](mailto:mnieman@coachella.org)

18. INDEPENDENT CONTRACTOR – CONTRACTOR is an independent contractor. CONTRACTOR, its officers, employees, agents, representatives, or subcontractors shall in no sense be considered employees or agents of SCAQMD, nor shall CONTRACTOR, its officers, employees, agents, representatives, or subcontractors be entitled to or eligible to participate in any benefits, privileges, or plans, given or extended by SCAQMD to its employees. SCAQMD will not supervise, direct, or have control over, or be responsible for, CONTRACTOR's or subcontractor's means, methods, techniques, work sequences or procedures or for the safety precautions and programs incident thereto, or for any failure by them to comply with any local, state, or federal laws, or rules or regulations, including state minimum wage laws and OSHA requirements. CONTRACTOR shall promptly notify SCAQMD of any material changes to subcontracts that affect the Contract's scope of work, deliverable schedule, and/or payment/cost schedule.
19. USE OF SCAQMD NAME - CONTRACTOR shall not use any name, trade name, trademark, logo, or other designation of the SCAQMD (including contraction, abbreviation or simulation) in advertising, publicity, promotional, or any other activities or context without the express written consent of the SCAQMD in each case.
20. MEDIA/PUBLICATION
  - A. The parties shall work cooperatively on any communications to the media, including press statements and press conferences related to this Contract. The Parties agree that announcements, news releases and other communication materials describing the project shall acknowledge "The project was made possible by a grant from the South Coast Air Quality Management District AB 1318 Mitigation Fees Fund to reduce or mitigate emissions within Coachella Valley."
  - B. Information, data, documents, or reports developed by CONTRACTOR for SCAQMD, pursuant to this Contract, shall be part of SCAQMD public record unless otherwise indicated. Upon written approval of SCAQMD, CONTRACTOR may use or publish, at its own expense, such information, data, documents, or reports provided to SCAQMD. The following acknowledgment of support and disclaimer must appear in each publication of materials, whether copyrighted or not, based upon or developed under this Contract.

"This report was prepared as a result of work paid for, in whole or in part, by a grant from the South Coast Air Quality Management District (SCAQMD). The

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opinions, findings, conclusions, and recommendations are those of the author and do not necessarily represent the views of SCAQMD. SCAQMD, its officers, employees, contractors, and subcontractors make no warranty, expressed or implied, and assume no legal liability for the information in this report. SCAQMD has not approved or disapproved this report, nor has SCAQMD passed upon the accuracy or adequacy of the information contained herein."

- C. CONTRACTOR shall inform its officers, employees, and subcontractors involved in the performance of this Contract of the restrictions contained herein and require compliance with the above.
21. NON-DISCRIMINATION - In the performance of this Contract, CONTRACTOR shall not discriminate in recruiting, hiring, promotion, demotion, or termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age, or physical or mental disability and shall comply with the provisions of the California Fair Employment & Housing Act (Government Code Section 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, Executive Order No. 11246 (30 Federal Register 12319), and all administrative rules and regulations issued pursuant to said Acts and Order.
  22. ASSIGNMENT - The rights granted hereby may not be assigned, sold, licensed, or otherwise transferred by either party without the prior written consent of the other, and any attempt by either party to do so shall be void upon inception.
  23. NON-EFFECT OF WAIVER - The failure of CONTRACTOR or SCAQMD to insist upon the performance of any or all of the terms, covenants, or conditions of this Contract, or failure to exercise any rights or remedies hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such terms, covenants, or conditions, or of the future exercise of such rights or remedies, unless otherwise provided for herein.
  24. ATTORNEYS' FEES - In the event any action is filed in connection with the enforcement or interpretation of this Contract, each party shall bear its own attorneys' fees and costs.
  25. FORCE MAJEURE - Neither SCAQMD nor CONTRACTOR shall be liable or deemed to be in default for any delay or failure in performance under this Contract or interruption of services resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation, or any similar cause beyond the reasonable control of SCAQMD or CONTRACTOR.
  26. SEVERABILITY - In the event that any one or more of the provisions contained in this Contract shall for any reason be held to be unenforceable in any respect by a court of competent jurisdiction, such holding shall not affect any other provisions of this Contract, and the Contract shall then be construed as if such unenforceable provisions are not a part hereof.
  27. HEADINGS - Headings on the clauses of this Contract are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Contract.

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28. DUPLICATE EXECUTION - This Contract is executed in duplicate. Each signed copy shall have the force and effect of an original.
29. GOVERNING LAW - This Contract shall be construed and interpreted and the legal relations created thereby shall be determined in accordance with the laws of the State of California. Venue for resolution of any disputes under this Contract shall be Los Angeles County, California.
30. PRE-CONTRACT COSTS - Any costs incurred by CONTRACTOR prior to CONTRACTOR receipt of a fully executed Contract shall be incurred solely at the risk of the CONTRACTOR. In the event that a formal Contract is not executed, the SCAQMD shall not be liable for any amounts expended in anticipation of a formal Contract. If a formal Contract does result, pre-contract cost expenditures authorized by the Contract will be reimbursed in accordance with the cost schedule and payment provision of the Contract.
31. CITIZENSHIP AND ALIEN STATUS
  - A. CONTRACTOR warrants that it fully complies with all laws regarding the employment of aliens and others, and that its employees performing services hereunder meet the citizenship or alien status requirements contained in federal and state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L. 99-603). CONTRACTOR shall obtain from all covered employees performing services hereunder all verification and other documentation of employees' eligibility status required by federal statutes and regulations as they currently exist and as they may be hereafter amended. CONTRACTOR shall have a continuing obligation to verify and document the continuing employment authorization and authorized alien status of employees performing services under this Contract to insure continued compliance with all federal statutes and regulations. Notwithstanding the above, CONTRACTOR, in the performance of this Contract, shall not discriminate against any person in violation of 8 USC Section 1324b.
  - B. CONTRACTOR shall retain such documentation for all covered employees for the period described by law. CONTRACTOR shall indemnify, defend, and hold harmless SCAQMD, its officers and employees from employer sanctions and other liability which may be assessed against CONTRACTOR or SCAQMD, or both in connection with any alleged violation of federal statutes or regulations pertaining to the eligibility for employment of persons performing services under this Contract.
32. PREVAILING WAGES – CONTRACTOR is alerted to the prevailing wage requirements of California Labor Code section 1770 et seq. Copies of the prevailing rate of per diem wages are on file at the SCAQMD's headquarters, of which shall be made available to any interested party on request. Notwithstanding the preceding sentence, CONTRACTOR shall be responsible for determining the applicability of the provisions of California Labor Code and complying with the same, including, without limitation, obtaining from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work, making the same available to any interested party upon request, paying any applicable prevailing rates, posting copies thereof at the job site and flowing all applicable prevailing wage rate requirements to its subcontractors. CONTRACTOR shall indemnify, defend and hold harmless the South Coast Air Quality Management District against any and all claims, demands, damages, defense costs or liabilities based on failure to adhere to the above referenced statutes.

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- 33. PROPOSAL INCORPORATION – CONTRACTOR's proposal submitted in response to Request for Proposal (RFP) #P2012-17, is expressly incorporated herein by this reference and made a part hereof of this Contract.
- 34. SUBCONTRACTOR APPROVAL – If CONTRACTOR intends to subcontract all or a portion of the work under this Contract, then CONTRACTOR must first obtain written approval from SCAQMD's Executive Officer or designee prior to subcontracting any work. Any material changes to the subcontract(s) that affect the scope of work, deliverable schedule, and/or payment/cost schedule shall also require the prior written approval of the Executive Officer or designee. No subcontract charges will be reimbursed unless the required approvals have been obtained from SCAQMD.
- 35. TAX IMPLICATIONS FROM RECEIPT OF AB 1318 FUNDS – CONTRACTOR is advised to consult a tax attorney regarding potential tax implications from receipt of AB 1318 funds.
- 36. DISCLAIMER OF WARRANTY – The decision to participate in this project and to purchase Equipment is CONTRACTOR's decision. **SCAQMD does not make any express or implied warranty of merchantability, fitness for a particular purpose or otherwise, quality or usefulness of the technology or Equipment.** SCAQMD will not be financially responsible or otherwise liable for the installation or performance of the Equipment.
- 37. ENTIRE CONTRACT - This Contract which includes Attachments 1, 2 and 3 hereto, represents the entire agreement between the parties and there are no understandings, representations, or warranties of any kind except as expressly set forth herein. No waiver, alteration, or modification of any of the provisions herein shall be binding on any party unless in writing and signed by the party against whom enforcement of such waiver, alteration, or modification is sought.

IN WITNESS WHEREOF, the parties to this Contract have caused this Contract to be duly executed on their behalf by their authorized representatives.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

CITY OF COACHELLA

By: \_\_\_\_\_  
Barry R. Wallerstein, D.Env., Executive Officer

By:   
Name: DAVID R. GARCIA  
Title: CITY MANAGER

Date: \_\_\_\_\_

Date: 9/11/2013

APPROVED AS TO FORM:  
Kurt R. Wiese, General Counsel

By:   
//AB1318 Boilerplate Revised: April 18, 2013

**ATTACHMENT 1  
STATEMENT OF WORK FOR  
CITY OF COACHELLA  
NATURAL GAS FUELING STATION, VEHICLE PROCUREMENT AND  
SOLAR PHOTOVOLTAIC PARKING CANOPY SYSTEM**

In June 2011, the SCAQMD Governing Board approved the establishment of the AB 1318 Mitigation Fees Fund (Fund 58). This special revenue fund is to be used to finance emission reduction projects, pursuant to the requirements of AB 1318 (V.M. Perez), which was codified into law in California Health and Safety Code section 40440.14. The mitigation fees are for the transfer of emission offsets from SCAQMD's internal offset accounts to CPV Sentinel, LLC, for the construction and operation of the CPV Sentinel Energy power plant located in Desert Hot Springs, CA.

CONTRACTOR's proposal was awarded to implement an emission reduction project in the Coachella Valley that will have a direct impact on the air quality and health of residents, while aiding in regional air quality goals. Under this project, CONTRACTOR shall oversee the installation of a publicly accessible CNG station to support new CNG vehicles being purchased by CONTRACTOR as well as the growing number of CNG vehicles operating in the Coachella Valley. The CNG station will be installed at CONTRACTOR's Corporate Yard located at 53462 Enterprise Way, Coachella, CA 92236 ("Site").

In addition, CONTRACTOR shall oversee the purchase, and three-year deployment within the jurisdictional boundaries of the SCAQMD, of at least four (4) alternative-fueled, California Air Resources Board ("ARB")-certified vehicles. CONTRACTOR shall be responsible for soliciting quotes from vendors, equipment selection, any station permitting, site development, construction, installation, commissioning, operation and maintenance. The new vehicles will displace a minimum of four gasoline and/or diesel vehicles.

Finally, CONTRACTOR shall design, install, and commission the solar photovoltaic ("PV") parking canopy system ("Project") and two dual-mount electric vehicle ("EV") charging stations at Site. The preliminary design estimations indicate that the System will be providing a total of 150 kilowatt-dc ("kW-DC"). There is a potential incentive pay back to SCAQMD, pending available funds with the California Public Utility Commission (CPUC) California Solar Initiative (CSI) Rebate program for the solar installation. If grant funds exceed total Project cost, this SCAQMD AB 1318 Mitigation Fees Fund contract will be reduced accordingly. CONTRACTOR will furnish labor, equipment, material and services as otherwise reasonably required to complete all design, engineering, permitting, construction, testing, commissioning, and interconnection of the Project as provided by the winning proposal layout and design drawings.

CONTRACTOR shall complete the following tasks:

**Task 1: Bid Advertisement and Award**

- 1.1 CONTRACTOR shall follow the City of Coachella's standard practice for bidding and awarding a municipal public works project for the CNG station, solar system and EV charging stations. This process includes complying with California public work contract codes and construction laws to compile bid packages, issue an RFP for design services, assess construction bids and verify bonds, selection based on technical expertise and cost, and award a contract. CONTRACTOR shall deliver a copy of the RFP to SCAQMD.
- 1.2 CONTRACTOR shall ensure that each Bid application shall list cost of each bid item for the overall construction of the CNG station, solar system, and EV charging stations. CONTRACTOR shall provide SCAQMD with a copy of their recommendation, the Bid application to be awarded, and a summary of bids received.
- 1.3 CONTRACTOR shall deliver a copy of the fully executed construction contract between CONTRACTOR and the selected bidder(s) to SCAQMD.
- 1.4 SCAQMD shall, at its discretion, incorporate the awarded bid's construction schedule(s) and/or costs into this Contract upon written notice to CONTRACTOR. Email notice is sufficient for this purpose. SCAQMD reserves the right to review and/or reject any costs that fall outside the scope of this Contract.
- 1.5 CONTRACTOR shall provide SCAQMD full access to all work Sites and shall, upon request, escort SCAQMD to review on-site work in progress.

**Task 2: CNG Station Construction**

CONTRACTOR shall construct the new CNG fueling station and have total responsibility to manage all related subcontractors and ensure successful project implementation. Equipment to be installed shall consist of the following:

- Compressor(s) of a suitable size to provide CNG fueling for at least seven (7) vehicles;
- 100 usable gasoline gallon equivalents ("GGEs") of high-pressure natural gas storage;
- Four 2-hose fast-fill dispensers capable of providing 3,600 psig fill pressures and certified by the California Bureau of Weights and Measures;
- Regenerative Dryer capable of meeting SAE J1616 moisture requirements;
- Payment system capable of accepting major credit cards; and
- All accessories (including breakaways, hose vent valves, pressure start, nozzles, hoses, etc.).

CONTRACTOR shall work with permitting agencies to ensure that approvals of all

building permits, inspections and other requirements have been completed. CONTRACTOR shall review all applicable codes and standards to ensure compliance. CONTRACTOR shall comply with all codes necessary to meet local regulatory requirements including, but not limited to National Fire Protection Association, American Gas Association, American National Standards Institute, American Petroleum Institute, American Society of Testing and Materials, American Society of Welding, U.S. Department of Transportation, U.S. National Fire Protection Agency, Occupational Safety and Health Association, Underwriters Laboratories and Society of Automotive Engineers.

It is CONTRACTOR's sole responsibility to comply with the above-mentioned codes, regulations, and standards, and all others laws or jurisdictions that may apply to the CNG fueling facility equipment, site and operations. CONTRACTOR shall coordinate and facilitate the new installation with a hazardous operations "(HAZOP)" and process safety analysis programs if required by local fire department or authority having jurisdiction ("AHJ"). CONTRACTOR shall provide an additional process safety analysis that is compatible with the past work and will meet the criteria set forth by the Department of Occupational Safety and Health ("DOSH"), if applicable. This work shall include at the least the following: fire protection, fire detection, methane detection and all necessary safety elements identified within the past and present HAZOP-process safety analysis documents.

### **Task 3: CNG Station Operation and Maintenance**

CONTRACTOR shall operate this station, with four fueling pumps available 24 hours per day, at the specified location for a minimum of three (3) years from the date the station begins dispensing fuel. CONTRACTOR shall acquire detailed data regarding the fueling system operation and efficiency; hydrogen refueling demand, filling time, dispensing operations and hydrogen supply/storage logistics, and provide quarterly progress reports as described in Deliverables of this Contract.

### **Task 4: Procurement of ARB-Certified Vehicles and ARB-Authorized Installations**

- 4.1 CONTRACTOR shall oversee and administer the procurement of two (2) new ARB-certified dedicated CNG-powered Ford F-250 trucks and two (2) electric-powered Nissan Leafs. CONTRACTOR shall ensure that each of the above CNG vehicles is converted to dedicated CNG-power by an authorized CNG system installer using a ARB-certified CNG system,
- 4.2 CONTRACTOR shall identify the name and address, including a contact person with telephone number and email address, for each dealership or authorized CNG conversion installer used in procuring and converting the vehicles identified in Task 4.1. CONTRACTOR shall seek the lowest price for each vehicle.
- 4.3 CONTRACTOR shall provide the ARB Executive Order for each CNG system installed or vehicle procured under Task 4.1.

- 4.4 CONTRACTOR shall provide proof of purchase and vehicle registration information for each vehicle procured in Task 4.1 including Vehicle Identification Number (VIN) and California DMV registration, and licensing.
- 4.5 CONTRACTOR shall provide a final cost of installation of the CNG conversion system installed on the vehicles identified in Task 4.1. This shall include a cost breakout for the CNG conversion system, the number and type of CNG fuel tanks installed, and the resulting GGE fuel storage capacity on each converted vehicle.

**Task 5: Vehicle Operation**

- 5.1 CONTRACTOR shall deploy and operate the vehicles identified in Task 4.1 within the jurisdictional boundaries of the SCAQMD. The CNG and electric vehicles are intended to produce quantifiable emission reductions of pollutants that contribute to unhealthy air in the region. CONTRACTOR shall refer to the provisions of Task 6 (Vehicle Removal) to address emission reduction requirements.
- 5.2 CONTRACTOR shall collect information for each new vehicle from the first date of deployment. Information shall include, but not be limited to: fuel usage, odometer readings, description of vehicle vocation, vehicle maintenance or warranty issues, and general vehicle performance feedback. CONTRACTOR shall submit this information in accordance with the Deliverables section of this Contract.
- 5.3 CONTRACTOR shall operate the vehicles for a minimum of three (3) years. CONTRACTOR shall submit quarterly reports summarizing the vehicle option of each vehicle identified in Task 4.1 for three (3) consecutive years accordance with the Deliverables section of this Contract.

**Task 6: Vehicle Removal**

- 6.1 CONTRACTOR shall provide information and documentation of all base vehicles which will be removed from service and replaced with the vehicles in Task 4. Information for each vehicle shall include: vehicle make, model, model year, engine size (displacement), fuel type, final odometer reading, miles accrued between the dates of acquiring and removing the vehicle from use, and the ARB Executive Order (if available) for the vehicle/engine. CONTRACTOR shall submit this information in accordance with the Deliverables section of this Contract.
- 6.2 CONTRACTOR shall ensure that any and all vehicles identified per Task 6.1 that are of Model Year 2002 or older and being removed from service to demonstrate emission reductions in accordance with the AB1318 Mitigation Fees Fund program be scrapped through a SCAQMD-approved dismantler. CONTRACTOR

shall submit supporting documentation on vehicle's scrapped in accordance with the Deliverables section of this Contract.

[http://www.aqmd.gov/tao/implementation/VIP\\_Dismantlers.pdf](http://www.aqmd.gov/tao/implementation/VIP_Dismantlers.pdf)

### Task 7: PV System

- 7.1 CONTRACTOR shall install the solar system identified in its proposal received in response to SCAQMD's RFP #2012-17 ("original proposal"). The suggested ratings for the PV system, prior to RFP, are estimates only. These ratings, tilt and azimuth will be finalized after receiving the winning proposal. Solar system design is to be sized to electrical usage. Winning proposal will determine system size and components. The solar system to be installed is described below:

Total System	
Existing Usage:	285,000 kWh Annual
New Usage:	11,200 kWh Annual for new EV stations
Projected Usage:	296,200 kWh Annual
Canopy System	
DC Rating:	150 kW (DC)
CEC Rating:	Pending Proposal Selection
PV Module:	Pending Proposal Selection
Inverter:	Pending Proposal Selection
Inverter Efficiency:	95% or greater
System Efficiency:	Pending Proposal Selection
System Cost:	[Target Cost \$4.5 /Watt (DC)]
Array Area:	±10,000 square feet

- 7.2 Any changes to the system size, modules, inverters or other components specified in the original proposal shall be pre-approved by SCAQMD prior to installation.
- 7.3 CONTRACTOR shall use all new components (photovoltaic panels and inverters) and these components must not have been previously placed in service in any other location or for any other application. Rebuilt, refurbished, or relocated equipment are not approved under this Contract.
- 7.4 CONTRACTOR agrees to use photovoltaic equipment and components that are certified by the California Energy Commission.
- 7.5 CONTRACTOR agrees to use photovoltaic modules and inverters that are UL-certified, and, at minimum, certified to IEC 61215 standard (for crystalline modules) and IEC 61646 standard (for thin film).
- 7.6 CONTRACTOR shall provide SCAQMD complete results of any tests conducted on the proposed photovoltaic panels by an independent, certified photovoltaic

testing laboratory, including but not limited to potential induced degradation tests, durability tests, temperature sensitivity tests, comparison to other PV modules, etc.

- 7.7 CONTRACTOR shall comply with the CPUC CSI Rebate program guidelines for the complete solar system including but not limited to: 12-month minimum usage, design factors, generation limits, energy audits, 10-year system warranty, net energy metering, grid interconnection, monitoring, inspections, maintenance, participation in CPUC CSI Rebate program, Project milestones, etc.

**Task 8: Design & Engineering**

- 8.1 CONTRACTOR shall collect the necessary Site information to complete the design and engineering of the solar system.
- 8.2 CONTRACTOR shall develop detailed design drawings to provide a turnkey installation of the solar system. The drawings shall be prepared by a licensed engineer. CONTRACTOR shall schedule a licensed structural engineer to perform the necessary calculations and analysis to ensure the solar canopy area is capable of handling the solar system.
- 8.3 CONTRACTOR shall be responsible for ensuring the design and engineering of the solar system is compliant with all applicable building and electrical codes.
- 8.4 CONTRACTOR shall develop a detailed schedule for engineering, acquisition of components, construction, installation and periodic monitoring, and submit this schedule to SCAQMD prior to construction.

**Task 9: Permits and Approvals**

- 9.1 CONTRACTOR shall obtain all necessary permits/approvals for the solar system.
- 9.2 CONTRACTOR shall produce the necessary drawings and specifications to obtain a building permit from the City of Coachella. The drawing package shall include a module layout diagram, module mounting system diagram, single-line electrical diagram, specification sheets for the module, inverter, and mounting system, and any other supporting documentation required to obtain the building permit.
- 9.3 CONTRACTOR shall provide SCAQMD with a copy of all permits/approvals prior to construction.
- 9.4 In the event such permission or a permit is not forthcoming, CONTRACTOR shall design an alternative but equivalent solar system at no additional cost to SCAQMD. SCAQMD reserves the right to terminate SCAQMD's participation in the project if the alternative system is materially different from the system

proposed in CONTRACTOR's original proposal or if the alternative system fails to receive the CPUC CSI Rebate program, unless their rebate program is oversubscribed for the year.

- 9.5 CONTRACTOR shall submit the required forms and documents to initiate the application process for the CPUC CSI Rebate program.

**Task 10: IID Utility Interconnection**

- 10.1 CONTRACTOR, with City's written approval, shall select the interconnection point for back-feeding the power from the solar system to the building's electrical panel or sub-panel.
- 10.2 CONTRACTOR shall submit an interconnection and net metering application to Imperial Irrigation District (IID) for the solar system.
- 10.3 CONTRACTOR shall acquire approval from the City of Coachella and IID for the final interconnection.
- 10.4 CONTRACTOR shall electrically integrate the solar panels to the building and Imperial Irrigation District grid using California Interconnection Guidebook (reflected by CPUC Rule 21 interconnection guidelines). CONTRACTOR shall follow guidelines set forth by the CSI for monitoring, interconnection, warranties and maintenance even though system will not fall under the CPUC CSI Rebate program.

**Task 11: CPUC CSI Rebate Program**

- 11.1 CONTRACTOR shall complete the application process, including the payment of any application fees, required to obtain the CPUC CSI rebate. The incentive payments shall be paid out to SCAQMD over the five year period. CONTRACTOR disclaims any interest in CSI Rebate payments.
- 11.2 CONTRACTOR shall provide copies of completed application forms to SCAQMD's Project Officer prior to submittal to IID.
- 11.3 CONTRACTOR must provide SCAQMD's Project Officer with a copy of the Confirmed Reservation Notice Letter issued by IID prior to construction.
- 11.4 CONTRACTOR shall ensure the solar system installed by the CONTRACTOR is purchased, installed and put into operation by the Reservation Expiration Date identified in the Confirmed Reservation Notice Letter, and shall comply with all other requirements of the CSI Rebate Program.

**Task 12: System Installation**

- 12.1 CONTRACTOR is entirely responsible for the turnkey design, engineering, purchase of equipment, and installation of the solar system.
- 12.2 CONTRACTOR shall install the solar system in accordance with the awarded bid. All bid items shall be subject to costs listed in the bid award, and subject to the not to exceed amount of this Contract. Changes to cost and scheduling are subject to Clause 34 of this Contract.
- 12.3 CONTRACTOR shall install the solar system in accordance with all applicable building and electrical codes and safety standards.
- 12.4 CONTRACTOR shall acquire equipment based on the engineering specifications developed and approved under Tasks 8 and 9.
- 12.5 CONTRACTOR shall comply with all interconnection and metering requirements of IID. CONTRACTOR shall follow guidelines set forth by CSI for monitoring, interconnection, warranties and maintenance even though system will not fall under the CPUC CSI Rebate program.
- 12.6 CONTRACTOR shall secure all permits, install the solar system in accordance with approved plans and permits, submit the interconnection application to utility provider, obtain final approval to interconnect the solar system to the power grid, secure final sign off and commission the system upon receipt of utility interconnect authorization.
- 12.7 CONTRACTOR shall ensure the meter and performance monitoring system meets the requirements of the CPUC CSI Rebate program.
- 12.8 CONTRACTOR shall provide SCAQMD with a copy of the final interconnection agreement and authorization.
- 12.9 CONTRACTOR shall provide SCAQMD full access to work Site and shall, upon request, escort SCAQMD to review on-site work in progress.

**Task 13: System Start Up**

- 13.1 If any equipment or component of the solar system, including but not limited to the solar panels, inverter, solar mounting system, is found to be defective before or during start up, CONTRACTOR shall be responsible for replacing the defective component(s) at no cost to the SCAQMD.
- 13.2 CONTRACTOR shall arrange for inspections for permit purposes, interconnection and any other approval needed prior to or during construction.

- 13.3 CONTRACTOR shall develop a manual(s) for operation, maintenance and training, and provide these to the site's maintenance staff.
- 13.4 Within 20 days of start up and acceptance testing, CONTRACTOR shall provide training to designated City employees in all aspects of routine operation, maintenance and safety of the solar system.
- 13.5 CONTRACTOR shall deliver three (3) sets of "As-Built" design and engineering drawings within three months of start up and acceptance testing, both in hard copy and in electronic CAD format.

**Task 14: Performance Monitoring**

- 14.1 CONTRACTOR shall ensure the solar system is metered in compliance with CSI Rebate program requirements regardless if the solar system will qualify for the CSI rebate.
- 14.2 CONTRACTOR shall install a performance monitoring system that will allow real-time monitoring of the solar system for the life of the Project. Monitoring systems shall track the weather conditions (temperature, wind, irradiance, etc.) and measure the kilowatts and kilowatt-hours by the hour, day, month and year. CONTRACTOR shall ensure the data is displayed on a website interface and viewable on this website at any time for the life of the System. SCAQMD shall have the ability to download the data from the website at any time.
- 14.3 The Performance Monitoring and Reporting Service shall be listed with the California Energy Commission and meet the requirements of the CPUC CSI Rebate program.
- 14.4 CONTRACTOR shall provide validation criteria to assess the performance of the solar system, once installed. CONTRACTOR shall provide validation criteria for individual panels, strings, combiner box outputs and the inverter. Such criteria shall be based on manufacturer specifications, PV USA Test Conditions and shall account for module temperature and irradiance in order to allow the SCAQMD to make the most accurate assessment possible regarding the health of the solar system including components and subsystems. The validation criteria shall be provided to the SCAQMD as a deliverable.

**Task 15: Warranties**

- 15.1 All warranty periods under this task shall start from the date CONTRACTOR accepts the turnkey solar system.
- 15.2 CONTRACTOR shall provide a 10-year system warranty, to provide for no-cost repair and replacement of the solar system for any expenses not otherwise covered by the manufacturer including all labor and workmanship.

- 15.3 CONTRACTOR shall provide a 25-year manufacturer warranty on the solar modules.
- 15.4 CONTRACTOR shall provide a 20-year manufacturer warranty on the inverter.
- 15.5 CONTRACTOR shall provide a 10-year warranty on any roof or building penetrations.
- 15.6 CONTRACTOR shall provide SCAQMD with a copy of the installation and product (photovoltaic modules and inverter) warranties prior to installation. The warranties shall protect the SCAQMD against defective workmanship, system or component breakdown, and degradation in electrical output, of no more than 15%, from the original rated electrical output of each system over the 10 year warranty period.
- 15.7 CONTRACTOR guarantees that the total PV output of the solar system over the first ten years of operation will yield at least 1550 kWh per AC-kW installed, measured as three year averaging. This guarantee assumes that the CONTRACTOR will clean the modules at least once every six months to prevent dust and debris from accumulating on the modules. If after the ten-year period, the energy production is less than the guaranteed amount, CONTRACTOR will add a corresponding number of solar modules at its own cost to make up for the differential. This guarantee period would start from the date the City of Coachella accepts the turnkey solar system. Bi-annual module cleaning status shall be included in the Progress Update report.
- 15.8 This contract has a survivability clause, wherein the tasks described in Task 15 will survive the Contract expiration date.

**Task 16: Service and Maintenance**

- 16.2 CONTRACTOR shall be responsible for the service and maintenance of the turnkey solar system installed under this Contract for the first ten years of system operation.
- 16.3 CONTRACTOR shall perform periodic inspections of the solar system over the ten year period to ensure the solar system is operating according to specifications and meeting the minimum electricity production specified for the first ten years in subtask 15.7. Periodic inspection results shall be included in the Progress Update Report.
- 16.4 CONTRACTOR shall provide SCAQMD with the following:
  - a. Manufacturer specifications for the solar system (photovoltaic modules and inverter),
  - b. Manufacturer's recommended operation, maintenance and safety procedures, and

- c. Maintenance contact names and phone numbers

**Task 17: Installation of EV Chargers**

- 17.1 CONTRACTOR shall procure two dual mount chargers conforming to the SAE J1772 recommended standard practice revised January 2010. CONTRACTOR shall provide pricing on chargers for SCAQMD approval prior to purchase.
- 17.2 CONTRACTOR shall install chargers at Site. CONTRACTOR shall provide installation costs for SCAQMD approval. CONTRACTOR shall notify SCAQMD if any of the installations are found to be no longer feasible. CONTRACTOR shall install signs detailing location of chargers at Site. CONTRACTOR shall notify SCAQMD of initial date of operation.

**DELIVERABLES**  
**Including Reporting & Formatting Requirements**

In addition to the deliverables set forth in the above-referenced statement of work, CONTRACTOR shall supply the following reports to the SCAQMD under this Contract. Each submitted report shall be stapled, not bound, printed in black ink, double-sided type, on an 8-1/2 by 11 inch page, and shall include camera-ready originals.

- 1) CONTRACTOR shall submit informal updates of program progress to the SCAQMD's Project Officer at least once every month throughout the Project. If there is any failure or delay in meeting the emission reduction Project objectives or timeline, proponents shall schedule an immediate meeting with SCAQMD's Project Officer. Infrastructure progress reports should be sent to Larry Watkins at [lwatkins@aqmd.gov](mailto:lwatkins@aqmd.gov); vehicle progress reports should be sent to Phil Barroca at [pbarroca@aqmd.gov](mailto:pbarroca@aqmd.gov); and PV system reports should be sent to Patricia Kwon at [pkwon@aqmd.gov](mailto:pkwon@aqmd.gov).
- 2) CONTRACTOR shall submit four stapled copies of each quarterly progress report due by the 10th day of each month following the reporting period. CONTRACTOR shall submit one copy of each progress report to each of the respective Project Officer noted in Item 1 above and one copy to SCAQMD's Contract Administrator – Technology Advancement, in conjunction with the invoice for the same period. **Invoices will not be paid if reporting is not up to date.** Each progress report shall include, but not be limited to,
  - a. Reference to SCAQMD contract number and title of Project.
  - b. Reporting time period (months, year).
  - c. Description of work completed during the reporting period, including a discussion of problems encountered and how those problems were resolved; and other relevant activities; for the station component of this contract information should include but not limited to location, type, and size of installation, schedule, status information for NEPA compliance, installation activities, and station start up.
  - d. Information and documentation of base vehicles which are being removed from service and replaced with the vehicles in Task 4. Information is to include vehicle make, model, model year, engine size (displacement), fuel type, final odometer reading, miles accrued between the dates of acquiring and removing the vehicle from use, and the ARB Executive Order (if available) for the vehicle/engine. In addition, the report shall also include station information (i.e. location, type, and size of installation, schedule, status information for NEPA compliance, installation activities, and station start up).
  - e. Information for each new CNG vehicle from the first date of deployment shall include, but not be limited to: fuel usage, odometer readings, description of vehicle vocation, vehicle maintenance or warranty issues, and general vehicle performance feedback.
  - f. Once a fueling station has completed its upgrade and/or installation and has initiated fuel sales, the quantity and price of the alternative fuels sold at each site

shall be reported for a two-year period on a quarterly basis. As available, the CONTRACTOR shall also report comparative pricing information on gasoline and diesel products sold at each site. This section should not contain any proprietary data or other information not subject to public release. If such information is important to reporting progress, CONTRACTOR shall mark the information as confidential prior to submitting to SCAQMD.

- g. For the PV System portion of this Contract, please include at minimum information on:
    - i. Project Design Status
    - ii. Monthly Pay Applications for the reporting period
    - iii. Project and/or Contract Risk Assessment
    - iv. Latent Conditions Register
    - v. Construction Issues, Key Activities, Contractual Status, and Schedule
    - vi. Turnover and Completion Status
    - vii. Photographs of ground breaking/construction progress, ribbon cutting/grand opening in-use, service and maintenance, etc
  - h. Summary of relevant data and results for each task.
  - i. Discussion of work planned for the next reporting period.
  - j. Discussion of Project status with respect to time schedule and steps being taken to resolve any delays.
  - k. Discussion of cost status with respect to original budget, work completed, costs to date, explanation of any overruns, and steps being taken to bring costs back into line.
- 3) CONTRACTOR shall submit a copy of the draft Final Report to each of the respective Project Officer noted in Item 1 above and one copy to SCAQMD's Contract Administrator – Technology Advancement, regarding completion of the emission reduction project for review, comment, and approval, not later than forty-two (42) months from contract execution. This document shall be considered in the public domain, in conformance with the California Public Records Act (Government Code Section 6250 et seq.). SCAQMD shall complete their review of the draft final report within four weeks of its receipt from proponent. The draft Final Report shall include, but not be limited to, the following:
- a) Reference to SCAQMD contract number and title of Project.
  - b) Project background and objectives.
  - c) An executive summary up to three pages in length, including a short, definitive statement of the Project; objective of the Project, description of work performed, resulting emission/exposure reduction, and reference to SCAQMD Rules if applicable.
  - d) A detailed description of the statement of work.
  - e) Summary of all work completed.
  - f) Results - a discussion of the expected Project results versus what was actually achieved.
  - g) Problems - a discussion of any significant problems encountered during the contract and how they were resolved.

- h) Remaining issues – a discussion of any Project components that may require follow-up beyond the Project period.
  - i) Color photographs in a digital format, such as .ppt, .tif, or .jpg on a CD or sent electronically of all the vehicles in service.
- 4) CONTRACTOR shall submit three stapled originals of the Final Report to SCAQMD's Contracts Administrator-Technology Advancement, incorporating the SCAQMD's comments, no later than forty-four (44) months from contract execution. The final report shall also include acknowledgement of all sponsors and participants in the Project. This document shall be considered in the public domain, in conformance with the California Public Records Act (Government Code Section 6250 et seq.).
- 5) CONTRACTOR shall submit a two-page Project synopsis, along with the Final Report. In addition to a hard copy of this synopsis, CONTRACTOR shall provide the synopsis in an electronic version, using Microsoft WORD 97 or compatible version.

**PROJECT MILESTONES  
CITY OF COACHELLA  
NATURAL GAS FUELING STATION AND VEHICLE PURCHASE AND SOLAR  
PHOTOVOLTAIC PARKING CANOPY SYSTEM**

<b>MILESTONES</b>	<b>COMPLETION DATE</b>
Release of RFP for Vehicles and CNG Infrastructure and Solar System	1-3 months from execution date
Procurement of ARB-Certified Vehicles, CNG Systems and ARB Authorized Installations	3-6 months from execution date
Station and System Construction and Installation	6-12 months from execution date
Station and System Operation and Maintenance	36 months from commissioning
Vehicle Operation	36 months from deployment
Data Collection, Analysis and Monthly and Quarterly Reports	Ongoing through end of contract
Draft Final Report	42 months from execution date
Final Report and Two-Page Project Synopsis	44 months from execution date

**ATTACHMENT 2  
PAYMENT SCHEDULE FOR  
CITY OF COACHELLA  
NATURAL GAS FUELING STATION, VEHICLE PROCUREMENT AND SOLAR  
PHOTOVOLTAIC PARKING CANOPY SYSTEM**

CONTRACTOR shall be reimbursed a not-to-exceed amount of \$1,895,000 for the new CNG fueling station, the vehicle procurements, the solar photovoltaic parking canopy system, and the EV chargers as described in the tasks within this Contract.

CONTRACTOR shall provide a detailed invoice including documentation of all costs incurred prior to receiving cost-share payment from SCAQMD. A retention of one percent shall be withheld on the station component until receipt and acceptance of the Two-Page Project Synopsis and Final Report, accompanied by a final invoice. There is a potential incentive pay back to SCAQMD, pending available funds with the CPUC CSI Rebate program. If grant funds exceed total Project cost, the SCAQMD AB 1318 Mitigation Fees Fund contract will be reduced accordingly.

**1. Natural Gas Fueling Station**

An invoice must be accompanied by supporting documentation, including equipment delivery and installation, and proof that the station and/or system is fully operational and/or vehicles placed in operation.

Payment upon Operational Station	\$774,309
Retention – upon receipt and acceptance of reporting	<u>\$7,821</u>
<b>Not-to-Exceed Station Amount</b>	<b><u>\$782,130</u></b>

**2. Vehicle Procurement**

Invoices shall be accompanied by supporting documentation including proof of purchase and actual vehicle costs. Vehicles to be purchased include: Two (2) Medium-Duty Ford Pick-Up Trucks, dedicated CNG, and two (2) Light-Duty, all electric Nissan Leaf vehicles.

If CONTRACTOR applied to the California Energy Commission (CEC) for AB 118 Buydown Incentives for Natural Gas and Propane Vehicles under Program Opportunity Notice #PON-11-603 and is awarded funding for any vehicle in this project, CONTRACTOR shall reimburse SCAQMD an equivalent amount. Also, any funds and incentives that are available for the purchase of dedicated electric vehicles must be applied toward the two all electric vehicles identified in this Contract.

<b>Not-to-Exceed Vehicle Amount</b>	<b><u>\$134,290</u></b>
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### 3. PV System and EV Chargers

The overall cost estimate for the solar system and EV Charging Station is \$978,580, with a not-to-exceed amount for this portion of the Contract of \$978,580 from SCAQMD. There is an annual potential incentive pay back to SCAQMD, pending available funds with the CPUC CSI Rebate program, as described in Tasks 10 and 11 of the Statement of Work. CONTRACTOR shall be reimbursed by SCAQMD upon submittal of an itemized invoice(s) for the purchase, installation and operation of the solar system and data monitoring systems. The invoice(s) must be accompanied by the supporting documentation specified below and the progress reports listed under "Deliverables". Payment schedule is subject to change based on incorporation of the winning proposal and approval by SCAQMD.

The following information is required prior to SCAQMD's final payment for the solar system:

- All documents identified in Task 9, including a copy of the building permit and final inspection sign-off,
- First monthly incentive payments under the CPUC CSI Rebate program, if not oversubscribed,
- An itemized invoice to SCAQMD, including a cost breakdown for all equipment, materials, labor and sales tax, and
- Cover letter from CONTRACTOR confirming the delivery, installation and start of operation of the turnkey solar system described in the tasks within this Contract. This letter must be on CONTRACTOR's letterhead and signed, under penalty of perjury, by CONTRACTOR's senior official with authorization to sign binding agreements affirming the above.

Not-to-Exceed Amount to Be Reimbursed for Solar System and EV Chargers:

<u>PROJECT MILESTONE</u>	<u>EXPECTED COMPLETION</u>	<u>SCAQMD FUNDING</u>
Permit Approved	10/25/13	\$45,483
Structural Pier Foundations	11/25/13	\$45,483
Structural Steel Erected & PV Modules Installed	1/12/14	\$639,372
Inverters Installed	2/8/14	\$174,730
IID Interconnection Agreement	3/20/14	\$21,781
Commissioning of System and First CPUC CSI Rebate (if awarded)	6/15/14	\$21,781
Installation of EV Chargers	12/31/13	\$30,000
<b>NOT-TO-EXCEED AMOUNT</b>		<b>\$978,580</b>

**GRAND TOTAL NOT-TO-EXCEED CONTRACT AMOUNT** **\$1,895,000**

**ATTACHMENT 3**  
**Quarterly Progress Report and 2-Page Project Synopsis Templates**



**AB1318 Mitigation Fees Fund Monthly Project Report**  
[Name of Project]  
[Contractor], [Contract #]  
[Month] [Year]

- Summary of Project Status (brief paragraph)
- Progress towards specific tasks and/or deliverables
- Deviations from plan
- For System portion of this Contract, technical specifications of panels and inverters, warranties on parts and system, O&M of the installations  
*[provide info or update as needed]*
- Major issues and Solutions
- Funds Expended either from AB1318 fund or in-kind funds by task and/or deliverables
- Proposed Performance or Emission Reduction Reductions including solar power generation (kWh per year), emission reductions for carbon dioxide, methane, and NO<sub>x</sub>, annual savings in electricity costs, job creation impacts  
*[provide info or update as needed]*

**ATTACHMENT 3**  
**Quarterly Progress Report and 2-Page Project Synopsis Templates**

SCAQMD Contract #

Date of Publication (as month/year)

## Project Title

### Contractor

Prime contractor and significant subcontractors.

### Cosponsors

List cosponsors from highest contributor to lowest.

### Project Officer

SCAQMD project manager name.

### Background

This section is a brief introduction describing the need for the technology and/or clean fuel, as defined by rules and regulations / mandates of SCAQMD, ARB, EPA, DOE, etc. If applicable, describe other relevant factors, such as economic issues, energy savings, etc.

### Project Objective

This section should briefly describe the project objectives as originally stated in the Board (or EO) letter. If the objective evolved significantly during the contracting procedure, it should be noted how and why.

### Technology Description

This section describes the general principles of operation and emissions control approach of the technology and/or clean fuel involved in the project.

If applicable, discuss how the principle of operation differs from other, currently available equipment. This includes describing what the "advancement" actually is over currently available technologies.

### Status

This section describes the status or progress of the project. If the project was completed, provide the date of completion and note that the final report is on file with complete technical details of the project. Describe major project events, such as

the development / testing / delivery of hardware (if applicable). If the project was terminated or ended prematurely you still need to file this report. Regardless of how it ended, per SB 199 you must describe any unanticipated problems that were encountered during the project, and how they were (or were not) resolved. If "fatal" problems were encountered, this section will be the heart of the report, since it would be unlikely that major benefits or emissions reductions were realized in a terminated project.

*Picture of technology that has been supported with SCAQMD/Technology Advancement cosponsorship, if applicable. The picture, preferably a photograph, should clearly illustrate the technology. The size of the image should be about 3x3 to fit this two column format. The picture of the technology should be positioned on the front page.*

### Results

This section summarizes all available emissions results and key performance characteristics. Performance is meant in the broadest terms, including (as applicable) emissions, energy efficiency, operation and maintenance requirements, overall environmental impacts, and performance tradeoffs. The primary emphasis of this section is the presentation of project data.

Performance results should be summarized using clear, graphical depictions whenever possible:

*Graph or table summarizing key performance characteristics. Graphs are preferred over tables when possible. Graphical data presented should show the most representative data of the project's/technology's performance. One graph would be preferred, but no more than two data presentations in this document.*

Measured performance is to be compared with the objectives/goals set for the project. Comparisons should focus on targeted emissions reductions and/or other key performance goals (e.g. range for electric vehicles).

### ATTACHMENT 3

#### Quarterly Progress Report and 2-Page Project Synopsis Templates

There should also be a brief discussion of performance tradeoffs. That is, did achieving one performance characteristic goal, such as emissions, compromise another performance characteristic, such as efficiency.

#### **Benefits**

This section crystallizes the above-noted performance characteristics into project benefits, e.g., reduced emissions, increased efficiency, reduced global warming gases, or other environmental benefits. The potential emissions inventory impact of this technology applied in the South Coast Air Basin must be estimated based on performance results of this project and some estimate of market penetration (concisely state assumptions).

It clearly describes how those actual benefits compare with the benefits that were anticipated at the project's start. Be as detailed as possible, including discussion of overall environmental impacts and benefits. Address the question of whether the technology may reduce an air pollutant while improving (or worsening) problems with water pollution, solid waste, global warming, toxic emissions, etc.

#### **Project Costs**

This brief section describes the actual costs of the program (SCAQMD's funding contribution as well as the overall cost sharing) and how they compare with the originally projected costs of the project as stated in the Board (or EO) letter. Cost information can be presented graphically, in a table, or in paragraph form. This section does not address cost effectiveness or cost of commercialization.

#### **Commercialization and Applications**

This section describes the anticipated or potential applications of the demonstrated technology and/or clean fuel. If applicable, discuss follow on projects to further improve the technology. If available or applicable, discuss expected costs of control and cost-effectiveness in the context of currently available technologies. Cost data should be noted as estimates or projections, especially since TA projects are often "first of a kind."

Prospects for commercialization should include a discussion of the potential size of the target or primary market, and if there is another market segment or application that could use the technology. Discussion of the commercial status of the technology should address questions such as: (1) how close to a commercial product is it; (2) what work remains to bring it to market; (3) when could it be made commercially available and competitive; and (4) what barriers remain before the technology can be commercialized.