



ENGINEERING, PROCUREMENT AND CONSTRUCTION CONTRACT

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| <u>SunPower Corporation, Systems</u> Name and Title for Notices: Cathy Villarreal, Project Administration Manager Address: 1414 Harbour Way South, Richmond, CA, 94804 Fax: (510) 323-8041 | <u>San Jose - Evergreen Community College District</u> Name and Title for Notices: Jeanine Hawk Address: 4750 San Felipe Road San Jose, CA 95135 |
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This Engineering, Procurement and Construction Contract (this “Contract”) is entered into this ___ day of May, 2011 (the “Effective Date”) by and between **SunPower Corporation, Systems**, a Delaware corporation having its principal place of business at 1414 Harbour Way South, Richmond, CA, 94804 (“Installer”), and **San Jose - Evergreen Community College District**, a California Community College having its principal place of business at 4750 San Felipe Road, San Jose, CA 95135 (“Customer”). In the event of a conflict between the terms and conditions of this Contract and the terms and conditions of any Work Authorization executed pursuant to this Contract, the terms and conditions of this Contract shall control.

1. DEFINITIONS.

- 1.1 “Allowances” identified in the Agreement include the Installer’s cost of materials and required fees less applicable discounts, delivery to the Site, applicable taxes, unloading, handling, installation, costs for incorporating this work into the Project, overhead and profit. All other costs associated with completing the Work described in the allowance are included in the Contract Price but outside of the allowance amount.
- 1.2 “Applicable Law” means any applicable federal, state or local act, law, statute, ordinance, code, rule, regulation, Permit, order, judgment, consent or approval of any Governmental Authority as may be in effect at the time the Work is undertaken.
- 1.3 “Business Day” means any day other than a Saturday, Sunday or a legal holiday in California, United States of America. In the event a time period set forth in this Contract or a Work Authorization expires on a Day that is not a Business Day, such period shall be deemed to expire on the next Business Day thereafter.
- 1.4 “Change Order” has the meaning set forth in Section 2.14 (*Change Orders*).
- 1.5 “Contract” the meaning given to such term in the preamble hereto.
- 1.6 “Contract Price” has the meaning set forth in Section 3.1 (*Contract Price*).
- 1.7 “Customer” has the meaning given to such term in the preamble hereto.
- 1.8 “Customer Permits” means those Permits designated as Customer Permits in the Work Authorization.
- 1.9 “Customer Person” refers to Customer, or any of their employees, Customer-authorized contractors, or any other Customer-preapproved person acting by, on behalf or through any of the foregoing.

- 1.10** “Day” means a period of twenty-four (24) consecutive hours from 12:00 midnight (Pacific time), and shall include Saturdays, Sundays and all holidays. In the event a time period set forth in this Contract or a Work Authorization expires on a Day that is not a Business Day, such period shall be deemed to expire on the next Business Day thereafter.
- 1.11** “Design Submittal” means (i) all drawings including structural layout, site civil modification drawings, mechanical and electrical drawings and drawings submitted in connection with the schematic, development and construction design phases documents (ii) product description information, (iii) Project Schedule, (iv) permit package and related documents and (v) any other documents submitted in connection with the applicable System.
- 1.12** “Effective Date” means the date set forth in the preamble hereto.
- 1.13** “Final Completion” with respect to the System means the date on which the System is 100% complete for engineering and construction work as defined in the Work Authorization, including completion of all required training, delivery of record drawings, maintenance manuals, and warranty packages for all products, achievement of Substantial Completion, completion of all Punch List Items, completion of Installer Permits, as described in the Work Authorization, completion of the System Performance Test and completion of the Proving Period.
- 1.14** “Final Completion Date” has the meaning set forth in Section 2.8 (*Final Completion*).
- 1.15** “Final Completion Notice” means the notice that shall be issued by Installer upon Final Completion.
- 1.16** “Force Majeure Event” means events or circumstances beyond the control of the effected party and which by the exercise of due diligence such party could not reasonably have been expected to avoid and which it has been unable to overcome, including acts of God and the public enemy; actions of the local utility; fires, floods, hurricanes, typhoons, tornados, winds in excess of ninety (90) mph, volcanoes, earthquakes; vandalism, terrorism, war, civil disobedience; labor disputes or strikes; sabotage; restraint by court order or by Governmental Authority; or other similar circumstances beyond the control of the effected party.
- 1.17** “Governmental Authority” means any federal, state, local or other governmental, regulatory or judicial agency, permitting agency, authority, public utility, or other entity having legal jurisdiction over the Site or the System.
- 1.18** “Hazardous Material” means all pollutants, contaminants and chemicals and any other carcinogenic, ignitable, corrosive, reactive, toxic or otherwise hazardous substances (and materials and/or substances containing or contained by the foregoing) subject to regulation, control or remediation under applicable environmental laws.
- 1.19** “Installer” has the meaning given to such term in the preamble hereto.
- 1.20** “Installer Permits” means those Permits designated as Installer Permits in the Work Authorization.
- 1.21** “Interconnection Agreement” means an agreement between Customer and any utility for the interconnection of any System to the electrical grid.
- 1.22** “Interconnection Point” means the point where the System is interconnected to Customer’s electrical equipment.

- 1.23** “Mobilization Commencement Date” means the date upon which Installer commences Work on the Site, which shall only occur after Installer obtains all Permits required to commence and perform the Work in accordance with this Agreement and the Work Authorization.
- 1.24** “Notice” means any written notice required or permitted to be given by one Party to the other Party under this Contract.
- 1.25** “Notice to Proceed” means the Customer’s written notice given to Installer directing Installer to commence performance of the entire Work. Unless specifically stated otherwise, a fully executed Contract, including a complete Work Authorization and associated Standard Warranty, Operations and Maintenance Agreement and Performance Guarantee, shall constitute a Notice to Proceed.
- 1.26** “Parties” means Customer and Installer collectively, and each of them may be referred to as a “Party.”
- 1.27** “Permit” shall mean each and every national, autonomic, regional and local license, authorization, certification, filing, recording, permit or other approval with or of any Governmental Authority, including, without limitation, each and every environmental, construction or operating permit and any agreement, consent or approval from or with any other Person that is required by any Applicable Law or that is otherwise necessary for the performance of the Work.
- 1.28** “Progress Payment” has the meaning set forth in Section 3.2 (*Payments of the Contract Price*).
- 1.29** “Project Schedule” means the schedule for the performance of the Work by Installer, set forth in the applicable Work Authorization and shown on Exhibit A, attached.
- 1.30** “Proving Period” has the meaning set forth in Section 2.7 (*Proving Period*).
- 1.31** “Punch List” has the meaning set forth in Section 2.6 (*Punch List*).
- 1.32** “Rebate Program” means any rebate or other incentive program in effect as of the Effective Date and offered with respect to any System by any public utility or Governmental Authority.
- 1.33** “Schedule of Values” means the schedule of values set forth in the applicable Work Authorization.
- 1.34** “Site” means the site for installation of a System, as specified in the applicable Work Authorization.
- 1.35** “Specifications” means the specifications with respect to a System, as set forth in the applicable Work Authorization and, once accepted, as provided in the applicable Design Submittal.
- 1.36** “Substantial Completion” means the System is mechanically, electrically, and structurally constructed and complete (except for Punch List items) in accordance with this Contract and the applicable Work Authorization, and is functionally complete and capable of delivery of electrical energy to the Interconnection Point.
- 1.37** “Substantial Completion Date” has the meaning set forth in Section 2.5 (*Substantial Completion*).
- 1.38** “Substantial Completion Notice” means that notice provided by Installer certifying that the System has achieved Substantial Completion.
- 1.39** “System” or “Systems” means a solar photovoltaic system or solar photovoltaic systems identified in the applicable Work Authorization.

- 1.40 “System Performance Test” means the tests conducted with respect to the System performance.
- 1.41 “Warranty” means the warranties provided in the applicable Work Authorization and included as Exhibit D – Standard Warranty.
- 1.42 “Work” has the meaning set forth in Section 2.1 (*Work*).
- 1.43 “Work Authorization” means a Work Authorization executed by the Parties with respect to a System that comprises the layout, specifications, description, Work, materials, Project Schedule, Permits, Contract Price and all other information necessary to define the System and the Work with respect thereto.
- 1.44 “Work Product” has the meaning set forth in Section 9.14 (*Ownership of Designs*).

2. THE WORK.

- 2.1 **Work.** Installer shall provide, on a turnkey basis, all professional design and engineering services, equipment procurement, supervision, labor, materials, equipment, tools, construction equipment and machinery, utilities, transportation, and procurement of Installer Permits for the System (subject to the limitations set forth herein and the applicable Work Authorization) in conformity with a Work Authorization executed in accordance with this Contract (the “Work”), and other facilities, items and services, in each case to the extent necessary to complete the Work in accordance with the Specifications. Installer shall have control over (i) the engineering, design and construction means, methods, techniques, sequences, and procedures and (ii) the coordination of all portions of the Work, unless otherwise provided herein or in the applicable Work Authorization.
- 2.2 **Design.** Installer shall perform engineering and design services, using qualified architects, engineers and other professionals selected by Installer, in each case as are necessary to prepare the Design Submittal. Design shall occur in three (3) phases: 1) schematic design and 2) design development; and 3) construction design. Each Design Submittal shall be submitted to Customer for approval, which shall not be unreasonably withheld. Customer shall review and provide its written approval of Design Submittals in accordance with the Project Schedule, but in no event later than ten (10) Business Days from receipt by Customer of the Design Submittal. If Customer fails to provide approval, objections and/or comments within such ten (10) Business Day period, Customer shall provide a day for day extension to the Project Schedule. Installer shall incorporate or respond to Customer’s comments and return revised Design Submittal to the Customer for final review within five (5) Business Days. Once the design has been approved or deemed approved by Customer, any additional Customer requested changes to the design or materials to be incorporated into the System will be handled as a Change Order and may be subject to modifications to Contract Price and Project Schedule as appropriate.
- 2.3 **Permitting.** The Installer shall produce required documentation in sufficient detail to obtain the Permits, as described in the Work Authorization, required for construction and operation of the System.
- 2.4 **Work Site: Construction, Supervision and Safety.** Installer shall supervise and direct all Work performed hereunder, and shall be solely responsible for and have exclusive control over the means, methods, techniques, sequences and procedures employed. Installer shall ensure that all persons performing work hereunder are skilled in the tasks assigned to them. Installer shall keep each Site neat, clean and reasonably free of materials and accumulation of waste caused by the Work.

2.5 **Start-up Testing, Field Inspection and Verification, and System Commissioning.** Prior to Substantial Completion of each System, Installer shall perform its own start-up testing and field inspection and verification, in conjunction with the Customer's representative to ensure that all components function properly, within design tolerances and in accordance with any requirements set forth in the applicable Work Authorization. These tasks are detailed in the Work Authorization.

2.6 **Substantial Completion.** If Installer has achieved Substantial Completion with respect to the System, Installer shall deliver to Customer a Substantial Completion Notice stating that such System achieved Substantial Completion. Customer and Installer shall inspect all Work within ten (10) Business Days from receipt of such Notice and either:

- a. deliver to Installer the Substantial Completion Notice countersigned by a duly authorized officer of Customer confirming that Installer has completed the relevant Work; or,
- b. notify Installer in writing that the relevant Work has not been completed, stating the reasons therefore.

If Customer fails to inspect the Work and notify Installer that the relevant Work has not been completed within such ten (10) Business Days, Customer shall provide a day for day extension to the Substantial Completion Date. If Customer notifies Installer that the relevant Work has not been completed, Installer shall take action to complete the relevant Work and shall deliver to Customer another Substantial Completion Notice. This procedure shall be repeated until the Work is accepted by Customer in writing. The good faith and reasonable determination of Substantial Completion by the Customer's Program Manager and the Customer shall be controlling and final.

2.7 **Punch List.** Upon achieving Substantial Completion with respect to the System, the Installer shall review the System with the Customer to determine a list of items still outstanding which are necessary to complete the System in accordance with the Work Authorization, approved design documents and the Specifications (the "Punch List") and shall provide such written Punch List to the Customer. The Punch List shall include a schedule of values assigned to each item on the Punch List. The Customer is the sole arbiter of the values established on the Punch List for the values of the outstanding items so long as Customer acts reasonably and in good faith. Within ten (10) Business Days after receipt of a proposed Punch List, Customer shall either (a) approve the Punch List; or (b) request that certain amendments or modifications be made to the Punch List. If Customer timely requests amendments or modifications to the Punch List, the Parties shall negotiate in good faith and shall promptly agree on and execute an amended Punch List. The Parties' agreement on the Punch List shall not be a pre-requisite to the relevant System achieving Substantial Completion and the Parties' failure to timely agree on the Punch List pursuant to this Section shall not delay or be deemed to preclude any System from achieving Substantial Completion hereunder. Should the Customer determine that the System has not achieved Substantial Completion, the Installer shall continue to complete the Work until such time as Installer can substantiate the System does satisfy the requirements of Substantial Completion and provide a new Substantial Completion Notice to the Customer. This process of System review, acceptance and negotiations shall continue on in this manner until Substantial Completion is achieved. If Customer notifies Installer that Customer has amendments or modifications to the Punch List but such items are not provided to Installer within thirty (30) days after the Substantial Completion Date, Customer and Installer shall discuss any changes required to the Final Completion Date in order to provide Installer with a reasonable time to address such Punch List additions.

The Punch List work shall be completed in a mutually agreed time period not to exceed sixty (60) days after the Substantial Completion Date. If Installer fails to complete the Punch List items on

or before the expiration of the sixty (60) day period set forth above (or such longer or shorter period as may be agreed upon by the Parties in writing), Customer may complete such remaining Punch List items on its own and charge Installer for the duly justified and reasonable costs. Installer will not unduly withhold payment of added costs to complete Punch List work by Customer-provided sources should the Installer be either unwilling or unable to complete the Punch List in the sixty (60) day period. Installer shall promptly issue a Final Completion Notice upon completion by Installer of the Punch List items.

2.8 **Proving Period; System Performance Test.** Prior to Final Completion, the Installer shall perform (a) the thirty (30) day Proving Period and (b) System Performance Test and commissioning the Systems, in each case consisting of monitoring the System output and ensuring that the System functions properly over time. This Proving Period and System Performance Test are detailed in the Work Authorization.

2.9 **Final Completion.** Final Completion shall occur after Substantial Completion, when Punch List Items are completed, the thirty (30) day Proving Period and System Performance Tests are successfully completed, training has occurred and documentation has been forwarded to the Customer including all warranties, record drawings and Operation and Maintenance manuals. If Installer has achieved Final Completion with respect to the System, Installer shall deliver to Customer a Final Completion Notice stating that such System achieved Final Completion. Customer shall inspect all Work within ten (10) Business Days from receipt of such Notice and either:

- a. deliver to Installer the Final Completion Notice countersigned by a duly authorized officer of Customer confirming that Installer has completed the relevant Work; or,
- b. notify Installer in writing that the relevant Work has not been completed, stating the reasons therefore.

If Customer fails to inspect the Work and notify Installer that the relevant Work has not been completed within such ten (10) Business Days, Customer will provide a day for day extension to the Final Completion Date. -If Customer timely notifies Installer that the relevant Work has not been completed, Installer shall take action to complete the relevant Work and shall deliver to Customer another Final Completion Notice. This procedure shall be repeated until the Work is accepted by Customer in writing. The good faith and reasonable determination of Final Completion by the Customer's Program Manager and the Customer shall be controlling and final.

2.10 **Project Schedule.** Installer shall utilize its best efforts to perform the Work in conformity with the Project Schedule as specified in Exhibit A, Work Authorization. Customer shall be entitled to recover from Installer damages for loss of use of the System established at five hundred dollars (\$500) per Day in the event Installer fails to achieve Substantial Completion within two hundred and seventy six (276) calendar days from issuance of the Notice to Proceed, unless the failure to achieve Substantial Completion is caused by Customer's breach of this Contract or a Force Majeure Event, and, this amount will accrue for each day until Substantial Completion is achieved. In the event any such damages are payable to Customer by Installer, amounts due shall be paid every thirty (30) Days until Substantial Completion is achieved. In no event shall the aggregate amount of damages under this Section 2.10 exceed fifty thousand dollars (\$50,000.00). Installer acknowledges that any damages paid under this Section 2.10 are not a penalty in lieu of Customer's actual damages resulting from the failure to achieve Substantial Completion. The Parties further acknowledge that Customer's actual damages may be impractical and difficult to accurately ascertain, and in accordance with Customer's rights and obligations under this Agreement, any damages provided pursuant to this Section 2.10 constitutes fair and reasonable damages to be borne by Installer in lieu of Customer's actual damages.

- 2.11 **Compliance.** Installer shall cause the Work to be performed in compliance with Applicable Law and any design and engineering or other professional services to be performed pursuant to this Contract and any Work Authorization, which under Applicable Law must be performed by licensed personnel, shall be performed by licensed personnel in compliance with Applicable Law.
- 2.12 **Prevailing Wage Rates.** Pursuant to California Labor Code §1773, the Director of the Department of Industrial Relations of the State of California has determined the generally prevailing rates of wages in the locality in which the Work is to be performed. The Installer shall post a copy of all applicable prevailing wage rates for the Work at conspicuous locations at the Site of the Work. The Installer and all Installer's Subcontractors performing any portion of the Work shall pay not less than the applicable prevailing wage rate for the classification of labor provided by their respective workers in prosecution and execution of the Work.
- 2.13 **Project Stabilization Agreement.** Installer must provide evidence of acceptance of the terms and conditions of the Construction Careers Agreement for all Measure G Bond Projects (PSA) between the San Jose Evergreen Community College District and the Santa Clara & San Benito Counties Building and Construction Trades Council, a copy of which has been provided by Customer to Installer. The Installer shall submit completed and signed "Agreement to be Bound" and the completed and signed "Agreement of Contractors" with this Contract, both of which are included as Attachments. Additionally, Installer and any of the Installer's subcontractors of any tier on this project will be subject to, and will also be required to sign and be bound by the PSA.
- 2.14 **Rebate Program/Tax Credits.**
- a. Installer shall provide all necessary assistance and cooperation to Customer in the preparation and submittal of any and all applications or other documentation necessary for Customer to participate in any Rebate Program. Installer shall attend all site verification visits conducted by the applicable public utility or Governmental Authority and shall assist Customer in satisfying the requirements of the Rebate Program. Installer's obligations under this Section shall expire on the first anniversary of Substantial Completion of the System unless this Contract is terminated earlier pursuant to Section 4.3 (*Termination for Cause*).
 - b. The Parties acknowledge and agree that any rebates or incentives payable under any Rebate Program or any tax credits associated with the ownership of the System will be paid directly to, or shall be retained by, Customer. Installer makes no representation or warranty as to the amount or availability of any Rebate Program or tax credit or incentive or any other incentives or credits available or perceived or believed to be available from any utility, Governmental Authority or any other Person, and assumes no responsibility or liability in connection therewith. Installer shall coordinate PG&E meter installations and interconnection to PG&E and shall use its best efforts to ensure that the Customer's PG&E connections are complete within sixty (60) days after Substantial Completion. Customer is solely responsible for determining the availability of any Rebate Program and negotiating the payment of any such rebates with the applicable public utility or Governmental Authority.
 - c. The Installer, with Customer acknowledgement, shall apply to the CSI Program Administrator for an extension of the Customer's CSI Reservation Expiration Date of January 20, 2012, under the CSI program guidelines with the intent to extend the Substantial Completion date to a later date based on the current progress at that time. If Installer is successful in obtaining such CSI Reservation Expiration Date extension, the Parties hereby acknowledge and agree that the Parties shall execute a Change Order to revise the remainder of the Project Schedule accordingly. Such Change Order will not increase the Contract Price. Customer shall use its best efforts to assist Installer in

applying for such CSI Reservation Expiration Date extension request including, without limitation, the execution and/or provision of any documents required for such formal request.

2.15 Change Orders.

- a. **Generally.** Each Party may, upon written Notice to the other Party, request a change to the Specifications, the Work or any System by issuing a written order (the “Change Order”) which shall include: (i) a reference to this Contract and the relevant Work Authorization, (ii) the changes to the Work as proposed and (iii) the effects (if any) of the Change Order on the Project Schedule and Contract Price.
- b. **Change Order Costs and Pricing.** If a Change Order contemplates a change in Contract Price such changes shall be calculated as follows: (A) 1) labor and materials costs of Installer shall be billed at cost, with a fifteen percent (15%) markup to cover administration, overhead and profit, or 2) Installer will provide a firm not-to-exceed estimated cost comprised of all labor, materials, equipment, tools and supplies, vehicles and incidentals with a fifteen percent (15%) markup to cover administration, overhead and profit; (B) subcontractor costs of Installer shall be billed at cost, with a ten percent (10%) markup to cover administration, overhead and profit; and (C) any additional performance or payment bond costs shall be billed at cost and not subject to markup. Deductive Change Orders for reductions in Contract Price shall include the same reductions in mark-up costs (i.e. 15% on Installer, 10% on subcontractor and actual costs for bonds).
- c. **Installer Requested Change Order.** Installer shall be entitled to a Change Order only upon the occurrence of any of the following and only to the extent any such event has an impact upon the Work, Project Schedule or Contract Price and so long as Installer has used all reasonable efforts to mitigate the effects of such event:
 - i. the Work is delayed, suspended or accelerated by Customer, Customer’s employees, or Customer’s preapproved person/s acting on behalf or through any of the aforementioned;
 - ii. a breach by Customer or any Customer Person of the terms and conditions of this Contract or the failure by any Customer Person to perform its obligations hereunder,
 - iii. a change in Applicable Law occurring after the Effective Date of this Contract that affects Installer’s performance hereunder and under the relevant Work Authorization;
 - iv. the occurrence of a Force Majeure Event;
 - v. delays in obtaining Permits in excess of the times allotted for such Permits in the applicable Work Authorization; provided that Installer or Customer, as applicable, has (A) timely filed and complied with all filing and application requirements and deadlines of the relevant Governmental Authority and (B) used its best efforts to obtain such Permits, including, but not limited to, coordinating and cooperating with the relevant Governmental Authority;

- vi. Work required or expenses or costs incurred as a result of or in connection with any of the exclusions set forth in this Contract and in the applicable Work Authorization; or
 - vii. any change requested by Customer or their authorized representative to (A) the Specifications, as detailed in the Work Authorization, during the design process or (B) the Specifications, as agreed in the Design Submittal, the Work or the System after formal approval of the Design Submittals.
- d. **Customer Requested Change Order.** Customer shall be entitled to request a Change Order at any time or upon the occurrence of any of the following:
- i. additions to the Work or deletions from the Work that effect System size, configuration or output; or
 - ii. changes to the Specifications which may affect the System size, configuration or output.
- e. **Procedure.** If Installer is entitled to a Change Order pursuant to clause (c) above, Installer shall submit such Change Order to Customer for its review and approval, which shall not be unreasonably withheld. Within ten (10) Business Days after receipt of a Change Order, Customer shall either: (i) execute and deliver such Change Order as provided by Installer or (ii) request that certain amendments or modifications be made to such Change Order. If Customer does not respond to such Change Order within that period, Installer shall be provided with an adjustment to the Project Schedule to the extent Installer has been delayed in its performance of Work on the critical path of the Project Schedule as a result of such delay in response. If Customer timely requests amendments or modifications to the Change Order, the Parties shall negotiate in good faith and shall promptly agree on and execute an amended Change Order.

If Customer is entitled to request a Change Order pursuant to clause (d) above, Customer shall submit such Change Order to Installer for its review and approval. Within ten (10) Business Days after receipt of a Change Order, Installer shall either: (i) execute and deliver such Change Order as provided by Customer, (ii) request that certain amendments or modifications be made to such Change Order or (iii), if an addition to the Work or change to the Specifications that affects System size, configuration or output, identify to Customer the reasons that such request would cause Installer to deny such Change Order, allowing Customer opportunity to review and revise Change Order or to respond to Installer with justification for Change Order. If Installer does not respond to such Change Order within that period, Customer shall be provided with an adjustment to the Project Schedule to the extent Customer has been delayed in its use of the System as a result of such delay in response. If Installer timely requests amendments or modifications to the Change Order, the Parties shall negotiate in good faith and shall promptly agree on and execute an amended Change Order.

All executed or deemed executed Change Orders will be incorporated by reference into this Contract and the applicable Work Authorization.

- f. **Equitable Adjustment.** If the Parties cannot agree on the cost or other terms or conditions of a Change Order, Installer shall have no obligation to implement the Change Order if such Change Order was requested by Customer, or to continue to perform the Work without agreement on cost or any other term or condition of the requested Change Order. Installer may, nonetheless, continue performance of the Work and shall have the right, upon completion of the Work, to submit an equitable adjustment request to

Customer for any additional amounts due to Installer as a result of any changes to the Work pursuant to clause (c) above. The Parties shall negotiate in good faith to establish an equitable adjustment to the Contract Price; provided, that Installer shall not be eligible to an equitable adjustment if the reason for the Change Order for which Installer requests an equitable adjustment is due to Installer's, Installer's subcontractor's, or Installer's vendor's errors or omissions, including design related errors or omissions, or breach of this Contract or the Work Authorization. If the Parties are unable to reach agreement on an equitable adjustment, the Parties shall resolve such issues in accordance with Section 9.12 (*Arbitration*) of this Contract.

- g.** Delay. If Installer's performance hereunder is delayed by any event or circumstance described in clause (c) of Section 2.14 (*Change Orders*), Installer shall not be deemed in breach of this Contract and shall be entitled to request a Change Order in accordance with Section 2.14 (*Change Orders*). Installer shall use its commercially best efforts to avoid or minimize the cause of such delay and shall, as soon as practicable but within forty-eight (48) hours of the event, notify Customer thereof in writing.

2.16 Hazardous Materials. Installer shall have no responsibility for detection, abatement, remediation, removal or disposal of any Hazardous Material, except Hazardous Materials introduced onto the Site by Installer, its employees, subcontractors, agents, or other parties acting on behalf of Installer. In the event that Installer becomes aware of the presence of, or exposure of persons to, any Hazardous Material at the Site, Installer shall inform Customer by Notice as soon as practicable. Notwithstanding anything to the contrary herein, Installer shall not be responsible for, and Customer shall bear full responsibility and remediation costs relating to any Hazardous Materials uncovered, removed or disturbed by Installer on the Site resulting from Installer's performance of the Work hereunder. Any introduced Hazardous Materials brought on to the Site or used by the Installer or any of its subcontractors or vendors will be removed in their entirety by the Installer at no cost to the Customer and, any associated impacts caused by the introduction or use of Hazardous Materials brought onto the site or used by the Installer or any of their subcontractors or vendors shall also be removed completely by the Installer at no costs to the Customer. In addition, Customer hereby specifically agrees to indemnify, defend and hold Installer, subsidiaries, affiliates, divisions, and their respective directors, officers, employees, shareholders, agents, representatives, successors and assigns harmless from and against any and all losses, liabilities, claims, demands, damages, causes of action, fines, penalties, costs and expenses (including, but not limited to, all reasonable consulting, engineering, attorneys' or other professional fees), that they may incur or suffer by reason of: (a) the existence, uncovering or unveiling, or any release by Customer of, a Hazardous Material on or from the Site; (b) any enforcement or compliance proceeding commenced by or in the name of any Governmental Authority because of an alleged, threatened or actual violation of any Applicable Law by Customer or because of the presence on the Site of Hazardous Materials not specifically introduced onto the Site by Installer or any of their subcontractors or vendors; and (c) any action reasonably necessary to abate, remediate or prevent a violation or threatened violation of any Applicable Law by Customer.

Installer also hereby specifically agrees to indemnify, defend and hold Customer, subsidiaries, affiliates, divisions, and their respective directors, officers, employees, shareholders, agents, representatives, successors and assigns harmless from and against any and all losses, liabilities, claims, demands, damages, causes of action, fines, penalties, costs and expenses (including, but not limited to, all reasonable consulting, engineering, attorneys' or other professional fees), that they may incur or suffer by reason of: (a) the introduction of a Hazardous Material onto the Site by Installer or any of its subcontractors or vendors; (b) any enforcement or compliance proceeding commenced by or in the name of any Governmental Authority because of an alleged, threatened or actual violation of any Applicable Law by Installer or any of their subcontractors or vendors or because of the presence on the Site of Hazardous Materials introduced onto the Site by Installer or

any of its subcontractors or vendors; and (c) any action reasonably necessary to abate, remediate or prevent a violation or threatened violation of any Applicable Law with respect to Hazardous Materials introduced onto the Site by Installer or any of its subcontractors or vendors.

3. CONTRACT PRICE; PAYMENTS.

- 3.1 Contract Price.** The Contract Price with respect to the System (the “Contract Price”) shall be stated in the applicable Work Authorization (Exhibit A). The Contract Price may be adjusted by Change Orders or as otherwise provided herein.
- 3.2 Payments of the Contract Price.** Customer shall pay the Contract Price to Installer in monthly installments (each a “Progress Payment”) for the portion of the Work performed during the previous month, which, in the case of each Progress Payment, shall be calculated by multiplying (a) the portion of Work completed by Installer during such month *times* (b) the percentage of Contract Price allocated to such Work in the Schedule of Values *times* (c) the Contract Price. Customer shall pay to Contractor the final payment for Final Completion, as detailed in the Schedule of Values, within thirty (30) Business Days after the Final Completion Date. Customer shall make entire payment in advance for the 15 year Operations and Maintenance Agreement (Exhibit B) and for the 15 year Performance Guarantee (Exhibit C) within thirty (30) Business Days from the date of the invoice, which shall issued in connection with the Final Completion.
- 3.3 Invoices.** Ten Business Days prior to the end of each billing period, Installer shall submit to Customer a detailed draft of its intended invoice for review. Within five (5) Business Days of receipt, Customer and Installer will meet to review Customer comments and to agree on values for the work completed. Installer will then submit within five (5) Business Days a final invoice together with all supporting documentation for each Progress Payment due hereunder. Submission of an invoice shall constitute a representation by Installer that the portion of the Work subject to such invoice has been performed in accordance with this Contract and the applicable Work Authorization. Customer shall pay each invoice within thirty (30) Business Days from date of the invoice thereof.
- 3.4 Disputed Invoices.** Any work disputed based on the review of the draft invoice and unable to be agreed by Customer will not be paid, however Customer will timely pay the undisputed portion of such invoice in accordance with Section 3.2 (*Invoices*). –Upon resolution of any disputed amount, the agreed-upon amount shall be included in the following billing period invoice and paid in accordance with Section 3.2 (*Invoices*). Any dispute not resolved amicably hereunder may be submitted to arbitration in accordance with the terms of Section 9.12 (*Arbitration*). Customer shall not be deemed to be in default of this Contract by reason of withholding payment with respect to any portion of an invoice disputed in good faith; provided, that if such dispute is resolved in Installer’s favor, Customer shall pay interest on such unpaid amounts dating back to the original due date set forth in the applicable invoice. Any payment not received on or before the due date for such payment, shall bear interest at the rate of 2% above the rate per annum quoted in the Wall Street Journal as the prime rate for corporate loans (or the arithmetic mean if there is more than one such rate), or the highest rate allowable by law, whichever is lower, commencing on the first Day after such payment is due and continuing until paid.
- 3.5 Payment to Subcontractors and Suppliers.** Upon payment by Customer of any invoice, Installer shall promptly pay its relevant subcontractor and supplier amounts due with respect to the Work reflected in the invoice. Installer shall be responsible to keep the Site clear and free from all liens placed on the Site or Customer by any subcontractor or supplier or Installer with respect to Work paid for by Customer, and to defend, discharge or bond any such liens as soon as reasonably practicable. Installer agrees to provide fully executed Conditional Lien Release forms for all payment applications submitted to Customer along with fully executed Unconditional Lien Release forms for all payment applications submitted to Customer with respect to the immediately

prior payment application (so long as payment from Customer was received) as a condition of payment.

- 3.6 Title.** Title to the System shall pass to Customer during the course of construction, including, without limitation, the structure, photovoltaic modules, inverters, materials, equipment, etc. subject in each case to the extent payment thereof shall have been made by Customer in accordance with this Contract and the applicable Work Authorization.
- 3.7 Risk of Loss.** From the Effective date and until the Final Completion Date of the System, Installer assumes risk of loss and full responsibility for the cost of replacing or repairing any damage to such System whether installed or not and all materials, equipment, supplies and maintenance equipment (including temporary materials, equipment and supplies) that are purchased by Installer for permanent installation in or for use during construction of such System, regardless of whether Customer has title thereto under this Contract. Installer shall bear the risk of loss and full responsibility for the cost of replacing or repairing any damage to the System and adjacent affected Customer's property and all materials, equipment, supplies and maintenance equipment (including temporary materials, equipment and supplies) to the extent caused by the negligent or willful acts of Installer or its agents, employees or representatives.

Customer shall bear the risk of loss and full responsibility with respect to the System after the Final Completion Date of the System, and if any component of such System is stolen or damaged after Final Completion, then Installer shall restore or rebuild any such loss or damage and complete the Work in accordance with this Contract at the sole cost and expense of Customer. Customer shall bear the risk of loss and full responsibility for the cost of replacing or repairing any damage to the System and adjacent affected Customer's property and all materials, equipment, supplies and maintenance equipment (including temporary materials, equipment and supplies) to the extent caused by the negligent or willful acts of Customer or its agents, employees or representatives. However, if such damage or loss is due to the negligent or willful acts of Installer or its agents, employees or representatives, Installer will bear the risk of loss and full responsibility for the cost of replacing or repairing any damage to the System and adjacent affected Customer's property and all materials, equipment, supplies and maintenance equipment (including temporary materials, equipment and supplies).

4. TERM.

- 4.1 Generally.** This Contract shall start on the Effective Date and shall continue for a period of one (1) year, unless terminated sooner pursuant to this Contract. This Contract may be renewed for additional one (1) year periods through mutual written agreement between the Parties.
- 4.2 Work Authorization Term.** The term of each Work Authorization executed hereunder shall commence as of the effective date of such Work Authorization and shall continue until the Final Completion of the System set forth in such Work Authorization. Termination or expiration of this Contract shall not relieve the Parties from their respective obligations with respect to any System for which a Work Authorization was executed prior to such expiration or termination.
- 4.3 Termination for Cause.** Either Party may terminate this Contract for cause if the other Party Materially Breaches this Contract and the breaching Party does not take action to cure such breach within fifteen (15) Business Days after written Notice thereof; provided, that if the relevant Material Breach cannot reasonably be cured within the time period set forth above, such time period shall be extended as may reasonably be required so long as the breaching Party continues to exercise its best efforts to cure such breach. "Material Breach" shall mean a default in one Party's obligations hereunder or under a Work Authorization that substantially undermines the economic value of this Contract to the other Party.

4.4 Installer's Rights and Remedies. Notwithstanding the preceding Section 4.3 (*Termination for Cause*), if Customer (i) fails to pay the amount payable to Installer after it becomes due and payable to Installer in the time frame noted under this Contract or (ii) Customer is insolvent, adjudged bankrupt or makes a general assignment for the benefit of its creditors, then Installer may pursue any of the following rights and remedies:

- a. upon five (5) Days written Notice to Customer, suspend all Work until any such default is cured; and/or
- b. upon ten (10) Days written Notice to Customer, terminate this Contract and recover from Customer (i) all amounts due from Customer for services provided and materials purchased through the date of termination, (ii) reasonable costs of winding down the Work, removing materials and supplies from the Site or terminating subcontractors and material purchase orders, and (iii) any other rights or remedies available to Installer at law, in equity or under this Contract.

4.5 Customer's Rights and Remedies. Notwithstanding the preceding Section 4.3 (*Termination for Cause*), if Installer is insolvent, adjudged bankrupt or makes a general assignment for the benefit of its creditors, then Customer may pursue any of the following rights and remedies:

- a. upon five (5) Days written Notice to Installer, suspend all payments for Work until any such default is cured; and/or
- b. upon ten (10) Days written Notice to Installer, terminate this Contract and recover from Installer (i) all amounts due from Installer for services not provided and materials not purchased through the date of termination, (ii) reasonable costs of completing the Work, removing or providing materials and supplies for the Site or hiring or terminating subcontractors and material purchase orders, and (iii) any other rights or remedies available to Customer at law, in equity or under this Contract.

5. INDEMNITY.

5.1 Indemnification by Installer. The "Indemnified Parties" shall be defined to include: (i) the Customer and its Board of Trustees and its members, officers, employees, agents and representatives (including the Customer's Inspector and the Program Manager); (ii) Customer's consultants for the Work and their respective agents and employees; and (iii) if one is designated by the District for the Work, the Program Manager and its agents and employees. Unless arising from the sole negligence or willful misconduct of the Indemnified Parties, the Installer shall to the fullest extent permitted by law, indemnify, defend and hold harmless the Indemnified Parties from and against any and all damages, losses, claims, demands or liabilities whether for damages, losses or other relief, including, without limitation attorneys' fees and costs, expert consultant/witness fees and costs which arise, in whole or in part, from the acts, omissions or other conduct of the Installer or any of the Installer's subcontractors or any person or entity engaged by them in connection with the Work and in violation of this Contract or Applicable Law. The Installer's obligations under the foregoing include without limitation: (i) injuries to or death of persons; (ii) damage to property; (iii) theft or loss of property, including loss of use; (iv) stop notice claims asserted by any person or entity in connection with the Work; and (v) other losses, liabilities, damages or costs resulting from, in whole or part, any acts, omissions or other conduct of Installer in violation of this Contract or Applicable Law, any of Installer's Subcontractors, of any tier, any person or entity employed directly or indirectly by Installer or any Installer's Subcontractor in connection with the Work and their respective agents, officers or employees. If any action or proceeding, whether judicial, administrative, arbitration or otherwise, shall be commenced on account of any claim, demand, liability or other matter subject to Installer's obligations hereunder, and such action or proceeding names any of the Indemnified Parties as a party thereto, the Installer

shall, at its sole cost and expense, defend the named Indemnified Parties with counsel reasonably satisfactory to the named Indemnified Parties. If there is any judgment, award, ruling, settlement, or other relief arising out of any claim, demand, liability or other matter subject to the Installer's obligations hereunder, and which binds the Indemnified Parties, Installer shall promptly pay, satisfy or otherwise discharge any such judgment, award, ruling, settlement or relief and hold harmless the Indemnified Parties from any and all liability or responsibility arising out of any such judgment, award, ruling, settlement or relief. The Installer's obligations hereunder are binding upon Installer's Performance Bond Surety and these obligations shall survive notwithstanding Installer's completion of the Work or the termination of the Contract.

5.2 Indemnification by Customer. Customer shall defend, indemnify and hold harmless Installer, its officers, directors, employees and agents from and against any claims, demands, damages, losses, fees, expenses, liabilities and penalties (including, without limitation, reasonable attorneys' and expert witnesses' fees), arising out of or relating to Customer's performance or nonperformance under this Contract, but only to the extent caused by the negligent or other wrongful acts or omissions of Customer or the Indemnified Parties.

5.3 Limitation of Liability. To the extent damages are not recoverable under Installer's comprehensive general liability, professional liability, errors & omissions, worker's compensation, or automobile policies, Installer shall not be liable to any Customer or person under this Agreement. These limitations apply only to Installer's uncovered damages, and to the extent that damages are covered by Installer's insurers, there shall be no limitation or cap on recoverable damages.

6. INSURANCE AND BONDS.

6.1 Customer's Insurance. Customer shall procure and maintain general liability insurance. Limits of liability will be maintained at \$1,000,000 per occurrence/\$2,000,000 annual aggregate. Coverage will include Products Completed Operations, Personal/Advertising Injury, and medical expense of \$10,000. Insurance shall name Installer as an additional insured. Customer shall provide Installer a certificate of insurance evidencing the insurance required in this Section upon request.

6.2 Installer's Insurance.

Installer shall maintain (a) comprehensive commercial general liability insurance, (b) installation or builders' risk insurance, (c) workers' compensation insurance for Installer's employees and (d) automobile liability insurance. Installer shall provide Customer a certificate of insurance evidencing the insurance required in this Section 7.2 upon request.

a. Commercial General Liability: Limits of liability will be maintained at \$2,000,000 per occurrence/\$5,000,000 annual aggregate. Coverage will include Products Completed Operations, Contractual Liability, Property Damage, Personal Injury. This insurance will also name Customer as an additional insured. Primary policy shall be \$1,000,000 per occurrence/\$2,000,000 annual aggregate with a further umbrella policy covering the balance of the required minimums. Limits, therefore, shall be satisfied through a combination of primary and umbrella policies.

- b. Installation or Builders' Risk Insurance: Will cover the System and all materials from the time delivered to the Site for their full replacement cost value on an all risk or special cause of loss form from the Mobilization Commencement Date through the Substantial Completion Date. Insurance shall be in a form and include deductible levels typically found in the insurance market for similar solar projects. This insurance shall name Customer as an additional insured.
- c. Workers' Compensation: Statutory as described by law and employers' liability at limits of \$1,000,000.
- d. Automobile Liability: Limits will be maintained as per those listed above in (a) Commercial General Liability except the primary policy will not be required to have the \$2,000,000 aggregate limit.
- e. Professional Liability: Limits will be maintained at \$5,000,000 per occurrence.

If Installer fails to secure and maintain the required insurance, Customer shall have the right (without any obligation to do so, however) to secure the same in the name and for the account of Installer, in which event Installer shall pay the reasonable cost thereof (or Customer may deduct the same from amounts otherwise due Installer hereunder) and Installer shall furnish upon demand all information that may be required in connection therewith.

6.3 Bonds. As required by Customer, Installer shall procure a performance and payment bond for only the design and the construction of the System, on a form acceptable to both the Customer and Installer's surety.

- a. The performance bond will be in the amount of one hundred percent (100%) of the design and construction portion of the Contract Price and will continue in force for a period of one (1) year after the Final Completion Date. The surety will not be liable to the Customer for any obligation of Installer at the conclusion of such one (1) year period.
- b. The payment bond will be in the amount of one hundred percent (100%) of the design and construction portion of the Contract Price and shall be held for the period required under Applicable Law after the Final Completion Date.

7. REPRESENTATIONS AND WARRANTIES. Each Party hereby represents and warrants to the other party as follows:

- 7.1 Organization and Qualification.** It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organizations and has the lawful power to engage in the business it presently conducts and contemplates conducting.
- 7.2 Power and Authority.** It has the power to make and carry out this Contract and each Work Authorization executed hereunder and to perform its obligations hereunder and under each Work Authorization and all such actions have been duly authorized by all necessary proceedings on its part.
- 7.3 No Conflict.** The execution, delivery and performance of this Contract and each Work Authorization will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of its certificate of incorporation or by-laws or any Applicable Law or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected.

- 7.4 **Validity and Binding Effect.** This Contract and each Work Authorization has been, or will be at the time executed or deemed executed, duly and validly executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity.

8. CUSTOMER'S RESPONSIBILITIES.

- 8.1 **Access to Site.** On the Mobilization Commencement Date of the Contract and for so long as any Work (including any Work related to the Warranty) is provided by Installer hereunder, Customer shall enable Installer or any of its subcontractors or agents to gain free, unobstructed, access to the Site in accordance with a Site Utilization Plan prepared by Installer and approved by Customer for the purpose of performing the Work hereunder and shall keep the Site free and clear from any encumbrances, obstructions or Hazardous Materials introduced to the Site by Customer. Installer to prepare a Site Utilization Plan for approval by Customer. Such access will be given upon Installer's written requests with forty-eight (48) hours advance notice of the requested access. In addition to the foregoing, Customer shall allow Installer to have access to the Site to: (a) inspect the Site to verify conditions and to construct and install the System on the Site; (b) access and maintain a data acquisition system ("DAS") on the System and collect data from such DAS, independent of any DAS owned by Customer; and (c) perform (or cause to be performed) all tasks necessary or appropriate, as reasonably determined by Installer, to carry out the activities and enjoy the rights set forth in this Contract. Customer shall ensure that Installer has access to and use of power and water while performing Work hereunder.

Compliance with Laws and Agreements. Installer shall comply with any written, express or implied obligations required by law or with any Permits, Interconnection Agreements or other agreements to which Customer or any Customer Person is a party to and which have been provided to Installer. Installer shall provide a site-specific Stormwater Pollution Prevention Plan. There shall be a "Zero Tolerance" for unregulated use of storm drains. Do not dump, spill, empty, or wash anything into a storm drain under any circumstances. This restriction includes all wash waters from tools, vehicles or equipment. Installer shall provide temporary containment or shall direct wash water so that it is disposed of in Sanitary Sewers. Installer shall coordinate location(s) of wash water disposal with Customer. Provide filtering of wash water before disposal into the Sanitary Sewer system.

- 8.2 **Cooperation.** Customer shall fully and timely cooperate with Installer in Installer's performance of its obligations under this Contract, including, without limitation, (a) timely review and, where applicable, approval of drawings, specifications, Change Order requests and other Installer requirements, (b) timely negotiate and execute Interconnection Agreements and timely provide all information and consents necessary for Installer to apply for the Installer Permits and fulfill its obligations hereunder, (c) comply with the Project Schedule as it applies to Customer and (d) perform or cause to be performed any Customer portion of work.
- 8.3 **Site Preparation.** Prior to commencement of the Work, Customer shall be responsible for any necessary Site coordination to make the Site available to the Installer at the Mobilization Commencement Date.
- 8.4 **Data Transmission.** Installer shall provide and install a Data Acquisition Systems (DAS) at the Site. DAS provided shall not have subscription payments or any form of recurring payments by the Customer to the system manufacturer. The DAS provides system performance and weather data. The data is collected from a meteorological station located in the array area and from the inverter(s). The data is provided to Installer's monitoring team, which deciphers the data and uploads it to a monitoring website for customer viewing.

8.5 **Storage.** Customer shall provide Installer with an area for storage space located near the Site for storage of materials, tools and equipment, and other purposes.

9. MISCELLANEOUS

9.1 **Acknowledgment and Consent of Customer.** By signing and delivering this Contract and the Work Authorization to the Installer, the Customer acknowledges it has authorized the Installer to commence the Work.

9.2 **Notices.** All Notices required or permitted hereunder shall be in writing and shall be deemed given: (a) when delivered in person with transmittal signed by the receiving party; (b) the date of receipt noted from a commercial overnight delivery service; or (c) upon receipt - if sent by United States mail, postage prepaid, registered or certified mail, return receipt requested. All Notices shall be addressed to the recipient party at the address set forth on the first page to this Contract or other address a party may designate in writing from time to time.

9.3 **Independent Contractor.** Installer shall at all times be and remain an independent contractor and not an agent of Customer for any purpose whatsoever and shall have no authority to create or assume any obligation, express or implied, in the name of, or on behalf of, Customer or to bind Customer in any manner whatsoever.

9.4 **Subcontractors.** Installer may from time to time retain third party subcontractors and suppliers in connection with the Work or any System provided hereunder. Those subcontractors or suppliers are solely the agents of the Installer and are obligated solely to the Installer, whose insurance, indemnity etc. are under the exclusive control of the Installer.

9.5 **Authorized Representatives.** Each Party shall designate one or more representatives authorized to act on behalf of the designating Party. If a Party designates more than one authorized representative, it shall specify the nature of the communications for which each representative is authorized to act on the designating Party's behalf.

9.6 **Publicity/Signage.** Installer shall have the right to access the System, with forty-eight (48) hours advance written notice of the requested access, with guests for promotional purposes, including taking photographs, during hours acceptable to the Customer in its reasonable business judgment. Customer shall have the right to use the System's description, photographs, monitoring data, etc. for any promotional purposes without restriction.

9.7 **Entire Agreement; Amendment.** This Contract, including the Exhibits hereto and any signed Work Authorization hereunder, represents the entire and integrated agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. No amendment, modification or waiver in respect of this Agreement will be effective unless in writing and executed by both Parties.

9.8 **Assignment.** Neither Party shall assign or delegate its rights or obligations under this Contract without the written consent of the other Party. In determining whether to consent to any assignment, each Party shall be entitled to consider the experience, reputation and creditworthiness of the proposed assignee or other transferee. Subject to the foregoing, this Contract shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns.

9.9 **No Waiver.** No failure on the part of either Party to exercise or enforce any term hereof or any right hereunder shall operate as a waiver, release or relinquishment of any right or power conferred under this Contract.

- 9.10 **Survival.** Cancellation, expiration, or earlier termination of this Contract shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination (including, without limitation, any representations or warranties).
- 9.11 **Governing Law.** This Contract with respect to each System shall be governed by, interpreted and enforced in accordance with, the laws of the State of California.
- 9.12 **Arbitration.** All disputes that may arise between the Parties under or in connection with this Contract, shall be submitted (together with any counterclaims) to final and binding arbitration heard by a single arbitrator in accordance with the then-current Commercial Arbitration Rules of the Judicial Arbitration Mediation Services (JAMS) and are to be conducted in San Jose, California. The prevailing party of any arbitration, action or legal proceeding shall be entitled to receive from the other party, in addition to any other relief that may be granted, its reasonable attorneys' fees, costs, and expenses incurred.
- 9.13 **Execution in Counterparts.** This Contract may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
- 9.14 **Ownership of Designs.** All drawings, specifications, calculations, data, notes and other materials and documents, including electronic data furnished by Installer to Customer under this Contract (“Work Product”) are the instruments of service of Installer and Installer will retain all common law, statutory and other reserved rights, including copyrights.
- 9.15 **Customer’s Limited License upon Payment in Full.** Upon Customer’s payment in full for all Work performed under this Contract, Installer will grant Customer and its successors and assigns a perpetual, royalty-free limited license to use the Work Product in connection with Customer’s operation, maintenance and repair of the System. The Parties agree that the limited license to use the Work Product granted hereunder will provide Customer sufficient rights in and to the Work Product as will be necessary for Customer to operate and maintain the System. The license granted under this Section is only valid for use in relation to the System and this provision does not permit Customer to use Installer’s intellectual property or copyrighted work in relation to any other project or photovoltaic system. Customer shall have the right to use the System’s description, photographs, monitoring data, or any promotional information solely for any promotional purposes without restriction. No other license in the Work Product is granted pursuant to this Contract.

IN WITNESS WHEREOF, in consideration for the mutual promises set forth in this Contract and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned have executed this Contract by their duly authorized representatives as of the date first written above.

SUNPOWER CORPORATION, SYSTEMS

SAN JOSE - EVERGREEN COMMUNITY COLLEGE DISTRICT

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____



EXHIBIT A

WORK AUTHORIZATION FOR: EVERGREEN VALLEY COLLEGE

| | |
|---|--|
| SUNPOWER CORPORATION, SYSTEMS ("Installer") | EVERGREEN SAN JOSE – EVERGREEN COMMUNITY COLLEGE DISTRICT ("Customer") |
| Installer Address | Customer Address |
| 1414 Harbour Way South Richmond CA 94804 | 3095 Yerba Buena Road San Jose, CA 95135 |
| Effective Date: _____, 2011 | |

This Work Authorization (this "Work Authorization") is entered into between Installer and Customer and made effective as of the Effective Date set forth above. This Work Authorization is made part of the Engineering, Procurement and Construction Contract between Customer and Installer, dated as of _____, 2011 (the "Contract"). Capitalized terms used in this Work Authorization but not specifically defined herein shall have the meaning given to such terms in the Contract.

1. SYSTEM LOCATION AND DESCRIPTION:

Address: Evergreen College, 3095 Yerba Buena Road, San Jose, CA 95135

System Size, Product and Basic Description:

| | |
|----------------------------|--|
| Mounting System | SunPower T-0 Tracker |
| PV Modules | 3,456 SunPower 327 modules (SPR-327NE-WHT-D) |
| Inverters | 2 SatCon 500 (PVS-500-480V) |
| Size: kW dc | 1,130.11 |
| Size: kW so (cec-ac) | 999.973 |
| Annual PV Degradation Rate | 0.5% |

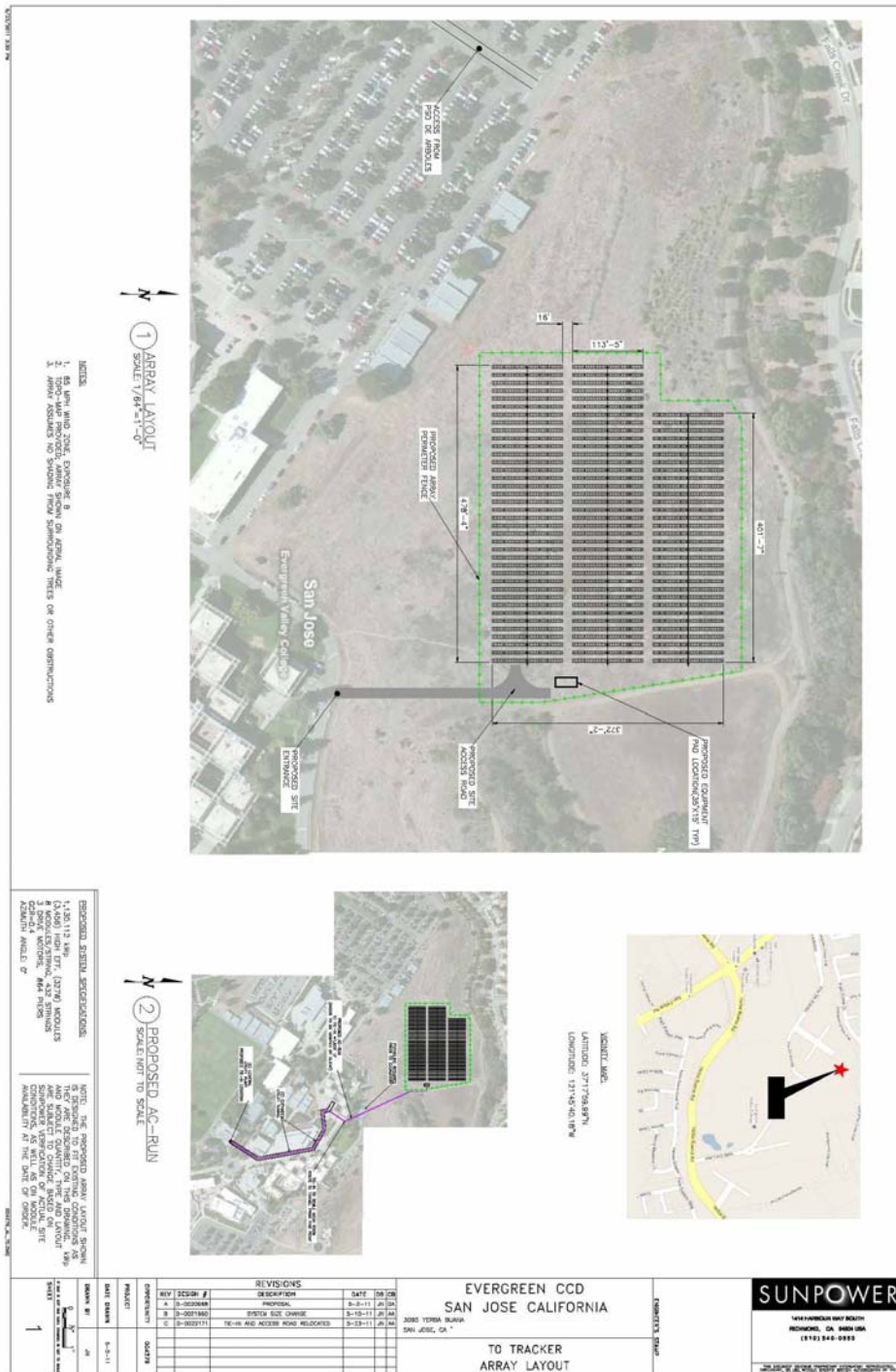
2. CONTRACT PRICE:

| | |
|---|-----------------|
| Data Acquisition System (DAS) | Included |
| Owner's O&M Manual, Training, As-built Drawings | Included |
| Sales Tax | Included |
| 15-Year Inverter Warranty | Included |
| Photovoltaic System | \$5,731,181 |
| Fifteen (15) year Maintenance Agreement (Exhibit B) | \$276,380 |
| Fifteen (15) year Performance Guarantee (Exhibit C) | <u>\$89,224</u> |
| Total Price: | \$6,096,785 |

4. PROJECT SCHEDULE:

| Date: | Description: |
|------------------------------|---|
| June 23, 2011 | Notice to Proceed issued by Customer |
| June 30, 2011 | Commencement of Work |
| Aug. 17, 2011 | Customer Supplied Final Geotech Report Received by SunPower |
| July 7 – Aug 23, 2011 | Engineering Schematic Design Submittal Development |
| Aug. 30, 2011 | Engineering Schematic Design Submittal Approved by District |
| Aug. 30, 2011 | Customer Board Ratification of Resolution on DSA status of System (District Responsibility) |
| July 28 – Aug 31, 2011 | Civil Design Submittal Development |
| Sept 15, 2011 | Civil Design Approved by District |
| Aug. 31, 2011 – Oct 13, 2011 | Engineering Design Submittal Development |
| October 28, 2011 | Engineering Design Submittal Approved (Permit Approval by District) |
| Sept. 27, 2011 | Mobilization Commencement Date |
| November 3, 2011 | Site Preparation Completed |
| Dec. 09, 2011 | Inverter Installation Completed |
| Dec 31, 2011 | PV Module Installation Completed |
| Jan 20, 2012 | Substantial Completion |
| April 20, 2012 | Final Completion |

5. ARRAY LAYOUT:



6. SYSTEM DESIGN & SCOPE

General:

- Array layout per T-0 Tracker Array Layout included in this Work Authorization.
- The Work excludes requirements for accessibility upgrades and accessibility design around the proposed ground mounted system. Architectural enhancements to the System are not included in this Contract. Contract excludes design or installation of any required additional fire hydrants or fire protection apparatuses as required by local first responders or Fire, Life/Safety professionals responsible for review and approval of the design for the System.
- Installer will provide all design services required to perform this work, including civil, structural, electrical, storm water prevention. District will provide Geotechnical and special testing & inspection services.

Electrical:

- Electrical equipment such as the inverter and switchgear will be installed on the ground with a properly-engineered service reinforced concrete pad and foundation located per the array layout in this Work Authorization.
- Contract assumes location of equipment pad as shown on Contract array layout is acceptable. If a change is required, additional costs may be required.
- Contract assumes that the electrical interconnection point is rated 21kVa and is located in the near vicinity of the proposed tie-in location shown on the Contract array layout.
- The external disconnect will be a 21kV fused disconnect. It will be a metal clad, non-walk-in type disconnect located outside the electrical room. Dimensions are approximately 5'x6' in plan and 8' in height. Reinforced concrete pad, enclosed with an 8 ft chainlink fence and gate with green slats.
- District will provide information to allow Installer to locate underground utilities. Potholing by Installer at street crossing(s) and in vicinity of known utilities is required. Contract also assumes use of standard dig trenching, without issues related to unforeseen underground utilities and use of EMT conduit with rain-tight compression fittings for above ground installations and schedule 40 PVC for below ground installations.
- All medium voltage conduit will utilize concrete encased duct banks. Contractor will use PVC Schedule 80 with red concrete encasement at 4' depth recommended (3' depth minimum).
- Expansion provisions for a future 500 kwac solar PV system to include additional switchgear capacity for accepting future inverter ac circuit and a spare conduit stubbed out of the mechanical tunnel running to and stubbed out of the 1 MWac equipment pad for future access to switchgear.
- Proposed step up transformer shall be 480V:21kVa, non-Dry-type. Secondary containment is not included in this Contract.
- Contract assumes all utility-owned electrical equipment serving the Site's electrical distribution system has adequate capacity to handle the System output. No utility required electrical equipment upgrades or replacements are included in this Contract
- Any costs associated with unforeseen utility interconnection requirements, including but not limited to utility-owned equipment upgrades or additions, relay protection equipment external to the inverters, system impact studies, and interconnection studies are not included in this Contract.
- Contract assumes there is no additional Customer-side protection or disconnects required by the Customer or utilities above that provided by the certified inverters.
- AC cable sizing is based on the assumption that the soil thermal resistivity (RHO) is less than or equal to 120°C-cm/W.
- Energy Management System Integration or similar control or SCADA system integrations to the System is not included in this Contract. Agreement assumes use of cellular modem for communication with a third party monitoring company. All other communication and low voltage infrastructure is excluded from this Contract.
- Contract assumes commissioning requirements for System is only for the photovoltaic portion of the System only. Contract does not include other building system commissioning cost not related to our work (i.e. HVAC, Plumbing, Fire Alarm, etc.).

- No security system or new lighting is included, including any rework of existing lighting circuits or lighting devices
- DC system includes a 600v system design.
- AC system circuits are radial.
- Special lightning protection is not included.
- Design of the System is according to 2008 NEC Code.

Interconnection:

- Installer is responsible for all interactions with PG&E and assembling/distributing all the documentation for the interconnection agreement.
- Delays associated with service upgrades to the Site by the local utility that affect energization of the System in its entirety shall result in a Change Order extending the Project Schedule based on the number of days delayed. Installer will work with Customer to remedy the impact. Additional costs incurred by Installer or its subcontractors for remobilization or storage of materials due to utility company delays that affect completion of the work will result in a Change Order.
- Installer's proposed interconnection and System design assumes 21 kVa interconnection point. No costs have been included in the Contract for transformer upgrades, design associated with upgrade, or installation costs at the point of interconnection. Installer will not be responsible for delays or monetary impact caused by Customer's ability to energize new transformer by date indicated in Project Schedule.
- Contract assumes Installer may utilize a portion of existing utility tunnel to route electrical infrastructure (conduit, cable, racking, etc...) to proposed tie-in location at Central Utility Plant as shown on proposed array layout. It is understood that a portion of the Work will require trenching. Additional costs may be required if this tunnel cannot be utilized for routing infrastructure to tie-in.
- Any special utility interconnection, metering costs or hardware beyond fused AC switch and design and installation changes required by utility company for interconnection or upgrades to Customer tie-in panel and upstream from Customer's meter, and requirements by permitting government agency or authority are excluded

Clearance:

The distance from the center of the torque tube to finished grade are designed for 4 foot clearance.

Landscaping:

- Site landscaping (e.g. plant restoration or long term weed abatement) is not included in the Contract. Weed abatement in and around the System (e.g. plant restoration or long term weed abatement) is not included in the Contract.
- Installer is to perform its work only within the boundaries identified in the Site Utilization Plan. Restoration of lands disturbed outside that limit is at the Installer's expense.
- The surface under the panel system will be a low ground cover seed mix specified by a local civil engineer.

Site Access:

- Roads:
 - Installer will be guaranteed Site access to perform all Work.
 - Existing roads will be capable of handling all required construction equipment such as drilling rigs, concrete trucks, delivery trucks, cranes, and all other equipment necessary to complete the Work. Installer will not be responsible for any damage to existing roads resulting from normal construction traffic. Installer will be responsible for damages it causes not related to normal construction traffic.
 - PG&E will have 24/7 access to existing electric utility meters and the utility lockable disconnect locations for all electrical interconnections related to the System.
 - Extra time or personnel constraints due to Site security beyond daily signing in by workers on a sign in sheet, i.e. badging, background checks, tool inventory checks, etc. is not included

Fencing:

- Contract includes 6' Galvanized Chain Link fence around entire perimeter of ground mounted array. Special provisions for special hardware, or other fencing items are excluded from this Contract.
- Inverters are NEMA 3R rated. Should an overhead shade structure be necessary for Installer to achieve output projects as defined in the Performance Guarantee, such will be provided by Installer.
- Additional fencing around equipment enclosures in array area is excluded, as the array area will include a fence. Fencing around array area will include privacy slats.

Painting:

Painting of steel structures, conduits, or any equipment is not included. All metal materials are either factory-finished or non-corrosive (e.g. galvanized, stainless steel). Damage resulting from construction activities will be touched up at completion of work.

Operations & Maintenance Buildings and Structures:

No O&M Building or other structures are provided.

Building Upgrades:

No building upgrades other than those noted in this section are included.

Miscellaneous Work:

Contractor will provide information, attend meetings and otherwise comply with normal District standards for bond-funded construction projects (weekly meetings, reporting for bond funding oversight committee, safety compliance, RFI submittal processing).

Site & Construction Conditions:

- **Use of Facilities:** Contract assumes on-site water and power will be available for construction with no restrictions and at no charges to Installer. Installer responsible for connection and distribution of temporary power. Water shall be of sufficient quality to ensure worker safety in execution of the required work and suitable for Installer's required concrete mix design. Water source shall be located within 1000 feet of proposed access point to area of construction. Installer is required to provide its own potable water for use by workers during construction.
- **Hazardous Materials:** Removal and disposal of any existing hazardous waste materials, contaminated soils, or any other unforeseen site conditions that require special handling are excluded as part of this Contract. Changes to design or construction as a result of utilities. SunPower engineers to perform due diligence to identify and locate as part of design phase) and or hazards, underground or above ground, or any undocumented building upgrades are excluded from this Contract.
- **Changes due to Existing Facilities and Structures:** Changes or unforeseen work resulting from existing utilities and structures, right of ways, and/or hazards, underground or above ground, or any undocumented building upgrades are not included. Installer includes potholing at street crossing(s) and in vicinity of known utilities.
- **Latent Condition:** Shall mean any adverse condition at the Site that materially impairs the performance of the Work and is not disclosed to Contractor and is not foreseeable or discoverable prior to the execution of this Contract from any documents delivered to Contractor or an inspection of the conditions at the Site without destructive testing or opening of concealed portions at the Site. The list of documents and disclosures delivered to the Contractor and developed during inspection of conditions at the Site prior to execution of this Contract are included.
- **Foundations, Soils & Site Preparation:** Actual foundation requirements will be determined upon completion of the engineering process. Drilled piers are assumed foundation type for ground mounted system construction.

Should driven piers be acceptable due to soils conditions or site preparation requirements, Customer will be entitled to a Change Order.

- Existing soil is assumed to have the following characteristics:
 - IBC or UBC Table 1804A.2, Class 3 or equivalent Non-hazardous, sandy gravel and/or gravel
 - Allowable foundation pressure greater than or equal to 2000 psf Lateral Bearing strength below grade equal to 200 (Lbs./Sq.Ft./Ft. of depth)
 - Lateral sliding coefficient of friction greater than or equal to 0.35 No sub-grade rocks or rock formations
 - Adequate drainage
 - No seismic-related hazards (e.g. faults, liquefaction, seismically-induced settlement, lateral spreading) Limited expansiveness
 - Low to moderate corrosivity
 - Depth to start of passive pressure is 0.5 feet.
- Slope Tolerance:

Installer has reviewed the Site and includes grading necessary to prepare the site for installation of the System. Installer will prepare Site as follows:

 - Maximum slope in any direction = 8%
 - Northward facing slopes may reduce performance and are not recommended.
 - In addition to these localized maximum slope requirements, the overall Site must be of a similar slope to avoid terracing or retaining work, which would be regarded as additional work and is not included in this quote.
- Site Preparation Allowance of \$135,000 includes the following items:
 - Staging Area
 - Grubbing and scraping
 - Grading
 - Access and maintenance roads
 - SWPP implementation
 - Surveying
 - Hydroseed disturbed areas
- Installer will supply and install security hardware in form of Bryce Fastener, Penta – Nut High Security 316 Stainless Steel Nut which will be installed at every solar module on top of Installer standard modules attachment hardware. Installer will purchase four Sockets, keyed to a serial number and tracked by Bryce Fastener at a material purchase cost of approx. \$35/EA. These will transferred to the District at completion of installation with O&M documentation. Installer has not had adequate time to test this fastening solution with our qualified module attachment hardware. Should a conflict exist between nut and Installer module attachment bolt, extra costs may be required. SunPower will maintain the four sockets for the duration of the warranty period.
- Installer provides all concrete necessary to perform its work.

District is responsible for commissioning a site-specific geotechnical report. Contractor will provide District with scope for this report.

Contract assumes Installer will prepare the Site. Installer will provide detailed specifications and site plan drawings showing proposed site preparation scope of Work for Customer approval including (as needed):

- Removing trees or other shading obstructions, grubbing and scraping, grading, Storm Water Pollution Prevention Plan requirements.
- Drainage requirements and/or drainage design and interconnection to Customer's existing storm drain system or any other storm drain discharge system is excluded from this Contract.
- Plant weeding, mulct, irrigation system, and rock/bollards are excluded.

Commissioning, Monitoring, Operations/Maintenance & Warranty

- Commissioning: IV Curve testing is not included. IV Curve testing is a per string testing value that provides a baseline testing at the initial commissioning of the system
- Spare Parts: No spare parts are included.

Labor:

Overtime and special shift requirements are excluded.

Compliance with PSA conditions is included.

American Recovery and Reinvestment Act requirements for Federal Davis-Bacon wages or Buy America Act provisions are not included in this Contract.

Taxes and Fees:

Contract includes all applicable taxes. A sales tax rate of 9.250% is assumed. If this tax rate changes, the difference will be paid to or collected from the District. All other taxes are included.

Bonds:

Costs for payment and performance bonds at a rate of 1.0% of the Contract Price has been included. All bonds will be issued for the term of construction only in accordance with the Project Schedule.

Insurance:

Insurance is provided in accordance with the Agreement.

Permits:

- Site is zoned for System installation per Installer's design requirements and will not have to be re-zoned. Contract assumes that there will be no issues with any easements (such as roads), right-of-ways, bridges, utility power lines, etc. and any costs or expenses associated therewith are excluded from this Contract
- "Customer Permits" include any special permits, approval requirements, monitoring, compliance requirements, fees and certifications (such as CEQA applications, environmental impact report, wetlands delineation, water quality, archeological, endangered species, water rights, mineral rights, etc.). Customer is responsible for all Customer Permits and the costs and expenses associated therewith are excluded from this Contract.
- All costs for special testing and inspections, e.g. concrete sampling, placement observation, compression tests, trench compaction tests, excavation observation, welder observation, etc. are excluded from this Contract.
- Installer has included a \$6,000 Allowance for all Installer Permits. Installer Permits include building, electrical, grading, structural, mechanical, storm water prevention, dust control, geotechnical, Fire Prevention, tree removal and landscaping Permits.
- Installer assumes 10 days in Project Schedule for permit review and approval.
- All DSA and CGS fees are excluded from this Contract.
- Customer is self-permitting for building, structural, electrical, grading, mechanical, fire prevention and geotechnical permits.
- Customer will provide Installer proof of governing board ratification of resolution on DSA status of System in order to ensure that System is not within jurisdiction of DSA. Ratification of resolution is needed by date identified in Project Schedule to ensure Installer is able to meet Project Schedule for construction of the System.

Wind:

Site max wind speed is no more than 85mph 3 sec wind gust. More severe wind conditions would require additional engineering and costs.

Shading:

- Removal of trees, poles or other obstructions that may shade the System outside of the actual array area, as shown on the proposed array layout drawing, is not included.
- Trees and or landscape obstructions under the footprint of the System is included in this Contract. Replacement or replanting of any trees or shrubs removed under the footprint of the System is not included.

Weather Conditions:

Delays due to abnormal or adverse weather conditions shall not be allowed for weather conditions, which fall within the parameters listed herein. Adverse weather delays may be allowed only if the number of workdays of adverse weather exceeds these parameters on a monthly basis and Installer proves that adverse weather actually caused delays to the critical path of the Project Schedule. Installer shall provide written notice of intent to claim an adverse weather day within one working day of the adverse weather day occurring. Rain parameters are as follows, pro-rated in the individual month Installer starts and finishes work:

Rain Workdays: January, [6]; February, [6]; March, [5]; April, [3]; May, [1]; June, [0]; July, [0]; August, [0]; September, [0]; October, [2]; November, [4]; December, [6]. The Installer shall anticipate the cumulative total of rain workdays for each month construction occurs (from Notice to Proceed through Final Completion) and include said workdays in the Project Schedule.

In order to qualify as a rain day with respect to the foregoing parameters, daily rainfall must exceed .10 of an inch or more at a local station, as measured by the National Oceanic & Atmospheric Administration, and Installer must prove that the rain actually caused delay to the critical path of the Project Schedule as set forth above and below.

Delays due to abnormal or adverse weather conditions shall not be a prima facie reason for an extension of Contract Times. Installer shall make every commercially reasonable effort to continue Work under prevailing conditions. Delays due to abnormal or adverse weather conditions will be allowed provided Installer can prove abnormal or adverse weather conditions at the Site prevented the Installer from proceeding with seventy-five percent (75%) of the scheduled crew labor and equipment resources engaged on critical path activities identified on the accepted and most current CPM progress schedule update at the time of the abnormal or adverse weather condition, and 75% of the crew did not work more than three (3) hours. Abnormal or adverse weather delays meeting the criteria in this paragraph are deemed beyond the control of Installer, and Installer shall be entitled to a Change Order in accordance with the Agreement.

Rain delay shall be recognized for the actual period of time Installer proves it was delayed by rain in accordance with the above parameters and requirements. For example, and not by way of limitation, if rain exceeding the specified parameters does not in fact delay Installer's progress on the critical path of the Project Schedule, then no time extension shall be recognized; and conversely, if Installer proves that rain exceeding the specified parameters causes delay to Installer for a period longer than one day, then Installer shall be entitled to a time extension equal to the actual period of such delay.

Installer shall take reasonable steps to mitigate potential weather delays, such as surface dewatering the Site (including surface water that fills excavations created by the Installer), providing access roads un-impacted by abnormal or adverse weather and covering work and material that could be affected adversely by weather. Failure to do so shall be cause for Customer to deny an extension to the Project Schedule due to abnormal or adverse weather, such denial will be limited to the time delay that results from such failure to mitigate by exercising reasonable care.



Document Handling:

Additional design work to change SunPower CAD design standards to meet Customer's unique CAD or other electronic design or collaboration requirement is not included in the Work.

IN WITNESS WHEREOF, the Parties execute this Work Authorization as of the Effective Date, as follows:

SAN JOSE – EVERGREEN COMMUNITY
COLLEGE DISTRICT

SUNPOWER CORPORATION, SYSTEMS,
a Delaware corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____