Regular Council Meeting

June 18, 2026

FRESNO CITY COUNCIL

City of FRESNO

Supplement Packet

ITEM(S)

2-D (ID 26-843)
Actions pertaining to the PARCS and Public Safety facilities solar projects capital improvement projects (Citywide)

[TITLE TRUNCATED FOR SUPPLEMENTAL PACKET COVER PAGE]

Contents of Supplement: Staff Report, Design Build Agreement - Alliance Building Solutions, Lease Purchase Agreement - Metro Futures, Inc., Resolution - Financing Authorizing, Resolution - Intent to Reimburse and AAR Resolution

Item(s)

Supplemental Information:
Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.
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REPORT TO THE CITY COUNCIL

FROM: NICHOLAS D. MASCIA, PE, TE, PTOE, Assistant City Manager
Office of the Mayor & City Manager

SCOTT MOZIER, Director
Public Works Department

SANTINO DANISI, MBA, City Controller/Finance Director
Finance Department

SUBJECT

..Title

Actions pertaining to the PARCS and Public Safety facilities solar projects capital improvement projects (Council Districts 1, 3, and 5)

1. Adopt findings of Categorical Exemptions pursuant to Class 1/15301) of the California Environmental Quality Act (CEQA) Guidelines
2. Award a Design Build contract to Alliance Building Solutions, Inc. (ABS), for a not to exceed amount of $5,684,172, to be financed through Metro Futures, Inc. with a Lease Purchase Agreement, for the implementation of solar energy services, including construction, installation, labor, materials, and design-builder project management for solar at seven sites and EV Chargers at three sites
3. Approve the Lease Purchase Agreement with Metro Futures, Inc. for an equipment amount of $5,684,172, $461,905.11 for Capitalized Interest, and an additional $25,000 issuance cost, for a total not to exceed $6,171,077.11 through a 20-year lease term
4. ***RESOLUTION - authorizing the City Manager or designee to enter into a Design Build contract with Alliance Building Solutions, Inc., a Lease Purchase Agreement, an escrow agreement and equipment schedule with Metro Futures, Inc., substantially in the form attached and subject to approval as to form by the City Attorney, and all related documents (Subject to Mayor’s Veto)
5. ***RESOLUTION - declaring its official Intent to reimburse certain expenditures from the proceeds of Lease Purchase Agreement (Subject to Mayor’s Veto)
6. ***RESOLUTION – Adopting the 56th Amendment to Annual Appropriations Resolution No. 2025-179 to appropriate $1,100,000 for the Phase 4 Solar Installation Project (Requires Five Affirmative Votes) (Subject to Mayor’s Veto)

..Body

RECOMMENDATION

Staff recommends the City Council adopt the Categorical Exemption; award the Design Build Contract to Alliance Building Solutions, Inc. (ABS) for energy services in substantially the form attached for the PARCS and Public Safety solar energy capital improvement projects; approve the Lease Purchase Agreement with Metro Futures, Inc.; adopt a resolution authorizing the City Manager to enter into the Design-Build contract and Lease Purchase Agreement, and execute all related documents on behalf of the City of Fresno; adopt a resolution declaring the official intent of the City of Fresno to reimburse certain expenditures from the proceeds of the Lease Purchase Agreement; and adopt a resolution adopting the 56th Amendment to the Annual Appropriations Resolution No. 2025-179 to appropriate $1,100,000 for the Phase 4 Solar Installation Project.

EXECUTIVE SUMMARY

Staff recommends that the City Council award a Design Build Contract to ABS for the purpose of providing a turn-key approach to implementing capital improvement projects which will include a combination of solar carports or rooftop solar projects and required electric vehicle charging stations. The contract includes solar facilities at five PARCS sites, the Fire Headquarters and Jerry P. Dyer Regional Police Training Facility.

BACKGROUND

This request is in follow up to previous Council direction to seek options to complete solar projects at seven previously identified sites under the current Net Energy Metering 3.0 (NEM 3.0) tariff issued by the California Public Utilities Commission (CPUC). Staff has continued to pursue a no out-of-pocket Power Purchase Agreement (PPA) as the City has done in all previous projects, however under the current NEM structure, PPAs are not currently available to municipalities for this scale of project(s). The contract attached will provide an opportunity to finance and own the solar systems being constructed. The current CA Green Building Code also requires the installation of Level 2 EV Chargers at all sites including 25 or more covered parking spots to comply with State of CA requirements to increase the number of clean air vehicles and conversion to electrification. The overall total project construction cost is $5,684,172, which includes the cost of construction, installation, labor, materials and design-builder project management for solar at seven sites and EV Chargers at three sites, plus a $25,000 cost of issuance for the debt and the cost of Capitalized Interest of $461,905.11, for an overall project total cost of $6,171,077.11.

Site Name	Annual kWh use	Solar System Type	EV Charger(s) Requirement
Sal Mosqueda Community Center	324,141	Carport Canopies	4 – Level 2 EV Chargers
Roeding Park	226,288	Carport Canopies	None required
Inspiration Park	135,366	Carport Canopies	None required
Mary Ella Brown Community Center	203,235	Carport Canopies	2 – Level 2 EV Chargers
Fire Department Headquarters	219,471	Roof Top solar	None required
Ted C. Wills Community Center	285,708	Carport Canopies	None required
Jerry P. Dyer Regional Police Training Facility	181,799	Carport Canopies	2 – Level 2 EV Chargers

This proposal includes a Savings Guarantee that the new solar facilities will generate sufficient power and reduce the City's power consumption from the grid below the utility baseline, of a sufficient dollar amount that exceeds the annual debt service payment. This Savings Guarantee would commence once the systems receive their Permission to Operate (PTO) and ABS receives the final payment for the construction. The Design-Build Contract includes Measurement and Verification provisions which state that if verified savings are less than the Guaranteed Project Savings as shown in the Savings Summary, then ABS shall pay the Purchaser the shortfall amount. This means that after factoring in for any lost days of production due to vandalism or damage, if the solar systems do not meet the projections, the Design-Builder will write the City a check to make sure the projected energy savings are met and paid out to the City each year. It will be critical in future years for the City to continue with preventive maintenance and timely repairs, because unlike a PPA, the City will have full ownership of the solar facilities. Through proactive efforts to keep the systems fully operational, the solar power generated can deliver upon the anticipated savings.

ABS offered a 4.99% interest rate as part of the turn-key service which has been guaranteed by Metro Futures, Inc. Upon securing the financing options described, the City Manager or designee will execute the required documents to fund the project.

This item is considered time sensitive due to the City's desire to meet Federal deadlines to qualify these seven sites for the Federal Incentive Tax Credit (ITC). To qualify for ITC direct pay, projects must either commence construction prior to July, 4, 2026 or qualify for the 5% Safe Harbor prior to July 4, 2026. The estimated value of the ITC is $1,400,000 payable to the City approximately 6 to 12 months following project completion and Permission To Operate (PTO) having been received from PG&E.

The recommended actions also include the adoption of a reimbursement resolution and an amendment to the AAR appropriating $1.1 million in FY2026 for the project. Staff recommends the Council authorize the two resolutions in order that the City can make the $1.1 million payment in case it is needed to meet the deadlines. Once the loan proceeds are made available by the lender, all payments on the project will be made to ABS from the loan proceeds. The City will review and approve of these payments, but ordinarily the Design-Build contract funds will not pass through the City. While the goal is to have the financing fully in place to make the first $1.1 million payment to the Design-Builder by July 3, 2026, the recommended action creates authorization for the City to make this payment directly if needed, after which the City will be fully reimbursed the $1.1 million from the loan proceeds.

In 2020, the City initiated a Request for Qualifications (RFQ) process to solicit qualified Energy Service Companies (ESCOs) to establish a Qualified Vendor List (QVL) for assistance in analyzing energy efficiency opportunities at PARCS and Public Safety facilities that would benefit from energy savings, and provide a turn-key service including evaluation, design, construction and financing. The SOQs were received, and following a comprehensive committee evaluation and interview process, four firms were placed on the QVL. ABS was one of the selected firms and has successfully delivered on past projects for the City of Fresno.

The City Attorney's Office has reviewed and approved all associated items as to form.

ENVIRONMENTAL FINDINGS

Staff has determined that this approval is categorically exempt from the California Environmental Quality Act (CEQA) Guidelines pursuant to Section 15301/Class 1. Class 1 categorical exemptions apply to projects that involve minor alterations to existing public facilities where there is little or no expansion of the existing use. This project involves the installation of photovoltaic canopies in six City parking lots that serve and are a part of existing City facilities, and the installation of photovoltaic panels on the roof the Fire Department Headquarters. EV chargers will be installed in three of the parking lots. The lots will continue to be used for parking with no addition of space or expansion of use. The Fire Department Headquarters will continue its existing use. Because the installation of these solar facilities is merely a minor modification that has no impact on the use of these existing City facilities, a Class 1

Categorical Exemption is appropriate. In addition, none of the exceptions to exemptions set forth in section 15300.2 have occurred.

As such, this project is categorically exempt from CEQA pursuant to Class 1/15301.

LOCAL PREFERENCE

The local preference ordinance does not apply because the RFQ was issued seeking a design build and was based on qualifications not based solely on price. Pursuant to the terms of the Community Workforce Agreement or Project Labor Agreement (PLA), the contract includes a requirement to include locally sourced labor during construction given the engineer's estimate exceeded $1 million, pursuant to the terms of the PLA.

FISCAL IMPACT

The impact to the General Fund is limited to City staff costs of $215,000 for plan review and permitting, administration, project management and construction management, which are not eligible for traditional energy financing programs, prior to realizing any energy savings. These estimated City costs of $215,000, are projected to be more than offset by the future tax credits of $1,400,000 that are anticipated near the beginning of FY2029. The projected energy savings versus loan debt service payments are included in the attachments, and have been verified by the consultant for the City, which indicate a positive net cash flow for the City over the 20-year period.

Attachments:
Design Build Agreement - Alliance Building Solutions
Lease Purchase Agreement - Metro Futures, Inc.
Resolution - Financing Authorizing
Resolution - Intent to Reimburse
AAR Resolution

CONTRACT
DESIGN/BUILD CONTRACT

THIS CONTRACT is made and entered into by and between the CITY OF FRESNO, a California municipal corporation (City), and Alliance Building Solutions, LLC, a Limited Liability Corporation (Design/Builder).

RECITALS

WHEREAS, the City has requested qualifications and the Design/Builder has responded to City's request; and

WHEREAS, the Design/Builder's response is incorporated herein by reference as if truly set forth; and

WHEREAS, the Design/Builder represents the Design/Builder is experienced, well qualified, and a specialist in the field of design/build construction of Renewable Energy Project; and

WHEREAS, the City desires to employ the Design/Builder to work), on a design/build basis (collectively, Project), as set forth herein; and

WHEREAS, the Design/Builder represents it is an entity that lawfully combines the roles of constructor and professional designer, at a minimum, into a single operating unit.

CONTRACT

NOW, THEREFORE, incorporating the foregoing recitals herein, City and Design/Builder mutually agree as follows:

1. **<u>SCOPE OF WORK</u>** The Work to be performed consists, in general, of the design and construction of a Renewable Energy Project and Site Work. The Work (subject to earlier termination in accordance with this Contract) from Substantial Completion or Final Completion of the Work, whichever occurs first, constitutes the "Project" herein. The scope of Work, attached as **Exhibit A**, shall include all items and procedures necessary to properly complete the task in accordance with all of the terms set forth in this Contract, whether specifically included in the scope of Work/services, or not. The scope of Work shall include all items contained in the Design/Builder's response.

2. **<u>CONTRACT DOCUMENTS AND DEFINITIONS</u>** The "Notice Inviting Qualification," "Qualifications," "Scope of Work" and the "Specifications" including "General Conditions", "Special Conditions", "Project Technical Requirements", "City Standard Specifications", "Renewable Energy Systems", "EV Chargers", "Measurement and Verification", and "City of Fresno Community Workforce Agreement- Agreement to be Bound" for the following: DESIGN-BUILD OF Renewable Energy Project, copies of which are annexed hereto, together with all the drawings, plans, and documents specifically referred to in said annexed documents, including Performance and Payment Bonds, if required, are hereby incorporated into and made a part of this Contract, and shall be known as the Contract Documents.

Wherever used in this Contract, the words defined in Article 1 of the General Conditions (DIVISION II of the Contract Documents) shall have the meaning therein given, unless the context requires a different meaning.

3. COMPENSATION AND CONTRACT PRICE

3.1. Design/Builder promises and agrees to perform or cause to be performed, in a good and workmanlike manner, under the direction and to the satisfaction of the City Engineer, and in strict accordance with the Proposal Specifications, all of the work (design, construction) as set forth in the Contract Documents. The Design/Builder further guarantees that the Work shall be designed and constructed for a Contract Price not to exceed five million six hundred eighty-four thousand one hundred seventy-two dollars ($5,684,172) (i.e., "GMP"), to be financed through a 20-year lease purchasing agreement, an escrow agreement, including a $25,000 issuance cost and $461,905.11 capitalized interest, for a total financed not to exceed $6,171,077.11, and equipment schedule with Metro Futures, Inc. at a rate not to exceed 4.99% for a total loan payment not to exceed $10,509,267.01. This Contract Price (GMP) shall not, under any circumstances, be exceeded without the consent of the City Council for City evidenced by a written Contract amendment approved by the City Council and signed by both Parties to this Contract.

3.2 The compensation set forth in this Contract shall be the maximum compensation which the Design/Builder may receive under this Contract including, but not limited to, all out-of-pocket costs and taxes. If the Design/Builder's actual costs incurred are less than the GMP for design and construction of the Work, then compensation by City will be limited to such lesser amount. The City shall pay nothing above the compensation listed unless otherwise agreed to in writing by the Parties. Unless otherwise required by State law, a 5% retention shall be withheld from payments of the Contract Price to Design/Builder by City. The 5% retention shall be released after the appropriate statutes have expired and all liens and stop payment notices have been released or otherwise cleared to the satisfaction of the City.

3.3 The Design/Builder shall complete the Work (Final Completion) within 540 working days from the date of the Notice to Proceed.

3.4 The City accepts the Design/Builder's Proposal as stated and agrees to pay the consideration stated, at the times, in the amounts, and under the conditions specified in the Contract Documents.

4. AGREEMENT TO BE BOUND

4.1 The Contractor agrees to be a party to, and bound by, the City of Fresno Community Workforce Agreement ("Agreement"), including any subsequent amendments or interpretations. This binding obligation applies to all covered project work undertaken by the Contractor.

4.2 The Contractor adopts and agrees to the written terms of the legally established trust fund documents specified in Section 10.1 of the Agreement, including all rules governing fund contributions, benefits, and appointed trustees. The Contractor shall execute separate subscription agreements for individual trust funds whenever required by those funds.

4.3 The Contractor shall require all subcontractors of every tier to become similarly bound to the Agreement for all work within its scope. Compliance requires each subcontractor to execute an identical Agreement to be Bound.

4.4 Concurrently with the execution of this Design/Build Contract, the Contractor shall sign and deliver the formal "Agreement to be Bound," attached hereto and incorporated by reference as **Exhibit F**.

5. <u>OWNERSHIP AND ASSIGNMENT OF TAX CREDITS</u> The Parties expressly agree that all right, title, and interest in any federal, state, or local tax credits, incentives, or rebates—specifically including, but not limited to, the Investment Tax Credit (ITC) under the Internal Revenue Code—arising from or related to the Renewable Energy Project belong exclusively to the City. To the extent that any such credits or incentives are initially allocated by law or regulation to the Design-Builder, the Design-Builder hereby irrevocably transfers, conveys, and assigns all such rights and credits to the City. The Design-Builder shall exert its utmost efforts, use maximum diligence, and execute all necessary documentation to secure, substantiate, and finalize these tax credits for the City's sole benefit. Refer to Lease Purchase Agreement, attached hereto as **Attachment G**.

6. <u>Tax Credit Safe Harbor, Title Vesting, and Reimbursement Covenants</u>.

6.1 Safe Harbor Intent and Interagency Cooperation. The City of Fresno (“City”) is a California municipality seeking to qualify the solar renewable energy project (the "Project") for the federal Investment Tax Credit (“ITC”) or its direct cash payment equivalent under Internal Revenue Code (“IRC”) Section 6417 (Elective Pay). Design/Builder explicitly acknowledges that timing is of the essence. Design/Builder shall strictly comply with, and shall compel its Engineering, Procurement, and Construction (EPC) contractors and equipment vendors to comply with, the five percent (5%) safe harbor requirements (the "Safe Harbor Rule") set forth in IRS guidelines prior to the absolute deadline of July 4, 2026 (the "Safe Harbor Deadline").

6.2 Procurement Target and Cost Buffering. To insulate the City against mid-construction cost overruns or unexpected budget fluctuations, Design/Builder shall front-load procurement under this Design/Builder Agreement. Design/Builder shall legally incur expenditures or pay for ITC-eligible equipment, targeting an expenditure of seven percent (7%) to ten percent (10%) of the initial estimated total Project depreciable cost prior to the Safe Harbor Deadline for a minimum total value of $568,417. However, to support further front-loading of this Project, the City shall pay a total dollar amount of $1,100,000, to be paid in full on or before June 29, 2026 (the "City Upfront Payment").

6.3 Immediate Title Vesting and Delivery. Legal and tax title to all equipment, materials, solar modules, inverters, racking systems, and tangible property procured or deposited against using the City Upfront Payment shall vest automatically and unconditionally in the City immediately upon vendor delivery, payment, or allocation to the Project, and in all events prior to the Project being placed in service. Design/Builder shall maintain a segregated inventory of such property, explicitly labeled as "Property of the City of Fresno," and shall provide the City with serialized bills of sale and UCC-1 financing statements within five (5) business days of procurement.

6.4 Deal Failure, Unwind, and Reimbursement. If this transaction falls through, or financing falls through, or is terminated by either party for any reason, within ninety (90) days of such failure or termination, Design/Builder shall refund to the City the entire $1,100,000 City Upfront Payment, less only actual, verified, and reasonable out-of-pocket project expenses directly incurred by Design/Builder prior to termination.

6.5 If the primary financing structure becomes unavailable for any reason, ABS shall immediately notify the City and attempt to source alternative financing. If ABS is unable to obtain alternative financing acceptable to the City within 90 days, the City reserves the right to secure its own independent financing.

6.6 Transfer of Tangible Property in Lieu of Cash. To secure the reimbursement obligation set forth in subsection (d) above, the City shall have the immediate right to demand, and Design/Builder shall immediately deliver, the physical possession, clean title, and corporate assignment of any and all tangible property, equipment, solar panels, inverters, or racking systems purchased or deposited against by Design/Builder or its affiliates using the City Upfront Payment. The verified fair market value of any tangible property successfully transferred and delivered to the City shall be credited against the cash reimbursement amount owed by Design/Builder.

7. **CONTRACTOR DEFINED** For the purposes of this Contract, “Design/Builder” means a design/build entity as defined in Article 5, Chapter 4 of the Fresno Municipal Code and includes legal entities that are able to provide appropriately licensed contracting, architectural and engineering services as needed for construction of the Work.

8. **PAYMENT PROCEDURE** The Design/Builder shall be paid for Work (design and construction services) rendered in accordance with the General Conditions.

9. **CONTROL OF SITE** The care, custody, and control of the Site shall be with the Design/Builder until Substantial Completion or termination of this Contract and shall pass from the Design/Builder to the City upon Substantial Completion or termination, but subject to the warranties, performance, and any other continuing obligations of the Design/Builder hereunder. From and after Substantial Completion or termination, the City shall assume the risk of physical damage to the Site. The Design/Builder shall be responsible for and obligated to replace, repair, and reconstruct any portion or all of the Work which is lost, damaged, or destroyed prior to the transfer of care, custody, and control of the Work to the City, however such loss or damage or destruction shall have occurred. The City assumes responsibility for such loss, damage, or destruction after Substantial Completion or termination.

10. **SITE CONDITIONS** The Design/Builder agrees to fully assume all risks, and costs associated with such risks, in performing the Work and meeting the obligations under this Contract, except for costs associated with materially differing Project Site conditions from those reasonably anticipated after completion of design services which are assumed by the City in accordance with the terms set forth herein.

11. **NO WAIVER OF DEFAULT** The failure of any Party to enforce against another Party any provision of this Contract shall not constitute a waiver of that Party's right to enforce such a provision at a later time, and shall not serve to vary the terms of this Contract.

12. **LICENSES** The Design/Builder shall, at its sole cost and expense, keep in effect or obtain, and have possession of, at all times during the term of this Contract any and all licenses, permits, approvals and credentials which are legally required for the Design/Builder to practice its profession and design, construct and maintain the Project.

13. **MERGER AND MODIFICATION** All prior agreements between the Parties are incorporated in this Contract which constitutes the entire agreement. Its terms are intended by the Parties as a final expression of their agreement with respect to such terms as are included herein and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. The Parties further intend this Contract constitutes the complete and exclusive statement of its terms and no extrinsic evidence whatsoever may be introduced in any judicial or arbitration proceeding involving this Contract. This Contract may be modified only in a writing approved by the City Council and signed by all the Parties.

14. **COMMUNICATIONS** All communications between the City and the Design/Builder concerning the Project shall be in writing.

15. **EXHIBITS** All exhibits and attachments to which reference is made in this Contract re deemed incorporated in this Contract, whether or not actually attached.

16. **COMPLIANCE WITH ALL LAWS**

16.1 The Design/Builder shall, at the Design/Builder's sole cost, comply with all of the requirements of municipal, state, and federal authorities now in force, or which may hereafter be in force, pertaining to this Contract, and shall faithfully observe in all activities relating to or growing out of this Contract all municipal ordinances and state and federal statutes, rules or regulations, and permitting requirements now in force or which may hereafter be in force including, without limitation, obtaining a City of Fresno business license where required.

16.2 The Design/Builder, its subcontractors, subconsultants and their employees, in the performance of the Design/Builder's work under this Contract shall be responsible for exercising the degree of skill and care required by customarily accepted good professional practices and procedures used in the Design/Builder's field. Any costs for failure to meet the forgoing standard or to correct otherwise Defective Work that requires re-performance of the Work, as directed by the City shall be borne in total by the Design/Builder and not the City. In the event that the Design/Builder fails to perform in accordance with the above standard, the Design/Builder will re-perform any task which was not performed to the reasonable satisfaction of the City. Any Work re-performed shall be completed within the time limitations originally set forth for the specific task involved. The Design/Builder shall work any overtime required to meet the deadline for the task at no additional cost to the City. If the re-performance of any task is not feasible within the original time limitations, then the Design/Builder shall perform such task within the new schedule for re-performance provided to and accepted by the City. The City shall have the option to direct Design/Builder not to re-perform any task which was not performed to the reasonable satisfaction of the City. In the event the Design/Builder is so directed, the City and the Design/Builder shall negotiate a reasonable settlement for satisfactory Work performed. No previous payment shall be considered a waiver of the City's right to reimbursement. Nothing contained in this clause is intended to limit any of the rights or remedies which the City may have under law.

16.2.1 The City and its designees may make visits to the Project Site, suppliers, subcontractors, and/or demonstration sites, as frequently as necessary to review Project accomplishments and management control systems.

16.2.2 The Design/Builder and its subcontractors and subconsultants shall comply with Title VI of the Civil Rights Act of 1964 (42 United States Codes Section 2000d, et seq.)

16.2.3 During the performance of this Contract, the Design/Builder and its subcontractors and subconsultants shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. The Design/Builder and its subcontractors and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. The Design/Builder and its subcontractors and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12990 et seq.) And the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part of it as if set forth in full. The Design/Builder and its subcontractors and subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. The Design/Builder shall include this clause in all subcontracts to perform work under this Contract.

16.2.4 Upon written request of the City, the Design/Builder shall provide detailed documentation of all expenses at any time throughout the Project. In addition, the Design/Builder agrees to allow the City, upon written request, to have reasonable access to and the right of inspection of all records that pertain to the Project during the term of this Contract and for a period of five (5) years thereafter. Further, the Design/Builder agrees to incorporate an audit of this Project within any scheduled audits, when specifically requested by the City. The Design/Builder shall include a similar right to audit clause in any subcontract.

17. INDEPENDENT CONTRACTOR. This Contract calls for the performance of the services of the Design/Builder as an independent contractor. The Design/Builder retains the right to control the manner in which the services described herein are performed and the Design/Builder will supply all equipment, tools, materials and supplies necessary to perform the services set forth in this Contract. In the furnishing of the work provided for herein, the Design/Builder is acting as an independent contractor. Neither the Design/Builder, nor any of its officers, associates, agents, or employees shall be deemed an employee, joint venture, partner or agent of the City for any purpose. However, the City shall retain the right to verify that the Design/Builder is performing its respective obligations in accordance with the terms of the Contract. Because of its status as an independent contractor, the Design/Builder and its officers, agents, and employees shall have absolutely no right to employment rights and benefits available to City employees. The Design/Builder shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Contract, the Design/Builder shall be solely responsible, indemnify, defend, and save the City harmless from all matters relating to employment and tax withholding for and payment of the Design/Builder’s employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in City employment benefits, entitlements, programs and/or funds offered employees of the City whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Contract, the Design/Builder may be providing services to others unrelated to City or to this Contract.

18. PAYMENT AND PERFORMANCE BONDS

18.1 Prior to the City’s execution of the Contract, the Design/Builder shall provide two good and sufficient surety bonds as described hereunder from a corporate surety admitted by the California Insurance Commissioner to do business in the State of California.

18.2 The Design/Builder shall provide the following bonds on forms prescribed by the City with the name of the oblige as the City in the amount set forth below as security for the faithful performance and payment of all the Design/Builder’s obligations hereunder for completing the Project:

18.2.1 A Payment Bond for 100% of the Contract Price, to satisfy claims of material suppliers and of mechanics and laborers employed on the Work. The bond shall be maintained by Design/Builder in full force and effect until the completed Work is accepted by City and until all claims for materials and labor are paid, and shall otherwise comply with Chapter 7, title XV, Part 4, Division 3 of the Civil Code.

18.2.2 A Performance Bond for 100% of the Contract Price to guarantee faithful performance of the Work, within the time prescribed, in a manner satisfactory to City, and that all materials and workmanship shall be free from original or developed defects. The bond shall be maintained by the Design/Builder in full force and effect until the completed Work is accepted by the City and until all claims for materials and labor are paid.

18.3 Each bond shall be signed by both the Design/Builder and the Surety and the signature of the authorized agent of the Surety shall be notarized.

18.4 Should any bond become insufficient, the Design/Builder shall renew the bond within ten (10) Days after receiving notice from the City.

18.5 Changes in the Work or services, or extensions of time, made pursuant to this Contract, shall in no way release the Design/Builder or Surety from their obligations. Notice of such changes or extensions shall be waived by the Surety.

18.6 All bonds shall be sufficient surety bonds in the form prescribed by the City and shall be issued by such Sureties which are admitted insurers (a corporate surety), admitted by the California Insurance Commissioner to do business in the State of California. All bonds shall satisfy the requirements stated in Section 995.660 of the California Code of Civil Procedure, except as provided otherwise by law or regulation. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act. Should any Surety at any time fail to meet these requirements notice will be given to the City by the Design/Builder to that effect. The Design/Builder shall require Surety to provide such notice to the Design/Builder and City immediately upon Surety's failure to meet the requirements of a corporate surety in the State of California. No further payments shall be deemed due or shall be made under the Contract until a new Surety shall qualify and be accepted by the City.

18.7 If the Surety on any bond furnished by the Design/Builder is declared bankrupt or becomes insolvent or its right to do business is terminated in California, the Design/Builder shall within seven (7) Days thereafter substitute another bond and Surety, which must be acceptable to the City.

18.8 The Design/Builder shall obtain the City's written acceptance of all such security instruments at the time the bond(s) are provided.

19. <u>INDEMNIFICATION</u> To the furthest extent allowed by law, including California Civil Code section 2782, DESIGN/BUILDER shall indemnify, defend and hold harmless CITY and each of its officers, officials, employees, agents, and volunteers from any and all claims, demands, actions in law or equity, loss, liability, fines, penalties, forfeitures, interest, costs including legal fees, and damages (whether in contract, tort, or strict liability, including but not limited to personal injury, death at any time, property damage, or loss of any type) arising or alleged to have arisen directly or indirectly out of (1) any voluntary or involuntary act or omission, (2) error, omission or negligence, or (3) the performance or non-performance of this Contract . DESIGN/BUILDER'S obligations as set forth in this section shall apply regardless of whether CITY or any of its officers, officials, employees, agents, or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of CITY or any of its officers, officials, employees, agents or volunteers.

To the fullest extent allowed by law, and in addition to the express duty to indemnify, DESIGN/BUILDER, whenever there is any causal connection between the DESIGN/BUILDER's performance or non-performance of the work or services required under this Contract and any claim or loss, injury or damage of any type, DESIGN/BUILDER expressly agrees to undertake a duty to defend CITY and any of its officers, officials, employees, or agents, as a separate duty, independent of and broader that the duty to indemnify. The duty to defend as herein agreed to by DESIGN/BUILDER expressly includes all costs of litigation, attorneys' fees, settlement costs and expenses in connection with claims or litigation, whether or not the claims are valid, false or groundless, as long as the claims could be in any manner be causally connected to DESIGN/BUILDER as reasonably determined by CITY.

Upon the tender by CITY to DESIGN/BUILDER, DESIGN/BUILDER shall be bound and obligated to assume the defense of CITY and any of its officers, officials, employees, or agents, including the a duty to settle and otherwise pursue settlement negotiations, and shall pay, liquidate, discharge and satisfy any and all settlements, judgments, awards, or expenses resulting from or arising out of the claims without reimbursement from CITY or any of its officers, officials, employees, agents, or volunteers.

It is further understood and agreed by DESIGN/BUILDER that if CITY tenders a defense of a claim on behalf of CITY or any of its officers, officials, employees, and agents and DESIGN/BUILDER fails, refuses or neglects to assume the defense thereof, CITY and its officers, officials, employees, or agents may agree to compromise and settle or defend any such claim or action. and DESIGN/BUILDER shall be bound and obligated to reimburse CITY and its officers, officials, employees, agents, or volunteers for the amounts expended by each in defending or settling such claim, or in the amount required to pay any judgment rendered therein.

The defense and indemnity obligations set forth above shall be direct obligations and shall be separate from and shall not be limited in any manner by any insurance procured in accordance with the insurance requirements set forth in this Contract. In addition, such obligations remain in force regardless of whether CITY provided approval for, or did not review or object to, any insurance DESIGN/BUILDER may have procured in accordance with the insurance requirements set forth in this

Contract. The defense and indemnity obligations shall arise at such time that any claim is made, or loss, injury or damage of any type has been incurred by CITY, and the entry of judgment, arbitration, or litigation of any claim shall not be a condition precedent to these obligations.

The defense and indemnity obligations set forth in this section shall survive termination or expiration of this Contract.

If DESIGN/BUILDER should subcontract all or any portion of the work to be performed under this Contract, DESIGN/BUILDER shall require each subcontractor to Indemnify, hold harmless and defend CITY and each of its officers, officials, employees, orA agents in accordance with the terms as set forth above.

20. **TERMINATION** This Contract may be terminated as set forth in the General Conditions for this Project. In addition, following Final Completion and during any maintenance period of the Contract, the City may terminate, without liability to the Design/Builder for detrimental reliance or any other basis in law or equity, the Contract (i) with cause upon thirty (30) Days' notice to the Design/Builder with opportunity to cure the default during same thirty (30) Days and the Design/Builder's failure to cure such default; (ii) without cause and at the end of the then current maintenance period upon providing the Design/Builder sixty (60) Days' notice prior to the end of such maintenance period; or (iii) in the sole event of non-appropriation relating to this Contract, the City shall have the right to terminate this Contract at the end of any fiscal year of the City, in the manner and subject to the terms specified in this paragraph as follows: the City shall endeavor to give written notice of such termination not less than sixty (60) Days prior to the end of such fiscal year, and shall notify the Design/Builder of any anticipated termination. For purposes of this paragraph, "fiscal year" shall mean the twelve-month fiscal period of the City which commences on July 1 in every year and ends on the following June 30. For purposes of this paragraph, "non-appropriation" shall mean the failure of the City or the City's governing body to appropriate money for any fiscal year of City sufficient for the continued performance of this Contract by the City.

20.1 In the event of termination by the City as set forth above, the Design/Builder shall remain fully liable for any Work not completed, liquidated damages, delays to other contractors, materials, and equipment provided, designs commenced through the date of termination, consequential damages and any remaining warranty period. If it has not already done so, the Design/Builder will immediately deliver to City possession of the Work including all designs, engineering, Project records, cost data, drawings, specifications and contracts, and construction supplies and aids dedicated solely to performing the Work. The Design/Builder shall assign all subcontracts to City, however, City may accept or reject said subcontracts at its sole discretion.

20.2 The City and the Design/Builder agree that should the City's termination for cause be determined by a court of law to be wrongful or without cause, such termination will be treated as a termination for convenience entitling the Design/Builder to an equitable settlement for claims and liabilities outstanding at the date of termination and reasonable compensation for work actually performed to the date of termination. No other compensation shall be due the Design/Builder for termination for convenience.

20.3 In the event of termination by the City following Final Completion as set forth in this section, the Design/Builder shall be paid compensation for maintenance services satisfactorily performed prior to the effective date of the notice of termination. In the event of termination with cause, the City may withhold an amount that would otherwise be payable as an offset to, but not in excess of, the City's damages caused by default of the Design/Builder.

20.4 In the event the City terminates the Contract with cause, the City may exercise any right, remedy (in law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law, or proceed by appropriate court action to enforce the terms of the Contract, or to recover direct, indirect, consequential or incidental damages for the breach of the Contract. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

21. STOP NOTICES OR LIENS The Design/Builder shall not allow any stop notices or liens to be filed on the Project herein, and shall pay all costs and fees to the City, including without limitation attorney's fees, incurred by the City because of the filing of any such stop notice, lien or legal action relating thereto. The Design/Builder agrees the City may withhold from any funds held by the City concerning the Project herein 125% of the amount of the stop notice, lien or legal action and any additional amounts sufficient to cover costs and fees, including without limitation attorney's fees, incurred by the City because of the filing of any stop notice, lien, or legal action relating thereto.

22. EXECUTION This Contract is effective upon execution. All Parties are equally responsible for authorship of this Contract. Section 1654 of the California Civil Code shall not apply to the interpretation of this Contract.

23. NOTICES Any notice required or intended to be given to either party under terms of this Contract shall be in writing and shall be deemed to be duly given if delivered personally or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of the Bid Proposal in the case of the Design/Builder and at the address set forth on the signature page of the Contract in the case of the City, or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

24. COMPLIANCE WITH LAW In providing the services required under this Contract, Design/Builder shall at all times comply with all applicable laws of the United States, the State of California and City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Contract.

25. **ASSIGNMENT** The Contract is personal to the Design/Builder and there shall be no assignment, transfer, sale, or subcontracting by the Design/Builder of its rights or obligations under the Contract without the prior written approval of the City. Any attempted assignment, transfer, sale, or subcontracting by the Design/Builder, its successors or assigns, shall be null and void unless approved in writing by the City.

26. **BINDING EFFECT** Subject to the foregoing section, the rights and obligations of this Contract shall inure to the benefit of, and be binding upon, the Parties to the Contract and their heirs, administrators, executors, personal representatives, successors and assigns.

27. **TITLE TO DOCUMENTS AND LICENSE TO SOFTWARE** All documents, plans, and drawings, maps, photographs, and other papers, (including, but not limited to, computer or electronic data) or copies thereof prepared by the Design/Builder pursuant to the terms of this Contract, shall, upon preparation, become the property of the City and may be used by the City for any purpose without further compensation or authorization of Design/Builder. Additionally, the complete right or perpetual license of all system and maintenance software, if any, shall be transferred to the City.

28. **ACCOUNTING RECORDS** The Design/Builder shall maintain accurate accounting records and other written documentation pertaining to all costs incurred in performance of this Contract. Such records and documentation shall be kept at the Design/Builder's office during the term of this Contract, and for a period of five (5) years from the date of expiration or termination of the Contract or, longer if required by law, and said records shall be made available to City representatives upon request at any time during regular business hours. This section shall survive expiration or termination of this Contract.

29. **SITE INSPECTION** The City shall be allowed to inspect the Site at any time and the Design/Builder shall make all areas of the Site available to inspection including, without limitation, any construction trailers or offices at the Site and all plans, drawings, schedules, documents, photographs and other documentation relating to the Project.

30. **CORPORATE AUTHORITY** Each individual signing this Contract on behalf of the Design/Builder represents and warrants that they are, respectively, duly authorized to sign on behalf of the Design/Builder and to bind the Design/Builder fully to each and all of the obligations set forth in this Contract.

31. **NON-INTEREST** No officer or employee of the City shall hold any interest in this Contract (California Government Code Section 1090).

32. **CUMULATIVE REMEDIES** All City's remedies provided in this Contract are cumulative; that is, in addition to each and every other remedy herein or otherwise provided by law, and the City shall have any and all equitable and legal remedies which it would have according to law other than damages for failure to complete the Project within the Contract Time, which damages are covered by the liquidated damages provision herein.

[SIGNATURES FOLLOW ON THE NEXT PAGE.]

IN WITNESS WHEREOF, the Parties have executed this Contract on the day and year here below written, of which the date of execution by the City shall be subsequent to that of the Design/Builder's, and this Contract shall be binding and effective upon execution by both Parties.

ALLIANCE BUILDING SOLUTIONS,
A Limited Liability Corporation

By: _______________________________

Name: ____________________________

Title: _____________________________
(If corporation or LLC., Board Chair, Pres. or Vice Pres.)

By: _______________________________

Name: ____________________________

Title: _____________________________
(If corporation or LLC., CFO, Treasurer, Secretary or Assistant Secretary)

CITY OF FRESNO,
A California municipal corporation

By: _______________________________
Georgeanne A. White
City Manger

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: _______________________________
Jennifer M. Wharton Date
Deputy City Attorney

ATTEST:
AMY ALLER
City Clerk

By: _______________________________
Date
Deputy

Attachment:
Attachment A- Scope of Work
Attachment B- Renewable Energy Systems
Attachment C- EV Chargers
Attachment D- Measurement and Verification
Attachment E- Division II General Conditions
Attachment F- City of Fresno Community Workforce Agreement- Agreement to be Bound

Attachment A: Scope of Work

City of Fresno – Phase 4

Sal Mosqueda Center

Renewable Energy Systems

- Install a new carport mounted solar photovoltaic (PV) system. The system will be owned, operated, and maintained by the City. Refer to the Preliminary Solar Layouts Attachment for proposed system layouts. Final system layouts to be approved by the County after final design and coordination is complete. Refer to the Renewable Energy Systems Attachment for details on location, system size, and production.

Roeding Park

Renewable Energy Systems

- Install a new carport mounted solar photovoltaic (PV) system. The system will be owned, operated, and maintained by the City. Refer to the Preliminary Solar Layouts Attachment for proposed system layouts. Final system layouts to be approved by the County after final design and coordination is complete. Refer to the Renewable Energy Systems Attachment for details on location, system size, and production.

Inspiration Park

Renewable Energy Systems

- Install a new carport mounted solar photovoltaic (PV) system. The system will be owned, operated, and maintained by the City. Refer to the Preliminary Solar Layouts Attachment for proposed system layouts. Final system layouts to be approved by the County after final design and coordination is complete. Refer to the Renewable Energy Systems Attachment for details on location, system size, and production.

Marry Ella Brown Community Center Park

Renewable Energy Systems

- Install a new carport mounted solar photovoltaic (PV) system. The system will be owned, operated, and maintained by the City. Refer to the Preliminary Solar Layouts Attachment for proposed system layouts. Final system layouts to be approved by the County after final design and coordination is complete. Refer to the Renewable Energy Systems Attachment for details on location, system size, and production.

Fire Department HQ

Renewable Energy Systems

- Install a new rooftop mounted solar photovoltaic (PV) system. The system will be owned, operated, and maintained by the City. Refer to the Preliminary Solar Layouts Attachment for proposed system layouts. Final system layouts to be approved by the County after final design and coordination is complete. Refer to the Renewable Energy Systems Attachment for details on location, system size, and production.

Ted C. Wills Community Center

Renewable Energy Systems

- Install a new rooftop and carport mounted solar photovoltaic (PV) system. The system will be owned, operated, and maintained by the City. Refer to the Preliminary Solar Layouts Attachment for proposed system layouts. Final system layouts to be approved by the County after final design and coordination is complete. Refer to the Renewable Energy Systems Attachment for details on location, system size, and production.

Police Department Regional Training Facility

Renewable Energy Systems

- Install a new carport mounted solar photovoltaic (PV) system. The system will be owned, operated, and maintained by the City. Refer to the Preliminary Solar Layouts Attachment for proposed system layouts. Final system layouts to be approved by the County after final design and coordination is complete. Refer to the Renewable Energy Systems Attachment for details on location, system size, and production.

Scope of Work Assumptions:

1. Excludes identification and removal of any hazardous material (such as lead, mold, and asbestos).
2. Excludes any structural penetrations or reinforcement or engineering, except solar carports.
3. Excludes permit, plan check and utility fees.
4. Excludes concrete work of any kind, except solar carports.
5. Modification and upgrading of existing systems to current codes.
6. LEED Design, evaluation, calculations, or consulting on LEED documentation.
7. Structural engineering, calculations, or modifications of any kind, beyond what is typically required for permitting of roof-mounted solar.
8. Assumes everything is up to code.
9. Excludes any unforeseen conditions.

Attachment B: Renewable Energy Systems

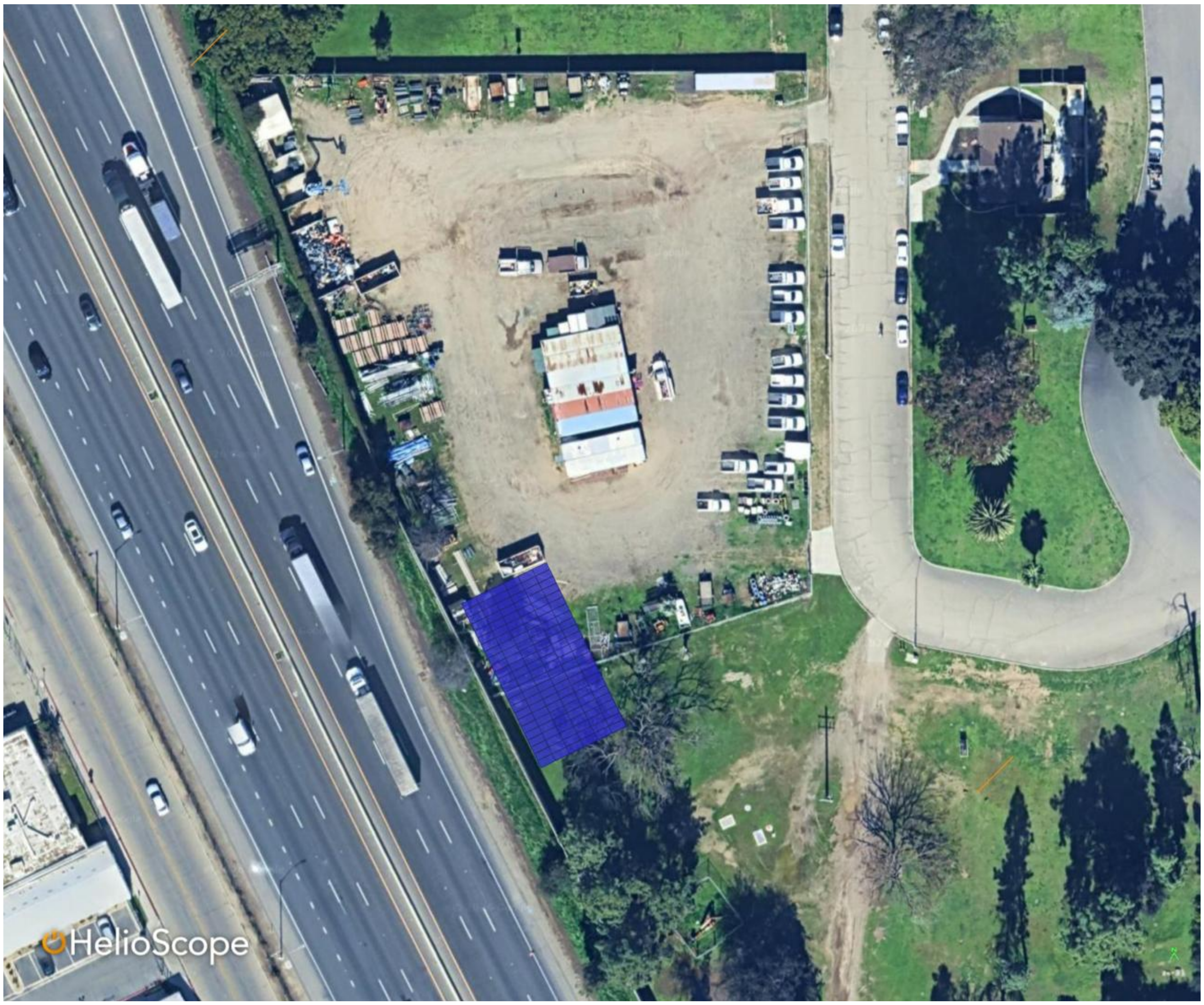
City of Fresno – Phase 4

System 1 Design

Location:	**Sal Mosqueda Community Center**
Address:	4670 E Butler Ave, Fresno, CA 93702
Estimated Power Rating:	193,750 W-DC
Estimated Year 1 Production:	325,491 kWh

System 2 Design

Location:	**Roeding Park**
Address:	890 W Belmont Ave, Fresno, CA 93728
Estimated Power Rating:	92,880 W-DC
Estimated Year 1 Production:	152,043 kWh

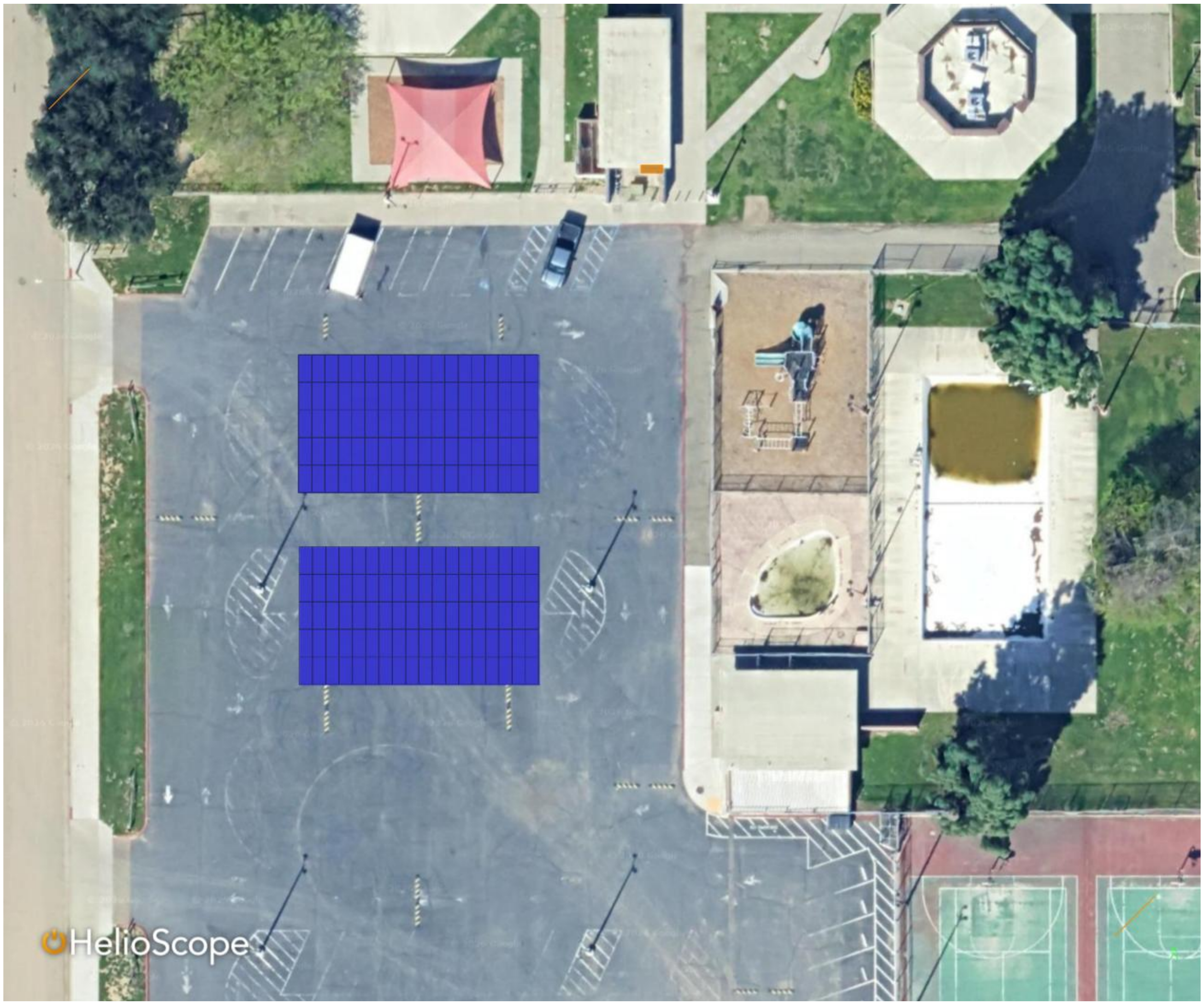


System 3 Design

Location:	**Inspiration Park**
Address:	5770 W Gettysburg Ave, Fresno, CA 93722
Estimated Power Rating:	79,375 W-DC
Estimated Year 1 Production:	136,023 kWh

System 4 Design

Location:	**Mary Ella Brown Community Center Park**
Address:	1350 E Annadale Ave, Fresno, CA 93706
Estimated Power Rating:	116,100 W-DC
Estimated Year 1 Production:	197,454 kWh



System 5 Design

Location:	**Fire Department HQ**
Address:	911 H Street, Fresno, CA 93721
Estimated Power Rating:	134,375 W-DC
Estimated Year 1 Production:	217,176 kWh

System 6 Design

Location:	**Ted C Wills Community Center**
Address:	770 N San Pablo Ave, Fresno, CA 93728
Estimated Power Rating:	139,320 W-DC
Estimated Year 1 Production:	238,040 kWh

System 7 Design

Location:	**Police Department Regional Training Facility**
Address:	6375 W. Central Ave, Fresno, CA 93706
Estimated Power Rating:	107,100 W-DC
Estimated Year 1 Production:	180,955 kWh

Assumptions:

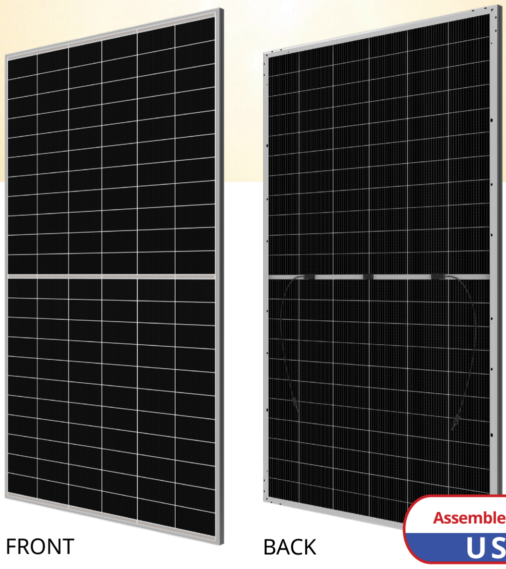
1. All technology & equipment specified/used in this project will meet or exceed all currently applicable & proposed safety, environmental and interconnection standards, as well as all fire safety requirements.
2. All PV system equipment & components will be UL certified.
3. ABS will obtain permits (without any building and safety or planning fees from the City) & utility approvals necessary to install the PV System.
4. Assumes all carport foundation drilling in clean dirt. All rock drilling to be at additional costs.
5. Interconnection work/outages may be scheduled during normal business hours only if coordinated with and approved by the affected City department. Notices to the affected City department shall be provided two weeks in advance. Interconnection may require scheduling outside of normal business hours during certain times of year.
6. Building department and utility inspections will be scheduled during normal business hours.
7. Pricing assumes that ABS's employees will have free and clear access to all array locations simultaneously during business hours (M-F 0700-1700).
8. ABS will provide electrical drawings stamped by a licensed California Registered Electrical Professional Engineer.
9. The planned AC electrical tie-in will not require component upgrades or improvements.
10. The System & installation will meet all requirements for interconnection with appropriate documentation. ABS will be responsible for providing all documentation.
11. System layout is acceptable to AHJ in terms of clearances.
12. Single mobilization and completion of project in one phase.
13. As built plans if available for engineering reference will be provided by City.
14. ABS is not responsible for superficial marking of parking area due to use of equipment.
15. On-site staging areas are available for storage of equipment and materials.
16. No special safety requirements beyond ABS's standard safety regulations will be enforced. ABS shall comply with all State and Local ordinances
17. Pricing includes NEMA 3R painted steel electrical equipment.
18. Ground penetrating radar (GPR) is accurate down to a depth of 3'-4'. There may be underground utilities below this level that are untraceable with GPR that would require the use of an underground camera to be located at additional cost.
19. Pricing assumes the structure can support the additional loads of the PV array system.
20. Pricing is based on prevailing wage rates and the Community Workforce Agreement (PLA), consistent with the Design-Builder's Agreement to be Bound.

Exclusions:

1. UL recertification of existing electrical equipment beyond our scope of work
2. Repairs of any electrical code violations at the existing facility
3. Removal and/or disposal of hazardous materials
4. Arc flash or breaker coordination studies
5. 3rd party (private) locating services
6. Pedestrian & vehicle traffic control
7. Re-creation of building plan sets
8. Lightening protection systems
9. Revenue grade metering
10. ADA design/compliance other than the ADA van-accessible EV charging stations that are required for the project
11. Sprinklers & gutters
12. Inverter enclosures
13. Electrical infrastructure upgrades

NEW

CanadianSolar



FRONT BACK

Assembled in the USA

Low Carbon Module

HiHero Bifacial HJT

CS6.2-66HB-620 | 625 | 630 | 635 | 640 | 645H

MORE POWER

645 W — Module power up to 645 W
Module efficiency up to 23.9 %

EXTRA POWER — Up to 90% Power Bifaciality,
more power from the back side

No B-O LID, excellent anti-LeTID & anti-PID performance. Low power degradation, high energy yield

Leading temperature coefficient (Pmax): -0.255%/°C, increases energy yield in hot climate

CO_2 — Lower energy consumption & carbon emissions, shorter carbon payback time

MORE RELIABLE

Tested up to ice ball of 35 mm diameter according to IEC 61215 standard

Minimizes micro-crack impacts

Heavy snow load up to 6000 Pa,
enhanced wind load up to 5400 Pa*

* For detailed information, please refer to the Installation Manual.

15 Years — **Industry Leading Product Warranty on Materials and Workmanship***

30 Years — **Linear Power Performance Warranty***

1st year power degradation no more than 1%
Subsequent annual power degradation no more than 0.35%

*According to the applicable Canadian Solar Limited Warranty Statement.

MANAGEMENT SYSTEM CERTIFICATES*

ISO 9001: 2015 / Quality management system
ISO 14001: 2015 / Standards for environmental management system
ISO 45001: 2018 / International standards for occupational health & safety
IEC 62941: 2019 / Photovoltaic module manufacturing quality system

PRODUCT CERTIFICATES*

IEC 61215 / IEC 61730 / CE / MCS / UKCA / CGC
CEC listed (US California) / FSEC (US Florida)
UL 61730 / IEC 61701 / IEC 62716 / IEC 60068-2-68
UNI 9177 Reaction to Fire: Class 1 / Take-e-way

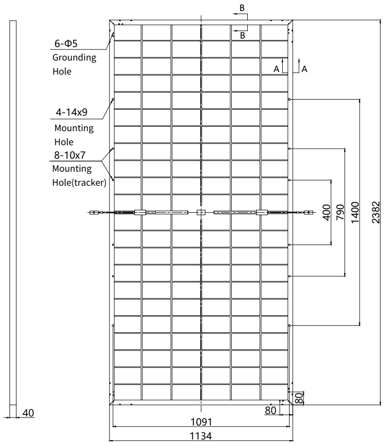
* The specific certificates applicable to different module types and markets will vary, and therefore not all of the certifications listed herein will simultaneously apply to the products you order or use. Please contact your local Canadian Solar sales representative to confirm the specific certificates available for your Product and applicable in the regions in which the products will be used.

Canadian Solar Inc., a BNEF Tier 1 and S&P Global Tier 1 module manufacturer, is a leading provider of integrated solar and energy storage solutions. With over 24 years of expertise, the company has delivered more than 165 GW of premium-quality solar modules worldwide.

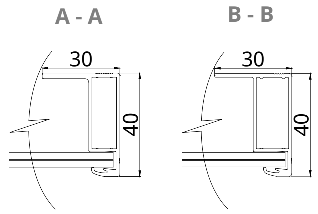
CS Power Systems Inc.
1350 Treat Blvd. Suite 500, Walnut Creek, CA 94597 | www.canadiansolar.com/na | service.ca@CSPowertech.com

ENGINEERING DRAWING (mm)

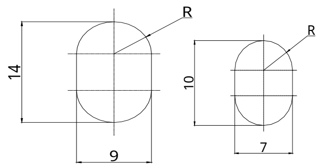
Rear View



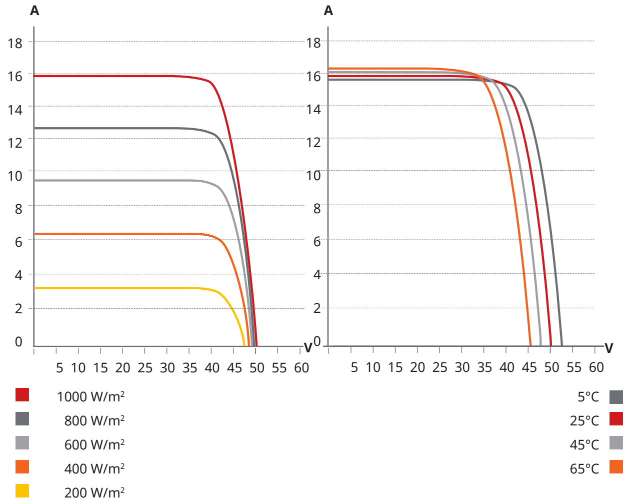
Frame Cross Section



Mounting Hole



CS6.2-66HB-635H / I-V CURVES



ELECTRICAL DATA | STC*

		Nominal Max. Power (Pmax)	Opt. Operating Voltage (Vmp)	Opt. Operating Current (Imp)	Open Circuit Voltage (Voc)	Short Circuit Current (Isc)	Module Efficiency
CS6.2-66HB-620H		620 W	42.6 V	14.58 A	50.1 V	15.65 A	23.0%
Bifacial Gain**	5%	651 W	42.6 V	15.31 A	50.1 V	16.43 A	24.1%
	10%	682 W	42.6 V	16.04 A	50.1 V	17.22 A	25.2%
	20%	744 W	42.6 V	17.50 A	50.1 V	18.78 A	27.5%
CS6.2-66HB-625H		625 W	42.6 V	14.69 A	50.1 V	15.75 A	23.1%
Bifacial Gain**	5%	656 W	42.6 V	15.42 A	50.1 V	16.54 A	24.3%
	10%	688 W	42.6 V	16.16 A	50.1 V	17.33 A	25.5%
	20%	750 W	42.6 V	17.63 A	50.1 V	18.90 A	27.8%
CS6.2-66HB-630H		630 W	42.6 V	14.79 A	50.2 V	15.82 A	23.3%
Bifacial Gain**	5%	662 W	42.6 V	15.53 A	50.2 V	16.61 A	24.5%
	10%	693 W	42.6 V	16.27 A	50.2 V	17.40 A	25.7%
	20%	756 W	42.6 V	17.75 A	50.2 V	18.98 A	28.0%
CS6.2-66HB-635H		635 W	42.7 V	14.88 A	50.3 V	15.92 A	23.5%
Bifacial Gain**	5%	667 W	42.7 V	15.62 A	50.3 V	16.72 A	24.7%
	10%	699 W	42.7 V	16.37 A	50.3 V	17.51 A	25.9%
	20%	762 W	42.7 V	17.86 A	50.3 V	19.10 A	28.2%
CS6.2-66HB-640H		640 W	42.7 V	14.99 A	50.4 V	16.01 A	23.7%
Bifacial Gain**	5%	672 W	42.7 V	15.74 A	50.4 V	16.81 A	24.9%
	10%	704 W	42.7 V	16.49 A	50.4 V	17.61 A	26.1%
	20%	768 W	42.7 V	17.99 A	50.4 V	19.21 A	28.4%
CS6.2-66HB-645H		645 W	42.8 V	15.07 A	50.4 V	16.13 A	23.9%
Bifacial Gain**	5%	677 W	42.8 V	15.82 A	50.4 V	16.94 A	25.1%
	10%	710 W	42.8 V	16.58 A	50.4 V	17.74 A	26.3%
	20%	774 W	42.8 V	18.08 A	50.4 V	19.36 A	28.7%

* Under Standard Test Conditions (STC) of irradiance of 1000 W/m², spectrum AM 1.5 and cell temperature of 25°C.
** Bifacial Gain: The additional gain from the back side compared to the power of the front side at the standard test condition. It depends on mounting (structure, height, tilt angle etc.) and albedo of the ground.

ELECTRICAL DATA | NMOT*

	Nominal Max. Power (Pmax)	Opt. Operating Voltage (Vmp)	Opt. Operating Current (Imp)	Open Circuit Voltage (Voc)	Short Circuit Current (Isc)
CS6.2-66HB-620H	472 W	40.5 V	11.65 A	47.6 V	12.61 A
CS6.2-66HB-625H	476 W	40.5 V	11.74 A	47.6 V	12.69 A
CS6.2-66HB-630H	479 W	40.5 V	11.83 A	47.7 V	12.74 A
CS6.2-66HB-635H	483 W	40.6 V	11.90 A	47.8 V	12.82 A
CS6.2-66HB-640H	487 W	40.6 V	11.99 A	47.9 V	12.90 A
CS6.2-66HB-645H	491 W	40.7 V	12.06 A	47.9 V	12.99 A

* Under Nominal Module Operating Temperature (NMOT), irradiance of 800 W/m², spectrum AM 1.5, ambient temperature 20°C, wind speed 1 m/s.

MECHANICAL DATA

Specification	Data
Cell Type	HJT cells
Cell Arrangement	132 [2 x (11 x 6)]
Dimensions	2382 × 1134 × 40 mm (93.8 × 44.6 × 1.57 in)
Weight	33.4 kg (73.6 lbs)
Front Glass	2.0 mm heat strengthened glass with anti-reflective coating
Back Glass	2.0 mm heat strengthened glass
Frame	Anodized aluminium alloy
J-Box	IP68, 3 bypass diodes
Cable	4.0 mm² (IEC), 12 AWG (UL)
Cable Length (Including Connector)	300 mm (11.8 in) (+) / 200 mm (7.9 in) (-)*
Connector	T6 or MC4-EVO2A
Per Pallet	27 pieces
Per Container (40' HQ)	540 pieces or 486 pieces (only for US & Canada)

* For detailed information, please contact your local Canadian Solar sales and technical representatives.

ELECTRICAL DATA

Operating Temperature	-40°C ~ +85°C
Max. System Voltage	1500 V (IEC/UL)
Module Fire Performance	TYPE 29 (UL 61730) or CLASS C (IEC61730)
Max. Series Fuse Rating	35 A
Protection Class	Class II
Power Tolerance	0 ~ + 10 W
Power Bifaciality*	85 %

* Power Bifaciality = $Pmax_{rear}$ / $Pmax_{front}$, both $Pmax_{rear}$ and $Pmax_{front}$ are tested under STC, Bifaciality Tolerance: ± 5 %

TEMPERATURE CHARACTERISTICS

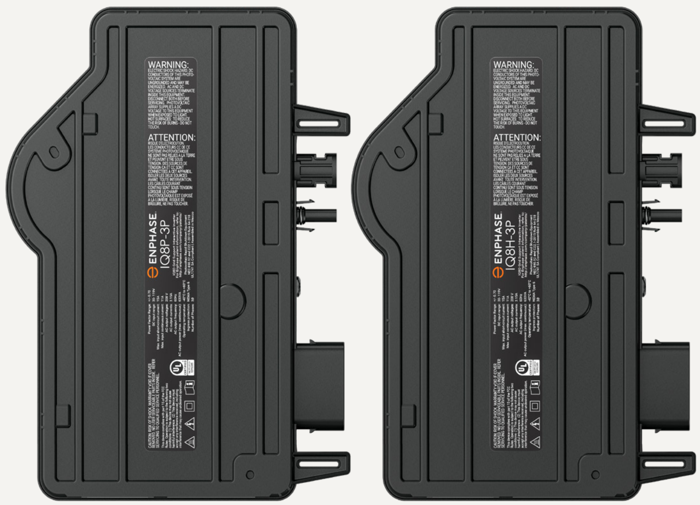
Specification	Data
Temperature Coefficient (Pmax)	-0.255 % / °C
Temperature Coefficient (Voc)	-0.230 % / °C
Temperature Coefficient (Isc)	0.044 % / °C
Nominal Module Operating Temperature	41 ± 3°C

* The specifications and key features contained in this datasheet may deviate slightly from our actual products due to the on-going innovation and product enhancement. Canadian Solar Inc. reserves the right to make necessary adjustment to the information described herein at any time without further notice. Please be kindly advised that PV modules should be handled and installed by qualified people who have professional skills and please carefully read the safety and installation instructions before using our PV modules.

PARTNER SECTION

CS Power Systems Inc.

1350 Treat Blvd. Suite 500, Walnut Creek, CA 94597 | www.canadiansolar.com/na | service.ca@CSPowertech.com



IQ8 Commercial Microinverters

The high-powered, smart grid-ready Enphase IQ8P-3P and IQ8H-3P Microinverters are specifically designed for 120/208 VAC (4-wire) three-phase interconnection for small commercial solutions.

Each microinverter integrates with the IQ Gateway Commercial 2 and the Enphase App monitoring and analysis software.

With simplified design, improved energy harvesting, and advanced monitoring, microinverters offer true peace of mind during operation and maintenance.

Easy to install

- Lightweight and compact with plug-and-play connectors
- Power line communication (PLC) between components
- Faster installation

High productivity and reliability

- More than one million cumulative hours of testing
- Class II double-insulated enclosure
- Optimized for the latest high-powered PV modules

Smart grid-ready

- Complies with the latest advanced grid support
- Remote automatic updates for the latest grid requirements
- Configurable to support a wide range of grid profiles
- Meets IEEE® 1547 (UL 1741-SB) requirements

Enphase 25 year limited warranty

The IQ Series Microinverters extend the reliability standards set forth by previous generations and undergo over a million hours of power-on testing, enabling Enphase to provide an industry-leading limited warranty of up to 25 years.*

* 25-year warranty is valid, provided an internet-connected IQ Gateway is installed.

IQ8 Commercial Microinverters

INPUT DATA (DC)	UNITS	IQ8P-3P-72-E-US/IQ8P-3P-72-E-DOM-US[1]		IQ8H-3P-72-E-US[2]	
Commonly used modules for pairing[3]	W	380–640		320–540	
Module compatibility[3]	—	54-cell/108-half-cell, 60-cell/120-half-cell, 66-cell/132-half-cell and 72-cell/144-half-cell			
Maximum input DC voltage	V	63			
Peak power tracking voltage	V	35.5–53		28.5–45	
Operating range	V	16–63			
Min./Max. start voltage	V	21/63			
Max. DC continuous current (module I_{mp})	A	14			
Max. input DC short-circuit current	A	25			
Max. DC short-circuit current (module I_{sc})	A	20			
Overvoltage class DC ports	—	II			
DC port backfeed current	A	0			
PV array configuration	—	1 × 1 ungrounded array; no additional DC side protection required; AC side protection requires max. 20 A per branch circuit			
OUTPUT DATA (AC)	**UNITS**	**IQ8P-3P-72-E-US/IQ8P-3P-72-E-DOM-US[1]**		**IQ8H-3P-72-E-US[2]**	
Peak output power	VA	480		384	
Maximum continuous output power	VA	475		380	
Nominal (L-L) voltage/range[4]	V	208/183–229	220/198–242	208/183–229	220/198–242
Maximum continuous output current	A	2.28	2.16	1.83	1.73
Nominal frequency	Hz	60			
Extended frequency range	Hz	47–68			
Maximum microinverters per 20 A three-phase branch circuit[5]	—	12		15	
Overvoltage class AC port	—	III			
Power factor setting	—	1.0			
Power factor (adjustable)	—	0.85 leading ... 0.85 lagging			
Total harmonic distortion	%	<5			
EFFICIENCY	**UNITS**	**IQ8P-3P-72-E-US/IQ8P-3P-72-E-DOM-US[1]**		**IQ8H-3P-72-E-US[2]**	
Peak efficiency	%	97.8		97.7	
CEC weighted efficiency	%	97.5		96.5	
MECHANICAL DATA		**IQ8P-3P-72-E-US/IQ8P-3P-72-E-DOM-US[1]**		**IQ8H-3P-72-E-US[2]**	
Ambient temperature range	-40°F to 149°F (-40°C to 65°C)				
Relative humidity range	4% to 100% (condensing)				
DC connector type[6]	Enphase EN4 bulkhead; ECA-EN4-S22-12:EN4 (TE PV4-S SOLARLOK) 150 mm/5.9" to Stäubli MC4 adapter cable pair (default supply)[7]				
Dimensions (H × W × D)	10.4" × 7.9" × 1.4" (265 mm × 200 mm × 35 mm) without bracket				
Weight	3.5 lb (1.6 kg)				
Cooling	Natural convection				
Approved for wet locations	Yes				
Enclosure	Class II double-insulated, corrosion-resistant polymeric enclosure				
Environmental category/UV exposure rating	Outdoor—NEMA Type 6/IP67				

FEATURES	IQ8P-3P-72-E-US/IQ8P-3P-72-E-DOM-US[1]	IQ8H-3P-72-E-US[2]
Communication	Power line communication (PLC)	
Monitoring	Enphase App monitoring and analysis software. Both options require the installation of an IQ Gateway Commercial 2.	
Compliance	CA Rule 21 (UL 1741-SB), UL 62109-1, UL 1741/IEEE 1547, FCC Part 15 Class B, ICES-0003 Class B, CAN/CSA-C22.2 NO. 107.1-01. This product is UL Listed as PV rapid shutdown equipment and conforms with NEC 2014, NEC 2017, and NEC 2020 section 690.12 and C22.1-2018 Rule 64-218 rapid shutdown of PV systems for AC and DC conductors, when installed according to manufacturer's instructions.	

[1] IQ8P-3P-72-E-DOM-US is made in the United States of America. The PCBA, electrical parts, and enclosure are domestically manufactured to meet the eligibility requirements for the ITC domestic content bonus adder.
[2] IQ8H-3P-72-E-US is no longer being manufactured.
[3] Pairing PV modules with wattage above the limit may result in additional clipping losses. See the compatibility calculator at https://link.enphase.com/module-compatibility.
[4] Nominal voltage range can be configured if required by the utility. For interconnection to system voltages other than 120/208 VAC (4-wire) three-phase, a transformer is required to connect to the grid.
[5] Limits may vary. Refer to local requirements to define the number of microinverters per branch in your area.
[6] Enphase IQ8P-3P and IQ8H-3P Microinverter bulkhead and adapter cable male/female DC connectors must only be mated with the identical type and manufacturer brand of male/female connectors.
[7] Qualified per UL subject 9703.

Revision history

REVISION	DATE	DESCRIPTION
DSH-00236-7.0	November 2025	Added “Total harmonic distortion” information.
DSH-00236-6.0	April 2025	Added a new footnote to SKU IQ8H-3P-72-E-US stating that it is no longer being manufactured.
DSH-00236-5.0	October 2024	Removed the reference for preliminary testing for IQ8P-3P-72-E-DOM-US SKU.
DSH-00236-4.0	August 2024	Added information about IQ8P-3P-72-E-DOM-US.
DSH-00236-3.0	February 2024	Modified “208V three-phase” to “208Y VAC three-phase on page 1.
DSH-00236-2.0	November 2023	Updated the specifications.
DSH-00236-1.0	October 2023	Initial release.

/ STP 33-US-41 / STP 50-US-41 / STP 62-US-41

Sunny Tripower CORE1-US

33 / 50 / 62

It stands on its own

/ Complies with IEEE 1547-2018 and UL 1741 SB standards

UL 3741 LISTED PV Hazard Control
SMA Smart Connected
SMA ShadeFix STRING LEVEL OPTIMIZATION

Fully integrated

- No additional racking required for rooftop installation
- Integrated DC and AC disconnects and overvoltage protection
- 12 direct string inputs for reduced labor and material costs
- Up to 60% faster commercial PV system installation

Increased power, flexibility

- Six MPP trackers for flexible stringing and maximum power production
- Achieve an optimized design using SMA Sunny Design with NEC 690.8(A)(1)(a)(2) when calculating maximum current on systems over 100kW
- ShadeFix, SMA's proprietary shade management solution, optimizes at the string level
- Intelligent string monitoring to pinpoint array performance issues

Enhanced safety, reliability

- Integrated SunSpec PLC signal for module-level rapid shutdown
- DC AFCI arc-fault protection certified to Standard UL 1699B Ed. 1

Smart monitoring, control, service

- I-V curve diagnostic function to visualize and document PV string electrical characteristics
- Increased ROI with SMA ennexOS cross sector energy management platform
- SMA Smart Connected proactive O&M solution reduces time spent diagnosing and servicing in the field

The Sunny Tripower CORE1 is the world's first free-standing PV inverter for commercial rooftops, carports, ground mount and repowering legacy solar projects.

From distribution to construction to operation, the Sunny Tripower CORE1 enables logistical, material, labor and service cost reductions, and is the most versatile, cost-effective commercial solution available. Integrated SunSpec PLC for rapid shutdown and enhanced DC AFCI arc-fault protection ensure compliance to the latest safety codes and standards. With Sunny Tripower CORE1 and SMA's ennexOS cross sector energy management platform, system integrators can deliver comprehensive commercial energy solutions for increased ROI.

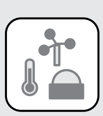
SunSpec Modbus for 1547 CERTIFIED
Rapid Shutdown CERTIFIED
UL 3741 LISTED PV Hazard Control

Technical data	Sunny Tripower CORE1 33-US	Sunny Tripower CORE1 50-US	Sunny Tripower CORE1 62-US
Input (DC)			
Maximum array power	50000 Wp STC	75000 Wp STC	93750 Wp STC
Maximum system voltage		1000 V	
Rated MPP voltage range	330 V ... 800 V	500 V ... 800 V	550 V ... 800 V
MPPT operating voltage range		150 V ... 1000 V	
Minimum DC voltage / start voltage		150 V / 188 V	
MPP trackers / strings per MPP input		6 / 2	
Maximum usable operating input current / per MPP tracker		120 A / 20 A	
Maximum short circuit current per MPPT / per string input		32 A / 30 A	
Output (AC)			
Nominal output power	33300 W	50000 W	62500 W
Maximum apparent power	33300 VA	53000 VA	66000 VA
Output phases / line connections		3 / 3-(N)-PE	
Nominal AC voltage		480 V / 277 V WYE	
AC voltage range		244 V ... 305 V	
Maximum output current	40 A	64 A	80 A
Rated grid frequency		60 Hz	
Grid frequency / range		50 Hz, 60 Hz / -6 Hz ... +6Hz	
Power factor at rated power / adjustable displacement		1 / 0.0 leading ... 0.0 lagging	
Harmonics THD		<3 %	
Efficiency			
CEC efficiency	97.5%	97.5%	97.5%
Protection and safety features			
Load rated DC disconnect		●	
Load rated AC disconnect		●	
Ground fault monitoring: Riso / Differential current		● / ●	
DC AFCI arc-fault protection		●	
SunSpec PLC signal for rapid shutdown		●	
DC reverse polarity protection		●	
AC short circuit protection		●	
DC surge protection: Type 2 / Type 1+2		○ / ○	
AC surge protection: Type 2 / Type 1+2		○ / ○	
Protection class / overvoltage category (as per UL 840)		I / IV	
General data			
Device dimensions (W / H / D)		621 mm / 733 mm / 569 mm (24.4 in x 28.8 in x 22.4 in)	
Device weight		84 kg (185 lbs)	
Operating temperature range		-25 °C ... +60 °C (-13 °F ... +140 °F)	
Storage temperature range		-40 °C ... +70 °C (-40 °F ... +158 °F)	
Audible noise emissions (full power @ 1m and 25 °C)		65 dB(A)	
Topology		Transformerless	
Cooling concept		OptiCool (forced convection, variable speed fans)	
Enclosure protection rating		Type 4X, 3SX (as per UL 50E)	
Corrosivity classification according to IEC 61701		C3*	
Maximum permissible relative humidity (non-condensing)		100 %	
Additional information			
Mounting		Free-standing with included mounting feet	
DC connection		Amphenol UTX PV or H4Plus connectors	
AC connection		Screw terminals - 4 AWG to 4/0 AWG CU/AL	
LED indicators (Status / Fault / Communication)		●	
Network interfaces: Ethernet / WLAN / RS485		● (2 ports) / ▲ / ○	
Data protocols: SMA Modbus / SunSpec IEEE 1547 Modbus / Webconnect		● / ● / ●	
ShadeFix technology for string level optimization		●	
Intelligent string performance monitoring		●	
I-V curve diagnostic function		●	
Integrated Plant Control / Q on Demand 24/7		● / ●	
SMA Smart Connected (proactive monitoring and service support)		●	
Certifications			
Certifications and approvals		UL 1741, UL 1699B Ed. 1, UL 1998, CSA 22.2 107-1, PV Rapid Shutdown System Equipment, UL 3741	
FCC compliance		FCC Part 15 Class A	
Grid interconnection standards		IEEE 1547-2018, UL 1741 SA/SB - CA Rule 21, HECO SRD V2.0	
Advanced grid support capabilities		L/HFRT, L/HVRT, Volt-VAr, Volt-Watt, Frequency-Watt, Ramp Rate Control, Fixed Power Factor	
Warranty			
Standard		10 years	
Optional extensions		15 / 20 years	
Type designation	STP 33-US-41	STP 50-US-41	STP 62-US-41

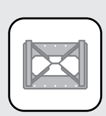
○ Optional features ● Standard features – Not available ▲ Subject to availability Data at nominal conditions - status: 08/2023 * ≥ 2 km from the coast

Accessories

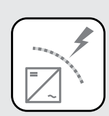
SMA Data Manager M
EDMM-US-20



SMA Sensor Module
MD.SEN-US-40



Universal Mounting System
UMS_KIT-10



AC Surge Protection Module Kit
AC_SPD_KIT1-10, AC_SPD_KIT2_T1T2
DC Surge Protection Module Kit
DC_SPD_KIT4-10, DC_SPD_KIT5_T1T2

Toll Free +1 888 4 SMA USA
www.SMA-America.com

SMA America, LLC

/ STP 20-US-50 / STP 25-US-50 / STP 30-US-50

SMA

Sunny Tripower X-US

20 / 25 / 30

Integrated intelligence for
future-proof system design.

powered by ennexOS

SMA Smart Connected

UL 3741 LISTED PV Hazard Control

Rapid Shutdown CERTIFIED

SMA ShadeFix STRING LEVEL OPTIMIZATION

Integrated System Manager
- Monitoring and control for up to 5 inverters (max. 150 kVA)
- Remote access with Sunny Portal powered by ennexOS
- SMA Dynamic Power Control

Enhanced safety
- Integrated SunSpec PLC signal for module-level shutdown
- Advanced DC AFCI arc-fault protection
- Optional DC type 2 and type 1+2 surge protection

Maximum yields
- Three MPP trackers for flexible array design
- Achieve an optimized design using SMA Sunny Design with NEC 690.8(A)(1)(a)(2) when calculating maximum current on systems over 100kW
- SMA ShadeFix string level optimization
- Integrated I-V curve diagnostics

Smart monitoring, control and service
- SMA Smart Connected proactive monitoring and service solution
- SMA ennexOS cross-sector energy management platform
- Centerpiece of the proven SMA Energy System Business

Sunny Tripower X is the new innovative inverter solution for commercial PV systems.

Providing three MPP trackers with SMA ShadeFix string optimization technology for optimal PV array design flexibility and maximum energy yields. SMA's proven integrated rapid shutdown support and reliable DC AFCI arc-fault protection ensure enhanced system safety. And now with the new integrated System Manager, powered by SMA's ennexOS cross-sector energy management platform, Sunny Tripower X becomes the centerpiece of the SMA Energy System Business for comprehensive commercial energy systems now and in the future.

Technical data	Sunny Tripower X 20-US	Sunny Tripower X 25-US	Sunny Tripower X 30-US
Input (DC)			
Maximum array power	30000 Wp	37500 Wp	45000 Wp
Maximum system voltage		1000 V	
Rated MPP voltage range	350 V ... 800 V	430 V ... 800 V	515 V ... 800 V
MPPT operating voltage range		150 V ...1000 V	
Minimum DC voltage / start voltage		150 V / 188 V	
Maximum usable operating input current / Maximum short circuit current per MPPT		24 A / 37.5 A	
MPP trackers / strings per MPP input		3 / 2	
Output (AC)			
Nominal output power	20000 W	25000 W	30000 W
Maximum apparent power	20000 VA	25000 VA	30000 VA
Output phases / line connection		3 / 3-(N)-PE	
Nominal AC voltage		480 V / 277 V	
AC voltage range		244 V ... 305 V	
Maximum output current	24 A	30 A	36 A
Rated grid frequency / range		60 Hz / -6 Hz ... +6 Hz	
Power factor at rated power / adjustable displacement		1 / 0.8 leading ... 0.8 lagging	
Harmonics (THD)		< 3 %	
Efficiency			
CEC efficiency	97.5 %	98 %	98 %
Protection and safety features			
Load rated DC disconnect		●	
Load rated AC disconnect		○	
Ground fault monitoring / grid monitoring		● / ●	
DC reverse polarity protection / AC short-circuit protection		● / ●	
All-pole sensitive residual-current monitoring unit		●	
DC AFCI arc-fault protection		●	
SunSpec PLC signal for rapid shutdown		●	
DC surge protection: Type 2 / Type 1+2		○ / ○	
Protection class / overvoltage category (as per UL 840)		I / III	
General data			
Device dimensions (W/H/D)		728 mm / 762 mm / 266 mm (28.7 in / 30 in / 10.5 in)	
Device weight		30 kg (77 lbs)	
Operating temperature range		-25°C to +60°C (−13°F to +140°F)	
Audible noise emission (full power @ 1m and 25°C)		59 dB(A)	
Topology / cooling concept		Transformerless / OptiCool (forced convection, variable speed fans)	
Enclosure protection rating		Type 4X (as per UL 50E)	
Corrosion classification		C5	
Maximum permissible relative humidity (non-condensing)		100 %	
Additional information			
Mounting		Vertical rack / wall mount to 15° from horizontal	
DC connection / AC connection		Amphenol H4 Plus / spring-cage terminal	
LED indicators (status / fault / communication)		●	
Network interfaces: Ethernet / WLAN		● (2 ports) / ●	
Data protocols: SMA Modbus / SunSpec Modbus / Speedwire		● / ● / ●	
Multi-function relay / Extension module slot / Digital inputs		● / ● / ● (6 inputs)	
ShadeFix technology for string level optimization		●	
I-V curve diagnostic function		●	
Integrated Plant Control / Q on Demand 24/7		● / ●	
SMA Smart Connected (proactive monitoring and service support)		●	
Standard warranty		10 years	
Optional warranty extensions (total warranty coverage cannot exceed 20 years)		+5 years, +10 years	
Certificates and approvals			
Certificates and approvals		UL 62109-1, UL 1699B Ed. 1, CAN/CSA 22.2 No. 62109-1:16 / 62109-2:16, PV Rapid Shutdown System Equipment in accordance with UL1741:2021, UL 3741	
FCC compliance		FCC Part 15 Class A	
Grid interconnection standards		UL 1741 SB, IEEE 1547:2018, compliance to SRDs: CA Rule 21, HECO Rule 14H, ISO-NE	
Integrated System Manager			
Maximum number of supported inverters / energy meters		5 / 1	
Maximum system power PV inverters (nominal AC power)		150 kVA	
Centralized commissioning of all devices in the system		●	
Remote parameterization of SMA devices		● (via Sunny Portal powered by ennexOS)	
SMA Dynamic Power Control (e.g. zero export / Volt-VAr)		●	
Type designation	STP 20-US-50	STP 25-US-50	STP 30-US-50

● Standard features ○ Optional – Not available Data in nominal conditions Last revision: 04/2025

Accessories

- SMA Data Manager M EDMM-US-20
- DC terminal cover DC-TERM-COVER
- SMA Sensor Module MD.SEN-US-40
- DC Surge Protection Kits T2: DC_SPD_KIT6-10 T1+2: DC_SPD_KIT7_T1T2
- Roof Mount Kit 210462-00.01
- AC Disconnect Kit 210841-00.01

Toll Free +1 888 4 SMA USA
www.SMA-America.com

SMA America, LLC

Attachment C: EV Chargers

City of Fresno (PH 4 Solar)

ALLIANCE
BUILDING SOLUTIONS

City of Fresno – EV Chargers Inventory

Product: EV Loop – Flex Level 2 Charger

Quantity & Location:

Site	Number of EV Chargers
Sal Mosqueda Community Center	4
Mary Ella Brown Community Center Park	2
Police Department Regional Training Facility	2

Equipment Details: See specification sheet attached below

loop
ev charging network

ALLIANCE

EV-FLEX™

Electric Vehicle Level 2 Charging Station

Meet the best-in-class EV charging network technology for at home or on the go. The EV-FLEX™ Level 2 charging station is the ideal EV charging solution for multi-tenant residential, commercial, retail or municipal properties.

+ Sleek, compact modern design
+ Flexibly mounted on a wall, ceiling, pole or pedestal
+ WiFi & LTE cellular enabled for public or private networks
+ RFID, Smartphone App and Bluetooth user authentication
+ Real-time load management and demand response
+ Tamper resistant; rated for indoor/outdoor use
+ Universal compatibility

loop
ev charging network

EV-FLEXTM Specifications

Electrical	+ 32 A / 7.68 kW max output, 60 Hz + 208/240 VAC, single phase input + Hardwired, single port
Connector	+ 25 ft. charging cable (18 ft. optional) + SAE J1772 Type 1 standard compliant
Network Connectivity	+ Built-in Wi-Fi (802.11 b/g/n) + Built-in LTE Cellular (Cat 1; AT&T or Verizon) + OCPP 1.6 Communication Protocol
Firmware	+ 90-day, 15-minute encrypted interval data storage + Persistent data storage upon power interruption + Over the Air (OTA) updates available via Loop Network™
Core Specifications	+ Weatherproof, dust-tight: NEMA 4 (IP66), IK10 tamper resistant + Integrated cable management saddle and holster + Operating Temperature = -30 to 50 °C / -22 to 122 °F + Metering Accuracy = Embedded +/- 3% + User Interface = Configurable OLED display + Status Indicators = Power/Ready, Charging, Fault + Wall, ceiling, pole or pedestal mounting options + Main Enclosure Dimensions = 11.14" H x 7.56" W x 3.11" D + Weight = 5.28 kg / 11.64 lbs
Certifications & Standards	+ UL, FCC, Energy Star + Open ADR 2.0b compliant + CALeVIP, Charge Ready 2
Loop Network™ App (Optional)	+ Web-based portal for desktop access & remote troubleshooting + Public or private network enabled + User access control through RFID, NFC, Bluetooth and/or QR code + Flexible billing models (Pay-Per-Use vs. Subscription) + Automated billing & real-time payment resolution
Warranty	+ 3-year limited product warranty (parts only); optional 5-year and 10-year extended warranties available
Ordering	+ EV-FLEX™ , Wall Mount, Single Port Charger **#EVS-32A-L2-001** + EV-FLEX™, Pedestal Mount, Single Port Charger **#EVS-32A-L2-001-P** + EV-FLEX™, Pedestal Mount, Dual Single Port Chargers **#EVS-32A-L2-001-2P**

UL LISTED
CAL eVIP
ENERGY STAR
OPEN CHARGE ALLIANCE

Attachment D: Measurement and Verification

City of Fresno – Phase 4

SCOPE OF SERVICES

ATTACHMENTS:

Attachment 1 – Guaranteed Savings Measurement & Verification

- Savings Guarantee
- Measurement and Verification Methods
- Selected Measurement and Verification Options
- IPMVP Option A M&V Plan
- IPMVP Option C M&V Plan

Attachment 2 – Utility Baseline Summary

Attachment 3 – Renewable Energy Project Cashflow

MEASUREMENT & VERIFICATION

This Measurement and Verification ("M&V") Agreement ("Agreement") dated __/__/___ ("Effective Date") is made by and between:

City of Fresno ("Purchaser") with its principal place of business at 2600 Fresno Street, Fresno, CA 93721

and

Alliance Building Solutions, LLC. ("ABS") with its principal place of business at 12520 High Bluff Drive, Ste 345, San Diego, CA 92130

SCOPE OF SERVICES

Energy Savings Measurement & Verification Service:

"ABS" will provide measurement and verification services of the energy savings associated with "Purchaser" Renewable Energy Project, as described in "Attachment A – Scope of Work". Energy Savings M&V reports will be provided to the "Purchaser" on an annual basis or upon request up to once a year for the term specified below.

Term:

This Service Agreement shall commence upon the completion and acceptance of the Purchaser of installation of the project and receipt of final payment for the Contract and shall continue for an initial term of three (3) years. The "Purchaser" may elect to enter into further extended terms upon written notice provided to ABS not less than thirty (30) days prior to termination of the initial term. If the "Purchaser" fails to provide ABS with a written notice of extension prior to the end of the initial term or any subsequent extensions, the M&V Agreement shall be considered terminated. The "Purchaser" may terminate this service agreement at any time with a (30) day written notice. However, termination of this agreement will void any savings guarantee associated with this project.

Charges:

This Agreement shall be billed once per year is due and payable 30-days after "Purchaser's" receipt of invoice. The annual Service Agreement charge is $0 for the first three years, $25,000 for the fourth year and escalated at 3% annually for every subsequent year thereafter. This rate does not include taxes.

Attachment 1

Guaranteed Savings Measurement & Verification

This document contains the Measurement and Verification (M&V) plan for the energy savings related to the Energy Efficiency Measures (EEMs) contained in the Installation Agreement. The following table summarizes the EEMs implemented at the City of Fresno:

Site	Renewable Energy Systems
Sal Mosqueda Community Center	X
Roeding Park	X
Inspiration Park	X
Marry Ella Brown Community Center Park	X
Fire Department HQ	X
Ted C Wills Community Center	X
Police Department Regional Training Facility	X

For each EEM, a specific M&V plan is submitted to provide a comprehensive overall plan for the City of Fresno. Energy savings shall be compared to the Utility Baseline Summary, as shown in Attachment 2. Each EEM's M&V Plan provides:

- A description of how the savings shall be verified.
- The selection of the specific protocol of verification of savings.
- The requirements for measurement or other means to establish savings.

ABS is responsible for pre-retrofit measurements, energy savings calculations, equipment installation, and required post retrofit verification as outlined herein. Purchaser agrees to operate and maintain all equipment installed. Proper operation and maintenance of equipment and systems is critical to long-term achievement of energy savings.

Savings Guarantee

ABS warrants that Purchaser shall realize total annual project savings (utility savings and solar ITC) in excess of the amounts in the able below. The effective date will begin on the date of final acceptance of the Installation project and receipt of final payment for the associated Installation Contract. The total project savings will exceed the installation contract amount associated with this agreement during the course of the useful life of the installed equipment. ABS agrees to complete the M&V Report on an annual basis and deliver to the Purchaser within ninety (90) days of the anniversary date of final acceptance and annually thereafter if renewed by the Purchaser. Project savings that are verified during the course of construction will be applied to the 1st year guaranteed project savings.

If the annual M&V Report demonstrates that the project will achieve one hundred percent (100%) or more of the Guaranteed Project Annual Savings, then ABS shall have satisfied its energy performance guarantee obligation and the Purchaser shall accept the Annual M&V Report.

In the event that an annual M&V Report savings value (including any excess savings from previous years) does not meet the Guaranteed Project Savings in accordance with the M&V Plan, then ABS shall repair, replace, or substitute the EEM that is not performing at the required level, as identified in the M&V Report. Following corrective action, ABS shall re-perform the relevant M&V work for the affected EEM(s) and amend or supplement the M&V Report. If the sum of the EEMs indicates that the Guaranteed Project Savings are met or exceeded, then no further remedy shall be required.

If, after the opportunity to make corrections, the M&V Report, as amended, indicates that verified savings are less than the Guaranteed Project Savings as shown in the Savings Summary, then ABS shall pay the Purchaser the shortfall amount. However, under no circumstances will the amount(s) paid for the total of the energy savings shortfalls exceed the total savings associated with this contract.

The Purchaser agrees that project savings, which exceed the guaranteed amount in any one (1) year, may be applied to previous or future year's savings to offset an energy savings shortfall. The savings guarantee will remain in effect for the term of this agreement. Cancellation of this agreement will result in the termination of the savings guarantee.

The Utility Baseline Summary, as shown in Attachment 2, may be modified over the course of the Guarantee Period to adjust for changes in utility rates, number of days in utility billing cycle, square footage, energy using equipment, building occupancy and weather.

The Savings Guarantee can be combined with Phase 2 of the energy retrofit project completed by ABS at the sites where solar will be installed. Additionally, ABS will provide solar operations and maintenance (O&M) for the first three years after installation of the project at no cost to the City. The solar O&M will only be for the solar scope completed as part of this agreement and at the sites listed above. The O&M will include cleaning of the panels, and inspecting inverters, batteries and wiring. This service will be provided once annually for the first three years.

Year	Guaranteed Savings
1	$309,732
2	$324,990
3	$340,960
4	$332,672
5	$349,414
6	$366,948
7	$385,310
8	$404,540
9	$424,680
10	$445,770
11	$467,858
12	$490,990
13	$515,212
14	$540,578
15	$567,142
16	$594,960
17	$624,090
18	$654,594
19	$686,536
20	$717,482
Total Savings	**$9,544,458**

Measurement and Verification Methods

Measurement and Verification (M&V) of energy savings is a methodology based on standard industry protocol intended to provide reasonable assurance that energy savings calculated are realized over the term of the contract.

The development of the M&V plan is based on the International Performance Measurement and Verification Protocol (IPMVP): Concepts and Options for Determining Energy and Water Savings, Volume 1. This plan contains methodology that shall provide verification of the estimated program savings through direct utility billing comparisons, engineering calculations and/or field measurements.

M&V methods can differ based on the type, size and complexity of the project, as well as the availability of data, level of assurance of saving, financing constraints, and energy costs. The M&V methods used for this project are detailed herein and were selected to be the most cost effective while still providing a reasonable assurance of the savings calculations.

IPMVP 2012 Volume 1 provides an overview of the IPMVP Options, as illustrated below:

M&V Option	M&V Methodology Description	How Savings Are Calculated
Option A Retrofit Isolation: Key Parameter Measurement	Savings are determined by field measurement of the key performance parameter(s) which define the energy use of the EEM's affected system(s) and/or the success of the project. Measurement frequency ranges from short-term to continuous, depending on the expected variations in the measured parameter, and the length of the reporting period. Parameters not selected for field measurement are estimated. Estimates can be based on historical data, manufacturer's specifications, or engineering judgment. Documentation of the source or justification of the estimated parameter is required. The plausible savings error arising from estimation rather than measurement is evaluated.	Engineering calculation of baseline and reporting period energy from short-term or continuous measurements of key operating parameter(s) and estimated values. Routine and non-routine adjustments as required.
Option B Retrofit Isolation: All Parameter Measurement	Savings are determined by field measurement of the energy use of the EEM-affected system. Measurement frequency ranges from short-term to continuous, depending on the expected variations in the savings and the length of the reporting period.	Short-term or Continuous measurements of baseline and reporting period energy, and/or engineering computations using measurements of proxies of energy use. Routine and non-routine adjustments as required.
Option C Whole Facility	Savings are determined by measuring energy use at the whole facility or sub-facility level. Continuous measurements of the entire facility's energy use are taken throughout the reporting period.	Analysis of whole facility baseline and reporting period (utility) meter data. Routine adjustments as required, using techniques such as simple comparison or regression analysis. Non-routine adjustments as required.
Option D Calibrated Simulation	Savings are determined through simulation of the energy use of the whole facility, or of a sub-facility. Simulation routines are demonstrated to adequately model actual energy performance measured in the facility. This Option usually requires considerable skill in calibrated simulation.	Energy use simulation, calibrated with hourly or monthly utility billing data. (Energy end use metering may be used to help refine input data.)

Selected Measurement and Verification Options

The below table illustrates the selected IPMVP Options for the EEMs covered under this M&V plan:

Site	Renewable Energy Systems
Sal Mosqueda Community Center	A, C
Roeding Park	A, C
Inspiration Park	A, C
Marry Ella Brown Community Center Park	A, C
Fire Department HQ	A, C
Ted C Wills Community Center	A, C
Police Department Regional Training Facility	A, C

The particular options selected for each EEM were based on a number of related issues including: EEM complexity, EEM cost, EEM savings, cost of M&V and the ability to accurately determine holistic building operations. If more than one option is selected, either option will be considered valid by ABS and the Purchaser. The baseline and the post-installation energy use depend on various system and external factors, such as utilized setpoints, energy demand, operating hours, occupancy, weather conditions, and energy rates. Development of the baseline, post installation consumption, cost avoidances and simple payback for each EEM covered by this M&V plan includes:

- Stipulated Values – These agreed upon values are important in the overall calculations for energy consumption, financial calculations, and operating conditions.
- Developed/Measured Values – These are the values determined by spot or short-term measurement. Values are determined based on a sound engineering approach to variable determination. Both values used for baseline consumption and values to be measured/determined as parts of the post installation are detailed.
- Assumptions – Some values that are assumed in order to calculate energy use are necessary in certain circumstances.
- Calculations – The necessary calculations for baseline energy usage, costing, and annual savings for evaluating the estimated and actual savings of EEMs.
- Pre-Retrofit Measurements – EEMs may have a section detailing the measurements required prior to the retrofit. These measurements are used to establish the baseline or adjustments required to establish an accurate baseline.
- Post Retrofit Measurements – EEMs may have a section that details the measurements required if any after the retrofit is completed. This section is utilized to detail the type of measurements required for verification of the energy savings calculations.
- Adjustments – EEMs may have a section for adjustments. This section includes possible adjustments to the actual Energy Audit Report and energy information, appropriate adjustments to the M&V plan, and adjustments to any savings guarantee. This section is utilized to anticipate changes necessary due to field conditions and provide an appropriate response in the verification of actual energy and cost avoidances.
- Commissioning – EEMs may have a section regarding the commissioning process. This provides the detail for how the savings will be verified upon project completion, and the type of inspection that will be completed, and the billing method for verified savings. This section is utilized to provide a standard approach for each EEM upon project completion.
- ABS will follow the agreed-upon M&V protocols for the measurement period and will prepare post installation reports with supporting documentation for the Purchaser.

Measurement and Verification Plan

IPMVP Option A: Retrofit Isolation, Key Parameter Measurement
For Solar Photovoltaic System

M&V Procedure
This option shall provide for the measurement of at least one variable pre- and post-retrofit with other variables allowed for stipulation. For this installation, the kilowatt-hour (kWh) production from the solar PV systems shall be measured and recorded.

Stipulated Values
The solar system savings are stipulated for the purposes of M&V. Values are obtained from the expected solar kWh production outlined in the Solar Systems Attachment and assuming a NEM 3.0 tariff with the utility. The solar panel degradation factor (0.8%/year), avoided energy cost ($/kWh, based on the City of Fresno rate schedule) and utility escalation rate (5.50%/year) are stipulated for the solar photovoltaic systems. Stipulated values are agreed to by Purchaser.

Savings Calculations
The calculations for the baseline energy consumption and post installation savings provided the basis for the overall financial viability of these EEMs. The following equations summarize the calculation of savings:

> Electricity Production*: Electricity production of the PV system is determined by recording the kilowatt hours (kWh) off the net electric meter and recording the results.*
>
> Dollar Savings: *After recording kWh production, each site's avoided energy cost ($/kWh), as shown in Utility Baseline, shall be used to determine dollar savings. Dollar Savings = (Annual kWh production) x (Avoided $/kWh) = Annual $ kWh Saved*

Maintenance of System
Calculation of energy cost savings from the solar PV systems are contingent upon the Purchaser maintaining an active operations and maintenance (O&M) contract with a solar service provider for the term of the solar lease agreement.

Post-Retrofit Measurements
Electrical energy (kWh) produced from the solar PV systems recorded from the net electrical meter.

Adjustments
For this EEM, the following adjustments are allowed for the purposes of Measurement and Verification:

- Addition or subtraction to the square footage of facilities.
- Utility rates, billing days or degree days.
- Addition or subtraction of electrical load at the facilities.
- Changes in the solar PV system sizing, location and layout.
- Changes in the conditions at or near any of the sites, which causes additional shading, soiling, or otherwise reduced performance of the solar PV systems.
- Adjustment to the Guaranteed Production values for weather shall use local weather data as recorded during the corresponding period.
- To the extent that the System output is negatively impacted by casualty, government regulation and or restriction that is beyond the Contractor's control to remedy within a reasonable time period, the Parties shall negotiate in good faith a modification of the Guaranteed Production.

Excused Production Losses
For this EEM, the following events are excused from production losses and any necessary adjustments are allowed for the purposes of Measurement and Verification:

- Force Majeure Events: Lost production from the beginning of a Force Majeure Event until production limiting factors caused by the Force Majeure Event have been remedied.

- Grid Event: Lost production when a fluctuation in the Grid frequency or voltage causes the inverters or the System to disconnect from the Grid. The "Grid" is defined to be the system receiving power exported from the System.
- Grid Outage: Lost production when a failure in the grid or Interconnection Infrastructure prevented energy from being exported from the solar facility. "Interconnection Infrastructure" means that utility-owned and maintained interconnection equipment (the substation including but not limited to transformers, switches, and protective relays) that is used to connect the Facility to the utility grid. Grid operator/owner ordered curtailments for any reason, other than an issue in the System, is a Grid Outage.
- Weather Events: Lost production from weather that limits or prevents safe operation of the solar facility including floods, snow, hurricanes, tornadoes, insolation-limiting wildfires, and volcanic activity.
- Purchaser Caused: Lost production when System dc capacity is off-line due to outages attributable to Purchaser's decision to perform or cause to be performed, any investigations, studies, operations, construction, installation and maintenance work or other activities deemed appropriate by ABS at its sole discretion.

Commissioning

Commissioning shall consist of inspections and a final Commissioning report. Commissioning of the new solar PV system shall include securing the Utility Interconnect agreement, proper alignment of the solar panels and functional testing.

Measurement and Verification Plan

IPMVP Option C: Whole Facility

M&V Procedure

The Measurement and Verification (M&V) Plan following IPMVP Option C protocol is designed to evaluate the energy performance of the whole facility, not just individual EEMs. The energy performance is assessed through utility meters, whole-facility meters, or sub-meters. The measurement boundary encompasses either the whole facility or a major section of the facility where EEMs were installed. Option C determines the combined savings of all the EEMs installed at the facility and is monitored by the associated energy meter. Savings reported under this Option will include the positive or negative effects of any non-EEM changes made in the facility because whole-facility meters are used.

Adjustments

Adjustments will be computed from identifiable physical facts about the energy governing characteristics of equipment within the measurement boundary. Adjustments are used to express both pieces of measured energy data under the same set of conditions. Two types of adjustments are possible:

- *Routine Adjustments* are used to account for any energy-governing factors, expected to change routinely during the reporting period. Routine Adjustments are completed by developing a mathematical model of each meter's energy-use pattern. Typically, the baseline model includes factors derived from regression analysis, which correlates energy to one or more independent variables such as occupancy, weather, and metering period length. Values of independent variables over the reporting period can be inputted into the baseline model to predict what the baseline energy consumption would have been had if no EEM's were installed.
- *Non-Routine Adjustments* are used to account for those energy-governing factors which are not usually expected to change, such as: the facility size, the design and operation of installed equipment, or the type of occupants. ABS will monitor these static factors for change throughout the reporting period. Adjustments will be based on industry standards and sound engineering principles as they pertain to the specific affected system.

Metering

Whole-facility energy measurements can use the utility's meters. Utility meter data is considered 100% accurate for determining savings because this data defines the payment for energy. The energy supplier's meter(s) may be equipped or modified to provide output that can be recorded by the facility's monitoring equipment. Meter data can be hourly, daily or monthly whole-facility data.

Savings Calculations

The calculations for the baseline energy consumption and post retrofit savings shall be completed in accordance with the industry guidelines set forth by IPMVP and ASHRAE. The baseline period and reporting period should use complete years of continuous data (12, 24, or 36 months). The electrical consumption reduction of the facility (measured in kWh and/or kW) shall be reported as Savings, or Avoided Energy Use, in which the savings are stated under the conditions of the reporting period and determined by the following equation:

Energy Savings (Avoided Energy Use) = (Baseline Energy ± Routine Adjustments to reporting-period conditions ± Non-Routine Adjustments to reporting-period conditions) - Reporting-Period Energy

The price schedule of the reporting period will be used to compute the "avoided cost" on a meter-by-meter basis. The price schedule will be obtained from the utility and will include all elements that are affected by metered amounts, such as consumption charges, demand charges, power factor, and demand ratchets. In the event of a significant decrease in energy prices, the price schedule used for savings reporting will be that which prevailed at the time of commitment to the investment. Cost savings are determined by applying the appropriate rate / price schedule in the following equation:

Cost Savings (Avoided Cost) = Cost of Baseline Energy - Cost of Reporting-Period Energy

Attachment 2

Utility Baseline Summary

Site Name	Site Address
Sal Mosqueda Community Center	4670 E Butler Ave, Fresno, CA 93702
Roeding Park	890 W Belmont Ave, Fresno, CA 93728
Inspiration Park	5770 W Gettysburg Ave, Fresno, CA 93722
Marry Ella Brown Community Center Park	1350 E Annadale Ave, Fresno, CA 93706
Fire Department HQ	911 H Street, Fresno, CA 93721
Park # 52 - Ted C Williams Community Center	770 N San Pablo Ave, Fresno, CA 93728
Police Department Regional Training Facility	6375 W. Central Ave, Fresno, CA 93706

Site Name	Meter Number	Annual Use(kWh)	Annual Cost($)	Blended Rate($/kWh)
Sal Mosqueda Community Center	1009947726	324,141	$125,327	$0.387
Roeding Park	1006590882	226,288	$96,067	$0.425
Inspiration Park	1006911186	135,366	$52,869	$0.391
Marry Ella Brown Community Center Park	1009516291	203,235	$76,159	$0.375
Fire Department HQ	1009502813	219,471	$82,546	$0.376
Park # 52 - Ted C Williams Community Center	1010078164	285,708	$105,006	$0.368
Police Department Regional Training Facility	1009487680	181,799	$79,340	$0.436

The baselines have been calculated using actual data for the specific meters for each site. The time period used for the utility baseline is August 2024 to July 2025.

Attachment 3

Renewable Energy Project Cashflow

DIVISION II

GENERAL CONDITIONS

DIVISION II
GENERAL CONDITIONS
DEFINITIONS (NONFEDERAL)

Wherever used in the Specifications, including the Instructions to Bidders and the Bid Proposal, or any of the Contract documents, the following words shall have the meaning herein given, unless the context requires a different meaning.

1. "Bidder" shall mean and refer to each person or other entity submitting a bid proposal, whether or not such person or entity shall become a Seller by virtue of award of a Contract by the Buyer.
2. California Building Code (CBC), Latest Edition; California Plumbing Code (CPC), Latest Edition; California Mechanical Code (CMC), Latest Edition; National Electrical Code (NEC), Latest Edition; California Fire Code (CFC), Latest Edition; California Health and Safety Code (as applicable). For purposes of this definition, “Latest Edition” shall mean the edition, and to the extent, adopted by the City through the City of Fresno Municipal Code.
3. “City,” "Buyer," "Owner," "Vendee," "City of Fresno" shall each mean and refer to the City of Fresno, California.
4. "City Standard Specifications" - City of Fresno, Standard Specifications, Department of Public Works, dated September 2010 and as amended from time-to-time.
5. "Construction Manager" shall mean and refer to the Owner’s authorized representative at the Job Site, in responsible charge of administering the Contract. The Construction Manager shall be the single point of contact for all correspondence, submittals, progress payment requests, and contacts to and from the Design Builder.
6. "Contract," "Contract Documents" shall mean and refer to these Specifications, including the Instructions to Bidders, the Bid Proposal, and any addenda thereto, the Agreement and all other standard Specifications, Buyer's Specifications and other papers and documents incorporated by reference into or otherwise referred to in any of the foregoing documents, whether or not attached thereto.
7. “Design Builder,” "Seller," "Vendor," "Supplier" shall each mean and refer to each person or other entity awarded a Contract hereunder and named or to be named in the Agreement with the Buyer to furnish the goods or services, or both, to be furnished under the Contract.
8. "Council," "City Council" shall each mean and refer to the Council of the Buyer.
9. "Engineer," "City Engineer," shall mean and refer to the City Engineer and any duly authorized representative.
10. "Goods," "Merchandise" shall each mean and refer to the equipment, material, article, supply, or thing to be furnished by the Seller under the Contract.
11. "Purchasing Manager" shall mean and refer to the Purchasing Manager of the Buyer.
12. "Specifications" shall mean and refer to all of the Contract Documents.
13. "State Standard Specifications" - State of California, Department of Transportation, Standard Specifications, Latest Edition.
14. “Working day” shall mean and refer to City regular business day.

INSURANCE REQUIREMENTS

(a) Throughout the life of this Agreement, DESIGN BUILDER shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, DESIGN BUILDER or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to DESIGN BUILDER shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve DESIGN BUILDER of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by DESIGN BUILDER shall not be deemed to release or diminish the liability of DESIGN BUILDER, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by DESIGN BUILDER. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of DESIGN BUILDER, vendors, suppliers, invitees, contractors, sub-contractors, subcontractors, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."

2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

MINIMUM LIMITS OF INSURANCE

DESIGN BUILDER shall procure and maintain for the duration of the contract insurance with limits of liability not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:
1. COMMERCIAL GENERAL LIABILITY
(i) $2,000,000 per occurrence for bodily injury and property damage;
(ii) $2,000,000 per occurrence for personal and advertising injury;
(iii) $4,000,000 aggregate for products and completed operations; and,
(iv) $4,000,000 general aggregate applying separately to the work performed under the Agreement.

2. COMMERCIAL AUTOMOBILE LIABILITY
$1,000,000 per accident for bodily injury and property damage.

3. Workers' Compensation Insurance as required by the State of California with statutory limits and EMPLOYER'S LIABILITY with limits of liability not less than:
 (i) $1,000,000 each accident for bodily injury;
 (ii) $1,000,000 disease each employee; and,
 (iii) $1,000,000 disease policy limit.

4. BUILDERS RISK (Course of Construction) insurance in an amount equal to the completed value of the project with no coinsurance penalty provisions. (Only required if the project includes new construction of a building, or renovation of, or addition to, an existing building.)

5. CONTRACTORS' POLLUTION LEGAL LIABILITY with coverage for bodily injury, property damage or pollution clean-up costs that could result from of pollution condition, both sudden and gradual. Including a discharge of pollutants brought to the work site, a release of pre-existing pollutants at the site, or other pollution conditions with limits of liability of not less than the following:

(i) $1,000,000 per occurrence; and,
(ii) $2,000,000 general aggregate per annual policy period.

(a) In the event this Agreement involves the transportation of hazardous material, either the Commercial Automobile policy or other appropriate insurance policy shall be endorsed to include Transportation Pollution Liability insurance covering materials to be transported by DESIGN BUILDER pursuant to the Agreement.

UMBRELLA OR EXCESS INSURANCE

In the event DESIGN BUILDER purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

DESIGN BUILDER shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and DESIGN BUILDER shall also be responsible for payment of any self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

(i) All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice has been given to CITY, except ten (10) days for nonpayment of premium. DESIGN BUILDER is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, DESIGN BUILDER shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, DESIGN BUILDER shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than seven (7) calendar days following to the expiration date of the expiring policy.

(ii) The Commercial General, Pollution and Automobile Liability insurance policies shall be written on an occurrence form.

(iii) The Commercial General, Pollution and Automobile Liability insurance policies shall be endorsed to name City, its officers, officials, agents, employees and volunteers as an additional insured for all ongoing and completed operations. The Commercial General endorsements must be as broad as that contained in ISO Forms: CG 20 10 11 85 or both CG 20 10 & CG 20 37.

(iv) The Commercial General, Pollution and Automobile Liability insurance shall contain, or be endorsed to contain, that the CONTRACTORS' insurance shall be primary to and require no contribution from the City. Coverage under the General Liability policy shall be as broad as that contained in ISO Form CG 20 01 04 13. These coverages shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers.

(v) If DESIGN BUILDER maintains higher limits of liability than the minimums shown above, City requires and shall be entitled to coverage for the higher limits of liability maintained by DESIGN BUILDER.

(vi) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these polices will be twice the above stated limits.

(vii) All policies of insurance shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers.

(viii) The Builder's Risk Insurance shall have the policy endorsed to provide the City of Fresno to be named as a Loss Payee.

PROVIDING OF DOCUMENTS

DESIGN BUILDER shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required herein All certificates and applicable endorsements are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, DESIGN BUILDER shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of DESIGN BUILDER shall also be required to provide all documents noted herein.

SUBCONTRACTORS

If DESIGN BUILDER subcontracts any or all of the services to be performed under this Agreement, DESIGN BUILDER shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no Side Agreement is required, DESIGN BUILDER will be solely responsible for ensuring that it's subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry and include the CITY as an Additional Insured with Primary and Non Contributory coverage and a Waiver of Subrogation consistent with the requirements herein.

PERFORMANCE AND PAYMENT BONDS

The Design Builder shall provide two good and sufficient surety bonds from a corporate surety admitted by the California Insurance Commissioner to do business in the State of California, on forms as those provided by the City in these Specifications and approved by the City.

(a) The "Payment Bond" shall be for not less than 100% under $10M; 110% $10M and over of the Contract price, to satisfy claims of material suppliers and of mechanics and laborers employed by Design Builder on the work. The bond shall be maintained by the Design Builder in full force and effect until the work is completed and accepted by the City, and until all claims for materials and labor are paid, and shall otherwise comply with

Chapter 5, Title 3, Part 6, Division 4 of the California Civil Code.

(b) The "Faithful Performance Bond" shall be for 100% under $10M; 110% $10M and over of the Contract price to guarantee faithful performance of all work, within the time prescribed, in a manner satisfactory to the City, and that all materials and workmanship will be free from original or developed defects.

INDEMNIFICATION

To the furthest extent allowed by law, including California Civil Code section 2782, DESIGN BUILDER shall indemnify, defend and hold harmless CITY and each of its officers, officials, employees, agents, and volunteers from any and all claims, demands, actions in law or equity, loss, liability, fines, penalties, forfeitures, interest, costs including legal fees, and damages (whether in contract, tort, or strict liability, including but not limited to personal injury, death at any time, property damage, or loss of any type) arising or alleged to have arisen directly or indirectly out of (1) any voluntary or involuntary act or omission, (2) error, omission or negligence, or (3) the performance or non-performance of this Contract . DESIGN BUILDER'S obligations as set forth in this section shall apply regardless of whether CITY or any of its officers, officials, employees, agents, or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of CITY or any of its officers, officials, employees, agents or volunteers.

To the fullest extent allowed by law, and in addition to the express duty to indemnify, DESIGN BUILDER, whenever there is any causal connection between the DESIGN BUILDER's performance or non-performance of the work or services required under this Contract and any claim or loss, injury or damage of any type, DESIGN BUILDER expressly agrees to undertake a duty to defend CITY and any of its officers, officials, employees, agents, or volunteers, as a separate duty, independent of and broader that the duty to indemnify. The duty to defend as herein agreed to by DESIGN BUILDER expressly includes all costs of litigation, attorneys fees, settlement costs and expenses in connection with claims or litigation, whether or not the claims are valid, false or groundless, as long as the claims could be in any manner be causally connected to DESIGN BUILDER as reasonably determined by CITY.

Upon the tender by CITY to DESIGN BUILDER, DESIGN BUILDER shall be bound and obligated to assume the defense of CITY and any of its officers, officials, employees, agents, or volunteers, including the a duty to settle and otherwise pursue settlement negotiations, and shall pay, liquidate, discharge and satisfy any and all settlements, judgments, awards, or expenses resulting from or arising out of the claims without reimbursement from CITY or any of its officers, officials, employees, agents, or volunteers.

It is further understood and agreed by DESIGN BUILDER that if CITY tenders a defense of a claim on behalf of CITY or any of its officers, officials, employees, agents, or volunteers and DESIGN BUILDER fails, refuses or neglects to assume the defense thereof, CITY and its officers, officials, employees, agents, or volunteers may agree to compromise and settle or defend any such claim or action and DESIGN BUILDER shall be bound and obligated to reimburse CITY and its officers, officials, employees, agents, or volunteers for the amounts expended by each in defending or settling such claim, or in the amount required to pay any judgment rendered therein.

The defense and indemnity obligations set forth above shall be direct obligations and shall be separate from and shall not be limited in any manner by any insurance procured in accordance with the insurance requirements set forth in this Contract. In addition, such obligations remain in force regardless of whether CITY provided approval for, or did not review or object to, any insurance DESIGN BUILDER may have procured in accordance with the insurance requirements set forth in this Contract. The defense and indemnity obligations shall arise at such time that any claim is made, or loss, injury or damage of any type has been incurred by CITY, and the entry of judgment, arbitration, or litigation of any claim shall not be a condition precedent to these obligations.

The defense and indemnity obligations set forth in this section shall survive termination or expiration of this Contract.

If DESIGN BUILDER should subcontract all or any portion of the work to be performed under this Contract, DESIGN BUILDER shall require each subcontractor to Indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms as set forth above.

This section shall survive termination or expiration of this Contract.

GENERAL GUARANTY

Neither the final certificate of payment nor any provision in the Contract Documents nor partial or entire occupancy of the premises by the City shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the Design Builder of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Design Builder shall remedy any defects in the work and pay for any damage to other work resulting therefrom, which shall appear within a period of 1 year from the date of final acceptance of work unless a longer period is specified. The Engineer will give notice of observed defects with reasonable promptness.

PRECEDENCE OF CONTRACT DOCUMENTS

The order of precedence of documents shall be: (1) Rules and Regulations of Federal Agencies relating to the source of funds for this project; (2) Permits from other agencies as may be required by law; (3) Supplemental Agreements, Change Orders, or Contract the one dated later having precedence over another dated earlier; (4) Special Conditions; (5) General Conditions; (6) Technical Specifications; (7) Plans; (8) Standard Specifications; (9) Standard Plans.

Detailed Plans shall have precedence over general Plans.

Whenever any conflict appears in any portion of the Contract, it shall be resolved by application of the order of precedence.

CONTRACT DOCUMENTS

The Design Builder shall submit the required contract documents in a form acceptable to the Capital Projects Department (Capital Administration Division, 747 R Street, 2nd Floor, Fresno, California 93721) within 15 calendar days (except in the event federal funding is applicable to this Contract, then 10 working days) from the Notice of Award of Bids.

Failure to provide said documents within the designated period shall be sufficient cause to forfeit the Design Builder's Bid Deposit and initiate a departmental recommendation to the Council to award project to the next lowest responsive and responsible Bidder.

NOTE: Contract Documents consist of the following: Contract, Labor and Materials and Faithful Performance Bonds, Insurance Certificates, Workers' Compensation Insurance Certificate, Fair Employment Form, and any other information which may be required by these Specifications.

The Design Builder shall utilize the City's Construction Management Information System (CMIS) for the submission, management, and review of all project-related data and documents throughout the duration of the Contract. CMIS is a web-based electronic project management system provided by the City at no cost to the Design Builder. It is intended to facilitate the electronic exchange of information, automate key construction management processes, provide electronic notifications of project activities, and serve as the primary platform for the submission and oversight of contract documentation.

All construction management documentation, including but not limited to daily inspection reports, submittals, Requests for Information (RFIs), pay estimates and change orders, shall be submitted and reviewed through CMIS. The use of CMIS by both the City and the Design Builder is mandatory and shall serve as the official record of project communications and documentation unless otherwise authorized in writing by the City.

PRE-CONSTRUCTION MEETING AND SCHEDULE OF WORK

Prior to the start of construction, the Construction Management Division will call a meeting with all affected City Departments, governmental agencies, or utility companies to coordinate the construction with the Design Builder so that no delays will be encountered due to conflicts of operations.

The Design Builder will be called upon to indicate, at this meeting, the proposed operations to accomplish the work. The Design Builder's attention is called to Section 6-1, City Standard Specifications, and the following requirements:

- The Design Builder shall submit a written tentative schedule of work to the Engineer at the pre-construction meeting.
- The final schedule of work shall be submitted no later than 5 working days after the pre-construction meeting.
- If the Project does not require a Stormwater Pollution Prevention Plan (SWPPP), pre the specification outlined in Division IV, the awarded Design Builder shall begin job site activities 15 calendar days after receiving notice that the contract has been executed by the City.
- If the Project requires a Stormwater Pollution Prevention Plan (SWPPP), per the specification outlined in Division IV, the awarded Design Builder shall begin job site activities within 55 calendar days after receiving notice that the contract has been executed by the City

- Modifications to the start of job site activities shall be approved in writing by the Engineer

If the Design Builder delays the submittal of the final work schedule, the City may deduct the number of calendar days beyond the 5 working days allowed for submittal from the number of working days allowed for completion of the project.

Design Builder's proposed schedule shall be in the form of a tabulation, chart, or graph and shall be in sufficient detail to show the chronological relationship of all activities of the project including, but not limited to, estimated starting and completion dates of various activities, procurement of materials, and scheduling of equipment. The construction schedule shall reflect completion of all work under the Contract within the specified time and in accordance with these Specifications. Once submitted to the Engineer for review and approval, the Engineer shall either approve or reject said Project Schedule. If rejected, it shall be revised to incorporate the necessary changes, deletions or additions and resubmitted to the Engineer. If the Project Schedule is approved by the Engineer, the Project Schedule shall become the baseline schedule for the Project. The Project Schedule is subject to change during construction and will be continually updated and adjusted throughout the Project by Design Builder on at least a monthly basis.

The City will use the Project Schedule for planning, executing, and monitoring Project progress.

The Design Builder will prepare a monthly schedule update. The Design Builder, at each weekly Project meeting shall provide City with two-week look-ahead schedules identifying its planned prosecution of the Work.

Design Builders will exchange scheduling information with subcontractors and suppliers. Design Builder will order work, equipment, and materials with sufficient lead-time to avoid interruption of the Work.

The City may issue a Notice to Proceed and start contract time upon the required start of job site activities, as specified herein, unless otherwise approved in writing by the Engineer. It is the Design Builders responsibility to ensure that all necessary pre-construction coordination is completed, submittals are approved, and permits issued in order for the work to commence.

OVERTIME INSPECTION FEES

The Design Builder shall promptly pay the City for all overtime inspections in accordance with existing resolutions or fee schedule of the City unless the charges for such inspection have been specifically waived elsewhere within this Contract. Overtime inspection charges will be made for all inspections on Saturdays, Sundays, and City Holidays, and hours worked by the inspector other than those of the normal City working days. If charges are not paid within 15 days of invoice, City may elect in its sole discretion to withhold unpaid charges from any progress payments.

SUBSTITUTION OF MATERIALS

(After Award)

See City of Fresno Standard Specifications, Section 4-1.5 entitled "Trade Names or Equals," which shall prevail.

Where the Design Builder has good and sufficient reason to suggest a substitution after bidding, it will within 14 days after the signing of the Contract, submit his or her request for substitution in writing and shall indicate all information required thereof including reasons for substitution, difference in price or cost, difference in size, difference in color, etc., and it will be approved or disallowed within 30 days.

No consideration shall be given to request for substitution not in accordance with the above conditions. The Engineer will be the sole judge in matters concerning equality of proposed substitutions and the decision shall be final. The burden of proof as to the quality of any proposed substitutions shall be upon the Design Builder.

Supplier must submit a letter to guarantee the replacement of any material that appears defective on the job for a period of 1 year after acceptance of the project.

ASSIGNMENT OF PAYMENT

Design Builder hereby agrees it will not assign the payment of any monies due it (him/her) from the City under the terms of this Contract to any other individual(s), corporation(s) or entity(s). The City retains the right to pay any and all monies due to Design Builder directly to Design Builder.

PATENTS

For the purchase of equipment and material, the Vendor shall hold the City of Fresno, its officers and employees, harmless from any and all liability for damages arising out of the use of any patented material, equipment, device or process incorporated into or made a part of or required by the manufacturer's Specifications to be used on or in connection with the material, equipment or supplies purchased by the Buyer pursuant to these Specifications, and Vendor agrees, by submission of a proposal hereunder, to defend the Buyer, at Vendor's sole expense, in any action or suit for damages or injunctive relief on account of any allegedly unauthorized use of or infringement of patent rights on any patented material, equipment, device or process, if the Buyer is named as a defendant in any such action or suit.

CODES AND ORDINANCES

Nothing in these Specifications is to be construed to permit work not conforming to applicable codes.

MAINTENANCE OF RECORDS

Design Builder and its subcontractors are required to maintain books, records, and other documents pertinent to the work of this Contract in accordance with Generally Accepted Accounting Principles. All such books, records, and other documents pertaining to the Contract shall be available to City or its authorized representatives upon request during regular business hours throughout the life of the Contract and for a period of 5 years after final payment or, if longer, for any period required by law or any State or Federal funding agreement applicable to this Contract. In addition, all books, documents, papers and records of Design Builder and its subcontractors pertaining to the Contract shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time by City or its authorized representatives, (and, in the event State or Federal funding is applicable to this Contract, then the respective State of California, State of California Department of Transportation (Caltrans), the State of California State Auditor, the United States, the Federal Highway Administration (FHWA), or any authorized representatives of the aforementioned), and shall allow interviews during normal business hours of any employees who might reasonably have information related to such records. If any litigation, claim, negotiations, audit, or other action is commenced before the expiration of said time period, all records must be retained until such action is resolved, or until the end of said time period whichever shall later occur. Failure or refusal by Design Builder or its subcontractors to comply with this provision shall be considered a substantial failure to comply with this Contract, and City may declare Design Builder in default as set forth in these Specifications, withhold payment to Design Builder, or take any other action it deems necessary to protect its interests. This provision shall survive expiration or termination of this Contract.

Design Builder and its subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs by line item for the Project. The accounting system shall enable the determination of incurred costs at interim points of completion and provide support for reimbursement payment vouchers or invoices sent to or paid by the City.

Design Builder and its subcontractors shall make the Contract and any State or Federal funding agreement materials applicable to this Contract available at their respective offices at all reasonable times during the entire Project period and 5 years from the date of final payment to Design Builder. This provision shall survive expiration or termination of this Contract.

NONFEDERAL LABOR STANDARD PROVISIONS

GENERAL PROVISIONS: The following Nonfederal Labor Standards Provisions, including the following provisions concerning: maximum hours of work, minimum rates of pay, and overtime compensation, with respect to the categories and classifications of employees hereinafter mentioned are included in the Contract pursuant to the requirements of applicable State or local laws, but the inclusion of such provisions shall not be construed to relieve the Design Builder or any subcontractor from the pertinent requirements of any corresponding Federal Labor-Standard Provisions of this Contract. In cases the minimum rates of pay set forth below shall be higher than the minimum rates of pay required by or set forth in the Federal Labor-Standards Provisions of this Contract for corresponding classifications, the minimum rates of pay set forth below shall be deemed, for the purpose of this Contract, to be the applicable minimum rates of pay for such classifications. The limitations, if any, in these Nonfederal Labor Standards Provisions upon the hours per day, per week or month which employees engaged on the work covered by this Contract may be required or permitted to work thereon shall not be exceeded.

SCHEDULE OF WAGES AND SALARIES: In accordance with the provisions of sections 1770 to 1781, inclusive of the Labor Code of the State of California and/or section (1)(b) of the United States Labor Code, the Director of Industrial Relations and/or the United States Secretary of Labor shall ascertain the general prevailing rate of wages applicable to the work to be done under this Contract to be included in these Specifications by reference. (For any questions regarding wage rates or specific wage rate determinations, contact the Contract Compliance Officer at City of Fresno Capital Projects Department, Capital Administration Division, 747 R Street, 2nd Floor, Fresno, California 93721, (559) 621-8880.)

LABOR CODE SECTION 1775: PENALTIES FOR UNDER-PAYMENT OF WAGES: The Design Builder and each subcontractor shall comply with California Labor Code section 1775 and pay not less than the wages established by the Director of the Department of Industrial Relations and/or the Federal government. In accordance with such section 1775, Design Builder or such subcontractor shall, as a penalty to the City, forfeit up to $200.00, as determined by the Labor Commissioner, for each calendar day or portion thereof for each worker under this Contract paid less than the established wage rates. These penalties shall be withheld from progress payments then due. The Design Builder shall contain in each subcontract the requirements hereunder.

PENALTIES FOR VIOLATION OF EIGHT HOUR DAY: Eight hours labor constitutes a regular day's work under this Contract. Design Builder or any subcontractor under him/her shall forfeit as a penalty to the City $25.00 for each worker employed in the execution of this Contract by Design Builder or such subcontractor for each calendar day during which any such worker is required or permitted to labor more than eight hours in any one calendar day and 40 hours in any one calendar week in violation of sections 1810 to 1815, inclusive, of the California Labor Code. Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of the California Labor Code, and notwithstanding the foregoing, work performed by employees of Design Builders and subcontractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours in excess of 8 hours per day at not less than one and one-half (1.5) times the basic rate of pay.

LABOR CODE SECTION 1777.5; EMPLOYMENT OF APPRENTICES: If this Contract involves $30,000 or more, the Design Builder and each subcontractor shall comply with California Labor Code section 1777.5, as it may be amended from time to time, the entire provisions of which are incorporated by this reference as if fully set forth herein, and Article 10, Subchapter 1, Chapter 2, Title 8 of the California Code of Regulations for all apprenticeable occupations applicable to the work as defined in such laws and regulations. Design Builder shall be responsible for the compliance with such Labor Code section for all apprenticeable occupations and shall contain in each subcontract the requirements hereunder. In accordance with section 1777.5 of the California Labor Code and the rules and regulations of the California Apprenticeship Council, properly indentured apprentices shall be employed in the execution of this Contract in at least the ratio of not less than 1 hour of apprentice work for every 5 hours of journeyman work (unless the respective Design Builder or subcontractor has been exempted from such ratio) and paid the prevailing rate of per diem wages for apprentices in the trade to which it is registered. The employment and training of each apprentice shall be in accordance with either the apprenticeship standards and apprentice agreements under which it is training, or the rules and regulations of the California Apprenticeship Council. Prior to commencing work on the Contract, Design Builder and each subcontractor shall submit contract award information to the City, if requested, and to an applicable apprenticeship program that can supply apprentices to the job site. The information shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. Within 60 days after concluding work on the Contract, the Design Builder and each subcontractor shall submit to the City, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the Contract. Design Builder shall employ apprentices for the number of hours computed before the end of the Contract or, in the case of the subcontractor, before the end of the subcontract and 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 job site.

FRESNO MUNICIPAL CODE SECTION 4-113; LABOR CODE SECTION 1777.5; EMPLOYMENT OF APPRENTICES: If this Contract involves $500,000 or more, the Design Builder shall contain in each subcontract the requirements hereunder and be responsible for providing all documentation required hereunder from subcontractor to the City. The Design Builder and each subcontractor shall provide documentation to City demonstrating compliance with the requirements of California Labor Code section 1777.5 and Article 10, Subchapter 1, Chapter 2, Title 8 of the California Code of Regulations by providing City copies of each of the following:

(i) All contract award information (e.g., completed form DAS 140) sent by Design Builder and by subcontractors to the State Division of Apprenticeship Standards and each applicable apprenticeship program in accordance with California Labor Code section 1777.5, as may be amended from time to time, including identification of addressee.

(ii) All requests by Design Builder and by subcontractors for approval, and all responses and certificates from any applicable apprenticeship program disapproving or approving Design Builder or subcontractor(s), to train apprentices; if any.

(iii) All requests by Design Builder and by subcontractors for dispatch of apprentices from any applicable apprenticeship program (e.g., completed form DAS 142); and all responses thereto, if any.

(iv) All certifications, if any, of Design Builder and of subcontractor(s) as an individual employer apprenticeship program by the State Division of Apprenticeship Standards or the California Apprenticeship Council.

(v) All apprenticeship agreements of apprentices employed by Design Builder and by subcontractor(s) and performing work under the Contract.

(vi) A verified statement by the Design Builder and by the subcontractor within 60 days after concluding the work of the respective journeyperson and apprentice hours performed on the Contract or subcontract.

(vii) All certificates of any exemption by the State Division of Apprenticeship Standards, California Apprenticeship Council or any apprenticeship program of Design Builder or subcontractor from any requirements of California Labor Code section 1777.5, as may be amended from time to time.

(viii) Other documentation as may be requested by City.

LABOR CODE SECTION 6705: If this Contract involves an estimated expenditure in excess of $25,000.00 and excavation of any trench or trenches five feet or more in depth, then your attention is directed to California Labor Code section 6705 relating to a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches, the entire provisions of which are incorporated by this reference as if fully set forth hereinafter.

Before execution of the Contract by the City, the Design Builder shall submit to the City and the Engineer shall accept, if satisfactory to him/her, said detailed plan.

If, in the Engineer's opinion, there is any noncompliance with said detailed plan, then the Design Builder shall stop forthwith all trench work until, either in the Engineer's or the State Division of Industrial Safety's opinion, there is compliance. The City shall not be liable for costs incurred by the Design Builder due to the work stoppage and the Design Builder will not be given nor is entitled to an extension of time to complete the work within the time set forth in this Contract due to the work stoppage.

WAGE AND PRICE CONTROL: Notwithstanding any provisions of the Contract to the contrary, the Design Builder shall be bound by the orders issued and rules and regulations adopted pursuant to the Economic Stabilization Act of 1970 (Public Law 91-379, 84 Statutes 799), as amended, or any subsequent Act of Congress.

COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970: This Contract is subject to all terms and conditions of the OCCUPATIONAL SAFETY AND HEALTH ACT of 1970, the California Occupational Safety and Health Act and their present and future amendments.

Design Builder expressly assumes responsibility for compliance therewith and warrants that all materials, supplies, and equipment provided or installed pursuant to this Contract, whether provided by the Design Builder, subcontractor, or a supplier, fully satisfy the requirements of said Acts. Design Builder shall, upon insertion in each Contract with a subcontractor or supplier of a clause by which the subcontractor or supplier warrants such compliance, be relieved of responsibility by the subcontractor or supplier.

<u>LABOR CODE SECTION 1776; PAYROLLS AND BASIC RECORDS</u>: The Design Builder and each subcontractor shall comply with California Labor Code section 1776, the entire provisions of which are incorporated by this reference as if fully set forth herein, and Design Builder shall contain in each subcontract the requirements hereunder.

(a) Accurate payroll records and basic records relating thereto shall be maintained by the Design Builder and each subcontractor during the course of the work and preserved for a period as required by law for all journeymen, apprentices, workers, and other employees employed in connection with the work. Such records shall contain information as on the payroll record forms provided by the Division of Labor Standards of the Department of Industrial Relations, the name, address, social security number, work classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents), daily and weekly number of hours worked, deductions made and actual per diem wages paid. The Design Builder shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to all employees affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

Design Builders employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b) (1) The Design Builder shall submit weekly (7 days after each week ending pay period) for each week in which any Contract work is performed a certified copy of all payrolls to the Engineer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. The Design Builder is responsible for the submission of certified copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Design Builder or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify under penalty of perjury under the laws of the State of California each of the following:

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause entitled "LABOR CODE SECTION 1776; PAYROLLS AND BASIC" and that such information is true, correct and complete;

(ii) That each employee employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions;

(iii) That each employee has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract;

(iv) Design Builder has complied with the requirements of California Labor Code sections 1771, 1811, and 1815 for any work performed hereunder by his or her employees.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b) (2) of this clause.

(4) The falsification of any of the above certifications may subject the Design Builder or Subcontractor to civil or criminal prosecution.

(c) The Design Builder or subcontractor shall make certified copies of all the records required under paragraph (a) of this clause available for inspection at all reasonable hours at the principal office of the Design Builder by, and furnished upon request to, the Engineer, the Division of Labor Standards Enforcement of the Department of Industrial Relations, the Division of Apprenticeship Standards of the Department of Industrial Relations, and each of their authorized representatives. A certified copy of the employee's record shall likewise be made available for inspection or furnished upon request by the employee or his or her authorized representative. The Design Builder shall provide hereunder the street address, city, and county of the location of the payroll records maintained by Design Builder and shall provide a notice of any change of location and address within 5 working days of such change. The Design Builder and subcontractors shall permit such representatives to interview employees during working hours on the job. If the Design Builder or subcontractor fails to submit the required records within 10 days after each week ending pay period, or to furnish or make them available for inspection within 10 days of request, (Design Builder has 10 days to comply) after written notice, the Design Builder shall forfeit $100.00 for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated, pursuant to California Labor Code section 1776. These penalties shall be withheld from progress payments then due.

<u>LABOR CODE SECTION 1771.1: CONSTRUCTION REGISTRATION WITH CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS:</u> A Design Builder or Subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered Design Builder to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the Design Builder is registered to perform public work

pursuant to Section 1725.5 at the time the contract is awarded.

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

The prime Design Builder is required to post job site notices prescribed by California Code of Regulations. All Contractors and Subcontractors must furnish electronic certified payroll records directly to the Division of Labor Standards Enforcement.

FAIR EMPLOYMENT PRACTICES AND NONDISCRIMINATION

In connection with the performance of work under this Contract, the Design Builder agrees as follows:

1. The Design Builder shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), marital status, political affiliation, sex, age (over 40), sexual orientation, and denial of family care leave or on any other basis prohibited by law. The Design Builder shall ensure that the treatment of employees and evaluation of applicants for employment are free of such discrimination and harassment. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Design Builder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State of California setting forth the provisions of this Fair Employment Practices section.

2. Design Builder and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

3. Design Builder assures City that it shall comply with the requirements of the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA; the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d (1988) et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (1989) and the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102 (1994); together with all applicable regulations and guidelines adopted to implement same. Said group of laws and requirements are collectively referred to in this Contract as the “anti-discrimination laws”.

4. The Design Builder will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a written notice advising the said labor union or workers' representative of the Design Builder's commitments under this section and shall post copies of the notice in

conspicuous places available to employees and applicants for employment.

5. The Design Builder will permit access to his or her records of employment, employment advertisements, application forms, and other pertinent data and records by the City, State of California, the State Fair Employment and Housing Commission, or any other appropriate agency designated by the City or the State of California, for the purposes of investigation to ascertain compliance with the Fair Employment Practices and Nondiscrimination section of this Contract.

6. Design Builder agrees to collect and maintain information to show compliance with the “anti-discrimination laws” including a list of discrimination complaints, reports of any compliance reviews conducted by other agencies descriptions of any pending discrimination-based lawsuits and data on the racial, ethnic, national origin, sex, and handicap characteristics of the population it serves.

7. Design Builder agrees to cooperate with City, and any other appropriate agency designated by the City, in all manner necessary to permit City and any such agency to adequately report to the United States Environmental Protection Agency on Design Builder’s compliance with the “anti-discrimination laws”.

8. A finding of willful violation of the Fair Employment Practices section of this Contract or of the California Fair Employment and Housing Act shall be regarded by the City as a basis for determining the Design Builder to be not a *responsible bidder* as to future contracts for which such Design Builder may submit bids, for revoking the Design Builder's prequalification rating, if any, and for refusing to establish, reestablish, or renew a prequalification rating for the Design Builder.

The City will deem a finding of willful violation of the California Fair Employment and Housing Act to have occurred upon receipt of written notice from the Fair Employment and Housing Commission that it has investigated and determined that the Design Builder has violated the California Fair Employment and Housing Act and has issued an order under California Government Code section 12973, section 12970, or obtained an injunction under California Government Code section 12973.

Upon receipt of such written notice from the Fair Employment and Housing Commission, the City shall notify the Design Builder that unless it demonstrated to the satisfaction of the City within a stated period that the violation has been corrected, that it will be reported to the City Council as not a *responsible bidder* on any future Contract.

9. The Design Builder agrees, that should the City determine that the Design Builder has not complied with the Fair Employment Practices section of this Contract, then pursuant to Labor Code sections 1735 and 1775, the Design Builder shall forfeit, as a penalty to the City, for each calendar day, or portion thereof, for each person who was denied employment as a result of such noncompliance, the penalties provided in the Labor Code for violation of prevailing wage rates. Such monies may be recovered from the Design Builder. The City may deduct any such damages from any monies due the Design Builder from the City. Furthermore, Design Builder agrees that the City shall have the right to terminate this Contract either in whole or in part, and any loss or damage sustained by City in securing the goods or services thereunder shall be borne and paid for by Design Builder and by the surety under the performance bond, if any, and City may deduct from any moneys due or thereafter may become due to Design Builder, the difference between the price named in the Contract and the actual cost thereof to City to cure Design Builder’s breach of the Contract.

10. Nothing contained in this Fair Employment Practices section shall be construed in any manner or fashion so as to prevent the City from pursuing any other remedies that may be available at law.

11. After award of the Contract, the Design Builder shall certify to the City that it has or will meet the following standards for affirmative compliance, which shall be evaluated in each case by the City:

(a) The Design Builder shall provide evidence, as required by the City, that it has notified all supervisors, foremen, and other personnel officers in writing of the content of the antidiscrimination clause and their responsibilities under it.

(b) The Design Builder shall provide evidence, as required by the City, that it has notified all sources of employee referrals (including unions, employment agencies, advertisement, Department of Employment) of the content of the antidiscrimination clause.

(c) The Design Builder shall file a Fair Employment Practices compliance report, as required by the City. Willfully false statements made in such reports shall be punishable as provided by law. The compliance report shall also spell out the sources of the work force and who has the responsibility for determining whom to hire, or whether or not to hire. The compliance report shall be kept current throughout the Contract in that the Design Builder shall report any changes in or additions to the answers therein, including changes in agreements with others. After the work or supplying materials is complete, and before final payment, the Design Builder shall submit a final statement of compliance.

(d) Personally, or through his or her representatives, the Design Builder shall, through negotiations with the unions with whom it has agreements, attempt to develop an agreement which will:

(1) Spell out responsibilities for nondiscrimination in hiring, referral, upgrading and training.

(2) Otherwise implement an affirmative antidiscrimination program in terms of the unions; specific areas of skill and geography, to the end that qualified disadvantaged workers will be available and given an equal opportunity for employment.

12. Design Builder’s signature on this Contract shall constitute a certification under the penalty of perjury under the laws of the State of California that Design Builder has, unless exempted, complied with the nondiscrimination program requirements of Government Code, Section 12990, and Title 2, California Code of Regulations, Section 8103.

13. The Design Builder will include the provisions of the foregoing paragraphs 1 through 12 in every first-tier subcontract so that such provisions will be binding upon each such subcontractor.

GENERAL MISCELLANEOUS

Independent Design Builder. In the furnishing of the work provided for herein, the Design Builder is acting as an independent Design Builder. Neither the Design Builder, nor any of its officers, associates, agents, or employees shall be deemed an employee, joint venturer, partner, or agent of the City for any purpose. However, the City shall retain the right to verify that the Design Builder is performing its respective obligations in accordance with the terms of the Contract.

Because of its status as an independent Design Builder, Design Builder and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to City employees. Design Builder shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare, and retirement benefits. In addition, together with its other obligations under this Contract, Design Builder shall be solely responsible, indemnify, defend and save City harmless from all matters relating to employment and tax withholding for and payment of Design Builder's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in City employment benefits, entitlements, programs and/or funds offered employees of City whether arising by reason of any common law, de facto, leased, or co- employee rights or other theory. It is acknowledged that during the term of this Contract, Design Builder may be providing services to others unrelated to City or to this Contract.

Notices. Any notice required or intended to be given to either party under the terms of this Contract shall be in writing and shall be deemed to be duly given if delivered personally or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of the Bid Proposal in the case of the Design Builder and at the address set forth on the signature page of the Contract in the case of the City, or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

Binding. Subject to the following section, once this Contract is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees, and representatives.

Assignment. The Contract is personal to the Design Builder and there shall be no assignment, transfer, sale, or subcontracting by the Design Builder of its rights or obligations under the Contract without the prior written approval of the City. Any attempted assignment, transfer, sale or subcontracting by the Design Builder, its successors, or assigns, shall be null and void unless approved in writing by the City.

Compliance with Law. In providing the services required under this Contract, Design Builder and its subcontractors shall at all times comply with all applicable laws of the United States, the State of California and City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Contract.

Waiver. The waiver by either party of a breach by the other of any provision of this Contract shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Contract. No provisions of this Contract may be waived unless in writing and signed by all parties to this Contract. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

Headings. The section headings in this Contract are for convenience and reference only and shall not be construed or held in any way to explain, modify, or add to the interpretation or meaning of the provisions of this Contract.

Severability. The provisions of this Contract are severable. The invalidity, or unenforceability of any one provision in this Contract shall not affect the other provisions.

Interpretation. The parties acknowledge that this Contract in its final form is the result of the combined efforts of the parties and that, should any provision of this Contract be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Contract in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

Exhibits. Each exhibit and attachment referenced in this Contract is, by reference, incorporated into and made a part of this Contract.

Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

No Third-Party Beneficiaries. The rights, interests, duties, and obligations defined within this Contract are intended for the specific parties hereto as identified in the preamble of this Contract. Notwithstanding anything stated to the contrary in this Contract, it is not intended that any rights or interests in this Contract benefit or flow to the interest of any third parties other than expressly identified within this section. The parties do intend that in the event that the State of California is funding the Project being constructed hereunder, that the State of California be a third-party beneficiary under this Contract and all rights, interest and benefits of this Contract accrue to the State.

Termination for Convenience: The City reserves the right to terminate this Contract upon 60 calendar days prior written notice to the Design Builder. In the event of such termination, the Design Builder shall be paid for satisfactory service performed to the date of termination.

Termination for Non-Performance: If Design Builder shall (i) materially breach any of its obligations under this Contract (including, without limitation, the failure to meet quality standards or to complete delivery, within the time specified herein, of all or any part of the materials, equipment, supplies or services to be provided under the Contract), and (iii) fail to commence and diligently pursue reasonable efforts to cure such breach within 5 calendar days after written notice by the City specifically describing the breach; the City Manager or his/her designee, acting for and on behalf of the City, may at any time after the expiration of the time for delivery, terminate the Contract as to the whole thereof, or in the event partial delivery has been made and accepted, as to such items or service to be furnished which have not been delivered or accepted prior to such termination. Such termination shall be effective upon receipt by Design Builder of written notice of termination from said City Manager or his/her designee, which notice shall be deemed to have been received by Design Builder, if mailed, within forty-eight hours to Design Builder's address as contained in the Design Builder's Bid Proposal or, if personally delivered, upon the delivery thereof to Design Builder, the authorized representative of Design Builder, or to the Design Builder's said address.

Funding. This Contract is contingent on the appropriation of funds by City. Should funds not be appropriated, this Contract may be terminated by City upon prior written notice to Design Builder.

Governing Law and Venue. This Contract shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Contract and any rights and duties hereunder shall be Fresno County, California.

Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Contract. This Contract represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may be modified only by written instrument duly authorized and executed by both City and Design Builder in accordance with City's current contract change order resolution for public works of improvement as may be revised.

CLAIMS FOR ADDITIONAL TIME

Extension of time, when granted, will be based upon the effect of delays to the project as a whole and will not be granted for noncontrolling delays to minor included portions of the Work unless it can be shown that such delays did, in fact, delay the progress of the project as a whole. The Design Builder shall not be entitled to damages or additional payment due to these delays except to the extent the delay exceeds the original Contract duration for Substantial Completion, and any extension hereunder other than any extension granted due to Owner caused delay, when Owner is responsible for the delay, the delay is unreasonable under the circumstances involved, not within the contemplation of the parties, and such delay causes actual damage to the Design Builder. The Owner shall not be entitled to liquidated damages for Design Builder delays unless the delay by Design Builder exceeds the original Contract duration for Substantial Completion and any extension of time to which the Design Builder is entitled to under the Specifications.

If delays are caused by unforeseen events beyond the control of the Design Builder, such delays will entitle the Design Builder to an extension of time as provided herein. War, governmental regulations, priorities, labor disputes, strikes, fires, floods, adverse weather necessitating cessation of Work, other similar action of the elements, inability to obtain materials, equipment or labor because of Federal Government restrictions arising out of the National Defense or War Program, required *Extra Work,* action or inaction by the Owner, or other specific reasons as may be further described in the Specifications may constitute such a delay.

If the Design Builder is delayed by the failure of the Owner to furnish necessary rights of way or materials agreed to be furnished by it, or by failure to supply necessary plans or instructions concerning the Work, after written request therefore, the Design Builder shall be entitled to an extension of time as provided herein.

CLAIMS AND DISPUTES

(a) General

The Design Builder and Owner shall make good faith efforts to resolve any and all Claims and disputes in a timely manner that may from time to time arise during Design Builder's performance of the Work. Claims, including those alleging an error or omission shall be directed to the Owner's Construction Manager for action as provided in the “Resolution of Claims and Disputes,” below.

It shall be a condition precedent to Claims review by the Public Works Director or his or her designated representative and to mediation or litigation between the Design Builder and Owner as to all such matters arising prior to the date final payment is due, that a formal decision on all Design Builder Claims be made by the Construction Manager. It shall be a condition precedent that the Design Builder appeal any disputed Claim to the Public Works Director prior to initiating mediation or litigation. It shall be a condition precedent that the Design Builder mediate any disputed Claim through non-binding mediation as provided herein, prior to initiating litigation. Unless mutually waived in writing by both parties, these provisions apply regardless of 1) whether such matters relate to execution and progress of the Work, or 2) the extent to which the Work has been completed.

Notice of Intent to Claim by Design Builder must be made within 72 hours after occurrence of the event giving rise to such Claim, or within 72 hours after the claimant first discovers or should have reasonably discovered the condition giving rise to the Claim, whichever is later. Notice of Intent to Claim and Claims must be made by written notice.

At all times during the course of the dispute resolution process pursuant to the “Resolution of Claims and Disputes,” the Design Builder shall continue with the Work as directed, in a diligent manner and without delay, or shall conform to the Owner's decision or order, and shall be governed by all applicable provisions of the Contract. Records of the Work shall be kept in sufficient detail to enable payment in accordance with applicable provisions in the Contract if this should become necessary.

The making of final payment <u>shall not</u> constitute a waiver of Claims by the Owner including, but not limited to, the following:

(i) liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;

(ii) failure of the Work to comply with the requirements of the Contract Documents; or

(iii) terms of special warranties required by the Contract Documents.

Design Builder shall promptly provide an unconditional waiver and release upon final payment in accordance with California Civil Code section 3262 and these Contract Documents. Except to the extent of any Claim arising from City’s sole or active negligence, and except to the extent Design Builder expressly describes any other disputed Claims for which prior written notice has been given the City and lists the respective dollar amounts in an unconditional waiver and release, the making of final payment shall constitute a waiver of Claims by the Design Builder pertaining to any and all costs, expenses, changes or other Claims related to Contract Price or Contract Time, including any synergistic effects attributed to multiple Change Orders. In the event of any disputed Claims between the City and Design Builder, the City may withhold from the final payment an amount not to exceed 150% of the disputed amount.

(b) Resolution of Claims and Disputes

(1) Decision of Construction Manager:

a. If the Design Builder believes any Work or demand to be outside the requirements of the Contract or believes that omissions, conflicts, errors, or discrepancies will cause or have caused the Design Builder additional costs or delays in the performance of the Work, it shall file a written Notice of Intent to Claim with the Construction Manager within 72 hours after occurrence of the event giving rise to the Claim, or within 72 hours after the Design Builder or its subcontractor first discovers or should have reasonably discovered the condition giving rise to the Claim, whichever is later. If a written Notice of Intent to Claim is not submitted within this time period, the Design Builder shall waive his or her right to further Claims on the issue and any synergistic effects related to such Claim.

1. Within 10 working days following the Notice of Intent to Claim, the Design Builder shall provide a Notice of Claim with complete supporting data for the Claim of the cost and delay related to such omissions, conflicts, errors, discrepancies, or Work alleged to be outside the requirements of the Contract. Notwithstanding the foregoing, if all supporting data cannot reasonably be made available within said 10 working days, then Design Builder shall provide all then available supporting data along with a request for additional time, stating a time certain, to obtain the remainder of supporting data along with both an explanation of the nature of such supporting data and the reason why additional time is necessary to provide same to the Construction Manager.

2. If a written Notice of Claim, along with complete supporting data or all then available supporting data and reasonable request for additional time with explanation as required above, is not submitted within 10 working days following the Notice of Intent to Claim, the Design Builder shall waive his or her right to make further Claims on the issue and any synergistic effects related to such Claim.

3. The Design Builder's request for additional time to provide the remainder of its supporting data shall be deemed acceptable to Owner unless the Construction Manager rejects in writing Design Builder's request within 5 working days from receipt of Design Builder's request. If the Construction Manager rejects Design Builder's request for

additional time, then Design Builder shall either provide complete supporting data immediately upon receipt of such rejection or within any time acceptable to the Construction Manager as stated in his or her written rejection, whichever is later (unless otherwise mutually agreed upon in writing by Design Builder and Construction Manager).

b. The Construction Manager will review any and all Claims and take one or more of the following preliminary actions in writing within 10 working days of receipt of written Notice of Claim and complete supporting data: 1) request additional supporting data from the Design Builder; 2) reject the Claim in whole, or in part, stating reasons for rejection; or, 3) recommend approval of the Claim. In the event the Construction Manager has not taken any preliminary action within 10 working days, then the Claim is deemed rejected unless the Design Builder and the Construction Manager mutually agree in writing to extend the time period for taking preliminary action. The Construction Manager will make his or her decision on the basis of the pertinent Contract provisions, together with the facts and circumstances involved in the dispute. The Construction Manager may also, but is not obligated to, notify the surety on Design Builder's performance bond of the nature and amount of the Claim.

c. If the Construction Manager requests additional supporting data from the Design Builder, the Design Builder shall supply the additional information to the Construction Manager within 10 working days unless the Design Builder and the Construction Manager mutually agree in writing to extend the time period for supplying such information. The Construction Manager will have 10 working days from the receipt of additional supporting data to provide a written decision unless the Design Builder and the Construction Manager mutually agree in writing to extend the time period for providing such decision. In the event the Construction Manager has not provided a written decision within 10 working days, or any extended time period agreed to in writing by Construction Manager and Design Builder, then the Claim is deemed rejected and this shall constitute Design Builder’s automatic request for an appeal meeting with the Public Works Director unless the Design Builder submits a written withdrawal of its Claim.

d. If the Claim is rejected in whole or in part by a written decision of the Construction Manager, the Design Builder shall notify the Construction Manager in writing within 10 working days after receiving the written decision that either: 1) the decision is accepted, and the Claim is amended; accordingly, or 2) the Design Builder requests an appeal meeting with the Public Works Director. Failure to timely request an appeal meeting with the Public Works Director following receipt of the written decision constitutes acceptance by the Design Builder of the Construction Manager's decision. If the Owner and Design Builder are able to resolve their dispute, the Owner will promptly process any required Contract changes.

(2) Decision of Public Works Director

a. The Public Works Director, or his or her designee, shall meet with the Design Builder and the Construction Manager within 15 working days (unless necessary to accommodate the Public Works Director’s schedule, or that of his or her designee, but in no event longer than 20 working days; or unless otherwise mutually agreed upon in writing by Design Builder and Construction Manager) from the Design Builder's timely submittal of his or her request, or any automatic request hereunder, for a meeting. The Design Builder may make a presentation in support of his or her Claim. No attorney may take part in the presentation or defense of the Claim in the meeting with the Public Works Director, or his or her designee. Nothing herein shall prevent an attorney from providing advice to a party either before or after the meeting. In the event the meeting with the Public Works Director, or his or her designee, has not been conducted within the time provided herein or as agreed upon in writing by Design Builder and Construction Manager, then the Claim is deemed rejected and, unless the Design Builder submits a written withdrawal of its Claim, the parties shall proceed to mediation as provided herein.

b. Within 10 working days (unless otherwise mutually agreed upon in writing by Design Builder and Construction Manager) from the meeting with the Design Builder and the Construction Manager, the Public Works Director, or his or her designee, shall render a written decision and a copy thereof shall be personally delivered, or mailed return receipt requested, to the Design Builder. In the event the Public Works Director, or his or her designee, has not provided a written decision within 10 working days, or any extended time period agreed to in writing by Construction Manager and Design Builder, then the Claim is deemed rejected and, unless the Design Builder submits a written withdrawal of its Claim, the parties shall proceed to mediation as provided herein.

c. If the Claim is rejected in whole or in part by a written decision of the Public Works Director, or his or her designee, the Design Builder shall notify the Construction Manager in writing within 10 working days after receiving the written decision that either: 1) the decision is accepted and the Claim is amended accordingly; or 2) the Design Builder rejects the decision of the Public Works Director, or his or her designee. Failure to timely notify the Construction Manager of either following receipt of the Public Works Director’s written decision, or that of his or her designee, shall constitute acceptance by the Design Builder of the Public Works Director’s decision, or that of his or her designee. If the Owner and Design Builder are able to resolve their dispute, the Owner will promptly process any required Contract changes. If the Design Builder rejects the written decision of the Public Works Director or his or her designee, the parties shall proceed to mediation as provided herein.

(3) Mediation

a. In the event that the Claim is not resolved after exhausting all aforementioned administrative measures, then the Design Builder must participate in non-binding mediation with City before the Design Builder may initiate litigation.

b. The parties shall mutually select, in writing, a mediator with at least 5 years' experience in the construction industry. In the event that the parties are unable to agree on a mediator within 15 working days of Design Builder's rejection of the decision of the Public Works Director or his or her designee, the City may select the mediator. Mediation, including at least one session requiring physical attendance by all parties, shall begin within 15 working days of selection of the mediator, unless necessary to accommodate the mediator's schedule. The parties shall share the mediator's fees and any administrative costs of mediation equally. The mediation shall be held in Fresno, California, unless another location is mutually agreed upon by the parties in writing. In the event the parties are unable to reach a mutually acceptable resolution of the Claim within 20 working days of the start of mediation, unless extended or otherwise terminated by written mutual agreement of the parties, mediation shall terminate.

c. If the Owner and Design Builder are able to resolve their dispute the Owner will promptly process any required Contract changes. Any settlement reached in principle must be in writing and is subject to approval by the City Manager or City Council consistent with City laws and policies. Should the dispute remain unresolved, the parties may resort to other dispute resolution procedures.

d. All statements made during the mediation shall be confidential and subject to sections 703.5, 1119 and 1152 of the California Evidence Code.

(4) Government Claims Act. Nothing herein is intended by the parties to waive any requirements of the Design Builder to comply with the Government Claims Act including, without limitation, California Government Code section 905; and Design Builder agrees that it shall remain responsible for complying with said section regarding any Claim. The parties agree, however, that the timeline for the Design Builder to file a claim under the Government Claims Act is tolled until exhaustion of the Design Builder of its administrative remedies hereunder (i.e., either upon termination of mediation, or upon written mutual waiver of mediation by the parties, whichever first occurs).

(5) Litigation

a. If the Design Builder continues to dispute the Work demanded of him/her after exhausting all aforementioned administrative measures, the Design Builder may institute legal proceedings, but only after final acceptance of the project by the Owner.

Unless specifically waived by the Owner, in writing, the submission of a dispute for mediation in accordance with the above provisions shall be a <u>condition precedent</u> to the Design Builder's right to initiate a suit, action or other proceeding against the Owner for damages.

b. In the event Owner initiates suit, action, or other proceeding against the Design Builder for damages, the prevailing party in such suit or action shall be entitled to recover reasonable attorney's fees and costs of suit.

c. In the event Design Builder initiates suit, action, or other proceeding against the Owner, the Owner shall be entitled to recover reasonable attorneys' fees and engineering defense costs if the Design Builder is not awarded, by the arbitrator or court, a dollar amount greater than 50 percent of the Design Builder's original Claim for damages.

d. The Design Builder shall include, or cause to be included, a requirement in all subcontracts of all tiers of Subcontractors for this project that whenever the Subcontractor disputes the Work demanded of him/her, it shall cooperate and comply with the Claims and Dispute procedures contained herein including, without limitation, exhausting all administrative measures prior to instituting legal proceedings, and instituting legal proceedings only after final acceptance of the project by the Owner.

MEDIATOR

The bid proposal includes a bid item “Mediator” which is provided to account for compensation by Owner for Owner’s share of costs of the Mediator as provided in these Specifications. The dollar amount listed in the bid item is an estimate only and will be included in each Bidder’s Proposal. Invoices from the Mediator shall be paid by the Design Builder only upon direct written authorization from the Owner.

Final payment to Design Builder will be based on fifty percent (50%) of the total amount of Owner approved invoices of the Mediator actually billed to Owner by Design Builder. The Design Builder shall include the specified lump sum bid item on the Bid Proposal for payment of Owner’s share of costs for the Mediator. Payment will be made under this bid item by issuance of a Change Order approved by the Owner and charged against this lump sum allocation.

This bid item may be increased, decreased, or deleted in its entirety and is not to be construed as additional money owed to the Design Builder. If no Change Order is issued against this bid item, the Contract Price shall be reduced by the full amount of the bid item included in the Bid Proposal for the Mediator.

The Design Builder shall have no claim for anticipated overhead or profit should the Owner fail to issue any Change Orders against this bid item.

PROGRESS PAYMENTS AND RETENTION

The Construction Manager will, after award of a Contract, establish a monthly payment date. This date will be the date during the life of the Contract, which will terminate each working month. Each month, the Construction Manager will make an approximate measurement of the Work performed to that date and estimate its value based on the Contract Unit Prices. When the Work has been satisfactorily completed, the Construction Manager will determine the quantity of Work performed and prepare the final estimate of its value.

Unless a greater percentage of retention is otherwise specified in the Contract Documents to be withheld from progress payments, 5% will be deducted from each progress estimate and retained by the City; and the remainder, less the amount of any previous payment for the Work performed, will be paid to the Design Builder subject to other provisions of this section. The City retains the option, at its discretion, to reduce any retained amount by payment to the Design Builder upon conditions or otherwise.

Under no circumstance shall any provision of this section be construed to limit the ability of the City to withhold 150 percent of the value of any disputed amount of Work from the final payment. In the event of a good faith dispute, nothing in this section shall be construed to require the City pay for Work that is not approved or accepted in accordance with the Plans and Specifications.

The payment of progress payments by the City shall not be construed as an absolute acceptance of the Work done up to the time of such payments.

If within the time fixed by law, a properly executed stop notice is filed with the City due to Design Builder's failure to pay for labor or materials used in the work, all money due for such labor or materials will be withheld from payment to the Design Builder in accordance with applicable laws.

Notwithstanding any other provision of the Contract, the City reserves the right to off-set any payment due the Design Builder against any debt due from the Design Builder to the City, pursuant to this Contract.

COMPLETION

When Design Builder considers the Work ready for its intended use, the Design Builder shall notify the City in writing that the Work is substantially complete. The Design Builder shall attach to this request a list of all work items that remain to be completed and a request that the City prepare a Certificate of Substantial Completion. Within a reasonable time thereafter, the City and Design Builder shall inspect the Work to determine the status of completion and to the extent that City agrees the Project is substantially complete. If the City does not consider the Work substantially complete, the City will notify Design Builder in writing of the reasons therefore and Design Builder shall promptly correct all items identified by the City. The City and Design Builder shall repeat the above-referenced procedure until all items are completed to the City’s satisfaction, whereupon City shall issue a Certificate of Substantial Completion.

On the date that the City issues the Certificate of Substantial Completion, the City shall provide the Design Builder with the final punch list identifying the remaining minor corrective items to be completed for final completion of the Project.

When the Design Builder considers the final punch list work to be complete, it shall request City to perform a final walk through of the Project to determine if said punch list work is complete and whether Design Builder has otherwise completed all of its obligations under the Contract Documents.

The City shall record the Notice of Completion when the entire Work including, but not limited to Design Builder’s closeout document obligations are fully satisfied, Design Builder’s punch list(s) and work shall have been completed to the satisfaction of the City.

However, the City, at its sole option, may accept completion of the Contract and have the Notice of Completion recorded when the entire Work including individual portions of the

Work shall have been completed to the satisfaction of the City, except for minor corrective items, as distinguished from incomplete items.

Regardless of the cause therefore, the Design Builder may not maintain any claim or cause of action against the City for damages incurred as a result of its failure or inability to complete its Work on the Project in a shorter period than established in the Contract Documents, the parties stipulating that the period set forth in the Contract Documents is a reasonable time within which to perform the work on the Project.

EXTENSION OF TIME - LIQUIDATED DAMAGES

The Design Builder and City hereby agree that the exact amount of damages for failure to complete the work within the time specified is extremely difficult or impossible to determine. Design Builder shall be assessed the sum as set forth in the Contract, as liquidated damages for each and every day the work required under the Contract Documents remains unfinished past the time for completion, as set forth in the Contract Documents, and any extensions of time granted by the City to the Design Builder under the terms of the Contract Documents. The Design Builder will pay to the City or City may retain from amounts otherwise payable to the Design Builder, said amount for each day after failure to meet the requirements of the contract completion as scheduled in the Contract. For purposes of this Item, section Work shall be considered *complete* in accordance with the provisions of the foregoing section entitled "COMPLETION" and issuance of a Certificate of Substantial Completion.

Design Builder shall not be charged for liquidated damages, as set forth above, because of any delays in completion of Work which are not the fault or negligence of Design Builder, or its subcontractors, or persons or entities for which it is responsible, including, but not restricted to acts of God, as set forth herein.

FINAL APPLICATION FOR PAYMENT AND FINAL PAYMENT

After Design Builder has completed all of the remaining Work items, and delivered all maintenance and operating instructions, schedules guarantees, bonds, certificates of inspection, and As-Built drawings, marked up Record documents, and any other close out documents required by the Contract Documents, and after the City has indicated that Design Builder has achieved Final Completion (including, without limitation, all final punch list work), Design Builder may make application for final payment following the City's procedure for progress payments. The final application for payment shall be accompanied by all documentation called for in the Contract Documents for making of progress payments together with complete and legally effective releases and waivers of all encumbrances arising out of or related to the Work.

After Design Builder has satisfied all of the conditions of the preceding paragraph, Design Builder shall submit its application for final payment and release of retention. Said application shall set forth the following information, at a minimum:

(1) Cost of the Work in permanent place as of the end of the immediately preceding month as shown on the updated Project Schedule and Schedule of Values submitted with the Design Builder's application;

(2) Less amounts previously paid and previously withheld as retention;

(3) The amount currently due; and

(4) An itemized list of disputed amounts, if any.

Design Builder's application for final payment shall also be accompanied by Conditional Waivers and Releases Upon Final Payment executed by Design Builder and by all subcontractors for whom payment is requested.

If the Design Builder fails to complete the punch list work or corrective items prior to the expiration of 35 calendar days immediately following issuance of a Certificate of Substantial Completion, the City shall withhold from the final payment an amount equal to 150% of the estimated cost, as determined by the City, of each item until such time as the item is completed. Alternatively, at the end of such 35-day period, if there are items remaining to be corrected, the City may elect to proceed to withhold a sufficient amount, which in City's judgment may be necessary to cover the cost of incomplete and defective work. In the event of a dispute between the City and Design Builder over the amount due, the City may withhold from the final payment an amount not to exceed 150% of the disputed amount.

Subject to the provisions of the Contract Documents, City shall make final payment of undisputed amounts to Design Builder no later than 45 calendar days after City's receipt of Design Builder's properly submitted application for final payment.

PAYMENTS WITHHELD

In addition to any amount which City may retain under the Contract Documents, City may withhold a sufficient amount of the Contract price otherwise due to Design Builder, which in City's judgment may be necessary to cover:

(1) Payments which may be past due and payable for just claims against Design Builder or any subcontractors, or against and about the performance of work on the Project.

(2) The cost of defective work, which Design Builder has not remedied.

(3) Liquidated damages assessed against Design Builder.

(4) Penalties for violation of any labor laws or deficient certified payroll.

(5) The cost of materials or equipment ordered by the City as it may deem advisable (this right is reserved by City in the event of any neglect by Design Builder in furnishing materials in ample quantities and at such times as to ensure uninterrupted progress of the Work) in order that the Work may be completed by the date specified in the Contract documents.

(6) The cost of completion of this Contract if there exists a reasonable doubt that this Contract can be completed for the balance then unpaid to Design Builder.

(7) Damage caused by Design Builder or its subcontractors and the parties for whom they are responsible.

(8) Site clean-up including, but not limited to, removal from site and disposal of debris if Design Builder fails to provide such final cleaning after construction has been completed.

(9) Payments to indemnify, defend, or hold harmless the City.

(10) Any payments due to the City including but not limited to payments for failed

tests, utilities, or imperfections.

(11) Extra services for the Construction Manager or any City agents, including but not limited to, services rendered in the evaluation of Design Builder substitution requests, Requests for Information (RFI's), Change Order Requests and Claims.

(12) Extra services for any inspector including, but not limited to, re-inspection required due to Design Builder's failed tests or installation of unapproved or defective materials and Design Builder's requests for inspection and Design Builder's failure to attend the inspection.

(13) Costs to complete or submit to City Project Record Documents and other closeout documents required under the Contract Documents.

(14) Submission of daily reports and completeness thereof.

(15) Breach of any provision of the Contract Documents.

If the above grounds are in the opinion of the City removed by or at the expense of Design Builder, payment shall be made for amounts withheld because of them.

City may apply, but is not obligated to apply, such withheld amount or amounts to payment of such claims or obligations at its sole discretion. In so doing, City shall make such payments on behalf of Design Builder. If any payment is made by City, then such amount shall be considered as a payment made under contract by City to Design Builder and City shall not be liable to Design Builder for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. City will render Design Builder an accounting of such funds disbursed on behalf of Design Builder.

As an alternative to payment of such claims or obligations, City, in its sole discretion, may reduce the total Contract price or set-off the amount against payments due.

WAIVER AND RELEASE FORMS

Consistent with the provisions of California Civil Code Chapter 3 – Waiver and Release [8120 – 8138], the Design Builder and its subcontractors shall promptly furnish the City with a release of all claims against the City arising by virtue of the Contract Documents related to amounts to be paid or which have been paid. This section shall survive expiration or termination of the Contract. The Design Builder shall include these requirements in all subcontracts for this project. The Design Builder and subcontractors from the operation of the release may specifically exclude disputed contract claims in stated amounts.

Neither the City nor the Design Builder by any term of this Contract, or otherwise, shall waive, affect, or impair the claims and liens of other persons whether with or without notice except by their written consent, and any term of the Contract to that effect shall be null and void. Any written consent given by any claimant pursuant to this section shall be null, void, and unenforceable unless and until the claimant executes and delivers a waiver and release. Such a waiver and release shall be binding and effective to release the City, construction lender, and surety on a payment bond from claims and liens only if the waiver and release follows substantially one of the forms set forth in California Civil Code Chapter 3 – Waiver and Release [8120 – 8138] and this section and is signed by the claimant or his or her authorized agent, and, in the case of a conditional release, there is evidence of payment to the claimant. Evidence of payment may be by the claimant's endorsement on a single or joint payee check that has been paid by the bank upon which it was drawn or by written acknowledgment of payment given by the claimant.

No oral or written statement purporting to waive, release, impair or otherwise adversely affect a claim is enforceable or creates any estoppel or impairment of a claim unless:

(1) It is pursuant to a waiver and release prescribed herein, or

(2) The claimant had actually received payment in full for the claim.

This section does not affect the enforceability of either an accord and satisfaction regarding a bona fide dispute or any agreement made in settlement of an action pending in any court provided the accord and satisfaction or agreement and settlement make specific reference to the stop notice or bond claims.

The waiver and release given by any claimant hereunder shall be null, void, and unenforceable unless it follows substantially the following forms in the following circumstances. Each waiver in this provision shall contain the following language, in at least as large a type as the largest type otherwise on the document:

(Example 1.) Where the claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a progress payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall follow substantially the following form:

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information
Name of Claimant: ____________________
Name of Customer: ____________________
Job Location: ____________________
Owner: ____________________
Through Date: ____________________

Conditional Waiver and Release
This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived, and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: ____________________
Amount of Check: $ ____________________
Check Payable to: ____________________

Exceptions
This document does not affect any of the following:
(1) Retentions.
(2) Extras for which the claimant has not received payment.
(3) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:
Date(s) of waiver and release: ____________________
Amount(s) of unpaid progress payment(s): $ ____________________
(4) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated for by the payment.

Signature
Claimant's Signature: ____________________
Claimant's Title: ____________________
Date of Signature: ____________________

Exclusions: Listing of Claims, of which prior written Notice has been given to the City of Fresno:
1. Claim for: ____________________ In the amount of: $________________
2. Claim for: ____________________ In the amount of: $________________
3. Claim for: ____________________ In the amount of: $________________

(Example 2.) Where the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a progress payment and the claimant asserts in the waiver it has, in fact, been paid the progress payment, the waiver and release shall follow substantially the following form with the text of the "Notice to Claimant" in at least as large a type as the largest type otherwise in the form:

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information

Name of Claimant: ______________________________
Name of Customer: ______________________________
Job Location: ______________________________
Owner: ______________________________
Through Date: ______________________________

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived, and released by this document, unless listed as an Exception below. The claimant has received the following progress payment: $ ______________________________

Exceptions

This document does not affect any of the following:
(1) Retentions.
(2) Extras for which the claimant has not received payment.
(3) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

Signature

Claimant's Signature: ______________________________
Claimant's Title: ______________________________
Date of Signature: ______________________________

Exclusions: Listing of Claims, of which prior written Notice has been given to the City of Fresno:
1. Claim for: ____________________ In the amount of: $____________
2. Claim for: ____________________ In the amount of: $____________
3. Claim for: ____________________ In the amount of: $____________

(Example 3.) Where the claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a final payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall follow substantially the following form:

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information

Name of Claimant: ______________________________
Name of Customer: ______________________________
Job Location: ______________________________
Owner: ______________________________

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived, and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: ______________________________
Amount of Check: $ ______________________________
Check Payable to: ______________________________

***Exceptions**

This document does not affect any of the following:
Disputed claims for extras in the amount of: $
____

Signature

Claimant's Signature: ______________________________
Claimant's Title: ______________________________
Date of Signature: ______________________________

*Listing of Claims, of which prior written Notice has been given to the City of Fresno:
1. Claim for: ______________________ In the amount of: $______________
2. Claim for: ______________________ In the amount of: $______________
3. Claim for: ______________________ In the amount of: $______________

(Example 4.) Where the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a final payment and the claimant asserts in the waiver it has, in fact, been paid the final payment, the waiver and release shall follow substantially the following form with the text of the "Notice to Claimant" in at least as large a type as the largest type otherwise in the form:

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information

Name of Claimant: ____
Name of Customer: ____
Job Location: ____
Owner: ____

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived, and released by this document, unless listed as an Exception below. The claimant has been paid in full.

***Exceptions**

This document does not affect the following:
Disputed claims for extras in the amount of: $
____

Signature

Claimant's Signature: ____
Claimant's Title: ____
Date of Signature: ____

*Listing of Claims, of which prior written Notice has been given to the City of Fresno:

1. Claim for: ________________________ In the amount of: $______________
2. Claim for: ________________________ In the amount of: $______________
3. Claim for: ________________________ In the amount of: $______________

SECURITIES IN LIEU OF RETENTION PERMITTED AND ESCROW AGREEMENT (PUBLIC CONTRACT CODE SECTION 22300)

Pursuant to provisions of section 22300 of the California Public Contract Code, Design Builder may substitute securities for any monies withheld by Owner. Procedures shall be as provided in section 22300 of the California Public Contract Code.

(a) Provisions shall be included in any invitation for bid and in any contract documents to permit the substitution of securities for any moneys withheld by a public agency to ensure performance under a contract, provided that substitution of securities provisions shall not be required in contracts in which there will be financing provided by the Farmers Home Administration of the United States Department of Agriculture pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. Sec. 1921 et seq.), and where federal regulations or policies, or both, do not allow the substitution of securities. At the request and expense of the Design Builder, securities equivalent to the amount withheld shall be deposited with the public agency, or with a state or federally chartered bank in this state as the escrow agent, who shall then pay those moneys to the Design Builder. Upon satisfactory completion of the contract, the securities shall be returned to the Design Builder.

(b) Alternatively, the Design Builder may request, and the owner shall make payment of retentions earned directly to the escrow agent at the expense of the Design Builder. At the expense of the Design Builder, the Design Builder may direct the investment of the payments into securities and the Design Builder shall receive the interest earned on the investments upon the same terms provided for in this section for securities deposited by the Design Builder. Upon satisfactory completion of the contract, the Design Builder shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the owner, pursuant to the terms of this section.

(c) Securities eligible for investment under this section shall include those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Design Builder and the public agency. The Design Builder shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon. Failure to include these provisions in bid and contract documents shall void any provisions for performance retentions in a public agency contract. For purposes of this section, the term “public agency” shall include, but shall not be limited to, chartered cities.

(d) (1) Any Design Builder who elects to receive interest on moneys withheld in retention by a public agency shall, at the request of any subcontractor, make that option available to the subcontractor regarding any moneys withheld in retention by the Design Builder from the subcontractor. If the Design Builder elects to receive interest on any moneys withheld in retention by a public agency, then the subcontractor shall receive the identical rate of interest received by the Design Builder on any retention moneys withheld from the subcontractor by the Design Builder, less any actual pro rata costs associated with administering and calculating that interest. In the event that the interest rate is a fluctuating rate, the rate for the subcontractor shall be determined by calculating the interest rate paid during the time that retentions were withheld from the subcontractor. If the Design Builder elects to substitute securities in lieu of retention, then, by mutual consent of the Design Builder and subcontractor, the subcontractor may substitute securities in exchange for the release of monies held in retention by the Design Builder. (2) This subdivision shall apply only to those subcontractors performing more than five percent of the Design Builder’s total bid. (3) No Design Builder shall require any subcontractor to waive any provision of this section.

The Legislature hereby declares that the provisions of this section are of statewide concern and are necessary to encourage full participation by contractors and subcontractors in public contract procedures.

(e) The escrow agreement used hereunder shall be null, void, and unenforceable unless it is substantially similar to the following form:

ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between _________________ ______________whose address is ____ hereinafter called "Owner," ____ ___________ whose address is ____ _______________ hereinafter called Design Builder and _________________________ ________ whose address is _______________________________________ hereinafter called "Escrow Agent."

For the consideration hereinafter set forth, the Owner, Design Builder, and Escrow Agent agree as follows:

(1) Pursuant to Section 22300 of the Public Contract Code of the State of California, Design Builder has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Construction Contract entered into between the Owner and Design Builder for _______________________ in the amount of _______________ dated _____________ (hereinafter referred to as the "Contract"). Alternatively, on written request of the Design Builder, the Owner shall make payments of the retention earnings directly to the Escrow Agent. When the Design Builder deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the Owner 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 Owner and Design Builder. Securities shall be held in the name of ____________________ and shall designate the Design Builder as the beneficial owner.

(2) The Owner shall make progress payments to the Design Builder 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 Owner makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Design Builder until the time that the escrow created under this contract is terminated. The Design Builder may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the Owner pays the Escrow Agent directly.

(4) Design Builder shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the Owner. These expenses and payment terms shall be determined by the Owner, Design Builder, 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 Design Builder and shall be subject to withdrawal by Design Builder at any time and from time to time without notice to the Owner.

(6) Design Builder 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 Owner to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Design Builder.

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

(8) Upon receipt of written notification from the Owner certifying that the Contract is final and complete, and that the Design Builder has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Design Builder 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 monies and securities on deposit and payments of fees and charges.

(9) Escrow Agent shall rely on the written notifications from the Owner and the Design Builder pursuant to Sections (5) to (8), inclusive, of this agreement and the Owner and Design Builder 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 Owner and on behalf of Design Builder in connection with the foregoing, and exemplars of their respective signatures are as follows:

(Signatures on Next Page)

On behalf of Owner:	On behalf of Design Builder:	On behalf of Escrow Agent:
Title	Title	Title
Name	Name	Name
Signature	Signature	Signature
Address	Address	Address

At the time the Escrow Account is opened, the Owner and Design Builder shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

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

Owner	Design Builder
Title	Title
Name	Name
Signature	Signature

COMMUNITY WORKFORCE AGREEMENT
FOR THE CITY OF FRESNO

INTRODUCTION/FINDINGS

This Community Workforce Agreement is entered into this 29TH day of SEPTEMBER, 2021, by and between the City of Fresno (hereinafter the "City"), and the Fresno, Madera, Kings and Tulare Counties Building and Construction Trades Council (hereinafter the "Trades Council") and its affiliated Unions that have executed this Agreement (referred to collectively herein as the "Union(s)"). Contractors and subcontractors of all tiers who work on City construction projects covered by this Agreement (hereinafter the "Contractor(s)/ Employer(s)"), shall become signatory to this Agreement by signing the **"Agreement to be Bound"** attached hereto as **Addendum A**.

A central purpose of this Agreement is to provide employment and training opportunities that build pathways into high-quality, sustainable construction careers for local workers, to create a pool of skilled construction labor for future City construction projects, to develop the regional workforce and economy, and to combat unemployment and underemployment in the region. Equally important, this Agreement is designed to promote the efficiency of construction operations through the use of skilled labor resulting in quality construction outcomes, and to provide for the peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of City Projects covered by this Agreement.

WHEREAS, this Agreement encourages construction employment and training opportunities in ways calculated to mitigate the harms caused by geographically concentrated poverty, unemployment and underemployment in economically disadvantaged areas and among City residents; and

WHEREAS, this Agreement reflects a commitment by all parties to diversity, workforce equity, and open opportunity in employment and training on City-funded projects; and

WHEREAS, the City places high priority upon the development of comprehensive programs for the recruitment, training and employment of local area residents and military veterans, and recognizes the ability of local pre-apprenticeship and apprenticeship programs to provide meaningful and sustainable career pathways in the construction industry; and

WHEREAS, the timely and successful completion of City Projects is an important fiduciary responsibility of the City of Fresno; and

WHEREAS, large numbers of workers of various skills will be required in the performance of construction work on City Projects and the timely and successful completion of City Projects is of the utmost importance to meet the needs of the City and avoid increased costs from delays in construction; and

WHEREAS, the use of skilled labor on construction work increases the safety of construction projects as well as the quality of completed work; and

WHEREAS, it is recognized that on City Projects with multiple contractors and bargaining units on the job site at the same time over an extended period of time, the potential for work disruption may be substantial without an overriding commitment to maintain continuity of work; and

WHEREAS, the interests of the general public, the City, the Unions, and the Contractors/Employers are best served when construction work proceeds in an orderly manner without disruption because of strikes, sympathy strikes, work stoppages, picketing, lockouts, slowdowns or other interferences with work; and

WHEREAS, the Contractors/Employers and the Unions desire to mutually establish and stabilize wages, hours and working conditions for the workers employed on City Projects and to encourage close cooperation among the Contractors/Employers and the Unions so that a satisfactory, continuous and harmonious relationship will exist; and

WHEREAS, the parties seek to avoid the tensions that would arise on City Projects if Union and non-union workers of different employers were to work side by side on City Projects, potentially leading to labor disputes that could delay completion of City Projects; and

WHEREAS, this Agreement is not intended to replace, interfere with, abrogate, diminish or modify existing local or national collective bargaining agreements in effect during the duration of City Projects, insofar as a legally binding agreement exists between the Contractors/Employers and the Unions, except to the extent that the provisions of this Agreement are inconsistent with said collective bargaining agreements, in which event the provisions of this Agreement shall prevail; and

WHEREAS, the contract(s) for construction work on City Projects will be awarded in accordance with the applicable provisions of all state, local and federal laws; and

WHEREAS, the parties to this Agreement pledge their full good faith and trust to work toward the mutually satisfactory completion of the City Projects;

NOW, THEREFORE, IT IS AGREED BETWEEN AND AMONG THE PARTIES HERETO, AS FOLLOWS:

ARTICLE I
DEFINITIONS

1.1 "Agreement" means this Community Workforce Agreement.

1.2 "Agreement to be Bound" means the agreement (attached hereto as Addendum A) that shall be executed by each and every Contractor/Employer as a condition of working on a Project.

1.3 "City" means the City of Fresno, California and its governing board, officers, agents and employees, including managerial personnel.

1.4 "City Resident" means an individual domiciled in the City. "Domiciled" has the meaning set forth in section 349(b) of the California Election Code, which cannot be a post office box.

1.5 "Completion" means that point at which there is Final Acceptance by the City of a Construction Contract and the City has filed a Notice of Completion. For purposes of this definition, "Final Acceptance" means that point in time at which the City has determined upon final inspection that the work has been completed in all respects and all required contract documents, contract drawings, warranties, certificates, manuals and data have been submitted and training completed in accordance with the contract documents and the City has executed a written acceptance of the work.

1.6 "Construction Contract" means the public works or improvement contract(s) (including design-bid, design-build, lease-leaseback or other contracts under which construction of City Projects is done) awarded by the City that are necessary to complete City Projects.

1.7 "Contractor(s)/Employer(s)" or "Contractor(s)" or "Employer(s)" means any individual, firm, partnership or corporation (including the prime contractor, general contractor, construction manager, project manager, design-build entity, lease-leaseback entity or equivalent entity), or combination thereof, including joint ventures, and their successors and assigns, that is an independent business enterprise and enters into a contract with the City with respect to the construction of any part of City Projects, and all contractors and subcontractors of any tier.

1.8 "Covered Work" means work on a Project that is described in Section 2.3, and not excluded pursuant to Section 2.4.

1.9 "Master Agreement" or "Schedule A" means the Master Collective Bargaining Agreement of each craft Union signatory hereto.

1.10 "New Local Apprentice" means a City Resident who both (i) is enrolled (or can be immediately enrolled) in a state-approved joint labor-management apprenticeship program and has progressed less than halfway toward the work hours needed to graduate from such program; and (ii) is a graduate of a Trades Council-recognized pre-apprenticeship program.

1.11 "Party" means the City, the Trades Council, and the Unions.

1.12 "Project" means a City awarded public works project as defined in California Labor Code Section 1720, where the engineer's estimate of the total cost of the project exceeds one million dollars ($1,000,000). All Construction Contracts required to complete an integrated Project shall be considered in determining whether this threshold is met. For the purpose of application of this threshold to Job Order Contracts, the threshold shall be applied to each job order, rather than to the job order contract aggregate maximum;

any individual job order above the threshold shall require application of this Agreement to such individual job order. The City and the Trades Council may mutually agree in writing to add additional projects or components to be covered by this Agreement.

1.13 "Project Manager" means the person(s) or entity(ies) designated by the City to oversee all phases of construction on a Project and the implementation of this Agreement.

1.14 "Trades Council" means the Fresno, Madera, Kings and Tulare Counties Building and Construction Trades Council.

1.15 "Transitional Housing" means housing the purpose of which is to facilitate the movement of homeless individuals and families into permanent housing within 24 months.

1.16 "Union" or "Unions" means the Trades Council and its affiliated local unions signatory to this Agreement, acting on their own behalf and on behalf of their respective affiliates and member organizations whose names are subscribed hereto and who have through their officers executed this Agreement.

ARTICLE II
SCOPE OF AGREEMENT

2.1 Parties: This Agreement applies to and is limited to all Contractors/Employers performing work under a Construction Contract on a Project (including subcontractors at any tier), and their successors and assigns, the City, the Trades Council, and its affiliated Unions signatory to this Agreement.

2.2 Applicability: This Agreement governs all Construction Contracts awarded on City Projects. For purposes of this Agreement, Construction Contracts shall be considered Completed as set forth in Section 1.5, except when the City directs a Contractor to engage in repairs, warranty work, modifications, or punch list work under a Construction Contract or when a Contractor performs work under a change order for a Construction Contract.

2.2.1 The terms of this Agreement will cover, and will fully apply to, any Contractor performing Project work, without regard to whether that Contractor performs work at other sites on either a union or non-union basis. This Agreement shall not apply to any work of any Contractor other than the Project work specifically covered by this Agreement. No Contractor shall be required to become signatory to a Union Schedule A Agreement as a result of performing Project work.

2.3 Covered Work: This Agreement covers, without limitation, all site preparation, surveying, construction, alteration, demolition, installation, improvement, remediation, retrofit, painting or repair of buildings, structures and other works, and related activities for a Project that is within the craft jurisdiction of one of the Unions and that is directly or indirectly part of a Project, including, without limitation to the following examples, landscaping and temporary fencing, temporary HVAC, geotechnical and exploratory drilling, soils and materials testing and inspection, pipelines (including those in linear corridors built to serve a Project), pumps, pump stations, start-up, modular furniture installation, and final clean-up. This Agreement covers work done for a Project in temporary yards, dedicated sites, or areas adjacent to a Project, and at any on-site or off-site batch plant constructed to supply materials to a Project.

2.3.1 This Agreement applies to any start-up, calibration, commissioning, performance testing, repair, maintenance, and operational revisions to systems and/or subsystems for a Project performed after Completion, unless performed by City employees.

2.3.2 This Agreement covers all on-site fabrication work over which the City, Contractor(s)/Employer(s) or subcontractor(s) possess the right of control (including work done for a Project in any temporary yard or area established for a Project). This Agreement also covers any off-site work, including fabrication, that is traditionally performed by the Unions and is directly or indirectly part of a Project, provided such work is covered by a current Master Agreement or current local addenda to a national agreement of the applicable Union(s).

2.3.3 Except for the delivery of supplies, equipment or materials that are stockpiled for later use, this Agreement covers all construction trucking work, including the hauling and delivery of ready-mix, asphalt, aggregate, sand, soil or other fill or similar material that is directly incorporated into the construction process as well as the off-hauling of soil, sand, gravel, rocks, concrete, asphalt, excavation materials, construction debris and excess fill, material and/or mud. Contractor(s)/Employer(s), including brokers, of persons providing construction trucking work shall provide certified payroll records to the City within ten (10) days of written request or as required by the bid specifications.

2.3.4 Work covered by this Agreement within the following craft jurisdictions shall be performed under the terms of their National Agreements as follows: the National Transient Lodge (NTL) Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, the National Agreement of Elevator Constructors, and any instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, with the exception that Articles IV, XIV and XV of this Agreement shall apply to such work.

2.4 Exclusions: The following shall be excluded from the scope of this Agreement.

2.4.1 This Agreement shall not apply to work performed by the City's own employees as permitted by the Public Contract Code.

2.4.2 This Agreement shall not apply to a Contractor/Employer's non-construction craft employees, managerial employees, administrative personnel, and supervisors above the level of general foreman, unless covered by a Master Agreement.

2.4.3 This Agreement shall not apply to a contract entered into with a professional service provider for a Project, as defined in Section 1.12, unless the professional service provider performs or subcontracts Covered Work, in which event the entity self-performing the Covered Work shall execute an Agreement to be Bound. Where applicable, the City shall include this requirement in the professional services contract.

2.4.4 This Agreement shall not apply to any non-Project work performed on or near or leading to the site of work covered by this Agreement that is undertaken by state, county, city, or other governmental bodies or their contractors. Work performed by public or private utilities including all electrical utility, voice-data-video, and security installation work ahead of and up to the electrical service entry connection or the main point of entry into the building shall be excluded. All electrical utility, voice-data-video, and security installation work performed after the electrical utility service entrance or the main point of entry shall be Covered Work. Additionally, all contracted work performed ahead of the service entrance connection and main point of entry that is inside the property line and provides for access to the building via a conduit or series of conduits shall be Covered Work.

2.4.5 This Agreement shall not apply to the off-site maintenance of leased equipment and on-site supervision of such work.

2.4.6 This Agreement does not apply to work by employees of, or contractors retained by, a manufacturer or vendor necessary to maintain such manufacturer's or vendor's warranty or guaranty, provided the manufacturer or vendor provides documentation showing that the warranty or guarantee specifically requires such employees or contractors to perform the work in order to preserve the warranty or guarantee, or provided the manufacturer or vendor demonstrates by an enumeration of specific tasks that the work cannot be performed by craft workers covered by this Agreement.

2.4.7 In circumstances requiring special knowledge, work may be performed by persons not covered by this Agreement provided that the Contractor/Employer or manufacturer responsible for such work demonstrates by an enumeration of specific tasks that the work cannot be performed by craft workers covered by this Agreement. A Contractor/Employer invoking this provision shall give notice to the Trades Council and the relevant Union(s), and such work shall be identified and discussed by the Contractor/Employer at its Pre-Job Conference, or, if not known at the time of the Pre-Job Conference, shall be identified and discussed with the Trades Council and the relevant Union(s) once the work becomes known, including by holding a Pre-Job Conference if requested by the Trades Council or the relevant Union(s).

2.4.8 This Agreement shall not apply to work substantially funded by any federal, state, other local or public agency that prohibits the use of project labor agreements on projects receiving its funding, or the funding of projects on which such agreements are used. With respect to such work, the City agrees that it will make a reasonable effort to defend the application of this Agreement, including by making a written request to the funding source. Notwithstanding the foregoing, however, should only a specific provision of the Agreement be prohibited by the funding source, the parties shall modify the requirements of this Agreement accordingly, to advance the purposes of this Agreement to the maximum extent feasible without the loss of funding.

2.4.9 This Agreement shall not apply to work that is jointly performed with another public agency, unless the work is awarded by the City, or unless otherwise agreed to by the Parties on a case by case basis. With respect to such work jointly performed with another public agency, the City will make a request to the other public agency to apply the terms of this Agreement, or in the alternative, request that the other public agency communicate with City representatives and the Trades Council to discuss application of this Agreement.

2.4.10 This Agreement shall not apply to renovation of Transitional housing buildings or units, given the time sensitivity of such work. For the avoidance of doubt, this exclusion does not apply to new construction, nor to a total remodel where residents are not occupying the building or units.

2.5 Award of Contracts: It is understood and agreed that the City has the right to select any qualified bidder for the award of a Construction Contract under this Agreement. The bidder need only be willing, ready and able to execute and comply with this Agreement. It is further agreed that this Agreement shall be included in all invitations to bid or solicitations for proposals from contractors or subcontractors for work on a Project. The City shall provide a copy of all such invitations to bid to the Trades Council at the time of issuance.

ARTICLE III
EFFECT OF AGREEMENT

3.1 By executing this Agreement, the Trades Council, the Unions and the City agree to be bound by each and all of the provisions of the Agreement.

3.2 By accepting the award of work under a Construction Contract for a Project, whether as a Contractor or subcontractor thereunder, all Contractors/Employers agree to be bound by each and every provision of this Agreement and agree to evidence their acceptance prior to the commencement of work by executing the Agreement to be Bound in the form attached hereto as **Addendum A**.

3.3 At the time that any Contractor/Employer enters into a subcontract with any subcontractor providing for the performance of work under a Construction Contract, the Contractor/Employer shall provide a copy of this Agreement to said subcontractor and shall require the subcontractor, as a condition of accepting the award of a construction subcontract, to agree in writing, by executing the Agreement to be Bound, to be bound by each and every provision of this Agreement prior to the commencement of work. The obligations of a Contractor may not be evaded by subcontracting. If the subcontractor refuses to execute the Agreement to be Bound, then such subcontractor shall not be awarded a Construction Contract on a Project.

3.4 This Agreement shall only be binding on the signatory parties hereto, and their successors and assigns, and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such party. Each Contractor shall alone be liable and responsible for its own individual acts and conduct and for any breach or alleged breach of this Agreement, except as otherwise provided by law or the applicable Master Agreement. Any dispute between the Union(s) and the Contractor(s) with respect to compliance with this Agreement shall not affect the rights, liabilities, obligations and duties between the Union(s) and other Contractor(s) party to this Agreement.

3.5 It is mutually agreed by the parties that any liability by a Union signatory to this Agreement shall be several and not joint. Any alleged breach of this Agreement by a Union shall not affect the rights, liabilities, obligations and duties between the Contractor(s) and the other Union(s) party to this Agreement.

3.6 The provisions of this Agreement, including the Schedule As incorporated herein by reference, shall apply to the work covered by this Agreement, notwithstanding the provisions of any other local, area and/or national agreements which may conflict with or differ from the terms of this Agreement. To the extent a provision of this Agreement conflicts with a Schedule A, the provision of this Agreement shall prevail. Where a provision of a Schedule A does not conflict with this Agreement, the provision of the Schedule A shall apply.

ARTICLE IV
WORK STOPPAGES, STRIKES, SYMPATHY STRIKES AND LOCKOUTS

4.1. The Unions, the City, and the Contractor(s)/Employer(s) covered by this Agreement agree that for the duration of a Project:

4.1.1 There shall be no strikes, sympathy strikes, work stoppages, picketing, handbilling or otherwise advising the public that a labor dispute exists, or slowdowns of any kind, for any reason, by the Unions or employees employed on a Project, at the job site of a Project or any other City facility because of a dispute on a Project. Disputes arising between the Unions and Contractor(s)/ Employer(s) on other City projects are not governed by the terms of the Agreement or this Article.

4.1.2 There shall be no lockout of any kind by a Contractor/Employer of workers employed on a Project.

4.1.3 If a Master Agreement expires before the Contractor/Employer completes the performance of work under a Construction Contract and the Union or Contractor/Employer gives notice of a demand for a new or modified Master Agreement, the Union agrees that it will not strike on work covered by this Agreement and the Union and the Contractor/Employer agree that the expired Master Agreement will continue in full force and effect for work covered under this Agreement until a new or modified Master Agreement is reached. If the new or modified Master Agreement provides that any terms of the Master Agreement shall be retroactive, the Contractor/ Employer agrees to comply with any retroactive terms of the new or modified Master Agreement that are applicable to any employee(s) on a Project during the interim, with retroactive payment due within seven (7) calendar days of the effective date of the new or modified Master Agreement.

4.1.4 In the case of nonpayment of wages or trust fund contributions on a Project, the Union shall give the City and the Contractor/Employer three (3) business days' notice when nonpayment of trust fund contributions has occurred, and one (1) business day's notice when nonpayment of wages has occurred or when paychecks being tendered to a financial institution normally recognized to honor such paychecks will not honor such paycheck, of the intent to withhold labor from the Contractor/Employers' or their subcontractor's workforce, during which time the Contractor/Employer may correct the default. In this instance, a Union's withholding of labor (but not picketing) from a Contractor/Employer who has failed to pay its fringe benefit contributions or failed to meet its weekly payroll shall not be considered a violation of this Article.

4.1.5 Notification: If the City or any Contractor contends that any Union has violated this Article, it will so notify in writing the Senior Executive of the Trades Council and the Senior Executive of the Union, setting forth the facts alleged to violate the Article, prior to instituting the expedited arbitration procedure set forth below. The Trades Council will immediately use its best efforts to cause the cessation of any violation of this Article. The leadership of the Union will immediately inform the workers of their obligations under this Article. A Union complying with this obligation shall not be held responsible for the unauthorized acts of employees it represents.

4.2 Expedited Arbitration: Any party to this Agreement shall institute the following procedure, prior to initiating any other action at law or equity, when a breach of this Article is alleged to have occurred.

4.2.1 A party invoking this procedure shall notify Robert Hirsch, as the permanent arbitrator, or Barry Winograd, as the alternate arbitrator, under this procedure. In the event the permanent arbitrator is unavailable at any time, the alternate will be contacted. If neither is available, the parties shall select the arbitrator from the list in Section 14.4. Notice to the arbitrator shall be by the most expeditious means available, with notice by email and telephone to the City, the involved Contractor, and the party alleged to be in violation, and to the Trades Council and involved local Union if a Union is alleged to be in violation.

4.2.2 Upon receipt of said notice, the City will contact the permanent arbitrator named above, or the alternate if the permanent arbitrator is not available, who will attempt to convene a hearing within twenty-four (24) hours if it is contended that the violation still exists.

4.2.3 The arbitrator shall notify the parties by email and telephone of the place and time for the hearing. Said hearing shall be completed in one session, which, with appropriate recesses at the arbitrator's discretion, shall not exceed twenty-four (24) hours unless otherwise agreed upon by all parties. A failure of any party to attend said hearings shall not delay the hearing of evidence or the issuance of an award by the arbitrator.

4.2.4 The sole issue at the hearing shall be whether or not a violation of Section 4.1 of the Agreement has occurred. The arbitrator shall have no authority to consider any matter of justification, explanation or mitigation of such violation or to award damages, which issue is reserved for court proceedings, if any. The award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without a written opinion. If any party desires a written opinion, one shall be issued within fifteen (15) calendar days, but the parties shall not delay compliance with or enforcement of the award due to the issuance of a written opinion. The arbitrator may order cessation of the violation of this Article, and the arbitrator's award shall be served on all parties by hand or registered mail upon issuance. Should a party found in violation of this Article fail to comply with the arbitrator's award ordering the party to cease the violation, the party in violation shall pay to the affected party as liquidated damages the sum of ten thousand dollars ($10,000.00) per shift for which it failed to comply, or portion thereof, until such violation is ceased. The arbitrator shall retain jurisdiction to resolve any disputes regarding the liquidated damages claimed under this section.

4.2.5 The arbitrator's award may be enforced by any court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to above in the following manner. The party filing such enforcement proceedings shall give written notice to the other party. In a proceeding to obtain a temporary order enforcing the arbitrator's award as issued under this Article, all parties waive the right to a hearing and agree that such proceeding may be *ex parte*. However, such agreement does not waive any party's right to seek or participate in a hearing for a final order of enforcement. Any court order enforcing the arbitrator's award shall be served on all parties by hand or delivered by certified mail.

4.2.6 Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure, or which interfere with compliance with the above procedure, are waived by the parties.

4.2.7 The fees and expenses of the arbitrator shall be divided equally between the party instituting the arbitration proceedings provided in this Article and the party alleged to be in breach of its obligation under this Article.

4.2.8 Should either the permanent or the alternate arbitrator identified above no longer work as a labor arbitrator, the City and the Trades Council shall mutually agree to a replacement.

ARTICLE V
PRE-JOB CONFERENCES

5.1 Timing: The Project Manager shall convene and conduct, at a location and time mutually agreeable to the Trades Council, a pre-job conference with the Unions and the representatives of all involved Contractors/Employers, who shall be prepared to announce craft assignments and discuss in detail the scope of work and the other issues set forth below, at least fourteen (14) calendar days prior to:

(a) The commencement of any Project work, and

(b) The commencement of Project work on any subsequently awarded Construction Contract.

5.2 The pre-job conference shall be attended by a representative of each participating Contractor and each affected Union, and the Trades Council and City may attend at their discretion.

5.3 The pre-job conference shall include but not be limited to the following subjects:

(a) A listing of each Contractor and subcontractor and their scope of work;

(b) The craft assignments;

(c) The estimated number of craft workers required to perform the work;

(d) Transportation arrangements;

(e) The estimated start and completion dates of the work; and

(f) Discussion of pre-fabricated materials.

5.4 Joint Administrative Committee: This Agreement is intended to provide close cooperation between management and labor. To that end, the City shall designate two representatives and the Trades Council shall designate two representatives to serve on a Joint Administrative Committee ("JAC"), each of whom may designate an alternate. JAC members may invite participation by a Contractor or Union as needed. The JAC shall meet quarterly and at the request of any member, to review progress of Projects and to discuss matters of general concern, such as safety and security. The JAC shall serve as a forum to foster communication between management and labor, and to assist the Unions and the Contactors to complete Projects in an economically efficient manner without interruption, delays or work stoppages.

5.4.1 The JAC shall participate in the drafting of reports to City Council regarding the status of targeted objectives under this Agreement, including the local hiring and apprenticeship provisions herein.

5.4.2 The JAC shall have no authority to review grievances or disputes involving this Agreement, which are subject to the applicable grievance procedure.

ARTICLE VI
NO DISCRIMINATION

6.1 The Contractors/Employers and the Unions agree to comply with all anti-discrimination provisions of federal, state, and local law, to protect employees and applicants for employment, on a Project.

ARTICLE VII
UNION SECURITY

7.1 The Contractors/Employers recognize the Unions as the sole bargaining representative of all craft employees working within the scope of this Agreement, and all such employees must be represented by a Union for the duration of their employment on a Project.

7.2 The Contractors/Employers shall make and transmit all deductions for Union dues, fees, and assessments that have been authorized by employees in writing in accordance with the applicable Master Agreement. This Agreement does not require any employee of a non-Union Contractor/Employer to join a Union or to pay dues or fees to a Union as a condition of working on a Project; however, nothing in this Article is intended to supersede the independent requirements of the applicable Master Agreements as to Contractors/Employers signatory to such Master Agreements and as to employees of those Contractors/Employers who are performing Covered Work.

7.3 Authorized representatives of the Unions shall have access to a Project whenever work covered by this Agreement is being, has been, or will be performed on a Project.

ARTICLE VIII
REFERRAL

8.1 Contractor(s)/Employer(s) performing construction work on a Project shall, in filling craft job requirements, utilize and be bound by the registration facilities and referral systems established or authorized by the Unions signatory hereto. The Contractor(s)/Employer(s) shall have the right to reject any applicant referred by the Union(s), in accordance with the applicable Master Agreement.

8.2 Contractor(s)/Employer(s) shall have the unqualified right to select and hire directly all supervisors above the level of general foreman it considers necessary and desirable, without such persons being referred by the Union(s), unless such craft construction employee is covered by a Master Agreement.

8.3 Core Workers: Contractor(s)/Employer(s) that are not signatory to a Master Agreement may request by name, and the Union will honor, referral of Core Workers as journeypersons for Project work who have been on the Contractor/Employer's active payroll for at least sixty (60) out of the one hundred (100) working days prior to the request, and who possess all licenses and certifications required to perform the work ("Core Workers").

8.3.1 The Union will refer to the Contractor one journeyperson employee from the hiring hall then one Core Worker for the affected trade or craft. This process shall be repeated, one and one, until the Contractor's workforce has a maximum of five (5) Core Workers. Thereafter, all of the Contractor's additional employees performing Covered Work shall be hired from the Union's hiring hall out-of-work list(s).

8.3.2 When the Contractor's workforce is reduced, employees shall be reduced so as to maintain the same ratio of Core Workers to hiring hall referrals as was applied in the initial hiring.

8.3.3 The Contractor shall provide the appropriate Union with the name and all necessary information for each Core Worker, and each Core Worker shall register with the Union's hiring hall and comply with Article VII before commencing work on a Project. If there is any question regarding an employee's eligibility as a Core Worker under this section, the Contractor shall provide the Union with written records demonstrating eligibility.

8.4 In the event that referral facilities maintained by the Union(s) are unable to fill the requisition of a Contractor/Employer for employees within a forty-eight (48) hour period (Saturdays, Sundays and Holidays excluded) after such requisition is made by the Contractor/Employer, the Contractor/Employer shall be free to obtain the worker(s) from any source. A Contractor/Employer who hires a worker(s) to perform Covered Work on a Project pursuant to this section shall immediately provide the appropriate Union with the name and address of such worker(s) and shall immediately refer such worker(s) to the appropriate Union to satisfy the requirements of this Agreement.

ARTICLE IX
LOCAL HIRING PROGRAM

9.1 It is in the interest of the parties to this Agreement to facilitate employment of City Residents to construct City Projects. To that end, the Unions agree to exert their utmost efforts to recruit a sufficient number of craft persons to fulfill the referral requests of Contractors/Employers for City Projects, consistent with this Article.

9.2 To the maximum extent allowed by law and consistent with the Unions' hiring hall referral provisions set forth in Master Agreements, City residents shall be requested by the Contractor(s)/Employer(s) and dispatched by the applicable Union(s).

9.3 Each Contractor shall either demonstrate satisfaction of the Percentage Requirements in Section 9.4 below, or demonstrate satisfaction of the good faith efforts set forth in Section 9.5 below.

9.4 Percentage Requirements: For each Project, each Contractor shall make best faith efforts to satisfy the following percentage requirements (the "Percentage Requirements"):

9.4.1 at least 50 percent of all journey-level Project work hours performed by City Residents;

9.4.2 at least 55 percent of all apprentice-level Project work hours performed by City Residents;

9.4.3 at least 30 percent of all apprentice-level Project work hours performed by New Local Apprentices.

9.5 Each Contractor must take the following steps in an attempt to utilize City Residents to satisfy the Percentage Requirements:

9.5.1 City Residents/Journey level Hours. Contractor may assign current crew members who are City Residents to a Project. If staffing with Contractor's current crew members does not enable satisfaction of the Percentage Requirement of Section 9.4.1, the Contractor shall request referral of needed City Residents from the appropriate Union hiring hall, using "name call," "rehire," or other available procedures to satisfy the Percentage Requirement of Section 9.4.1. All requests for referrals under this subsection shall be in writing.

9.5.2 City Residents/Apprentice Hours. Contractor may assign current crew members who are City Residents and apprentices registered in a joint labor-management apprenticeship program to a Project. If staffing with Contractor's current crew members does not enable satisfaction of the Percentage Requirement of Section 9.4.2, the Contractor shall request referral of needed City Resident apprentices from the appropriate Union hiring hall or joint labor-management apprenticeship program, using "name call," "rehire," or other available procedures to satisfy the Percentage Requirement of Section 9.4.2. All requests for referrals under this subsection shall be in writing.

9.5.3 New Local Apprentices. Contractor may assign current crew members who are New Local Apprentices to a Project. If staffing with Contractor's current crew members does not enable satisfaction of the Percentage Requirement of Section 9.4.3, the Contractor shall request referral of New Local Apprentices from the appropriate Union hiring hall or joint labor-management apprenticeship program, using "name call," "rehire," or other available procedures to satisfy the Percentage Requirement of Section 9.4.3. All requests for referrals under this subsection shall be in writing.

9.6 Union hiring halls and, where applicable, joint apprenticeship programs, will refer apprentices to non-signatory Contractors/Employers upon request provided the Contractors/Employers submit the forms required by the Department of Industrial Relations.

9.7 Oversight and Enforcement. Contractor requirements of the Local Hiring Program shall be terms of the prime contracts awarded by the City and subcontracts awarded by Contractors. Enforcement actions shall be pursuant to contract compliance procedures set forth in such contracts. Hours worked by workers who reside in states other than California shall not be considered in compliance determinations regarding the Local Hiring Program. Upon request by the City, Contractors shall submit copies of all information necessary to determine Contractor compliance with the Local Hiring Program, including dispatch requests and responses, records regarding hiring decisions of City Residents and New Local Apprentices who were referred but not hired, and any other relevant information requested by the City.

9.8 Federally-Funded Projects: The requirements of this Article IX shall not apply to Projects for which a federal funding source prohibits such application. However, if a federal funding source requires alternative hiring goals or requirements (such as in federal Executive Order 11246), then such requirements shall apply, and all requirements and procedures set forth in this Article shall be utilized to implement the alternative hiring goals or requirements imposed by the federal funding source. The City shall notify the Trades Council in the event that federal hiring goals supplant this Article.

ARTICLE X
WAGES AND BENEFITS

10.1 The Contractors/Employers agree to pay contributions to the vacation, pension and/or other deferred compensation plan, apprenticeship, worker protection and assistance, and health benefit funds established by the applicable Master Agreement(s) for each hour worked on a Project, in the amounts designated in the applicable Master Agreement(s).

10.2 By signing this Agreement, the Contractors/Employers adopt and agree to be
bound by the written terms of the legally established Trust Agreements described in Section 10.1, which may from time to time be amended, specifying the detailed basis upon which payments are to be made into, and benefits paid out of, such Trust Funds. The Contractors/Employers authorize the parties to such local Trust Agreements to appoint trustees and successor trustees to administer the Trust Funds and hereby ratify and accept the trustees so appointed as if they were appointed by the Contractors/Employers. The Contractors/Employers agree to execute a separate subscription agreement(s) when such Trust Fund(s) requires such document(s).

10.3 Wages, Hours, Terms and Conditions of Employment: The wages, hours and other terms and conditions of employment on City Projects shall be governed by the Master Agreement of the respective craft, to the extent such Master Agreement is not inconsistent with this Agreement. Where a subject is covered by the Master Agreement and not covered by this Agreement, the Master Agreement will prevail. When a subject is covered by both the Master Agreement and this Agreement, to the extent there is any inconsistency, this Agreement will prevail.

10.4 Holidays: Holidays shall be as set forth in the applicable Master Agreement.

ARTICLE XI
APPRENTICES

11.1 Recognizing the need to develop adequate numbers of competent workers in the construction industry, including on public works projects, the Contractors/Employers shall employ apprentices from a California state-approved Joint Apprenticeship Training Program in their respective crafts, to perform such work as is within their capabilities and that is customarily performed by the craft in which they are indentured.

11.2 Apprentice ratios will be in compliance with the provisions of the California Labor Code and the applicable state prevailing wage determination.

11.3 Consistent with the Master Agreements, there shall be no restriction on the utilization of apprentices in performing the work of their craft provided they are properly indentured and supervised.

ARTICLE XII
HELMETS TO HARDHATS

12.1 The Contractors/Employers and Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Contractors/Employers and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

12.2 The Unions and Contractors/Employers agree to coordinate with the Center to participate in an integrated database of veterans interested in working on Projects and of apprenticeship and employment opportunities for Projects. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

ARTICLE XIII
COMPLIANCE

13.1 It shall be the responsibility of the Contractors/Employers and Unions to investigate and monitor compliance with the provisions of Article IX of this Agreement. Nothing in this Agreement shall be construed to interfere with or supersede the usual and customary legal remedies available to the Unions and/or employee benefit Trust Funds to collect delinquent wages or Trust Fund contributions from Contractors/Employers on the Projects. Because the Projects are public works subject to the California Labor Code, the City shall monitor and enforce the Contractors/Employers' compliance with state prevailing wage requirements as well as this Agreement.

ARTICLE XIV
GRIEVANCE ARBITRATION PROCEDURE

14.1 Project Labor Disputes: All disputes involving the application or interpretation of a Master Agreement to which a Contractor/Employer and a Union are parties shall be resolved pursuant to the resolution procedures of the Master Agreement. All disputes relating to the interpretation or application of this Agreement, other than disputes under Article IV and Article XV, shall be subject to resolution by the grievance arbitration procedures set forth in this Article.

14.2 Employee Discipline: All disputes involving the discipline and/or discharge of an employee working on a Project shall be resolved through the grievance and arbitration provisions contained in the Master Agreement for the craft of the affected employee. No employee working on a Project shall be disciplined or discharged without just cause.

14.3 No grievance shall be recognized unless the grieving party (Union or District Council on its own behalf, or on behalf of an employee whom it represents, or a Contractor/Employer on its own behalf) provides notice in writing to the party with whom it has a dispute within five (5) business days after becoming aware of the dispute but in no event more than thirty (30) business days after it reasonably should have become aware of the event giving rise to the dispute. Time limits may be extended by mutual agreement of the parties.

14.4 Grievances shall be settled according to the following procedures:

Step 1: Within five (5) business days after the receipt of the written notice of the grievance, the representative of the involved Union or District Council, or his/her designee, and the representative of the involved Contractor/Employer, shall confer and attempt to resolve the grievance.

Step 2: If the grievance is not resolved at Step 1, within five (5) business days of the Step 1 meeting or the conclusion of efforts to resolve the grievance at Step 1, the alleged grievance may be referred in writing by either involved party to the Business Manager(s) of the affected Union(s) involved and the Labor Relations Manager of the Contractor/Employer, or the Contractor/Employer's designated representative, for discussion and resolution. This time limit may be extended by mutual consent of both parties. Regardless of which party has initiated the grievance, the Union shall notify its International Union representative prior to the Step 2 meeting, and the International Union representative shall advise if it intends to participate in the Step 2 meeting. The Project Manager and the Trades Council shall have the right to participate in any efforts to resolve the dispute at Step 2.

Step 3: If the grievance is not resolved at Step 2, either party may request the dispute be submitted to arbitration within five (5) business days of the Step 2 meeting or the conclusion of efforts to resolve the grievance at Step 2. This time limit may be extended by mutual consent of both parties. Within five (5) business days after referral of a dispute to arbitration, the representatives shall notify the permanent arbitrator designated in Article IV, or if not available, the alternate arbitrator designated in Article IV, for final and binding arbitration. If the permanent arbitrator or the alternate is not available, an arbitrator shall be selected by the alternate striking method from the list of three (3) below. The order of striking names from the list of arbitrators shall be determined by a coin toss, the winner of which shall decide whether they wish to strike first or second.

1. Carol Vendrillo
2. David Weinberg
3. Mark Keppler

14.5 The decision of the arbitrator shall be final and binding on all parties. The arbitrator shall have no authority to change, amend, add to or detract from any of the provisions of the Agreement. The expense of the arbitrator shall be borne equally by both parties. The arbitrator shall arrange for a hearing on the earliest available date from the date of his/her selection. A decision shall be given to the parties within five (5) calendar days after completion of the hearing unless such time is extended by mutual agreement. A written opinion may be requested by a party from the presiding arbitrator.

14.6 The time limits specified at any step of the grievance procedure may be extended by mutual agreement of the parties. However, failure to process a grievance, or failure to respond in writing within the time limits provided above, without an agreed upon extension of time, shall be deemed a waiver of such grievance without prejudice, or without precedent to the processing and/or resolution of like or similar grievances or disputes.

14.7 In order to encourage the resolution of disputes and grievances at Steps 1 and 2 of this grievance procedure, the parties agree that such settlements shall not be precedent setting.

14.8 Should any of the arbitrators listed in this Article or Article IV no longer work as a labor arbitrator, the City and the Trades Council shall mutually agree to a replacement.

ARTICLE XV
WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES

15.1 The assignment of Covered Work will be solely the responsibility of the Employer performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of the Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

15.2 All jurisdictional disputes on this Project between or among the building and construction trades Unions and the Employers parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Employers and Unions parties to this Agreement.

15.3 If a dispute arising under this Article involves the Northern California Carpenters Regional Council or any of its subordinate bodies, an arbitrator shall be chosen by the procedures specified in Article V, Section 5 of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch and Thomas Pagan, and the arbitrator's hearing on the dispute shall be held at the offices of the California State Building and Construction Trades Council in Sacramento, California within fourteen (14) calendar days of the selection of the arbitrator. All other procedures shall be as specified in the Plan.

15.4 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Employer's assignment shall be adhered to until the dispute is resolved. Individual employees violating this section shall be subject to immediate discharge.

15.5 Each Employer will conduct a pre-job conference with the Trades Council prior to commencing work. The City and the Project Manager will be advised in advance of all such conferences and may participate if they wish. Pre-job conferences for different Employers may be held together.

ARTICLE XVI
MANAGEMENT RIGHTS

16.1 Consistent with the Schedule A agreements, the Contractor(s)/Employer(s) shall retain full and exclusive authority for the management of their operations, including the right to direct their work force in their sole discretion. No rules, customs or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of employees, except that all lawful manning provisions in the Master Agreement shall be recognized.

ARTICLE XVII
DRUG AND ALCOHOL TESTING

17.1 The use, sale, transfer, purchase and/or possession of a controlled substance, alcohol and/or firearms at any time during the work day is prohibited.

17.2 Drug and alcohol testing shall be conducted in accordance with the substance abuse prevention policies set forth in the applicable Schedule A.

ARTICLE XVIII
SAVINGS CLAUSE

18.1 If any article, provision, clause, sentence or word of this Agreement is determined to be illegal or void as being in contravention of any applicable law, by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect. The parties further agree that if any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void, by a court of competent jurisdiction, the parties shall substitute, by mutual agreement, in its place and stead, an article, provision, clause, sentence or word that will meet the objections to its validity and will be in accordance with its original intent. If the parties are unable to agree on substitute language, then the entire Agreement shall be null and void.

18.2 If a court of competent jurisdiction determines that all or part of the Agreement is invalid and/or enjoins the City from complying with all or part of the Agreement's provisions, and the City accordingly determines that compliance with this Agreement will not be required in order to perform work under a Construction Contract, the Unions will no longer be bound by the provisions of Article IV.

ARTICLE XIX
TERM

19.1 This Agreement shall be included in all bid documents, requests for proposals, or other equivalent Project solicitations, which shall indicate that entering into this Agreement is a condition of the award of a Construction Contract(s) for each Project.

19.2 This Agreement shall apply until the Completion of each Project in accordance with Sections 1.5 and 2.2.

19.3 This Agreement shall become effective 120 days after it is executed by the City and the Trades Council and shall remain in effect until the five (5) year anniversary of the effective date. During this term, the City administration shall prepare annual reports to the City Council on Agreement implementation and results of the Local Hiring Program, which reports shall be provided to the JAC for review and comment prior to submission to the City Council. The Unions, Trades Council, and Contractors shall provide to the administration requested information relevant to such reports, including information regarding referrals from hiring halls for Covered Work on Projects. Upon the two-year anniversary of the effective date, if the Percentage Requirements set forth in the Local Hiring Program are not being met on all Projects in aggregate, the City shall provide the Trades Council with written notice. Upon receipt of such notice, the Trades Council and the City shall meet and confer regarding whether to modify the Local Hiring Program in order to improve outcomes and meet the Percentage Requirements, with any such modifications made upon mutual agreement by the Trades Council and the City. A similar process will take place on the third and fourth anniversaries of the effective date.

19.4 Approximately ninety (90) days prior to the five (5) year anniversary of the effective date of this Agreement, at the request of either party, the City and Trades Council shall meet to discuss whether to extend this Agreement, and, if so, the proposed terms of such extension including any proposed changes to the Agreement.

ARTICLE XX
MISCELLANEOUS PROVISIONS

20.1 The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement. All defined terms used in this Agreement shall be deemed to refer to the singular and/or plural, in each instance as the context and/or particular facts may require.

20.2 This Agreement may be executed in counterparts, such that original signatures may appear on separate pages and when bound together all necessary signatures shall constitute an original. Faxed or emailed signature pages transmitted to other parties to this Agreement shall be deemed the equivalent of original signatures.

20.3 Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of the party indicated, and each of the parties signing this Agreement warrants and represents that such party is legally authorized and entitled to enter into this Agreement.

20.4 The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

20.5 All defined terms used in this Agreement shall be deemed to refer to the singular and/or plural, in each instance as the context and/or particular facts may require.

[SIGNATURES TO FOLLOW]

CITY OF FRESNO

By: ______________________ Date: 9/29/2021

Name/Title: Thomas Esqueda City Manager

FRESNO, MADERA, KINGS AND TULARE COUNTIES BUILDING AND CONSTRUCTION TRADES COUNCIL

By: ______________________ Date: 9.29.21

Name/Title: Chuck Riojas

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE
BY: ______________________
SR DEP CITY ATTORNEY
Brandon M Collet

ATTEST:
BRIANA PARRA, CMC
INTERIM CITY CLERK
BY: ______________________ 9/29/21
Deputy
BERNARD GAMEZ

[UNION SIGNATURES]

FRESNO, MADERA, TULARE, KINGS BUILDING AND CONSTRUCTION TRADES
COUNCIL CRAFT UNIONS AND DISTRICT COUNCILS
COMMUNITY WORKFORCE AGREEMENT FOR THE CITY OF FRESNO

Insulators & Allied Workers Local 16

Millwrights Local 102

Boilermakers Local 549

Operating Engineers Local 3

Bricklayers, Tile Setters & Allied Crafts 3

Pile Drivers Local 34

Carpenters Local 701

Plasterers & Cement Masons Local 300

Carpenters Local 1109

Plumbers & Pipe Fitters Local 246

Drywall/Lathers Local 9083

Road Sprinkler Fitters Local 669

District Council 16 Local Union 294

Roofers and Waterproofers Local 27

Electricians Local 100

SMART International Association 104

Elevator Constructors Local 8

Teamsters Local 431

Iron Workers Local 155

Underground Utility/Landscape 355

Laborers Local 294

FRESNO, MADERA, TULARE, KINGS BUILDING AND CONSTRUCTION TRADES
COUNCIL CRAFT UNIONS AND DISTRICT COUNCILS
COMMUNITY WORKFORCE AGREEMENT FOR THE CITY OF FRESNO

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Plumbers & Pipe Fitters Local 246

Road Sprinkler Fitters Local 669

Roofers and Waterproofers Local 27

SMART International Association 104

Teamsters Local 431

Underground Utility/Landscape 355

[UNION SIGNATURES]

Bricklayer's, Tilelayer's
and Allied Craftworker's
Local 3 N. CA

FRESNO, MADERA, TULARE, KINGS BUILDING AND CONSTRUCTION TRADES COUNCIL CRAFT UNIONS AND DISTRICT COUNCILS COMMUNITY WORKFORCE AGREEMENT FOR THE CITY OF FRESNO

____
Insulators & Allied Workers Local 16

____
Boilermakers Local 549

____
Bricklayers, Tile Setters & Allied Crafts 3

____
Northern CA Carpenters Regional Council

____
District Council 16 Local Union 294

____
Electricians Local 100

____
Elevator Constructors Local 8

____
Iron Workers Local 155

____
Operating Engineers Local 3

____
Laborers Local 294

____
Plasterers & Cement Masons Local 300

____
Plumbers & Pipe Fitters Local 246

____
Road Sprinkler Fitters Local 669

____
Roofers and Waterproofers Local 27

____
SMART International Association 104

____
Teamsters Local 431

____
Underground Utility/Landscape 355

[UNION SIGNATURES]

IUPAT/DC 16

FRESNO, MADERA, TULARE, KINGS BUILDING AND CONSTRUCTION TRADES
COUNCIL CRAFT UNIONS AND DISTRICT COUNCILS
COMMUNITY WORKFORCE AGREEMENT FOR THE CITY OF FRESNO

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Underground Utility/Landscape 355

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District Council 16 Local Union 294	Roofers and Waterproofers Local 27
Electricians Local 100	SMART International Association 104
Elevator Constructors Local 8	Teamsters Local 431
9/28/2021 Iron Workers Local 155	Underground Utility/Landscape 355
Laborers Local 294	

FRESNO, MADERA, TULARE, KINGS BUILDING AND CONSTRUCTION TRADES
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Elevator Constructors Local 8	Teamsters Local 431
Iron Workers Local 155	Underground Utility/Landscape 355
Laborers Local 294	

[UNION SIGNATURES]

Road Sprinkler Fitters UA Local 669

[signature] on Behalf of BM Byron Dunn

FRESNO, MADERA, TULARE, KINGS BUILDING AND CONSTRUCTION TRADES
COUNCIL CRAFT UNIONS AND DISTRICT COUNCILS
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Road Sprinkler Fitters Local 669

Roofers and Waterproofers Local 27

SMART International Association 104

Teamsters Local 431

Underground Utility/Landscape 355

[UNION SIGNATURES]

Peter Nunez, President
9-24-2021

[UNION SIGNATURES]

UA LOCAL 355

Felipe U R

Addendum A
AGREEMENT TO BE BOUND

[Date]
[Addressee]
[Address]

Re: City of Fresno Community Workforce Agreement
Agreement to be Bound

Dear ________________:

The undersigned confirms that it agrees to be a party to and bound by the City of Fresno Community Workforce Agreement ("Agreement") as such Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms.

By executing this Agreement to be Bound, the undersigned subscribes to, adopts and agrees to be bound by the written terms of the legally established trust fund documents as set forth in Section 10.1 of the Agreement, as they may from time to time be amended, specifying the detailed basis upon which contributions are to be made into, and benefits made out of, such trust funds, and ratifies and accepts the trustees appointed by the parties to such trust funds. The undersigned agrees to execute a separate subscription agreement(s) for such trust funds when such trust fund(s) require(s) such document(s).

The obligation to be a party to and bound by the Agreement shall extend to all work covered by the Agreement undertaken by the undersigned. The undersigned shall require all of its subcontractors, of whatever tier, to become similarly bound for all their work within the scope of the Agreement by signing an identical Agreement to be Bound.

This letter shall constitute a subscription agreement, to the extent of the terms of the letter.

CONTRACTOR/SUBCONTRACTOR:____

California Contractor State License No. or Motor Carrier (CA) Permit No.:

____

Name of Authorized Person (print):

____

Signature of Authorized Person:

____

Title of Authorized Person:

____

Telephone Number of Authorized
Person:____

Address of Authorized
Person:____

State Public Works Registration Number:
____

Addendum B
SIDE LETTER

The parties recognize that the capacity to perform slurry seal maintenance work may not exist locally. Their mutual intent is to facilitate the creation of such capacity locally over time. Accordingly, the parties agree that with respect to slurry seal maintenance work that may otherwise be covered by this agreement, in the event the City receives no responsive bids, the parties agree to meet and confer. The parties may mutually agree to exclude such projects from coverage under this Agreement, or agree to modify the terms of this Agreement for the purpose of such projects. If the parties cannot agree, the City Manager may recommend to the City Council the exclusion of such projects from PLA coverage.

The parties further recognize that significant, new federal resources may become available after the effective date of this Agreement, and that such resources may require changes to this Agreement in order to ensure that the City can take full advantage of such resources. The parties' mutual goal is to ensure that nothing in this Agreement will impair the City's ability to apply for and receive such new funding, and that they will endeavor to agree on any necessary changes to ensure compliance with any new federal regulations governing such funding.

EQUIPMENT LEASE PURCHASE AGREEMENT

BETWEEN

METRO FUTURES, INC., as Lessor

AND

CITY OF FRESNO, as Lessee

DATED AS OF

<u>Month, day year</u>

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<u>Lease Documents</u>:

Equipment Lease-Purchase Agreement;

Exhibit A – Description of Equipment;

Exhibit B - Equipment Schedule, including Schedule 1 (Rental Payment Schedule);

Exhibit C – Notice and Acknowledgment of Assignment;

Exhibit D-1 – Insurance Coverage Request;

Exhibit D-2 – Intentionally Omitted;

Exhibit E – Essential Use Certificate;

Exhibit F – Incumbency Certificate;

Exhibit G – Opinion of Lessee's Counsel;

Exhibit H – Tax Opinion;

Exhibit I – Intentionally Omitted;

Exhibit J – Tax Certificate, including Post-Issuance Compliance Procedures;

Exhibit K – Escrow Agreement;

Exhibit A to Escrow Agreement – Certificate of Acceptance and Payment Request

Exhibit L – City Council Meeting Resolution from Meeting held on June 18, 2026;

Exhibit M – Form 8038-G; and

Exhibit N – Closing Memorandum/Payment Proceeds Direction.

<u>Other Documents:</u>

Design Build Agreement

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UCC-1 Financing Statement
CDIAC Filings
Lessee's Form W-9
Payment and Performance Bonds, with Dual Obligee Rider naming Lessor and its successors and assigns as additional insured

EQUIPMENT LEASE PURCHASE AGREEMENT

THIS EQUIPMENT LEASE PURCHASE AGREEMENT ("**Lease Agreement**") dated as of June 29, 2026, between METRO FUTURES, INC., a California corporation (together with its successors and assigns, the "**Lessor**"), whose mailing address is 12520 High Bluff Drive, Suite 345, San Diego, California 92130, and the CITY OF FRESNO, a political subdivision of the State of California (the "**Lessee**"), whose mailing address is 2600 Fresno Street, Fresno, California 93721.

WITNESSETH:

WHEREAS, the Lessor has agreed lease the Equipment (as hereinafter defined) to the Lessee, and the Lessee has agreed to lease the Equipment from the Lessor, pursuant to the terms and conditions hereinafter set forth;

NOW, THEREFORE, for and in consideration of the premises and of the covenants hereinafter contained, and other good and valuable considerations, the mutual parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

For purposes of this Lease Agreement and any related documents, the following definitions will apply:

1.1 Acceptance Certificate. A certificate in the form attached as Exhibit A to the Escrow Agreement.

1.2 Acquisition Period. Shall mean thirty-six (36) months from the Commencement Date, which is the date that the Escrow Fund shall terminate unless such date is extended in writing by the Lessor and the Lessee.

1.3 Authorized Representative. With respect to the Lessee, each authorized representative of the Governing Body or other person or officer approved by Lessee in writing.

1.4 Code. The Internal Revenue Code of 1986, as amended.

1.5 Commencement Date. Shall have the meaning set forth on Exhibit B.

1.6 Concluding Payment. Shall have the meaning set forth in Article 18.

1.7 Costs of the Equipment. The total cost of acquisition and installation of the Equipment, including costs of issuance $6,171,077.11.

1.8 Default Rate. Shall have the meaning set forth in Section 44.3.

1.9 Equipment. The personal property described in Exhibit A to this Lease Agreement that is now or may hereafter from time to time become attached hereto and incorporated herein by reference, together and with any and all additions, modifications, attachments, substitutions, repairs, accessories, replacements, parts and proceeds thereof.

1.10 Escrow Agent. Banc of California and its successors and assigns.

1.11 Escrow Agreement. The Escrow Agreement of even date herewith among the Lessor, the Lessee and the Escrow Agent in substantially the form attached hereto as Exhibit K.

1.12 Escrow Fund. The fund of such name created under the Escrow Agreement.

1.13 Event of Nonappropriation. Shall have the meaning set forth in Section 44.6(b).

1.14 Fiscal Year. Shall mean July 1 through June 30 of each year.

1.15 Governing Body. The City Council of the Lessee.

1.16 Lease Term. Shall mean the Original Term and all Renewal Terms, but ending on the occurrence of the earliest event specified in Article 3 of this Lease Agreement.

1.17 Maximum Lease Term. Shall mean the Original Term and all Renewal Terms through the Renewal Term, including the last rental payment date set forth in the rental payment schedule attached hereto as Exhibit B.

1.8 Original Term. Shall mean the period from the Commencement Date until the end of the Fiscal Year of the Lessee in effect at the Commencement Date.

1.19 Renewal Term. Shall mean the optional renewal terms of this Lease Agreement, each having a duration of one year and a term co-extensive with the Lessee's Fiscal Year.

ARTICLE 2

LEASE

The Lessor hereby sells, transfers and leases to the Lessee, and the Lessee hereby acquires, purchases and leases from the Lessor, the Equipment. The Lessee shall be entitled to possession the Equipment so long as the Lessee is not in default under this Lease Agreement and the Lessee has not failed to appropriate any amounts required to be paid by it hereunder.

ARTICLE 3

LEASE TERM

The Original Term of this Lease Agreement shall commence on the Commencement Date and shall terminate on the last day of the Lessee's current Fiscal Year. The Lease Term may be continued, solely at the option of the Lessee, at the end of the Original Term or any Renewal Term for an additional Renewal Term up to the Maximum Lease Term. At the end of the Original Term and at the end of each Renewal Term until the Maximum Lease Term has been completed, the Lessee will be deemed to have exercised its option to continue this Lease Agreement for the next Renewal Term unless the Lessee has terminated this Lease Agreement pursuant to the provisions set forth in the following paragraph or Article 18. The terms and conditions during any Renewal Term will be the same as the terms and conditions during the Original Term, except that the rental payments will be as provided in the rental payment schedule attached hereto as Exhibit B.

The Lease Term will terminate upon the first to occur of: (a) the expiration of the Original Term or any Renewal Term of this Lease Agreement and the nonrenewal of this Lease Agreement in an Event of Nonappropriation pursuant to Article 15; (b) the exercise by Lessee of the option to purchase the Equipment pursuant to **Error! Reference source not found.** hereof and payment of t he Concluding Payment and all amounts payable in connection therewith; (c) an Event of Default hereunder by the Lessee and Lessor's election to terminate this Lease Agreement pursuant to Article 14; or (d) the payment by the Lessee of all rental payments authorized or required to be paid by the Lessee under this Lease Agreement during the Maximum Lease Term.

ARTICLE 4

RENTAL PAYMENTS

4.1 Amount and Times of Payment. The Lessee hereby agrees to pay rental payments hereunder in the amounts and on the dates identified in Exhibit B. A portion of each rental payment is paid as, and represents payment of, interest, and the balance of each rental payment is paid as, and represents payment of, principal.

4.2 Place of Payments. All rental payments required to be made to the Lessor hereunder shall be made by wire transfer or other form of electronic payment in accordance with written instructions provided by the Lessor or, with the Lessor's consent, by such other commercial reasonable method of payment. The Lessee shall pay the rental payments in lawful money of the United States of America from moneys legally available therefor.

4.3 Late Charges. Whenever any rental payment or other amount payable to Lessor by Lessee hereunder is not paid within ten (10) business days after such due date, Lessee agrees to pay Lessor a late charge on the delinquent amount at the "Default Rate," which is one percent (1%) per month, or the maximum amount permitted under applicable law, whichever is less.

4.4 Current Expense. The Lessee's obligation to pay rental payments and any additional amounts payable hereunder constitutes a current obligation payable exclusively from legally available funds and shall not be construed to be an indebtedness within the meaning of any applicable constitutional or statutory limitation or requirement. THIS LEASE AGREEMENT IS NOT A PLEDGE OF THE FULL FAITH AND CREDIT OF THE LESSEE, AND DOES NOT CREATE ANY OBLIGATION ON THE PART OF THE LESSEE EXCEPT AS SPECIFICALLY STATED HEREIN.

4.5 Unconditional Payment Obligation. Subject to Section 15.1 hereof, the Lessee's obligation to pay rental payments and all other amounts payable hereunder and the Lessee's obligations otherwise to perform its obligations under or with respect to the Lease Agreement, are and shall be absolute and unconditional and shall not be affected by any circumstances whatsoever, including (i) any right of setoff, counterclaim, recoupment, deduction, abatement, defense or other right which the Lessee may have against the Lessor, the manufacturer or vendor of the Equipment, or any other person, for any reason whatsoever, including, those arising or allegedly arising out of claims (present or future, alleged or actual, and including claims arising out of strict liability in tort or negligence of the Lessor) of the Lessee against the Lessor under this Lease Agreement or otherwise, (ii) any defect in the title, condition, design, operation, or fitness for use of, or any damage to or loss or destruction of all or any portion of, the Equipment, or any interruption or cessation in the use or possession thereof by the Lessee for any reason whatsoever, (iii) the existence of any collateral, guaranty or security interest, (iv) any insolvency, bankruptcy, reorganization or similar proceedings by or against Lessee, (v) any force majeure event, or (vii) any other circumstance, happening or event whatsoever. It is the intention of the parties that all rental payments and other amounts due hereunder shall continue to be payable in all events in the manner and at the times set forth herein unless the obligation to do so shall have been terminated pursuant to the express terms hereof.

4.6 Appropriation.

(a) Lessee represents and warrants that: (i) it currently intends, subject to the provisions of Section 15.2, to continue the Lease Term through the Original Term and all of the Renewal Terms and to pay the rental payments hereunder; (ii) it has made sufficient appropriations or has other legally available funds to pay all rental payments hereunder due during the first Fiscal Year of the Lease Term and believes that legally available funds in an amount sufficient to make all rental payments during each of the Renewal Terms can be obtained; (iii) the officer of Lessee responsible for budget preparation will do all things lawfully within his/her power to obtain appropriated funds for the payment of rental payments and other amounts required to be paid hereunder in each succeeding Fiscal Year during the Lease Term, including make provision for such rental payments to the extent necessary in each proposed annual budget submitted for approval in accordance with applicable procedures of the Lessee and to exhaust all available reviews and appeals in the event such portion of the budget is not approved; and (iv) Lessee acknowledges that Lessor has relied upon these representations as an inducement to enter into this Lease Agreement. Notwithstanding the foregoing, the decision whether or not to budget or appropriate funds or to extend this Lease Agreement for any Renewal Term is solely within the discretion of the then current governing body of the Lessee. If an Event of Nonappropriation (hereinafter defined) shall occur, Lessee agrees, at Lessee's sole cost and expense, peaceably to deliver the corresponding Equipment to Lessor in the condition required by Section 6.1 at such location in the continental United States specified by the Lessor on or before the effective date of termination of this Lease Agreement.

(b) Notwithstanding any provision to the contrary in this Lease Agreement, if sufficient funds are not appropriated by the Governing Body to pay rental payments and other amounts due hereunder (an "Event of Nonappropriation") this Lease Agreement shall terminate as of the end of the Fiscal Year for which funds have been appropriated to pay all amounts hereunder.

ARTICLE 5

ESCROW FUND

5.1 Escrow Fund. On the Commencement Date upon satisfaction of the Lessor's requirements to closing (including, without limitation, the execution and delivery to the Lessor of (1) an incumbency certificate in substantially the form attached as Exhibit F hereto, (2) an Opinion of Lessee's Counsel in substantially the form attached as Exhibit G hereto and (3) a Tax Opinion attached as Exhibit H hereto, Lessor shall deposit: $6,171,077.11 into the Escrow Fund to be held in escrow and applied upon the express terms and conditions of the Escrow Agreement for the acquisition of the Equipment and payment of costs of issuance relating to this Lease Agreement. The Lessee shall order the Equipment, cause the Equipment to be delivered and installed at the location specified in Exhibit B and pay any and all delivery and installation costs and other Equipment costs in connection therewith. When the Equipment has been delivered and installed, Lessee shall promptly accept such Equipment and evidence said acceptance by executing and delivering to Lessor an Acceptance Certificate. Unless the Lessee gives the Lessor written notice of each defect or other proper objection to the Equipment before the execution of the Acceptance Certificate, it shall be conclusively presumed upon execution of an Acceptance Certificate, as between the Lessor and the Lessee, that Lessee has fully inspected and acknowledged that the Equipment described in the Acceptance Certificate is in good condition and repair, has been properly installed and is performing satisfactorily, and that the Lessee is satisfied with and has accepted such Equipment in such good condition and repair. The insufficiency of the amount in the Escrow Fund to pay all costs of the Equipment and any other costs related thereto shall not affect Lessee's obligations hereunder.

ARTICLE 6

RESPONSIBILITIES OF LESSEE

6.1 Care and Use. The Lessee shall use the Equipment in a careful and proper manner, in compliance with all applicable laws and regulations, and at its sole cost and expense, service, repair and maintain the Equipment so as to keep the Equipment in good condition, repair, appearance and working order for the purposes intended, ordinary wear and tear excepted, and shall replace any part of the Equipment as may from time to time become worn out, lost, stolen, destroyed or damaged or is unfit for use. Any and all additions to or replacements of the Equipment and all parts thereof shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Lease Agreement and included in the term "Equipment" as used in this Lease Agreement. If requested by the Lessor, the Lessee shall enter into or cause to be entered into, and maintained in full force and effect during the term of this Lease Agreement, standard maintenance contracts satisfactory to the Lessor covering the Equipment and shall comply with all its obligations thereunder. The Lessee shall furnish evidence to the Lessor of such signed maintenance agreement at or prior to the date of this Lease Agreement and the payment of all charges and premiums therefor. With Lessor's prior written consent, Lessee may undertake maintenance of the Equipment by its employees in lieu of such a maintenance agreement. Substitute maintenance may be used if first approved by the Lessor in writing. Upon the early termination of this Lease Agreement pursuant to Article 14 and 15, the Lessee shall permit the Lessor to remove the Equipment from the premises in the same condition as originally received, ordinary wear and tear excepted, and in such a condition which will permit the Lessor to be eligible for such standard maintenance contract without incurring any expense to repair or rehabilitate the Equipment.

6.2 Inspection. The Lessor shall have the right upon reasonable prior notice to the Lessee to enter into and upon the premises where the Equipment is located to inspect the Equipment and observe its use during normal business hours.

6.3 Utilities. The Lessee shall pay all charges for gas, water, steam, electricity, light, heat or power, telephone or other utility service, if any, furnished to or used in connection with the Equipment during the term of this Lease Agreement. There shall be no abatement of rental payments on account of interruption of any such services.

6.4 Taxes. The Lessee agrees to pay when due any and all taxes relating to the Equipment and the Lessee's obligations hereunder, including but not limited to, all license or registration fees, gross receipts tax, sales and use tax, if applicable, license fees, documentary stamp taxes, rental taxes, assessments, charges, ad valorem taxes, excise taxes, and all other taxes, licenses and charges imposed on the ownership, possession or use of the Equipment by any governmental body or agency, together with any interest and penalties, other than taxes on or measured by the net income of the Lessor.

6.5 Alterations. Without the prior written consent of the Lessor, which consent shall not be unreasonably withheld, the Lessee shall not make any alterations, modifications or attachments to the Equipment which cannot be removed without materially damaging the functional capabilities or economic value of the Equipment. Upon return of the Equipment and at the Lessor's request, the Lessee at its sole cost and expense, will remove all alterations, additions and attachments and repair the Equipment as necessary to return the Equipment to the condition in which it was furnished, ordinary wear and tear excepted.

6.6 Transportation and Installation Charges. The Lessee shall be responsible for all charges relating to the transportation of the Equipment to the Lessee's location and the installation at such location.

6.7 Insurance. The Lessee shall continuously maintain at its sole cost and expense or cause to be maintained property ;insurance covering all property in its care, custody and control, at a minimum equal to the greater of the outstanding principal amount under this Lease Agreement or the replacement value of the Equipment with such deductibles as required,,. Lessor shall be named as an additional insured on any such policy that insures the Equipment and the policy name the Lessor as a loss payee. The Lessee shall pay the premiums therefor and deliver to the Lessor the policies of insurance or duplicates thereof and a certification in the form of Exhibit D-1 or other evidence reasonably satisfactory to the Lessor of such insurance coverage. Each insurer shall also agree by endorsement upon the policy or policies issued by it that it will give thirty (30) days prior written notice to the Lessor of cancellation, non-renewal, or material modification of such policy and ten (10) days prior written notice for non-payment of premium. The proceeds of such insurance, at the option of the Lessee, shall be applied: (a) toward the replacement, restoration or repair of the Equipment, or (b) toward payment of the obligations of the Lessee hereunder. In lieu of the insurance policies described above, and with the consent of the Lessor, which consent shall not be unreasonably withheld, the Lessee may self-insure the Equipment by means of a self-insurance program whereby funds are set aside and maintained for the purpose of self-insuring the property of the Lessee. If Lessee chooses to self-insure the Equipment, Lessee will provide Lessor a certification in the form of Exhibit D-2 together with evidence of the self-insurance program in form and substance satisfactory to Lessor.

6.8 Risk of Loss. Lessee shall bear the entire risk of loss, theft, destruction of or damage to the Equipment or any part thereof from any cause whatsoever during the Lease Term and thereafter until redelivery to a location designated by Lessor, and shall not be relieved of the obligation to pay rental payments or any other obligation hereunder because of any such occurrence. If (a) the Equipment or any portion thereof hereunder is destroyed (in whole or in part) or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Equipment or any part thereof hereunder is taken under the exercise of the power of eminent domain, Lessee shall immediately notify Lessor. Lessee and Lessor shall cause the net proceeds of any insurance claim (including self-insurance) or condemnation award to be applied, at Lessee's option, to (i) the prompt repair, restoration, modification or replacement of the Equipment so affected or (ii) the payment in full of the then applicable Concluding Payment. Any balance of net proceeds remaining after completion of such work or payment of such Concluding Payment shall be paid promptly to Lessee. If the net proceeds are insufficient to pay the costs of such repair, restoration, modification or replacement or to pay such Concluding Payment in full, Lessee shall, at Lessor's direction and sole discretion, either complete the work or pay the then applicable Concluding Payment in full, and in either case pay any cost in excess of the amount of net proceeds, but only from legally available funds. The net proceeds referenced above shall be solely limited to a property loss claim for the leased equipment. In the event there is no applicable Concluding Payment set forth in the rental payment schedule attached hereto as Exhibit B, the Concluding Payment for any such prepayment set forth in this Section 6.8 shall be in an amount equal to 103% of the outstanding principal balance of this Lease Agreement.

6.9 Performance by the Lessor of the Lessee's Responsibilities. Any performance required of the Lessee or any payments required to be made by the Lessee, if not timely performed or paid, may be performed or paid by the Lessor, and in that event, the Lessor shall be immediately reimbursed by the Lessee for these payments and for any costs and expense, legal or otherwise, associated with the payments or other performance by the Lessor, with interest thereon at the Default Rate.

6.10 Financial Statements. If requested, the Lessee agrees that it will furnish the Lessor, the Lessee's annual budget or other proof of appropriation for the ensuing Fiscal Year and such other information relating to Lessee's ability to continue the Lease Term for the next succeeding Fiscal Year, and permit the Lessor or its agents and representatives to inspect the Lessee's books and records and make extracts therefrom as provided under the CA Public Records Act. Additionally, Lessee shall furnish to Lessor as soon as available and in accordance with the City's budgeting and reporting schedules and guidelines, but in no event later than 270 days after the end of each Fiscal Year, the audited financial statements of Lessee, in customary and reasonable detail including the report provided by Lessee's auditor, it being understood that the form and detail used by Lessee in the preparation of its financial statements in connection with this Agreement shall satisfy the form and detail requirements of this Section 6.10. The Lessee represents and warrants to the Lessor that all financial statements which have been delivered to the Lessor, if any, and accurately reflect the Lessee's financial condition and there has been no material adverse change in Lessee's financial condition as reflected in the statements since the date thereof.

ARTICLE 7

EQUIPMENT

7.1 Title. Title to the Equipment and any and all additions, repairs, replacements or modifications thereto, shall be vested and owned by the Lessee subject to the rights of the Lessor hereunder so long as the Lessee shall not be in default hereunder and/or this Lease Agreement shall not have been terminated pursuant to the provisions of Article 15 hereof. Immediately upon the occurrence of an event of default by the Lessee hereunder or the termination of this Lease Agreement under Article 15, title to the Equipment (and all additions, repairs, replacements or modifications thereto) shall vest in the Lessor, free and clear of any right, title or interest of the Lessee unless the Lessor elects otherwise, without the necessity of any further action or the execution of any documents by the parties. Upon timely receipt of all amounts required for the purchase of the Equipment pursuant to Section 4.1 or Article 18 this Agreement shall terminate, all of Lessor’s security interest in the Equipment shall terminate, and Lessor shall deliver to Lessee all such documents and instruments as Lessee may reasonably request to evidence the termination of this Agreement and Lessor’s security interest in the Equipment, without warranty by or recourse to Lessor. Lessee will, nevertheless, execute and deliver any such instruments as Lessor may request to evidence such transfer. Lessee irrevocably designates, makes, constitutes and appoints Lessor and its assignee as Lessee’s true and lawful attorney (and agent-in-fact) with power, at such time of termination or times thereafter as Lessor in its sole and absolute discretion may determine, in Lessee’s or Lessor’s or such assignee’s name, to endorse the name of Lessee upon any bill of sale, document, instrument, invoice, freight bill, bill of lading or similar document relating to the Equipment in order to vest title in Lessor and transfer possession to Lessee.

7.2 Security Agreement.

(a) To secure the performance of all of Lessee’s obligations hereunder, Lessee hereby grants to Lessor, and Lessor shall have and retain, a security interest constituting a first priority and perfected lien and security interest on the Equipment. Lessee agrees to execute and deliver such additional documents, including, without limitation, opinions of counsel, financing statements, landlord-tenant or mortgagee waivers, notices and similar instruments, in form satisfactory to Lessor, that Lessor deems necessary or appropriate to establish and maintain its security interest in the Equipment or for the confirmation or perfection of Lessor’s rights hereunder. As further security therefor, Lessee hereby grants to Lessor a first priority security interest in the cash and negotiable instruments from time to time in the Escrow Fund and all proceeds (cash and non-cash) thereof, and agrees with respect thereto that Lessor shall have all the rights and remedies of a secured party under the applicable provisions of the Uniform Commercial Code. Lessee, at its expense, will protect and defend Lessee’s rights in the Equipment and Lessor’s rights and interests therein and will keep the Equipment free and clear from any and all claims, liens, encumbrances and legal processes of Lessee’s creditors and other persons. Lessee agrees that financing statements may be filed with respect to the security interest in the Equipment.

(b) During the Lease Term, ownership and legal title of all of the Equipment and all substitutions, repairs, modifications, and replacements shall be in Lessee, and Lessee shall take all necessary action to vest such ownership and title in Lessee. Lessor does not own the Equipment, and, by this Lease Agreement, Lessor is merely financing the acquisition of the Equipment for the Lessee. Lessor has not been in the chain of title, does not operate, control or have possession or control over the Equipment, or Lessee's use, maintenance, operation, storage, or maintenance of the Equipment. Lessee is entitled to use and possession of the Equipment, subject to the rights of Lessor hereunder (including its interest in the Equipment as the lessor hereunder). If Lessor terminates this Lease Agreement pursuant to the terms hereof, all rights, title, and interests in the Equipment shall immediately vest in Lessor free and clear of any right, title or interest of Lessee. Lessee, at its expense, will protect and defend Lessee's rights in the Equipment and Lessor's rights and interests therein and will keep the Equipment free and clear from any and all claims, liens, encumbrances and legal processes of Lessee's creditors and other persons.

7.3 Personal Property; No Encumbrances. The Equipment is, and shall at all times be and remain, personal property notwithstanding that the Equipment or any part thereof may now be, or hereafter become, in any manner affixed or attached to, or imbedded in, or permanently resting upon, real property or any building thereon or any fixtures. Upon request of the Lessor, Lessee shall obtain, as to any place where the Equipment is located, a waiver from the landlord and mortgagee thereof with respect to any rights they may have in and to the Equipment or the rights of levy or seizure thereon. Lessee shall not create, incur, assume or permit to exist any mortgage, pledge, lien, security interest, charge or other encumbrance of any nature whatsoever on any of the real estate where the Equipment is or will be located or enter into any agreement to sell or assign or enter into any sale/leaseback arrangement of such real estate without the prior written consent of Lessor; provided, that if Lessor or its assigns is furnished with a waiver of interest in the Equipment acceptable to Lessor or its assigns in its discretion from any party taking an interest in any such real estate prior to such interest taking effect, such consent shall not unreasonably withheld.

7.4 Liens. The Lessee shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, security interest, encumbrance or claim on or with respect to the Equipment or any interest therein, except for the lien and security interest of the Lessor therein created under this Lease Agreement. The Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, security interest, charge, encumbrance or claim if the same shall arise at any time.

7.5 Use of Equipment; Maintenance and Repairs. Lessee shall keep the Equipment at the "Equipment Location" specified in Exhibit B and Lessee shall not remove any of the Equipment therefrom without Lessor's prior written consent. Lessee shall use the Equipment for the purpose for which such Equipment was designed. Lessee shall at all times and at the Lessee's sole cost and expense operate, maintain, service and repair the Equipment in good operating order, repair and condition (A) in accordance and consistent with (1) the manufacturer's warranties, recommendations and all maintenance and operating manuals or service agreements, whenever furnished or entered into, including any subsequent amendments or replacements thereof, issued by the manufacturer, (2) the requirements of all applicable insurance policies, (3) preserving all rights to any warranties, indemnities or other rights or remedies (such service to include monitoring the degradation of the Equipment and enforcing or assisting with the enforcement of the applicable warranties with respect to such degradation), (4) all applicable laws, ordinances, regulations or requirements of any governmental authority, official, board or department relating to its installation, possession, use or maintenance, and (5) prudent industry standards; and (B) without limiting the foregoing, so as to cause the Equipment to be in at least the same condition as when delivered to the Lessee hereunder, except for ordinary wear and tear. Lessee shall not make any alterations, additions, or improvements to the Equipment that are not readily removable without causing damage to or reducing the value of the Equipment. All alterations, additions, or improvements not readily removable shall become property of Lessor.

7.6 Essentiality. Lessee represents that, with respect hereto, (a) the use and operation of the Equipment is essential to its proper, efficient, and economic governmental operation and (b) the functions performed by the Equipment could not be transferred to other equipment available for its use. Lessee does not intend to sell or otherwise dispose of the Equipment or any interest therein prior to the last rental payment scheduled to be paid hereunder. On the Commencement Date, Lessee shall complete and provide Lessor a certificate in the form of Exhibit E.

7.7 Sublease. Lessee will not sublease or otherwise in any manner transfer, deliver or, except as expressly consented to by Lessor, relinquish possession (except on a temporary basis for repair or maintenance) or use of the Equipment without the prior written consent of Lessor.

7.8 No Warranties. Lessee acquires and leases the Equipment "AS IS." Lessee acknowledges that Lessor did not manufacture the Equipment. Lessor does not represent the manufacturer, supplier, owner or dealer, and Lessee selected the Equipment based upon Lessee's own judgment. Lessor makes no warranties, express or implied, including warranties of merchantability or fitness for a particular purpose or otherwise or as to the Equipment's value, design, condition, use, capacity or durability. Lessee agrees that regardless of cause, Lessor is not responsible for, and Lessee will not make any claim against Lessor for, any damages, whether consequential, direct, special or indirect incurred by Lessee in connection with the Equipment. Neither the manufacturer, supplier or dealer nor any salesperson, employee or agent of the manufacturer, supplier or dealer is Lessor's agent or has any authority to speak for Lessor or to bind Lessor in any way. For and during the Lease Term, Lessor assigns to Lessee any manufacturer's or supplier's product warranties, express or implied, applicable to any Equipment and Lessor authorizes Lessee to obtain the customary services furnished in connection with such warranties at Lessee's sole expense. Lessee agrees that (a) all Equipment will have been purchased in accordance with Lessee's specifications from suppliers selected by Lessee, (b) Lessor is not a manufacturer or dealer of any Equipment and has no liability for the delivery or installation of any Equipment, (c) Lessor assumes no obligation with respect to any manufacturer's or supplier's product warranties or guaranties, (d) no manufacturer or supplier or any representative of said parties is an agent of Lessor, and (e) any warranty, representation, guaranty or agreement made by any manufacturer or supplier or any representative of said parties shall not be binding upon Lessor.

ARTICLE 8

WARRANTIES AND REPRESENTATIONS OF THE LESSEE

The Lessee warrants and represents to the Lessor as follows, which representations and warranties shall be continuing.

(a) The Lessee is a political subdivision of the State of California within the meaning of Section 103(c) of the Code and will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as such. Lessee has a substantial amount of one or more of the following sovereign powers: (i) the power to tax; (ii) the power of eminent domain; and (iii) police powers.

(b) The Lessee is authorized under the Constitution and laws of the State of California to enter into this Lease Agreement and the transactions contemplated hereby and to perform all of its obligations hereunder.

(c) The execution and delivery of this Lease Agreement by or on behalf of the Lessee has been duly authorized by all necessary action of the Governing Body, and the Lessee has obtained such other approvals and consents as are necessary to consummate this Lease Agreement. Attached hereto as Exhibit L is a true and correct copy of the resolution or other documents constituting such official action, together with notice of public hearing relating to the meeting at such the resolution was adopted. The Lessee further represents and warrants that all requirements have been met and procedures have been followed in order to ensure the enforceability of this Lease Agreement in accordance with its terms.

(d) The Lessee has complied with such public bidding requirements as may be applicable to this Lease Agreement and such action is in compliance with all public bidding and other State and federal laws applicable to this Agreement and the acquisition and financing of the Equipment by Lessee.

(e) The Lessee has an immediate need for, and expects to make immediate use of all of the Equipment which need is not temporary or expected to diminish during the Lease Term.

(f) The execution, delivery and performance of this Lease Agreement and transactions contemplated herein will not violate any judgment, order, law or regulation applicable to the Lessee or result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bond, loan or credit agreement or other instrument to which the Lessee is a party or by which it is bound.

(g) There are no actions, suits or proceedings pending or, to the knowledge of the Lessee, threatened against or affecting the Lessee in any court or before any governmental commission, board or authority which, if adversely determined, would have a material adverse effect on the ability of the Lessee to perform its obligations hereunder.

(h) The Equipment is essential to and will be used only for the purpose of performing one or more governmental functions of the Lessee consistent with the scope of the Lessee's authority and will not be used in a trade or business of any person or entity.

(i) The Lessee has sufficient funds in its budget for the current Fiscal Year to pay the aggregate amount of the rental payments due under this Lease Agreement during the current Fiscal Year. The Lessee has never failed to pay payments coming due under any bond issue, lease purchase agreement or other indebtedness obligation of the Lessee.

(j) The Equipment is, and shall remain during the term of this Lease Agreement, personal property.

(k) The Lessee will promptly and duly execute and deliver to the Lessor such further documents, instruments and assurances and take such further action as the Lessor may from time to time reasonably request in order to carry out the intent and purpose of this Lease Agreement and to establish and protect the rights and remedies created or intended to be created in favor of the Lessor hereunder.

(l) The useful life of the Equipment will not be less than the Lease Term.

(m) Lessee will pay all costs of acquiring the Equipment in excess of the amount deposited by Lessor in the Escrow Fund allocated to payment of costs of the Equipment.

(n) Lessee is the fee owner of the real estate where the Equipment is and will be located and has good and marketable title thereto, and there exists no mortgage, pledge, lien, security interest, charge or other encumbrance of any nature whatsoever on or with respect to such real estate. The Equipment is not a replacement, repair, substitution or proceeds of any equipment or personal property subject to a prior lien or security interest of a third party.

ARTICLE 9

WARRANTIES AND REPRESENTATIONS OF THE LESSOR

The Lessor warrants and represents to the Lessee as follows, which representations and warranties shall be continuing.

(a) The Lessor is a corporation duly incorporated under the laws of the State of California and is in good standing with the State of California and is duly authorized to enter into the transactions contemplated by this Lease Agreement and to carry out its obligations hereunder.

(b) The Lessor has full power and authority to enter into this Lease Agreement and all other documents relating thereto and the performance of the Lessor's obligations hereunder have been duly and validly authorized, executed and delivered by the Lessor and approved under all laws, regulations and procedures applicable to Lessor and this Lease Agreement constitutes a valid, legal and binding obligation of the Lessor, enforceable in accordance with its terms.

(c) Lessor hereby assigns to Lessee, to the extent that it may lawfully do so, so long as no Event of Default and no Event of Nonappropriation shall have occurred and be continuing hereunder, all rights and benefits that Lessor may have under any warranty, guaranty or the like that may be made with respect to the Equipment by the manufacturer, seller and/or supplier (collectively, the "**Vendor**") thereof. To the fullest extent permitted by applicable law, as between Lessor and Lessee, Lessor shall not be liable to Lessee or any third party for any loss, damage, injury or expense of any kind or nature caused directly or indirectly by any of the Equipment or the use or maintenance thereof or any defect therein, the failure of operation thereof or by any interruption of service or loss of use thereof or for any loss of business or damage whatsoever and howsoever caused. Lessor makes no warranty as to the treatment of this Lease for tax or accounting purposes or as to the compliance of the Equipment with applicable government regulations or requirements. Lessee agrees to look solely to the Vendor for any claim arising from any defect, breach of warranty, failure or delay in delivery, mis-delivery or inability to use the Equipment for any reason whatsoever and Lessee's obligations to Lessor hereunder shall not in any manner be affected thereby, including (without limitation) Lessee's obligations to pay Lessor all rental payments and other amounts payable hereunder, subject to Article 15 hereof. Lessee has selected both the Equipment and the Vendor and acknowledges that Lessor has not participated in any way in Lessee's selection of the Equipment or the Vendor. Lessor has no obligation to install, erect, test, adjust, service or maintain the Equipment.

(d) NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY LESSEE HAS SELECTED EACH ITEM, TYPE, QUALITY, QUANTITY AND SUPPLIER OF THE EQUIPMENT BASED UPON RECOMMENDATIONS OF ITS INDEPENDENT CONSULTANTS PRIOR TO HAVING REQUESTED LESSOR TO FINANCE THE SAME AND THAT LESSOR HAS NOT MADE ANY, AND MAKES NO, WARRANTEES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO ANY MATTER RELATING TO THE SUITABILITY OF THE EQUIPMENT, ITS VALUE, DESIGN, CONDITION, DURABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY, OPERATION, MATERIALS, WORKMANSHIP AND/OR ITS QUALITY. AS BETWEEN LESSEE AND LESSOR, LESSEE LEASES, PURCHASES AND ACQUIRES THE EQUIPMENT "AS IS" "WHERE IS" AND "WITH ALL FAULTS."

(e) Lessee agrees that Lessor shall have no liability or be obligated in any manner for any obligation, loss, expense, claim, damage, action, suit or proceeding arising out of, connected with, or resulting directly or indirectly from the Equipment, including without limitation, the manufacture, selection, delivery, installation, possession, condition, lease, use, operation or return of the Equipment, notwithstanding the full payment of all obligations under this Lease Agreement.

ARTICLE 10

INTENTIONALLY OMITTED

ARTICLE 11

TAX COVENANTS AND INDEMNIFICATION

11.1 Covenants. The Lessee covenants and agrees that it will (i) rebate an amount equal to any excess earnings on the Escrow Fund to the Federal Government if required by, and in accordance with, Section 148(f) of the Code, and make the annual determinations, and maintain the records required by and otherwise comply with all regulations applicable thereto; (ii) register in writing the owner of this Lease Agreement so as to meet the applicable requirements of Section 149(a)(3) of the Code; (iii) timely file a Form 8038-G with the Internal Revenue Service in accordance with Section 149(e) of the Code; (iv) not permit the Equipment to be directly or indirectly used for a private business use within the meaning of Section 141 of the Code; and (v) comply with all provisions and regulations applicable to excluding interest from Federal gross income pursuant to Section 103 of the Code.

11.2 Further Covenants. The Lessee further covenants that it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest portion of the rental payments hereunder under Section 103 of the Code. The Lessee will not directly or indirectly use or permit the use of any proceeds available from the Lessor or any other funds of the Lessee, or take or omit to take any action that would cause the lease purchase obligation evidenced by this Lease Agreement to be an "arbitrage bond" within the meaning of Section 148(a) of the Code. To that end, the Lessee will comply with all requirements of Section 148 of the Code to the extent applicable to the lease purchase obligation evidenced by this Lease Agreement.

11.3 Indemnification. If the Lessor receives notice, in any form, from the Internal Revenue Service that it has determined that the Lessor may not exclude any interest paid hereunder from Federal gross income due to an act or omission of the Lessee, then the Lessee shall pay to the Lessor, within ninety (90) days after the Lessor notifies the Lessee of such determination, an amount which, with respect to the rental payments previously paid and taking into account all penalties, fines, interest and additions to tax (including all federal, state and local taxes imposed on the interest component of all rental payments due through the date of such event), will restore to the Lessor its after-tax yield (assuming tax at the highest marginal tax rate and taking into account the time of receipt of payments and reinvestment at the after-tax yield rate) on the transaction evidenced by this Lease Agreement through the date of such payment. Additionally, the Lessee agrees that upon the occurrence of such an event, it shall pay as additional rent to the Lessor on such succeeding rental payment due date such amount as will maintain such after-tax yield to the Lessor. Notwithstanding the foregoing, the Lessee's obligations under this paragraph shall be subject to the appropriation of funds for such purpose by the Governing Body.

ARTICLE 12

GENERAL INDEMNIFICATION

The Lessee hereby agrees to indemnify, protect and save the Lessor harmless, to the extent permitted by law, from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including attorneys' fees, arising out of, connected with, or resulting directly or indirectly from the Equipment, including without limitation, selection, delivery, possession, condition, lease, use, operation or return of the Equipment. Lessee's obligations under the preceding sentence shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the negligence or the willful misconduct of any vendor or supplier of the Equipment. The indemnification arising under this section shall continue in full force and effect notwithstanding the full payment of all obligations due under this Lease Agreement. Nothing herein shall constitute a waiver by Lessee of governmental immunities including California Government Code section 810 et seq. Lessor agrees that this Agreement shall in no way act to abrogate or waive any immunities available to Lessee under the Tort Claims Act of the State of California.

ARTICLE 13

INTENTIONALLY OMITTED

ARTICLE 14

DEFAULT AND REMEDIES

14.1 Definition of Default. The Lessee shall be deemed to be in default hereunder upon the happening of any of the following events of default (each, an "Event of Default").

(a) The Lessee shall fail to make any rental payment or pay any other sum under this Lease Agreement when due other than by reason of an Event of Nonappropriation;

(b) The Lessee shall fail to maintain insurance as required herein;

(c) With the exception of the above clauses (a) or (b), the Lessee shall fail to perform or observe any term or condition or covenant of this Lease Agreement for a period of thirty (30) days after written notice by Lessor to Lessee specifying such failure and requesting that it be remedied, unless Lessor shall agree in writing to an extension of time prior to its expiration;

(d) Proceedings under any bankruptcy, insolvency, reorganization or similar litigation shall be instituted by or against the Lessee, or a receiver, custodian or similar officer shall be appointed for the Lessee or any of its property, and such proceedings or appointments shall not be vacated, or fully stayed, within sixty (60) days after the institution or occurrence thereof.

(e) Any warranty, representation or statement made by the Lessee is found to be incorrect or misleading in any material respect on the date made.

(f) An attachment, levy or execution is levied upon or against the Equipment.

(g) Any insurance carrier cancels any insurance on the Equipment which is required hereunder without the Lessee first providing replacement coverage.

(h) The Equipment or any part thereof is abused, illegally used, misused, lost, destroyed or damaged beyond repair.

14.2 Remedies on Default. Upon the occurrence of any Event of Default, the Lessor may exercise any one or more of the following remedies as the Lessor in its sole discretion shall elect.

(a) With or without terminating this Lease Agreement, may declare all rental payments payable hereunder to the end of the then-current Fiscal Year of Lessee to be immediately due and payable by Lessee, whereupon such rental payments shall be immediately due and payable.

(b) Exercise any other remedy available, at law or in equity, with respect to such Event of Default.

(c) Reenter and take possession of the Equipment wherever situated without any court order or other process of law and without liability for entering the premises and sell, lease, sublease or make other disposition of the same in a commercially reasonable manner for the account of the Lessee, and apply the proceeds of any such sale, lease, sublease, or other disposition, after deducting all costs and expenses, including court costs and reasonable attorneys' fees, incurred with the recovery, repair, storage and other sale, lease, sublease or other disposition costs, toward the balance due under this Lease Agreement, holding Lessee liable for the difference between (i) the rental payments and other amounts payable by Lessee hereunder plus the applicable Concluding Payment, and (ii) the net proceeds of any such sale, lease or sublease; provided that the amount of Lessee's liability under this subparagraph (c) shall not exceed the rental payments and other amounts otherwise due hereunder plus the remaining rental payments and other amounts payable by Lessee to the end of the then current Original Term or Renewal Term.

(d) Proceed by appropriate court action to enforce performance by the Lessee of the applicable covenants of this Lease Agreement or to recover for the breach thereof including the payment of rental payments due or to become due hereunder or any deficiency therefor following disposition of the Equipment.

(e) Terminate this Lease Agreement as to all or any part of the Equipment and use, operate, lease or hold the Equipment as the Lessor in its sole discretion may decide.

(f) Terminate the Escrow Fund and apply any amounts therein to the Lessee obligations hereunder.

A termination hereunder shall occur only upon notice by the Lessor to the Lessee and only with respect to such portion or portions of the Equipment as the Lessor specifically elects to terminate in such notice. Except as to those parts of the Equipment with respect to which there is a termination, this Lease Agreement shall remain in full force and effect and the Lessee shall be and remain liable for the full performance of all its obligations hereunder. All remedies of the Lessor are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy or preclude the exercise of any other remedy.

14.3 No Remedy Exclusive. Each of the rights and remedies under this Agreement is cumulative and may be enforced separately or concurrently. No course of dealing or conduct between Lessor and Lessee shall be effective to amend, modify or change any provisions of this Agreement. No failure or delay by Lessor to insist upon the strict performance of any term, covenant or agreement of the Agreement, or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, covenant or agreement or of any such breach, or preclude Lessor from exercising any such right, power or remedy at any later time or times.

14.4 Costs and Attorneys' Fees. Upon the occurrence of an Event of Default, Lessee agrees to pay to Lessor or reimburse Lessor for, in addition to all other amounts payable hereunder, all of Lessor's costs of collection, including reasonable attorneys' fees, whether or not suit or action is filed thereon. Any such costs shall be immediately due and payable upon written notice and demand given to Lessee, shall be secured by this Agreement until paid, and shall bear interest at the Default Rate. In the event suit or action is instituted to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial and on appeal of such suit or action or in any bankruptcy proceeding, in addition to all other sums provided by law.

14.5 Reinstatement. Notwithstanding the exercise of any remedy granted by either **Error! Reference source not found.** or **Error! Reference source not found.** of this Lease Ag reement, if all amounts that have become due and payable to the Lessor have been paid, all other things have been performed in respect of which there was a default and there has been paid the reasonable fees and expenses of the Lessor, including administrative expenses and attorneys' fees paid or incurred, then the Event of Default or termination for non-appropriation of funds under this Lease Agreement shall be waived without further action on the part of any party hereto. Upon such payment and waiver, this Lease Agreement shall be fully reinstated, as if it had never been terminated, and the Lessee shall be restored to the use and possession of the Equipment.

ARTICLE 15

NON-APPROPRIATION

15.1 Nature of Obligations of the Lessee.

(a) Except as otherwise provided in this Article 15, the obligation of the Lessee to make rental payments and all other payments provided for in this Lease Agreement and to perform its obligations under this Lease Agreement will be absolute and unconditional, and such rental payments and other amounts will be payable without any rights of set-off, recoupment or counterclaim that the Lessee might have against the Lessor or any other person and whether or not the Equipment is used by the Lessee or available for use by the Lessee.

(b) While recognizing that it is not empowered to make any binding commitment beyond the current Fiscal Year of the Lessee, it is the current intention of the Lessee to make sufficient annual appropriations during the Lease Term to pay all rental payments and other amounts required to be paid by the Lessee under this Lease Agreement. Notwithstanding anything in this Lease Agreement to the contrary, the Lessee's obligation to pay the cost and expense of performing its obligations under this Lease Agreement, including without limitation its obligations to pay all rental payments and all other amounts required to be paid by the Lessee under this Lease Agreement, are subject to and dependent upon appropriations being made from time to time by the Governing Body for such purpose. The Lessee directs the Authorized Representative or other officer charged with the responsibility of preparing the Lessee's budget to include in the budget for each Fiscal Year of the Lessee during the Lease Term a request that the Governing Body appropriate in the Fiscal Year the amount of rental payments and other payments due under this Lease Agreement during such Fiscal Year. The Lessee shall notify the Lessor in writing each year during the Lease Term that such budget request has been made as soon as practicable following the submission of the Lessee's annual budget to the Governing Body. If at any time during any Fiscal Year of the Lessee, the amount appropriated in the budget of the Lessee for the Fiscal Year is insufficient to pay when due the rental payments and other amounts due under this Lease, the Lessee directs the Governing Body (or other officer charged with responsibility for preparing the Lessee's budget) to submit to the Governing Body at the next scheduled meeting of the Governing Body, or as promptly as practicable, but in any event within 45 days, a request for a supplemental appropriation sufficient to cover the deficit.

15.2 Notice of Appropriation. The Lessee shall give notice to the Lessor by no later than June 30 of each year of the amount budgeted by the Lessee and appropriated by the Governing Body for all payments required to be made by the Lessee under the Lease Agreement in the Fiscal Year commencing on the immediately succeeding July 1 and whether such amount is sufficient to meet all such required payments during such period.

ARTICLE 16

ASSIGNMENT

16.1 Assignment By Lessee. The Lessee agrees not to sell, assign, lease, sublease, pledge or otherwise encumber or suffer a lien or encumbrance upon or against any interest in this Lease Agreement or the Equipment (except for the lien and security interest of the Lessor therein) or to remove the Equipment from its place of installation without the Lessor's prior written consent which shall not be unreasonably withheld except that Lessee may sublease all or part of the Equipment if Lessee obtains an opinion of nationally recognized counsel in the area of tax exempt municipal obligations satisfactory to Lessor that such subleasing will not adversely affect the exclusion of the interest components of the rental payments from gross income for federal income tax purposes. Any such sublease of all or part of the Equipment will be subject to this Lease Agreement and the rights of Lessor in, to and under this Lease Agreement and the Equipment. The Lessee’s interest herein may not be assigned or transferred by operation of law.

16.2 Assignment By The Lessor. Lessor’s interest in, to and under this Lease Agreement and the Equipment may be assigned and reassigned in whole or in part to one or more assignees by Lessor without the necessity of obtaining the consent of Lessee; and such assignment, transfer or conveyance shall be made only to (i) an affiliate of Lessor or (ii) banks, insurance companies, government entities, conduits, trusts, custodians or other financial institutions or their affiliates, but no such assignment, transfer or conveyance shall be effective as against Lessee unless and until Lessor has delivered to Lessee written notice thereof that discloses the name(s) and address(es) of the assignee(s) or the Lease Servicer (as hereafter provided). Nothing herein shall limit the right of Lessor or its assignees to sell, assign or grant participation interests in this Lease Agreement to one or more entities listed in (i) or (ii); provided that if such assignment is made pursuant to a participation, custodial or similar agreement under which multiple ownership interests in this Lease Agreement are created, it shall establish a single entity, owner, servicer or other fiduciary or agent to act on behalf of all of the holders of such participation interests (herein referred to as the “Lease Servicer”) with respect to the rights and interests of such holders hereunder, including the exercise of rights and remedies thereunder upon the occurrence of an event of default, and further including the maintenance of a register by which a record of the names and addresses of such holders as of any particular time is kept and agrees, upon request of Lessee, to furnish such information to Lessee. Lessee will retain all notices of assignment as a register of all assignees and will make all payments to the assignee, assignees or Lease Servicer designated in such register. Lessee agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements that may be reasonably requested by Lessor or any assignee to protect its interest in the Equipment and in this Lease Agreement and agrees to the filing of financing statements with respect to the Equipment and this Agreement. Lessee will not have the right to and will not assert against any assignee any claim, counterclaim, defense, set-off or other right Lessee may have against Lessor.

ARTICLE 17

NATURE OF AGREEMENT

The Lessor and the Lessee agree that it is their intention that, for federal income tax purposes, the interest of the Lessor in the Equipment is as a secured party and the interest of the Lessee is as a debtor, and that the Lessor neither has nor will have any equity in the Equipment. It is the agreement of the Lessor and the Lessee that the aggregate rental payments provided for hereunder constitute the purchase price of the Equipment together with the interest on the unamortized amount thereof over the term of this Lease Agreement, that each installment of rent constitutes principal and interest, which fully amortizes the purchase price of the Equipment, together with interest, over the term of this Lease Agreement, and that upon the due and punctual payment and performance of the rental payments and other amounts and obligations under this Lease Agreement, title to the Equipment shall vest permanently in Lessee as provided in this Lease Agreement, free and clear of any lien or security of the Lessor therein.

ARTICLE 18

OPTION TO PURCHASE

Option to Purchase. At the option of Lessee, and provided that no Event of Default has occurred and is continuing hereunder, Lessor's interest in all, but not less than all, of the Equipment will be transferred, conveyed and assigned to Lessee, thereby vesting title to the Equipment permanently in Lessee, and this Lease shall terminate: (a) upon payment in full of the rental payments and all other payments then due hereunder or (b) on any rental payment date hereunder, by paying to Lessor, in addition to the rental payment due on such date, an amount equal to the concluding payment (the "Concluding Payment") shown for such rental payment date in the rental payment schedule in Exhibit B. Lessee shall not have the option to purchase the Equipment hereunder as provided in the foregoing clause (b) on any rental payment date hereunder for which a Concluding Payment is not stated in the rental payment schedule.

This option to purchase may be exercised by the Lessee on any Payment Date on or after June 29, 2036 and is conditioned upon:

(a) the Lessee's having performed all of the terms and conditions of the Lease Agreement between the parties other than the payment of monies not yet due and payable under this Lease Agreement;

(b) the Lessee's giving written notice to the Lessor of its election to exercise the option not less than sixty (30) days prior to the date of exercise of the option by the Lessee; and

(c) the Lessee's payment of the Concluding Payment in cash at the time of the exercise of the option.

Prepayment from Excess Moneys in Escrow Fund. Any funds not applied to pay costs of the Equipment and remaining in the Escrow Fund on the earliest of (i) the end of the Acquisition Period or (ii) receipt by the escrow agent named in the Escrow Agreement of a duly Acceptance Certificate identified as the final such request, shall, first be applied to all reasonable fees and expenses incurred by such escrow agent, if applicable, in connection with the Escrow Fund as evidenced by its statement forwarded to Lessor and Lessee; and, second be paid to Lessor, to be applied by Lessor on any payment date to all or a portion of the rental payment due and owing in the succeeding twelve (12) months and any remaining amounts shall be applied by Lessor as prepayment to the remaining principal balance owing hereunder in inverse order of rental payment dates, unless Lessor directs that payment of such amount be made in such other manner that, in the opinion of nationally recognized counsel in the area of tax exempt municipal obligations satisfactory to Lessor, will not adversely affect the exclusion of the interest components of rental payments from gross income for federal income tax purposes. If any such amount is applied against the outstanding principal components of rental payments, the rental payment schedule attached hereto as Exhibit B will be revised accordingly by Lessor and delivered to Lessee, which shall be binding absent manifest error.

ARTICLE 19

MISCELLANEOUS

19.1 Waiver. No covenant or condition of this Lease Agreement can be waived except by the written consent of the Lessor. Any failure of the Lessor to require strict performance by the Lessee or any waiver by the Lessor of any terms, covenants or agreements herein shall not be construed as a waiver of any other breach of the same or of any other term, covenant or agreement herein.

19.2 Severability. In the event any portion of this Lease Agreement shall be determined to be invalid under any applicable law, such provision shall be deemed void and the remainder of this Lease Agreement shall continue in full force and effect.

19.3 Governing Law. This Lease Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of California.

19.4 Notice. All notices made or required to be given pursuant to this Lease Agreement shall be in writing and shall be deemed duly served if and when mailed, certified or registered mail, postage prepaid, return receipt requested, to the other party at its address set forth above or at such other address as such party shall hereafter designate in writing.

If to the Lessor, address to:

Metro Futures, Inc.
12520 High Bluff Drive, Suite 345
San Diego, California 92130

Attention: Brad Chapman
Email: Brad@absenergy.com

If to the Lessee, address to:

City of Fresno
2600 Fresno Street
Fresno, California 93721
Attention: Georgeanne White
Email: Georgeanne.White@fresno.gov

19.5 Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Lease Agreement.

19.6 Entire Agreement. This Lease Agreement, together with any schedules hereto, constitutes the entire agreement between the parties and shall not be modified, amended, altered or changed except by written agreement signed by the parties.

19.7 Binding Effect. Subject to the specific provisions of this Lease Agreement, this Lease Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

19.8 Further Assurances. The Lessee will promptly and duly execute and deliver to the Lessor such further documents, instruments and assurances and take such further action as the Lessor may from time to time reasonably request in order to carry out the intent and purpose of this Lease Agreement and to establish and protect the rights and remedies created or intended to be created in favor of the Lessor hereunder.

19.9 Time. Time is of the essence of this Lease Agreement.

19.10 Counterparts. This Lease Agreement, and any exhibit hereto, may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

19.11 No Third-Party Beneficiaries. This Lease Agreement and any documents or certificates executed in connection with, or pursuant to it, are intended only for the benefit of the Lessor, the Lessee and the Escrow Agent, and no rights are intended, or shall be deemed to be, granted to any other parties thereby.

19.12 Exhibits. This Agreement includes the Exhibits attached hereto, all of which Exhibits are made a part hereof for all purposes. Lessee and Lessor agree that if any Exhibit to this Agreement contains blanks, the same shall be completed correctly and in accordance with this Agreement prior to or at the time of the execution and delivery thereof.

19.13 Electronic Transactions. The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

19.14 Lessee's Notice Filings Related to this Lease Agreement for SEC Rule 15c2-12. In connection with Lessee's compliance with any continuing disclosure undertakings (each, a "Continuing Disclosure Agreement") entered into by Lessee on and after February 27, 2019, pursuant to SEC Rule 15c2-12 promulgated pursuant to the Securities and Exchange Act of 1934, as amended (the "Rule"), Lessor acknowledges that Lessee may be required to file with the Municipal Securities Rulemaking Board's Electronic Municipal Market Access system, or its successor ("EMMA"), notice that Lessee has incurred obligations under this Lease Agreement and notice of certain subsequent events reflecting financial difficulties in connection with this Lease Agreement. Lessee agrees that it shall not file or submit, or permit to be filed or submitted, with EMMA any documentation that includes the following unredacted sensitive or confidential information about Lessor or its affiliates: address and account information of Lessor or its affiliate, e-mail addresses, telephone numbers, fax numbers, names and signatures of officers, employees and signatories of Lessor or its affiliates, or any account information for the Escrow Agreement, unless otherwise required for compliance with the Rule or otherwise required by law. Lessee acknowledges that Lessor is not responsible for Lessee's compliance or noncompliance with the Rule or any Continuing Disclosure Agreement.

[*Remainder of page intentionally left blank signature pages follow*]

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be executed as of the day and year first above written.

LESSEE

CITY OF FRESNO,
a municipal corporation

By: ___________________________
Georgeanne A. White
City Manager

APPROVED AS TO FORM:
ANDERW JANZ
City Attorney

By: ___________________________
Jennifer M. Wharton Date
Deputy City Attorney

ATTEST:
AMY K. ALLER
City Clerk

By: ___________________________
Deputy Date

LESSOR

METRO FUTURES, INC.,
a California corporation

By:___________________________________
Brad Chapman
President

By:__________________________________
Tim Gray
CFO

EXHIBIT A

DESCRIPTION OF EQUIPMENT

The Equipment shall mean energy conservation measures to be acquired and installed pursuant to the terms of the Design Build Agreement dated June 29, 2026, between Lessee and Alliance Building Solutions, LLC, as described therein, including eight (8) electric vehicle chargers, together with all replacements, substitutions, repairs, restorations, modifications, attachments, accessions, additions and improvements thereof or thereto, and all insurance and/or proceeds therefrom. See also “Scope of Work” attached hereto for a further description of the Equipment.

This Description of Equipment shall be deemed to be supplemented by the descriptions of the Equipment included in the Certificate of Acceptance and Payment Requests submitted to Lessor for approval pursuant to the Escrow Agreement dated as of ____________, among Lessor, Lessee and Banc of California, as escrow agent, which descriptions shall be deemed to be incorporated herein.

Attachment A: Scope of Work

City of Fresno – Phase 4

Sal Mosqueda Center

Renewable Energy Systems

- Install a new carport mounted solar photovoltaic (PV) system. The system will be owned, operated, and maintained by the City. Refer to the Preliminary Solar Layouts Attachment for proposed system layouts. Final system layouts to be approved by the County after final design and coordination is complete. Refer to the Renewable Energy Systems Attachment for details on location, system size, and production.

Roeding Park

Renewable Energy Systems

- Install a new carport mounted solar photovoltaic (PV) system. The system will be owned, operated, and maintained by the City. Refer to the Preliminary Solar Layouts Attachment for proposed system layouts. Final system layouts to be approved by the County after final design and coordination is complete. Refer to the Renewable Energy Systems Attachment for details on location, system size, and production.

Inspiration Park

Renewable Energy Systems

- Install a new carport mounted solar photovoltaic (PV) system. The system will be owned, operated, and maintained by the City. Refer to the Preliminary Solar Layouts Attachment for proposed system layouts. Final system layouts to be approved by the County after final design and coordination is complete. Refer to the Renewable Energy Systems Attachment for details on location, system size, and production.

Marry Ella Brown Community Center Park

Renewable Energy Systems

- Install a new carport mounted solar photovoltaic (PV) system. The system will be owned, operated, and maintained by the City. Refer to the Preliminary Solar Layouts Attachment for proposed system layouts. Final system layouts to be approved by the County after final design and coordination is complete. Refer to the Renewable Energy Systems Attachment for details on location, system size, and production.

Fire Department HQ

Renewable Energy Systems

- Install a new rooftop mounted solar photovoltaic (PV) system. The system will be owned, operated, and maintained by the City. Refer to the Preliminary Solar Layouts Attachment for proposed system layouts. Final system layouts to be approved by the County after final design and coordination is complete. Refer to the Renewable Energy Systems Attachment for details on location, system size, and production.

Ted C. Wills Community Center

Renewable Energy Systems

- Install a new rooftop and carport mounted solar photovoltaic (PV) system. The system will be owned, operated, and maintained by the City. Refer to the Preliminary Solar Layouts Attachment for proposed system layouts. Final system layouts to be approved by the County after final design and coordination is complete. Refer to the Renewable Energy Systems Attachment for details on location, system size, and production.

Police Department Regional Training Facility

Renewable Energy Systems

- Install a new carport mounted solar photovoltaic (PV) system. The system will be owned, operated, and maintained by the City. Refer to the Preliminary Solar Layouts Attachment for proposed system layouts. Final system layouts to be approved by the County after final design and coordination is complete. Refer to the Renewable Energy Systems Attachment for details on location, system size, and production.

Scope of Work Assumptions:

1. Excludes identification and removal of any hazardous material (such as lead, mold, and asbestos).
2. Excludes any structural penetrations or reinforcement or engineering, except solar carports.
3. Excludes permit, plan check and utility fees.
4. Excludes concrete work of any kind, except solar carports.
5. Modification and upgrading of existing systems to current codes.
6. LEED Design, evaluation, calculations, or consulting on LEED documentation.
7. Structural engineering, calculations, or modifications of any kind, beyond what is typically required for permitting of roof-mounted solar.
8. Assumes everything is up to code.
9. Excludes any unforeseen conditions.

EXHIBIT B

EQUIPMENT SCHEDULE

1. Description of the Equipment: See Exhibit A

2. Equipment Location: Multiple facilities and locations throughout the city pursuant to Design Build Agreement between the City of Fresno and Alliance Building Solutions, LLC dated June 29, 2026, including the following facilities:

Site	Renewable Energy Systems	EV Chargers
Sal Mosqueda Community Center	X	X
Roeding Park	X	
Inspiration Park	X	
Marry Ella Brown Community Center Park	X	X
Fire Department HQ	X	
Ted C Wills Community Center	X	
Police Department Regional Training Facility	X	X

3. Rental Payment Schedule: The rental payments shall be made for the Equipment as follows: See attached Schedule 1 to this Exhibit B.

4. Interest Rate: 4.990%

5. Commencement Date: June 29, 2026

6. Schedule Purchase Option: June 29, 2036

7. Scheduled Lease Term: Twenty (20) years

8. The terms and provisions of the Lease Purchase Agreement described above are hereby incorporated into this Schedule by reference and made a part hereof.

CITY OF FRESNO,
as Lessee

By:__________________________________
Name: Georgeanne White
Title: City Manager

METRO FUTURES,
as Lessor

By:__________________________________
Name: Brad Chapman
Title: President & CEO

Payment Number	Date Due	Total Rental Payment Due	Capitalized Interest Fund	Interest Component	Principal Component	Concluding Payment
0	6/29/2026					
1	12/29/2026	$0.00	($153,968.37)	$153,968.37		Non-Callable
2	6/29/2027	$0.00	($153,968.37)	$153,968.37		Non-Callable
3	12/29/2027	$0.00	($153,968.37)	$153,968.37		Non-Callable
4	6/29/2028	$178,923.70		$153,968.37	$24,955.33	Non-Callable
5	12/29/2028	$178,923.70		$153,345.74	$25,577.96	Non-Callable
6	6/29/2029	$186,552.70		$152,707.57	$33,845.13	Non-Callable
7	12/29/2029	$186,552.69		$151,863.13	$34,689.56	Non-Callable
8	6/29/2030	$194,537.70		$150,997.63	$43,540.07	Non-Callable
9	12/29/2030	$194,537.70		$149,911.30	$44,626.40	Non-Callable
10	6/29/2031	$190,393.70		$148,797.87	$41,595.83	Non-Callable
11	12/29/2031	$190,393.71		$147,760.06	$42,633.65	Non-Callable
12	6/29/2032	$198,764.70		$146,696.35	$52,068.35	Non-Callable
13	12/29/2032	$198,764.69		$145,397.24	$53,367.45	Non-Callable
14	6/29/2033	$207,531.71		$144,065.73	$63,465.98	Non-Callable
15	12/29/2033	$207,531.70		$142,482.25	$65,049.45	Non-Callable
16	6/29/2034	$216,712.71		$140,859.27	$75,853.44	Non-Callable
17	12/29/2034	$216,712.70		$138,966.72	$77,745.98	Non-Callable
18	6/29/2035	$226,327.70		$137,026.96	$89,300.74	Non-Callable
19	12/29/2035	$226,327.70		$134,798.91	$91,528.79	Non-Callable
20	6/29/2036	$236,397.70		$132,515.26	$103,882.44	$5,337,534.32
21	12/29/2036	$236,397.71		$129,923.40	$106,474.31	$5,228,398.16
22	6/29/2037	$246,942.70		$127,266.86	$119,675.84	$5,105,730.42
23	12/29/2037	$246,942.70		$124,280.95	$122,661.75	$4,980,002.13
24	6/29/2038	$257,986.70		$121,220.54	$136,766.16	$4,839,816.81
25	12/29/2038	$257,986.69		$117,808.22	$140,178.47	$4,696,133.88
26	6/29/2039	$269,552.70		$114,310.77	$155,241.93	$4,537,010.90
27	12/29/2039	$269,552.69		$110,437.48	$159,115.21	$4,373,917.81
28	6/29/2040	$281,663.70		$106,467.56	$175,196.14	$4,194,341.77
29	12/29/2040	$281,663.71		$102,096.42	$179,567.29	$4,010,285.30
30	6/29/2041	$294,346.70		$97,616.21	$196,730.49	$3,808,636.54
31	12/29/2041	$294,346.71		$92,707.79	$201,638.92	$3,601,956.65
32	6/29/2042	$307,628.70		$87,676.90	$219,951.80	$3,376,506.06
33	12/29/2042	$307,628.70		$82,189.10	$225,439.60	$3,145,430.47
34	6/29/2043	$321,537.70		$76,564.38	$244,973.32	$2,894,332.81
35	12/29/2043	$321,537.70		$70,452.30	$251,085.40	$2,636,970.28
36	6/29/2044	$336,102.70		$64,187.72	$271,914.98	$2,358,257.42
37	12/29/2044	$336,102.70		$57,403.44	$278,699.26	$2,072,590.68
38	6/29/2045	$351,354.70		$50,449.89	$300,904.81	$1,764,163.25
39	12/29/2045	$351,354.70		$42,942.32	$308,412.38	$1,448,040.56

40	6/29/2046	$367,325.70		$35,247.43	$332,078.27	$1,107,660.34
41	12/29/2046	$367,325.70		$26,962.07	$340,363.63	$758,787.61
42	6/29/2047	$384,049.69		$18,470.00	$365,579.69	$384,068.43
43	12/29/2047	$384,049.70		$9,348.79	$374,700.91	$0.00
Grand Totals		**$10,509,268.01**	**($461,905.11)**	**$4,800,096.01**	**$6,171,077.11**	

SCHEDULE 1 TO EXHIBIT B

* Lessee may exercise its option to purchase pursuant to Article 18 of the Lease Agreement. Assumes that all rental payments and additional rentals due on and prior to that date have been paid.

EXHIBIT C

NOTICE AND ACKNOWLEDGEMENT OF SALE OF RENTAL PAYMENTS AND ASSIGNMENT OF LEASE AGREEMENT AND ESCROW AGREEMENT

Metro Futures, Inc. ("Lessor") and the City of Fresno ("**Lessee**") have entered into that certain Equipment Lease-Purchase Agreement dated June 29, 2026 (the "**Lease Agreement**").

Lessee hereby acknowledges that, pursuant to the terms of the Lease Agreement, Lessor has assigned its right, title, and interest in and to the Lease Agreement and, the Equipment to First Security Finance, Inc., an Arkansas corporation ("**Assignee**").

Lessee is hereby directed to pay any and all rental payments and other amounts due under the Lease Agreement to Assignee, as directed by Assignee. Lessee will also direct any and all correspondence, notice and servicing requests to the Assignee at the following address:

First Security Finance, Inc.
4007 N. Rodney Parham Road
Little Rock, Arkansas 72212
Attention: Cain Gunnett

By signing this Notice and Acknowledgment, Lessee agrees that it will pay all amounts due under the Lease Agreement without any set-off notwithstanding any defect in, damage to or requisition of any of the Equipment leased under the Lease Agreement, any other similar or dissimilar event, any defense, set-off, counterclaim or recoupment arising out of any claim against Lessor or Assignee.

By signing this Notice and Acknowledgment, Lessee warrants that its representations and warranties under the Lease Agreement are true and correct on the date hereof.

Date: June 29, 2026

LESSEE:

CITY OF FRESNO,
a California Corporation

By:________________________________
Name: Georgeanne White
Title: City Manager

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: ________________________________
Jennifer M. Wharton Date
Deputy City Attorney

ATTEST:
AMY K. ALLER,
City Clerk

By: ________________________________
Deputy Date

LESSOR:

METRO FUTURES, INC.

By:______________________________
Name: Brad Chapman
Title: President & CEO

By: ______________________________
Name: Tim Gray
Title: CFO

EXHIBIT D-1

INSURANCE CERTIFICATION

Metro Futures, Inc.
12520 High Bluff Drive, Suite 345
San Diego, California 92130

June 29, 2026

Re: Equipment Lease-Purchase Agreement dated June 29, 2026 (the "Lease Agreement")

In connection with the above referenced Lease Agreement, the City of Fresno, as lessee (the "Lessee") certifies that it has instructed the insurance agent named below:

Name of Agent:	Kyle Powell – Aon | Aon Risk Insurance Services West, Inc.
Address:	707 Wilshire Boulevard, Suite 2600, Los Angeles , CA 90017
Phone:	(213) 996-1544

to issue the following insurance coverages:

1. *Liability Insurance*. Lessee is required to maintain public liability insurance, personal injury and property damage with policy limits of $3,000,000. The policy should be endorsed to name First Security Finance, Inc. (the "Additional Insured") as an additional insured.

2. *Casualty Insurance*. Lessee is required to maintain all risk extended coverage, malicious mischief and vandalism insurance for the Equipment described in the above-referenced Equipment Schedule in an amount not less than the greater of $6,171,077.11 or the full replacement cost of the Equipment. Such insurance shall be endorsed to name each of the Additional Insured and their successors and or assigns as an additional insured and co-loss payee with respect to such Equipment.

The required insurance should also be endorsed to give the Additional Insured at least 30 days' prior written notice of the effective date of any material alteration or cancellation of coverage, and an endorsement confirming that the interest of the Additional Insured shall not be invalidated by any actions, inactions, breach of warranty or conditions or negligence of Lessee.

Proof of insurance coverage will be provided to the Additional Insured prior to and/or commensurate with the later of the Commencement Date of the Lease or the delivery of the first Acceptance Certificate under the Escrow Agreement.

Very truly yours,

CITY OF FRESNO, as Lessee

By:________________________________
Name: Georgeanne White
Title: City Manager

EXHIBIT D-2

INTENTIONALLY OMITTED

EXHIBIT E

ESSENTIAL USE CERTIFICATE

Metro Futures, Inc.
12520 High Bluff Drive, Suite 345
San Diego, California 92130

June 29, 2026

Re: Equipment Lease-Purchase Agreement dated June 29, 2026

1. What is the specific use of the Equipment?

   The solar carport and rooftop systems will generate electricity and reduce the use of utility-provided electricity

2. What increased capabilities will the Equipment provide?

   The new solar equipment at the facilities is expected to generate electricity and reduce the reliance on the utility.

3. Why is the Equipment essential to your ability to deliver governmental services?

   The new equipment will provide green benefits for the City, reduce use of non-renewable energy sources, and provide cost savings over the life of the project..

4. Does the Equipment replace existing equipment? (If so, please explain why you are replacing the existing equipment)

   No. The equipment is all new installation.

5. Why did you choose this specific Equipment?

   The selected equipment is suitable as solar installations for the identified facilities and provides the City with an appropriate cost to savings ratio.

6. For how many years do you expect to utilize the Equipment?

   The City expects to operate the equipment beyond its individual expected service life, which ranges from 25 to 30 years.

Very truly yours,
CITY OF FRESNO, as Lessee

By: ______________________________
Name: Georgeanne White
Title: City Manager

EXHIBIT F

INCUMBENCY CERTIFICATE

I, Amy K. Aller, do hereby certify that I am the City Clerk of the City of Fresno ("Lessee"), which is a government organization duly established and validly existing under the laws of the State of California.

I hereby certify that, as of the date hereof, the individuals named below are the duly elected or appointed officers of the Lessee holding the offices set forth opposite their respective names. I further certify that:

(i) The signatures set opposite their respective names and titles are their true and authentic signatures, and

(ii) Such officers have the authority on behalf of Lessee to:

a. Enter into that certain Equipment Lease-Purchase Agreement dated as of June 29, 2026 (the "Lease Agreement"), between Lessee and Metro Futures, Inc., as lessor, and that certain Escrow Agreement dated as of June 29, 2026 (the "Escrow Agreement") by and among Lessee, Metro Futures, Inc., and Banc of California, as escrow agent; and

b. Execute certificate, documents, and agreements relating to the Lease Agreement and Escrow Agreement on behalf of Lessee.

NAME	TITLE	SIGNATURE
Georgeanne White	City Manager	______________________________

IN WITNESS WHEREOF, I have duly executed this Certificate on behalf of the Lessee.

June 29, 2026

By:____________________
Name: Amy K. Aller
Title: City Clerk

EXHIBIT G

OPINION OF LESSEE'S COUNSEL

June 29, 2026

Metro Futures, Inc.
12520 High Bluff Drive, Suite 345
San Diego, California 92130

Re: That certain Equipment Lease-Purchase Agreement dated June 29, 2026

Ladies and Gentlemen:

As counsel to the City of Fresno (the "Lessee"), I have examined that certain Equipment Lease-Purchase Agreement dated as of June 29, 2026 (the "Lease Agreement"), between the Lessee and Metro Futures, Inc., as lessor ("Lessor"), the form of the Escrow Agreement, together with the Disbursement Request Form and Certificate of Acceptance (collectively, the "Escrow Agreement"), and the proceedings taken by the Governing Body of the Lessee to authorize on behalf of the Lessee the execution and delivery of the Lease Agreement and the Escrow Agreement. The Lease Agreement and the Escrow Agreement are herein collectively referred to as the "Transaction Documents." Based upon the foregoing examination and upon an examination of such other documents and matters of law as we have deemed necessary or appropriate, we are of the opinion that:

1. The Lessee is a political subdivision of the State of California with the full power and authority to enter into the Transaction Documents.

2. The Transaction Documents have each been duly authorized, executed, and delivered by the Lessee. Assuming due authorization, execution and delivery thereof by Lessor, the Transaction Documents constitute legal, valid, and binding obligations of the Lessee, enforceable against the Lessee in accordance with their respective terms, subject to any applicable bankruptcy, insolvency, moratorium or other laws or equitable principles affecting the enforcement of creditors' rights generally.

3. The Lessee has complied with any applicable public bidding requirements in connection with the Transaction Documents and the transactions contemplated thereby. By proper action, the Governing Body of the Lessee authorized the execution and delivery of the Transaction Documents and certain other matters, which actions were duly taken at a meeting that was held in compliance with all applicable laws relating to the holding of open and public meetings.

4. No litigation or proceeding is pending or, to the best of my knowledge, threatened to restrain or enjoin the execution and delivery of or performance by the Lessee under the Transaction Documents or in any way to contest the validity of the Transaction Documents, to contest or question the creation or existence of the Lessee or the Governing Body of the Lessee or the authority or ability of the Lessee to execute or deliver the Transaction Documents or to comply with or perform its obligations thereunder. There is no litigation pending or, to the best of my knowledge, threatened seeking to restrain or enjoin the Lessee from annually appropriating

sufficient funds to pay the rental payments or other amounts contemplated by the Lease Agreement.

5. The entering into and performance of the Transaction Documents do not and will not violate any judgment, order, law, or regulation applicable to the Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest, or other encumbrance upon any assets of the Lessee or on the Equipment (as such term is defined in the Lease Agreement) pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement, or other instrument to which the Lessee is a party or by which it or its assets may be bound. Notwithstanding the foregoing, upon the due and timely filing of a financing statement in the form delivered at closing, the Lessor will have a perfected security interest in the Equipment.

6. The authorization, execution, delivery and performance of the Transaction Documents by Lessee do not require submission to, approval of, or other action by any governmental authority or agency which action has not been taken and is final and non-appealable.

This opinion may be relied upon by Lessor and purchasers and assignees of Lessor's interests in the Lease Agreement and any counsel rendering an opinion on the exclusion of the interest components of rental payments from gross income for purposes of federal income taxation.

Respectfully submitted,

____

EXHIBIT H

TAX OPINION

(see attached)

EXHIBIT I

INTENTIONALLY OMITTED

EXHIBIT J

TAX CERTIFICATE AND AGREEMENT
including
POST-ISSUANCE TAX COMPLIANCE PROCEDURES

Dated: June 29, 2026

The following certificate is delivered in connection with the execution and delivery of the Equipment Lease-Purchase Agreement dated June 29, 2026 (the "Lease Agreement"), entered into between the City of Fresno (the "Lessee") and Metro Futures, Inc. (the "Corporation"). Capitalized terms used herein have the meanings defined in the Lease Agreement.

Section 1. In General.

1.1. This Certificate is executed for the purpose of establishing the reasonable expectations of Lessee as to future events regarding the financing of certain equipment (the “Equipment”) to be acquired by Lessor and leased to Lessee pursuant to and in accordance with the Equipment Schedule executed under the Agreement (together with all related documents executed pursuant thereto and contemporaneously herewith, the "Financing Documents"). As described in the Financing Documents, Lessor shall apply $6,171,077.11 (the “Principal Amount”) toward the acquisition of the Equipment and closing costs, and Lessee shall make Rental Payments under the terms and conditions as set forth in the Financing Documents.

1.2. The individual executing this Certificate on behalf of Lessee is an officer of Lessee delegated with the responsibility of reviewing and executing the Financing Documents, pursuant to the Governing Body’s approval or other official action of Lessee adopted with respect to the Financing Documents, a copy of which has been delivered to Lessor.

1.3. The Financing Documents are being entered into for the purpose of providing funds for financing the cost of acquiring, equipping and installing the Equipment which is essential to the governmental functions of Lessee, which Equipment is described in the Equipment Schedule. The Principal Amount will be deposited in escrow by Lessor on the date of issuance of the Financing Documents and held by Banc of California, as escrow agent (the "Escrow Agent") pending acquisition of the Equipment under the terms of that certain Escrow Agreement dated as of June 29, 2026 (the "**Escrow Agreement**"), by and between Lessor, Lessee and Escrow Agent.

1.4. Lessee will timely file for each payment schedule issued under the Lease a Form 8038-G (or, if the invoice price of the Equipment under such schedule is less than $100,000, a Form 8038-GC) relating to such Lease with the Internal Revenue Service in accordance with Section 149(e) of the Internal Revenue Code of 1986, as amended (the “Code”).

1.5. Intentionally Omitted.

Section 2. Non-Arbitrage Certifications.

2.1. The Rental Payments due under the Financing Documents will be made with monies retained in Lessee's general operating fund (or an account or subaccount therein). No sinking, debt service, reserve or similar fund or account will be created or maintained for the payment of the Rental Payments due under the Financing Documents or pledged as security therefor.

2.2. There have been and will be issued no obligations by or on behalf of Lessee that would be deemed to be (i) issued or sold within fifteen (15) days before or after the date of issuance of the Financing Documents, (ii) issued or sold pursuant to a common plan of financing with the Financing Documents and (iii) paid out of substantially the same source of funds as, or deemed to have substantially the same claim to be paid out of substantially the same source of funds as, the Financing Documents.

2.3. Lessee does not and will not have on hand any funds that are or will be restricted, segregated, legally required or otherwise intended to be used, directly or indirectly, as a substitute, replacement or separate source of financing for the Equipment.

2.4. No portion of the Principal Amount is being used by Lessee to acquire investments which produce a yield materially higher than the yield realized by Lessor from Rental Payments received under the Financing Documents.

2.5. The Principal Amount does not exceed the amount necessary for the governmental purpose for which the Financing Documents were entered into. Such funds are expected to be needed and fully expended for payment of the costs of acquiring, equipping and installing the Equipment.

2.6. Lessee does not expect to convey, sublease or otherwise dispose of the Equipment, in whole or in part, at a date which is earlier than the final Payment Date under the Financing Documents.

Section 3. Disbursement of Funds; Reimbursement to Lessee.

3.1 It is contemplated that the entire Principal Amount will be used to pay the acquisition cost of Equipment to the vendors or manufacturers thereof or for any financial advisory or closing costs, provided that, if applicable, a portion of the principal amount may be paid to Lessee as reimbursement for acquisition cost payments already made by it so long as the conditions set forth in Section 3.2 below are satisfied.

3.2. Lessee shall not request that it be reimbursed for Equipment acquisition cost payments already made by it unless each of the following conditions have been satisfied:

(a) If applicable, Lessee adopted a resolution or otherwise declared its official intent in accordance with Treasury Regulation § 1.150 2 (a copy of which will be provided to Lessor, if applicable, the "Declaration of Official Intent"), wherein Lessee expressed its intent to be reimbursed from the proceeds of a borrowing for all or a portion of the cost of the Equipment, which expenditure was paid to the Vendor (as defined in the Lease Agreement) not earlier than sixty (60) days before Lessee adopted the Declaration of Official Intent;

(b) The reimbursement being requested will be made by a written allocation before the later of eighteen (18) months after the expenditure was paid or eighteen (18) months after the items of Equipment to which such payment relates were placed in service;

(c) The entire payment with respect to which reimbursement is being sought is a capital expenditure, being a cost of a type properly chargeable to a capital account under general federal income tax principles; and

(d) Lessee will use any reimbursement payment for general operating expenses and not in a manner which could be construed as an artifice or device under Treasury Regulation § 1.148-10 to avoid, in whole or in part, arbitrage yield restrictions or arbitrage rebate requirements.

Section 4. Use and Investment of Funds; Temporary Period.

4.1. Lessee has incurred or will incur, within six (6) months from the date of issuance of the Financing Documents, binding obligations to pay an amount equal to at least five percent (5%) of the Principal Amount toward the costs of the Equipment. An obligation is not binding if it is subject to contingencies within Lessee's control. The ordering and acceptance of the items of Equipment will proceed with due diligence to the date of final acceptance of the Equipment.

4.2. An amount equal to at least eighty-five percent (85%) of the Principal Amount will be expended to pay the cost of the Equipment by the end of the three-year period commencing on the date of this Certificate. No portion of the Principal Amount will be used to acquire investments that do not carry out the governmental purpose of the Financing Documents and that have a substantially guaranteed yield of four (4) years or more.

4.3. The reasonably expected economic lives of the components of the Equipment and the amount of the Principal Amount expected to be spent (cost) on each component are as follows:

Component	**Expected Economic Life**	**Cost**
Solar	30 years	$5,540,708
EV Chargers	10 years	$143,464

The weighted average maturity of principal components of the rental payments payable under the Lease Agreement is 14.326 years.

4.3. (a) Lessee covenants and agrees that it will rebate an amount equal to excess earnings on the Principal Amount deposited under the Escrow Agreement to the Internal Revenue Service if required by, and in accordance with, Section 148(f) of the Code, and make the annual determinations and maintain the records required by and otherwise comply with the regulations applicable thereto. Lessee reasonably expects to cause the Equipment to be acquired by February 16, 2023.

(b) Lessee will provide evidence to Lessor that the rebate amount has been calculated and paid to the Internal Revenue Service in accordance with Section 148(f) of the Code unless:

(i) Six-Month or Eighteen-Month Expenditure Exception Met: The entire Principal Amount and earnings thereon are expended on the Equipment by the date that is the six-month anniversary of the issuance of the Financing Documents or (ii) the Principal Amount and earnings thereon are expended on the Equipment in accordance with the following schedule: At least fifteen percent (15%) of the Principal Amount and interest earnings thereon is applied to the cost of the Equipment within six months from the date of issuance of the Financing Documents; at least sixty percent (60%) of the Principal Amount and interest earnings thereon is applied to the cost of the Equipment within 12 months from the date of issuance of the Financing Documents; and one hundred percent (100%) of the Principal Amount and interest earnings thereon is applied to the cost of the Equipment prior to eighteen (18) months from the date of issuance of the Financing Documents; or

Section 5. Escrow Account.

The Financing Documents provide that the monies deposited in escrow shall be invested until payments to the vendor(s) or manufacturer(s) of the Equipment are due. Lessee will ensure that such investment will not result in Lessee's obligations under the Financing Documents being treated as an "arbitrage bond" within the meaning of Section 148(a) of the Internal Revenue Code of 1986, as amended (the "Code"), respectively. Any monies which are earned from the investment of these funds shall be labeled as interest earned. All such monies will be disbursed on or promptly after the date that Lessee accepts the Equipment. Lessee acknowledges that the provisions of Sections 2 and 4 herein are particularly applicable when the Principal Amount is funded into an Escrow Fund subject to the Escrow Agreement.

Section 6. No Private Use; No Private Loan.

6.1. Lessee will not exceed the private use restrictions set forth in Section 141 of the Code. Specifically, Lessee will not permit more than 10% of the Principal Amount to be used for a Private Business Use (as defined herein) if, in addition, the payment of more than ten percent (10%) of the Principal Amount plus interest earned thereon is, directly or indirectly, secured by (i) any interest in property used or to be used for a Private Business Use or (ii) any interest in payments in respect of such property or derived from any payment in respect of property or borrowed money used or to be used for a Private Business Use.

6.2 In addition, if both (A) more than five percent (5%) of the Principal Amount is used as described above with respect to Private Business Use and (B) more than five percent (5%) of the Principal Amount plus interest earned thereon is secured by Private Business Use property or payments as described above, then the excess over such five percent (5%) (the “Excess Private Use Portion”) will be used for a Private Business Use related to the governmental use of the Equipment. Any such Excess Private Use Portion of the Principal Amount will not exceed the portion of the Principal Amount used for the governmental use of the particular project to which such Excess Private Use Portion is related. For purposes of this paragraph 6.2, “Private Business

Use" means use of bond proceeds or bond financed-property directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and excluding use as a member of the general public.

6.3. No part of the Principal Amount or interest earned thereon will be used, directly or indirectly, to make or finance any loans to non-governmental entities or to any governmental agencies other than Lessee.

Section 7. No Federal Guarantee.

7.1. Payment of the principal or interest due under the Financing Documents is not directly or indirectly guaranteed, in whole or in part, by the United States or an agency or instrumentality thereof.

7.2. No portion of the Principal Amount or interest earned thereon shall be (i) used in making loans the payment of principal or interest of which are to be guaranteed, in whole or in part, by the United States or any agency or instrumentality thereof, or (ii) invested, directly or indirectly, in federally insured deposits or accounts if such investment would cause the financing under the Financing Documents to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

Section 8. Miscellaneous.

8.1. Lessee shall keep a complete and accurate record of all owners or assignees of the Financing Documents in form and substance satisfactory to comply with the registration requirements of Section 149(a) of the Code unless Lessor or its assignee agrees to act as Lessee's agent for such purpose.

8.2. Lessee shall maintain complete and accurate records establishing the expenditure of the Principal Amount and interest earnings thereon for a period of three (3) years after payment in full under the Financing Documents.

8.3. To the best of the undersigned's knowledge, information and belief, the above expectations are reasonable and there are no other facts, estimates or circumstances that would materially change the expectations expressed herein.

8.4. The Lessee's Tax Identification Number is: 94-6000338.

IN WITNESS WHEREOF, this Tax Certificate and Agreement, including Post-Issuance Tax Compliance Procedures, has been executed on behalf of Lessee as of June 29, 2026.

CITY OF FRESNO, as Lessee

By: ______________________________

Name: Georgeanne White
Title: City Manager

EXHIBIT K

ESCROW AGREEMENT

LESSOR:
Metro Futures, Inc.
12520 High Bluff Drive, Suite 345
San Diego, California 92130

ESCROW AGENT:
Banc of California
10100 Santa Monica Blvd., Suite 2500
Los Angeles, California 90067

LESSEE:
City of Fresno
2600 Fresno Street
Fresno, California 93721

THIS ESCROW AGREEMENT (this "**Escrow Agreement**") is made as of June 29, 2026, by and among Metro Futures, Inc. ("**Lessor**"), the City of Fresno ("**Lessee**"), and Banc of California (the "**Escrow Agent**").

Lessor and Lessee have heretofore entered into that certain Equipment Lease-Purchase Agreement dated as of June 29, 2026 (the "**Lease Agreement**"). The Lease Agreement contemplates that certain Equipment described therein (the "**Equipment**") is to be acquired from the vendor(s) or manufacturer(s) thereof.

After acceptance of the Equipment by Lessee, the Equipment is to be leased by Lessor to Lessee pursuant to the terms of the Lease Agreement.

The Lease Agreement contemplates that Lessor will deposit with the Escrow Agent cash in the amount of $6,171,077.11 (the "**Deposit Amount**"), for deposit into the escrow fund (the "**Escrow Fund**"), to be held in escrow by the Escrow Agent and applied on the express terms and conditions set forth herein. Such deposit into the Escrow Fund, together with all interest and additions received with respect thereto, is to be applied from time to time to pay the vendor(s) or manufacturer(s) of the Equipment (as defined in the Lease Agreement) its invoice cost (a portion of which may, if required, be paid prior to final acceptance of the Equipment by Lessee) and to pay certain costs of entering into the Lease Agreement. The Escrow Fund is to be held for the account and benefit of Lessee, and Lessee has granted to Lessor a first priority and perfected lien on and security interest in the Escrow Fund and any all proceeds, interest and other earnings thereon and investments therein to the Lessor by virtue of the execution of this Escrow Agreement and the Lease Agreement without the need for any additional filings or financing statements.

The parties desire to set forth the terms on which the escrow is to be created and to establish the rights and responsibilities of the parties hereto.

NOW, THEREFORE, the parties agree as follows:

1. The Escrow Agent hereby agrees to serve as escrow agent upon the terms and conditions set forth herein. The Escrow Agent agrees that the Escrow Fund shall be held irrevocably in trust for the account and benefit of Lessee and all interest earned with respect to the

Escrow Fund shall accrue to the benefit of Lessee and shall be applied as expressly set forth herein.

2. There is hereby created a special account to be known as the "City of Fresno Escrow Fund" (the "Escrow Fund") to be held in trust by the Escrow Agent for the purposes stated herein, for the benefit of Lessor and Lessee, to be held, disbursed and returned in accordance with the terms hereof.

To the limited extent required to perfect the first, priority security interest granted by Lessee to Lessor in the cash and negotiable instruments from time to time held in the Escrow Fund, Lessor hereby appoints the Escrow Agent as its security agent, and the Escrow Agent hereby accepts the appointment as security agent, and agrees to hold physical possession of such cash and negotiable instruments on behalf of Lessor.

3. On such day as determined to the mutual satisfaction of the parties (the "**Commencement Date**"), Lessor shall deposit with the Escrow Agent cash in the amount of the Deposit Amount to be held by the Escrow Agent on the express terms and conditions set forth herein. The Escrow Agent agrees to accept the deposit of the Deposit Amount by Lessor with the Escrow Agent, and further agrees to hold the amount so deposited together with all interest and other additions received with respect thereto in escrow on the express terms and conditions set forth herein.

4. The Escrow Agent shall at all times segregate the Escrow Fund into an account maintained for that express purpose, which shall be clearly identified on the books and records of the Escrow Agent as being held in its capacity as Escrow Agent. Securities and other negotiable instruments held in the Escrow Fund from time to time shall be held or registered in the name of the Escrow Agent (or its nominee). The Escrow Fund shall not, to the extent permitted by applicable law, be subject to levy or attachment or lien by or for the benefit of any creditor of any of the parties hereto (except with respect to the security interest therein held by Lessor).

5. Lessee hereby directs the Escrow Agent to invest the cash held in the Escrow Fund from time to time in a Banc of California non-interest bearing demand deposit account with no fees or costs or, in the event such fund is not at the time available, such other investments as Lessee may specify in writing, to the extent the same are at the time legal for investment of the funds being invested. No investment shall be made that would cause the Lease Agreement to be deemed to be an arbitrage bond within the meaning of Section 148(a) of the Internal Revenue Code of 1986, as amended.

6. Lessor and Lessee hereby authorize the Escrow Agent to take the following actions with respect to the Escrow Fund:

a. From time to time, the Escrow Agent shall pay by wire transfer the vendor or manufacturer of the Equipment payments then due and payable, or reimburse Lessee for amounts that it has paid to the vendor or manufacturer of the Equipment, upon receipt of the following: (a) a duly executed Certificate of Acceptance and Payment Request in the form attached as Exhibit A hereto executed by the Lessee and approved for payment by the Lessor, (b) the vendor(s) or manufacturer(s) invoice(s) specifying the acquisition price of the Equipment described in the requisition request, and (c) any additional documentation required by Lessor. Escrow Agent will rely solely upon a duly executed Certificate of Acceptance and Payment Request in the form attached as Exhibit A hereto executed by the Lessor and Lessee in order to disburse funds within 3 business days of receipt, and Escrow Agent shall make the payments described in such document without further inquiry. Without limiting the foregoing, Lessor shall not be required to approve any such payment unless and until Lessee shall have provided or caused to be provided to Lessor (i) certificates of insurance evidencing coverage in accordance with the Lease Agreement and satisfactory to Lessor; and (ii) payment and performance bonds naming Lessor and its successors and assigns as an additional obligee and issued by a surety company rated "A" or better by AM Best in form and substance satisfactory to Lessor.

b. If Lessor provides to the Escrow Agent (with a copy to Lessee) written notice of the occurrence of an Event of Default or an Event of Nonappropriation by Lessee under the Lease Agreement, the Escrow Agent shall thereupon promptly remit to Lessor the entire balance of the Escrow Fund pursuant to written instructions provided by Lessor to the Escrow Agent.

c. On or before the Acquisition Period (as defined below) or upon receipt by the Escrow Agent of a duly executed Certificate of Acceptance and Payment Request identified as the final such request, the remaining moneys in the Escrow Fund shall, *first* be applied to all reasonable fees and expenses incurred by the Escrow Agent, if applicable, in connection herewith as evidenced by its statement forwarded to Lessor and Lessee; and *second*, be paid to Lessor for application on any Rental Payment Date to all or a portion of the Rental payment due and owing in the succeeding twelve (12) months and any remaining amount shall be applied by the Lessor as prepayment to the remaining principal balance owing under the Lease Agreement, in inverse order of Rental Payment Dates, unless Lessor directs that payment of such amount be made in such other manner directed by Lessor that, in the opinion of nationally recognized counsel in the area of tax-exempt municipal obligations satisfactory to Lessor, will not adversely affect the exclusion of the interest component of the Rental payments from gross income for federal income tax purposes. If any such amount is used to prepay principal, the Payment Schedule attached to the Lease Agreement will be revised accordingly, as specified by Lessor.

"Acquisition Period" means June 29, 2029, which is the date that the Escrow Fund shall terminate, unless such date is extended in writing by the Lessor and the Lessee.

7. The Escrow Agent shall have no liability for acting upon any written instruction presented by Lessee and Lessor in connection with this Escrow Agreement that the Escrow Agent in good faith believes to be genuine. Furthermore, the Escrow Agent shall not be liable for any act or omission in connection with this Escrow Agreement except for its own gross

negligence, willful misconduct, or bad faith. The Escrow Agent shall not be liable for any loss or diminution in value of the Escrow Fund as a result of the investments made pursuant to Section 5.

8. To the extent authorized by law, Lessee hereby agrees to indemnify and save the Escrow Agent harmless against any liabilities that it may incur in the exercise and performance of its powers and duties hereunder and that are not due to the Escrow Agent's gross negligence or willful misconduct. No indemnification will be made under this Section or elsewhere in this Escrow Agreement for damages arising solely out of gross negligence, willful misconduct, or bad faith by the Escrow Agent, its officers, agents, employees, successors or assigns.

9. The Escrow Agent may at any time resign by giving at least 30 days' prior written notice to Lessee and Lessor, but such resignation shall not take effect until the appointment of the successor Escrow Agent. The substitution of another bank or trust company to act as Escrow Agent under this Escrow Agreement may occur by written agreement of Lessor and Lessee. In addition, the Escrow Agent may be removed at any time, with or without cause, by instrument in writing executed by Lessor and Lessee. Such notice shall set forth the effective date of the removal. In the event of any resignation or removal of the Escrow Agent, a successor Escrow Agent shall be appointed by an instrument in writing executed by Lessor and Lessee. Such successor Escrow Agent shall indicate its acceptance of such appointment by an instrument in writing delivered to Lessor, Lessee and the predecessor Escrow Agent.

   Upon the effective date of resignation or removal, the Escrow Agent will transfer the Escrow Fund then held by it to the successor Escrow Agent selected by Lessor and Lessee.

10. This Escrow Agreement shall terminate upon receipt by the Escrow Agent of the written notice from Lessor specified in Section 6(b) or Section 6(c) hereof.

11. All notices hereunder shall be in writing, sent by certified mail, return receipt requested, or by mutually recognized overnight carrier addressed to the other party at its respective address shown on page 1 of this Escrow Agreement or at such other address as such party shall from time to time designate in writing to the other parties; and shall be effective on the date or receipt.

12. This Escrow Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. No rights or obligations of the Escrow Agent under this Escrow Agreement may be assigned without the prior written consent of Lessor and Lessee.

13. This Escrow Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and no waiver, consent, modification, or change of terms hereof shall bind any party unless in writing signed by all parties.

14. The Escrow Agent may employ agents, attorneys and accountants in connection with its duties hereunder and shall not be liable for any action taken or omitted in good faith in

accordance with the advice of counsel, accountants, or other skilled persons.

15. This Escrow Agreement shall be governed by and be construed and interpreted in accordance with the internal laws of the State of California.

16. This Escrow Agreement may be executed in several counterparts, each of which so executed will be an original. In addition, the parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be duly executed as of the day and year first above set forth.

LESSOR: METRO FUTURES, INC.

By: ______________________________
Name: Brad Chapman
Title: President & CEO

By: ______________________________
Name: Tim Gray
Title: CFO

LESSEE: CITY OF FRESNO

By: ______________________________
Name: Georgeanne White
Title: City Manager

ESCROW AGENT:
BANC OF CALIFORNIA

By: ______________________________
Name: Rebecca Aiello
Title: SVP Client Banking Manager

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: ______________________________
Jennifer M. Wharton Date
Deputy City Attorney

ATTEST:
AMY K. ALLER,
City Clerk

By: ______________________________
Deputy

EXHIBIT A TO ESCROW AGREEMENT

CERTIFICATE OF ACCEPTANCE AND PAYMENT REQUEST

The following payment request is directed to Banc of California (the "**Escrow Agent**"), as escrow agent under that certain Escrow Agreement dated as of June 29, 2026 (the "**Escrow Agreement**"), between the City of Fresno ("**Lessee**"), Metro Futures, Inc. ("**Lessor**"), and the Escrow Agent. Because Metro Futures, Inc. has assigned all of its right, title, and interest in and to the Escrow Agreement to First Security Finance, Inc., all references herein to "Lessor" shall mean First Security Finance, Inc..

The Escrow Agent is hereby requested to pay from the Escrow Fund established and maintained under the Escrow Agreement the amount set forth below to the named payee(s). The amount shown is due and payable under a purchase order or contract (or has been paid by and not previously reimbursed to Lessee). The equipment described below is part or all of the Equipment leased pursuant to that certain Equipment Lease-Purchase Agreement and Equipment Schedule thereto, both dated as of June 29, 2026 (the "**Lease Agreement**"), between Lessor and Lessee:

QUANTITY	DESCRIPTION OF UNITS OF EQUIPMENT	AMOUNT	PAYEE

Lessee hereby certifies and represents to and agrees with Lessor as follows with respect to the Equipment described above: (i) (i) the amount to be disbursed is not being paid in advance of the time, if any, fixed for any payment, and does not include any retained percentage entitled to be retained by Lessee at this time; (ii) no amount requested to be disbursed was included in any payment request previously filed with the Escrow Agent for which payment was actually made by the Escrow Agent; (iii) Lessee has made such investigation of such sources of information as are deemed necessary and is of the opinion that the applicable portion of the Equipment and related work has been fully paid for, and no claim or claims exist against the Lessee or the Vendor out of which a lien based on furnishing labor or material exists or might arise; (iv) acquisition and installation of the applicable portion of the Equipment for which payment is being requested has been completed in accordance with plans and specifications approved by the Lessee and in accordance with the terms and conditions of the related contract with the Vendor (the "Vendor Agreement"), and said applicable portion of the Equipment is suitable and sufficient for the expected uses thereof, however, this statement is made without prejudice to any rights against third parties which exist at the date hereof or which may subsequently come into being; (v) the amount remaining in the Escrow Fund will, after payment of the amount requested, be sufficient to pay the remaining costs of the Equipment; (vi) a present need exists for the Equipment, which need is not temporary or expected to diminish in the near future; (vii) the Equipment is essential to and will be used by Lessee only for the purpose of performing one or more governmental functions of Lessee consistent with the permissible scope of Lessee's authority; (viii) the estimated useful life of the Equipment based upon the manufacturer's representations and Lessee's projected needs is not less than the term of the Lease Agreement; (ix) Lessee has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes as of the date of this Certificate; (x) the Equipment is covered by insurance in the types and amounts required by the Lease Agreement; (xi) no Event of Default or Event of Nonappropriation, as those terms are defined in the Lease Agreement, and no event that with the giving of notice or lapse of time or both, would become an Event of Default or an Event of Nonappropriation, has occurred and is continuing on the date hereof; and (xii) sufficient funds have been appropriated by Lessee for the payment of all rental payments due under the Lease Agreement during Lessee's current Fiscal Year.

Based on the foregoing, the Escrow Agent is hereby authorized and directed to fund the acquisition of the Equipment set forth above by paying, or causing to be paid, the manufacturer(s)/vendor(s) the amounts set forth on the attached invoices from the Escrow Fund held under the Escrow Agreement in accordance with its terms.

The following documents are attached hereto and made a part hereof: (a) Original Invoice(s) and (b) lien waivers, if applicable.

IF REQUEST IS FOR REIMBURSEMENT, CHECK HERE ☐. Lessee paid an invoice prior to the Commencement Date identified in the Lease Agreement and is requesting reimbursement for such payment. A copy of evidence of such payment together with a copy of Lessee's declaration of official intent and other evidence required by Lessor prior to Lessor's approval hereof that Lessee has satisfied the requirements for reimbursement set forth in Treas. Reg. 1.150-2 is hereby attached. Lessor's approval hereof shall evidence that Lessee has delivered to Lessor such required documentation.

[Remainder of page intentionally left blank]

IF REQUEST IS FINAL REQUEST, CHECK HERE ___☐ Lessee hereby certifies that (a) all of the Equipment described in the Lease Agreement has been received in good condition and has been installed in accordance with the Vendor Agreement, (b) such Equipment is accepted "AS-IS, WHERE-IS"; (c) Lessee has inspected the Equipment, and determined that it is in good working order and complies with all purchase orders, contracts and specifications; (d) Lessee has fully and satisfactorily performed all covenants and conditions to be performed by it as of this date under the Lease Agreement with regard to such Equipment; (e) Lessee waives any right to revoke its acceptance; and (f) the Equipment is fully insured in accordance with the Lease Agreement. This certificate is made without prejudice to any rights against third parties which may exist as of the date hereof or which may subsequently come into being.

Date: ______________

Approved:

First Security Finance, Inc. (assignee of Metro Futures, Inc.), as Lessor	City of Fresno, as Lessee
By:_________________________________ Name:_______________________________ Title:________________________________	By:_________________________________ Name:_______________________________ Title:________________________________

EXHIBIT A TO ESCROW AGREEMENT

PAYMENT REQUEST

BANC OF CALIFORNIA

REQUEST FOR DOMESTIC WIRE TRANSFER

Customer (Originator) Information (All fields required)	
*Account Name	*Account Number
*Customer Address (Physical Address Only)	*Transfer Amount $______________ *Purpose of Wire
Beneficiary (Payee) Information	
*Beneficiary Name	*Beneficiary Account Number
*Beneficiary Address (Physical Address Only)	Beneficiary Phone Number (Optional) Originator to Beneficiary Instructions (Optional)
Beneficiary Bank Information	
*Beneficiary Bank Name	Beneficiary Bank ID (e.g. ABA Routing)
Beneficiary Bank Address (Physical Address Only)	Financial Institution to Financial Institution Instructions (Optional)

NOTICE AND ACKNOWLEDGEMENT OF ASSIGNMENT OF ESCROW AGREEMENT

Metro Futures, Inc. ("Lessor"), City of Fresno ("Lessee"), and Banc of California ("Escrow Agent") have entered into an Escrow Agreement dated June 29, 2026 (the "Escrow Agreement'), pursuant to which Lessor, or its Assignee (as defined below), has deposited cash into the Escrow Fund established thereunder, which funds are to be used by Lessee to acquire certain Equipment.

Escrow Agent is hereby notified that Lessor has assigned all of its right, title, and interest in and to, but not its obligations under, the Escrow Agreement to First Security Finance, Inc. ("Assignee"), including, in particular, but without limitation, Lessor's security interest in the Escrow Fund and Lessor's right to approve all payment requests submitted by Lessee.

Date: June 29, 2026

LESSOR: METRO FUTURES, INC.

By: ________________________________
Name: Brad Chapman
Title: President

By: ________________________________
Name: Tim Gray
Title: CFO

ESCROW AGENT: BANC OF CALIFORNIA

By: ________________________________
Name: Jason Sparks
Title: VP, Deposit Operations Manager

LESSEE: CITY OF FRESNO

By: ________________________________
Name: Georgeanne White
Title: City Manager

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney
By: ________________________________
Jennifer M. Wharton Date

ATTEST:
AMY K. ALLER
City Clerk

By: ________________________________
Deputy Date

EXHIBIT L

CITY COUNCIL MEETING RESOLUTION FROM MEETING HELD ON JUNE 18, 2026

(see attached)

EXHIBIT M

IRS FORM 8038-G

(see attached)

EXHIBIT N

CLOSING MEMORANDUM

$6,171,077.11 LEASE FOR SOLAR EQUIPMENT
PURSUANT TO THAT EQUIPMENT LEASE-PURCHASE AGREEMENT AND EQUIPMENT SCHEDULE THERETO BOTH DATED JUNE 29, 2026
BETWEEN CITY OF FRESNO, AS LESSEE, AND
METRO FUTURES, INC., AS LESSOR

Pre-Closing: Pre-Closing will be held at the Lessee's convenience, on or before June 23, 2026. All documents will be executed and two originals will be overnighted to Metro Futures, Inc., Attn.: Brad Chapman 12520 High Bluff Drive, Suite 345, San Diego, California 92130, for delivery no later than 9:00 am on the morning of June 23, 2026 and held in trust until such time as the wires and original documents are released by the Parties.

Closing: (1) By wire transfer, on the morning of June 29, 2026, the Lessor shall wire or cause to be wired, the Total Lease Proceeds in the amount of $6,171,077.11 to the Escrow Agent, as follows:

Bank Name:	Banc of California, N.A.
ABA No:	122238200
Account No:	6393654814
Account Name:	Banc of California as Escrow Agent – City of Fresno

(2) After receipt of the wire from the Lessor referenced above, the Escrow Agent is authorized by Lessee to transfer via wire the Issuance Costs in the amount of $25,000 to Lessor as follows:

Bank Name:	BMO (Bank of Montreal)
ABA Number:	071025661
Account Number:	4845314614
Account Name:	Metro Futures, Inc.

Metro Futures, Inc. will confirm disbursement of funds to the Lessee's escrow account and then release all of the original documents held in trust to the assignee and forward a copy to the Lessee.

<u>Sources and Uses of Funds</u>:

Principal Amount of Lease	$6,171,077.11
TOTAL SOURCES	**$6,171,077.11**
Total Equipment Cost:	**$5,684,172.00**
Capitalized Interest:	$461,905.11
Issuance Costs:	$25,000.00
TOTAL LEASE PROCEEDS	**$6,171,077.11**

<u>Attest</u>:

CITY OF FRESNO

By: ______________________________

Name: Georgeanne White
Title: City Manager

RESOLUTION NO. __________

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, AUTHORIZING THE CITY MANAGER OR DESIGNEE TO ENTER INTO A DESIGN BUILD CONTRACT WITH ALLIANCE BUILDING SOLUTIONS, INC., A LEASE PURCHASE AGREEMENT, AN ESCROW AGREEMENT AND EQUIPMENT SCHEDULE WITH METRO FUTURES, INC., AND ALL RELATED DOCUMENTS

WHEREAS, the Council of the City of Fresno (Council) desires to cause the City of Fresno (Lessee) to purchase, acquire and lease certain equipment constituting personal property (Equipment) necessary for the Lessee to perform essential governmental functions as deemed necessary and/or desirable by the City Manager or designee; and

WHEREAS, the Council desires to cause Lessee to enter into a design build contract with Alliance Building Solutions, Inc. not to exceed $5,684,172 to be financed through a 20-year lease purchasing agreement, an escrow agreement, and equipment schedule, not to exceed $5,709,172, which includes a $25,000 issuance cost with Metro Futures, Inc. at a rate not to exceed 4.99% for a total loan payment not to exceed $9,771,815.12; and

WHEREAS, in order to acquire such Equipment, the Lessee proposes to enter into one or more Lease Purchase Agreements (together with the Equipment Schedules and all related exhibits, schedules, and certificates attached thereto, the Lease Agreements) with Metro Futures, Inc., a California corporation (Lessor) for the Financed Amount secured in part by the Equipment, and one Escrow Agreement (together the

Disbursement/Payment Request Form and Acceptance Certificate, the Escrow Agreement) with the Lessor and an escrow agent (approved by Lessor); and

WHEREAS, the Council deems it for the benefit of the Lessee and for the efficient and effective administration thereof to enter into the Lease Agreements and Escrow Agreement (Collectively, Transaction Documents) for the purchase, acquisition, and leasing of the Equipment to be therein described on the terms and conditions therein provided.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

1. That the Council hereby authorizes and directs the City Manager or designee to execute and deliver the Transaction Documents.

2. That the execution of the Transaction Documents by the City Manager shall constitute conclusive evidence of such officer's and the Council's approval of any such changes, insertions, revisions, corrections, or amendments to the Transaction Documents.

3. That the officers and employees of the Lessee shall take all action necessary or reasonably required by the Transaction Documents to carry out, give effect to, and consummate the transactions contemplated thereby and to take all action necessary in conformity therewith.

4. That the City Manager and all other officers and employees of the Lessee are hereby directed and authorized to take and shall take all action necessary or reasonably required in order to select, purchase, and take delivery of the Equipment.

5. That nothing contained in this Resolution or the Transaction Documents shall be construed with respect to the Lessee as incurring a pecuniary liability or charge upon the general credit of the Lessee or against its taxing power, nor shall the breach of any provision contained in this Resolution or the Transaction Documents impose any pecuniary liability upon the Lessee or any charge upon its general credit or against its taxing power, except to the extent that the rental payments payable under the Transaction Documents are special limited obligations of the Lessee as provided therein.

6. That the City Manager is hereby designated to act as authorized representatives of the Lessee for purposes of the Transaction Documents until such time as the Council shall remove such designation.

7. That any actions authorized pursuant to the authority given hereunder and heretofore taken by the Lessee, or City Manager on behalf of the Lessee, in connection with the transactions contemplated by the foregoing resolutions be, and they hereby are, approved, ratified and confirmed in all respects.

8. This Written Consent may be executed in multiple counterparts, and all such executed counterparts shall constitute the same instrument.

9. This resolution shall be effective upon final approval.

* * * * * * * * * * * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, AMY K. ALLER, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the __________ day of ________________ 2026.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: ____________________________________, 2026
Mayor Approval/No Return: ___________________________, 2026
Mayor Veto: ____, 2026
Council Override Vote: _______________________________, 2026

AMY K. ALLER
City Clerk

By: ______________________________
Date
Deputy

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: ______________________________
Jennifer M. Wharton Date
Deputy City Attorney

RESOLUTION NO. ___________

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, DECLARING ITS OFFICIAL INTENT TO REIMBURSE CERTAIN EXPENDITURES FROM THE PROCEEDS OF THE LEASE PURCHASE AGREEMENT

WHEREAS, the City of Fresno ("City") intends to pay the costs of Renewable Energy Project (the "project costs"); and

WHEREAS, the City anticipates that it will issue debt obligations in the form of a lease purchase agreement, the payments under which would contain a separately stated interest component for the purpose of financing the project costs on a long-term basis; and

WHEREAS, the City's obligations under the lease purchase agreement will be considered debt for federal income tax purposes; and

WHEREAS, the maximum principal amount of such debt expected to be issued to finance the project costs is $5,709,172; and

WHEREAS, the City expects to pay certain project costs prior to the issuance of the debt obligations; and

WHEREAS, in order to obtain favorable treatment of expenditures of proceeds of the debt obligations used to reimburse the City's prior expenditures, Treasury Regulations section 1.150-2 requires the City to declare its official intent to reimburse such prior project costs expenditures with proceeds of debt.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Fresno as follows:

Date Adopted:
Date Approved:
Effective Date:
City Attorney Approval: ________

1. Findings. The City Council hereby finds and determines that the foregoing recitals are true and correct.

2. Official Intent. The City hereby states that it reasonably expects to reimburse its expenditures on project costs with proceeds of debt to be incurred by the City. The foregoing statement is a declaration of official intent that is made under and only for the purpose of establishing compliance with the requirements of Treasury Regulations section 1.150-2. This resolution does not bind the City to make any expenditure of project costs or to incur any debt for the project costs.

3. Additional Acts. The officers of the City, and each of them individually, are hereby authorized and directed, to do any and all things and to execute, deliver and perform any and all agreements and documents that they deem necessary or advisable in order to effectuate the purposes of this resolution. All actions heretofore taken by the officers of the City that are in conformity with the purposes and intent of this resolution are hereby ratified, confirmed and approved in all respects.

4. Effective Date. This resolution shall be effective upon final approval.

* * * * * * * * * * * * * *

I, AMY K. ALLER, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting thereof, held on the __________ day of ________________, 2026.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: ___________________________________, 2026
Mayor Approval/No Return: __________________________, 2026
Mayor Veto: _______________________________________, 2026
Council Override Vote: ______________________________, 2026

AMY K. ALLER
City Clerk

By:_________________________
Deputy Date

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By:_________________________
Jennifer M. Wharton Date
Deputy City Attorney

RESOLUTION NO. ____________

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, ADOPTING THE 56th AMENDMENT TO THE ANNUAL APPROPRIATION RESOLUTION NO. 2025-179 TO APPROPRIATE $1,100,000 FOR THE PHASE 4 SOLAR INSTALLATION PROJECT IN THE PUBLIC WORKS DEPARTMENT

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FRESNO:

THAT PART III of the Annual Appropriation Resolution No 2025-179 be and is hereby amended as follows:

	Increase/(Decrease)
TO: PUBLIC WORKS DEPARTMENT	
General Fund	$ 1,100,000

THAT account titles and numbers requiring adjustment by this Resolution are as follows:

General Fund

Revenues:			
Account String: **1000-1001-9999-000-439015-20-5-0000-0000-**		$ 1,100,000	
	Total Revenues		$ 1,100,000
Appropriations:			
Account String: **1000-1001-9999-000-757507-20-5-0000-0000-**		$ 1,100,000	
Project String: **209900565-PAYMENT**			
	Total Appropriations		$ 1,100,000

THAT the purpose is to appropriate $1,100,000 for the Phase 4 Solar Installation Project in the Public Works Department.

* * * * * * * * * * * * * *

Date Adopted:
Date Approved:
Effective Date:

Resolution No.

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, AMY K. ALLER, City Clerk of the City of Fresno, certify that the foregoing Resolution was adopted by the Council of the City of Fresno, California, at a regular meeting thereof, held on the __________ day of ________________ 2026.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: ____, 2026
Mayor Approval/No Return: _______________________________________, 2026
Mayor Veto: ____, 2026
Council Override Vote: ____, 2026

AMY K. ALLER
City Clerk

BY: ___________________________
Deputy Date