

S275431

CASE NO. 21-16201

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

GEORGE HUERTA,

Plaintiff and Appellant,

v.

CSI ELECTRICAL CONTRACTORS, INC.,

Defendant and Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
CASE No. 5:18-cv-06761-BLF
BETH LABSON FREEMAN, UNITED STATES DISTRICT JUDGE

APPELLANT'S EXCERPTS OF RECORD VOLUME 3 OF 6

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Plaintiff’s Complaints about Improper Pay Practices.

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149. When Sachs called work off at the worksite, it did not always make it clear how, whether, or when workers would receive their paychecks. At one point, Sachs told me that it would mail our paychecks to us. However, Sachs never mailed me paychecks. Rather than mailing our paychecks to us, it required us to drive to the Security Gate Entrance of the Solar Site and arrive at a specific time to collect our pay. The specific location that Sachs told us to pick our paychecks was “the gate of the Cal Flats entrance.” This was about an hour and 20-minute drive away for me, each way, depending on traffic, so it would mean that, to get paid, I was required to drive at least 2 hours and 40 minutes, not to mention go through the time for the process of collecting my pay check from the Security Gate Entrance. Even though workers were required to report to Solar Site, at specific times, in order to get paid, I was not paid for any reporting time.
150. Because I thought that having to drive to the Security Entrance Gate to pick up his paycheck when Sachs had called off work for that day was unfair, I made the following complaints by text message: a) On February 7th, 2017, I complained: “What about the checks tomorrow”; b) On February 15th, 2017, I complained: “Yall go have the checks ready”; c) On February 19, 2017, I complained: “I know send them checks” and d) On February 29, 2017, I complained, “Yall Sorry couldn’t even send the checks out.”
151. Three days after my February 29, 2017 complaint, on March 3, 2017, Sachs terminated my employment for made-up reasons.
152. As was stated in my complaint, I believe that, in addition to my complaints regarding discrimination, my complaints regarding my pay checks contributed to Sachs decision to retaliate against me and wrongfully terminate me.
153. I believe that Sachs labeled me a troublemaker because I was making valid complaints and created a story to try to wrongfully terminate me.

Circumstances of My Termination.

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3 154. With regard to the day of my termination, I feel that I was wrongfully terminated and retaliated
4 against for no reasons other than my race and my prior complaints about pay checks.
5
6 155. Specifically, on March 3, 2017, I reported to work on time and had been performing work at my
7 Installation Sites for approximately a half hour when my foreman, Antonio Lopez, approached
8 me and asked me something like: “Where did you go yesterday?” I replied, “What do you mean?
9 I wasn’t here yesterday.” Mr. Lopez then accused me of having ridden off in a buggy the
10 previous day and disappearing. I again told Mr. Lopez that I wasn’t at work that day and that he
11 could check the TSA sheet for my signature – which was not there because I was not at work that
12 day. It then became clear to me that Mr. Lopez was mixing me up with the other African
13 American man who was on the crew. I then complained to Mr. Lopez by saying something like:
14 “So all blacks look alike?” Mr. Lopez laughed and said that he wasn’t saying that. I then again
15 complained to Mr. Lopez by saying something like: “Well yeah, actually, you are basically
16 saying that because I’m getting in trouble based on actions I wasn’t here for and that you say you
17 saw and there was only one black man on this crew yesterday.”
18 156. Mr. Lopez then smirked at me and said, “okay,” in an unfriendly way and then walked off. I then
19 returned to work. Keith Hagan, another foreman, then, arrived and said he needed to talk to me.
20 He handed me a write up and asked if I wanted to read it. The write-up claimed: Does not follow
21 instructions; Insubordination; Leaving job without permission; Poor productivity. The notes
22 claimed: “Had issues with other crews (foremans) taking directions, no interest in
23 working/complaints from other crew members on having to rework his scope of work/had other
24 write ups similar to this one.” The write-up did not say anything about absences. None of the
25 claims in the write-up were true about me, and, it seemed to me that I was again being hassled
26 about the false accusation by Mr. Lopez in which he confused me with the other African
27 American crew member. It seemed to me that Sachs was either giving the write up to the wrong
28 worker or that they were just making up the things in the write-up to retaliate against me for
complaining about unfair treatment and pay and were trying to set me up to terminate me.

1 157. Mr. Hagan demanded that I sign the write-up even though I told Mr. Hagan that I was not the
2 African American worker that Mr. Lopez was talking about. I complained that they must be
3 mixing me up with the other African American worker on the crew and pointed out that the
4 write-up could not be correct because I wasn't even at work the previous day. Because the things
5 in the write-up were not true, I refused to sign it. When I refused to sign the write-up, Mr. Hagan
6 got upset and demanded that I get in a truck and go to the office with him.

7 158. When I was in the truck, I again complained about being confused with the other African
8 American worker on the crew and being blamed for something that I didn't do. And, in fact, Mr.
9 Hagan admits in his declaration that, in the truck, I complained about being blamed for
10 something that apparently happened on a day that I wasn't working. (See Hagan Declaration,
11 para. 9.) However, in his declaration, Mr. Hagan omits the part where I pointed out to him that
12 they were confusing me with the other African American man on my crew and treating us as
13 though all black men look alike. Instead Mr. Hagan claims in his declaration that "Mr. Griffin
14 never complained to me or any of the other foremen or employees that he felt that he had been
15 discriminated against based on his race or color at any point while working on the Cal Flats Solar
16 Project." This is simply not true.

17 159. In its motion, Sachs contends that "[Plaintiff's] supervisor did not make any racist comments, but
18 allegedly just mistook another black employee for Plaintiff. There is no suggestion that this was
19 anything more than an innocent mistake." This is a really insensitive claim. By making this
20 claim, Sachs is essentially arguing that all African American men could look alike and that this
21 perception is innocent. The other African American man on my crew and I in fact do not look
22 alike except for the color of our skin. It is obvious that, if I had not been an African American
23 man, I would not have been accused of the alleged actions of that other African American crew
24 member.

25 160. Even though I complained that I was being wrongfully written-up based upon issues related to
26 my race, Sachs made no effort to investigate my claims. Nor did Sachs withdraw the write-up
27 that day that involved mistaking me for the other African American crew member.
28

1 161. Once we got to the office and I had complained that Mr. Lopez was essentially expressing that
2 all black men look alike, Sachs further retaliated against me by giving me new different write-up
3 and then terminated me. Only at this point, did Sachs begin to claim that my termination had
4 anything to do with "Absenteeism". The other claim that Sachs made on this new termination
5 write-up was: "Refuses to work as directed" -- could only be related to my refusal to sign the
6 earlier false write-up.

7 162. As is stated above, I complained about discrimination based on race on more than one occasion
8 and also complained about Sachs failing to properly provide me with my paychecks on several
9 occasions (as recently as 3 days prior to my termination).

10 I declare under penalty of perjury under the laws of California and the United States that the
11 foregoing is true and correct.

12 Executed at Bakersfield, California.

13
14 DATED: July 12, 2018



JUSTIN GRIFFIN

Exhibit 1



SACHS ELECTRIC COMPANY - STANDARD JOB WORK RULES

CALIFORNIA FLATS SOLAR FACILITY

1/5/16

Sachs Electric Company strives to deliver high quality service to our clients. Therefore, all employees are expected to conduct themselves in a manner which will further this objective. Any employee who disregards or fails to conform to these work rules and regulations may be subject to disciplinary action, up to and including termination. Although some offences are more severe than others, and some may result in immediate termination, **a third warning, regardless of severity, will result in immediate termination.**

The following is an illustrative list of various rules and offenses that can lead to disciplinary action, but the list is **not** all-inclusive.

1. **JOBSITE ACCESS:** Parking is allowed in designated contractor parking areas only. Bus will leave the parking lot at 6:30 and 6:45 am promptly. If you miss the bus, you will need to sign in at the office.
2. **SAFETY:** The company has zero tolerance for safety violations. Disregard of safe work practices, failure to use furnished safety equipment, or willfull violations of OSHA & job safety rules can result in immediate discharge. Employees should not be negligent or careless in the performance of their job responsibilities. Hardhats, safety glasses, and gloves are required for work.
 - a. **Employees must immediately report any on-the-job injury, incident, accident or near miss regardless of severity to their supervisor. Failure to follow this procedure will be considered grounds for immediate termination.**
3. **APPROPRIATE WORK CLOTHING:** Appropriate work clothing consists of sturdy work boots, long pants, and shirt with sleeves.
4. **CELL PHONES AND/OR ELECTRONIC DEVICES:** Personal cell phones and/or electronic devises may not be used during working hours. Cell phone use is only allowed during lunch and breaks Therefore personal cell phones must be left in the break trailers and are not allowed outside of designated break areas.
5. **WORK AREA:** Employees shall stay in their assigned work areas, going about the installation of the work as directed by their supervisor. Employees who leave their assigned work areas, or who leave the workplace or jobsite without a supervisor's authorization for reasons not pertaining to work-related activities, may be subject to disciplinary action, up to and including termination.
6. **WORKING HOURS:** The standard work day begins at 7:00am and ends at 5:30pm. Employees shall be at their assigned work place and ready to work at their designated starting time, and shall remain at work until their regular quitting time. If you are late or need to leave early, you must sign in/out at the jobsite office.
 - a. **BREAKS:** When working 10 hour days a 15 minute break is allowed in the morning and afternoon in the designated areas.
 - b. **LUNCH BREAK:** Lunch break will be observed from 12:00 – 12:30. Pick up time for lunch shall be no early than 11:50. Any hot work activities must cease by 11:30, or supervisors must approve work to be performed between 11:30 – 12:00pm.
7. **ATTENDANCE/ABSENTEEISM: CALL IN NUMBER (813)-200-3348**
 Employees shall notify the jobsite by phone no later than start time, if they are going to be late or absent. Regular or predictable attendance is essential for the successful completion of the project. Therefore, the following disciplinary action will take place for unacceptable attendance:
 One (1) Tardy/Early Out – Verbal / Written Warning
 Two (2) Tardy/Early Out – Written Warning
 Three (3) Tardy/Early Out – Termination

One (1) Unexcused Absence – Written Warning

Two (2) Unexcused Absence – Termination

Excessive Absenteesim (excused or unexcused) – Warning and /or Termination

Unexcused Absence = No Call/No Show; Jury Duty – with no prior notice; Sick Day with no call

Excused Absence = Absence with call in; Jury Duty with prior notice; Sick Days with call in, up to 3 consecutive days; after 3 days, a doctor’s note will be required to return to work, no doctor’s note will result in 3 unexcused absences.

YOU MUST CALL IN EACH DAY THAT YOU ARE ABSENT.

- 8. **CONDUCT:** Employees shall treat all others on the site with courtesy and respect. Employees shall not discriminate or harass anyone on the jobsite due to race, color, national origin, sexual orientation, citizenship status, disability, religion or age, in accordance with the Company’s policy and state/federal laws (Refer to the Company’s EEO and Non-Harassment Policies). Any employee who engages in conduct that violates the Company policy will be subject to disciplinary action including immediate termination.

Other prohibited acts that will result in disciplinary action up to and including immediate termination, include, but are not limited to the following:

- a. Poor Productivity
- b. Fighting, horseplay, disruptive behavior, or insubordination
- c. Possession of firearms or dangerous weapons
- d. Possession, or use of alcohol or narcotics at anytime during normal work day
- e. Violation of Drug Testing Policy
- f. Gambling or possession of gambling material
- g. Falsification of records, facts, or information
- h. Theft or willful damage to Company property or the property of others
- i. Violation of Scrap Material Policy
- j. Failure to follow verbal or written instructions of supervision
- k. Violations of Sachs/customer/owner rules or regulations
- l. Safety Violations
- m. Unauthorized use of Sachs vehicles
- n. Discrimination in any form
- o. Sexual harassment
- p. Unlawful acts
- q. Badging in/out for others
- r. Personal use of cell phone and/or any other electronic device during working hours, except for lunch and break time

- 9. **HARDHATS:** Hardhats will be worn in a fashion they are made to be worn with the bill to the front. The Sachs Electric logo must be visible. No additional stickers other than the IBEW Bug, the American Flag, and job site issued are permitted.

- 10. **SITE VEHICLES:** Site Vehicles are not allowed in contractor parking lots.

- 11. **SMOKING:** Smoking is allowed only in designated areas only. No additional “smoke breaks” will be tolerated outside of breaks/lunch.

I have read and acknowledge the abovementioned Sachs Electric Company “Standard Job Work Rules”. I will understand that my signature below affirms my understanding of the company policy.

Justin Griffin

Signature

11/10/16

Date

Justin Griffin

Print Name

Exhibit 5



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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Justin Griffin, an individual, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

Sachs Electric Company, a Missouri corporation;
First Solar, Inc., a Delaware corporation;
California Flats Solar, LLC, a Delaware Limited
Liability Company, and Does 1 through 10,

Defendants.

Case No. 17-cv-03778-BLF

**DECLARATION OF KEVIN MANHART
IN OPPOSITION TO DEFENDANT
SACHS ELECTRIC COMPANY'S
MOTION FOR SUMMARY JUDGMENT**

Date: October 25, 2018

Time: 9:00 a.m.

Courtroom: 3

Action Filed: April 27, 2017

Removed: June 30, 2017

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1 I, Kevin Manhart, declare:

- 2 1. I have personal knowledge of the following facts.
- 3 2. I began working as a construction wireman 6 for Sachs Electric Company (“Sachs”) in or around
4 June 2016 at the California Flats Solar Site (“the Solar Site”) in Monterey County, California.
5 My employment with Sachs was terminated by Sachs in or around June 2017.
- 6 3. I signed up to start working for Sachs at the Solar Site through IBEW Local 234 who dispatched
7 me to the Solar Site. My dispatch provided me with a start time, job location, rate of pay, and the
8 person to whom to report. The Union dispatch told me to report to a McCarthy office in Paso
9 Robles. I attended my new hire orientation at that office on my first day of work and I then
10 reported to the Security Gate Entrance on that same day.

11 **The Security Gate Entrance to the Solar Site**

- 12
- 13 4. The Solar Site is on the Jack Ranch. The security gate entrance to the Solar Site was a short
14 distance from the intersection of Highway 41 and Turkey Flats Road (“Security Gate Entrance”).
- 15 5. To get to the Solar Site, it was necessary to pull off of Highway 41 and drive onto Turkey Flats
16 Road. The Security Gate Entrance is across Turkey Flats Road.
- 17 6. At the beginning, in order to get to the daily sites where work was being conducted, the other
18 workers and I were required to go through the Security Gate Entrance where Turkey Flats Road
19 started and drive on Turkey Flats Road (“the Solar Site Access Road”) to an area where a
20 parking lot was being developed. This was about a 10 mile drive. After a short period of time,
21 Sachs and McCarthy required the other workers and me to park our vehicles near the Security
22 Gate Entrance and ride a yellow school bus on the Solar Site Access Road down the same
23 approximately 10 mile drive to where we were working. That busing process lasted for about a
24 month or more. At some point, riding that bus was changed from mandatory to optional. During
25 the period of time that the school buses were used, I mostly drove my car into the Solar Site.
26 Ultimately, the school bus rides were abandoned.
- 27 7. When a parking lot at the end of the approximately 10 mile drive was created, we were told to
28 drive our own vehicles on the Solar Site Access Roads to the parking lot. The distance between

1 the Security Gate Entrance and the first parking lot was approximately 10 miles or so. During my
2 employment, there was another parking lot created at the end of the Solar Site Access Road. The
3 first and the second parking lots were around 2 or more miles apart. So, the distance from the
4 Security Gate Entrance to the second parking lot was a total of 12 or more miles.

5 8. At my new hire orientation, I was told that the only way for workers to get into and out of the
6 Solar Site was through the Security Gate Entrance and the Solar Site Access Road, and that we
7 should always use the Security Gate Entrance to enter the Solar Site.

8 9. While I worked at the Solar Site, the drive to the parking lot was about 45 minutes on the Solar
9 Site Access Road from the Security Gate Entrance. After I was assigned to park in the new
10 second parking lot, my drive time between the Security Gate Entrance and the second parking lot
11 was obviously longer than the drive to the first parking lot. I estimate that it took about an
12 additional 5 to 10 or more minutes to drive between the first parking lot and the second parking
13 lot. The drive back from the parking lots to the Security Gate Entrance took about the same
14 amount of time.

15 10. At my new hire orientation, we were told that there was no other way to get to the parking lots
16 on the Solar Site other than going through the Security Gate Entrance and driving the 10 to 12 or
17 more miles to the assigned parking lots. There was no possible way to walk from the Security
18 Gate Entrance to the parking lot in the morning and get to work on time, or to get off the Solar
19 Site on time at the end of the day. This was because the distance was so long and we were
20 restricted as to when we could get into or get out of the Security Gate Entrance.

21 11. When I first started working at the Solar Site, I was not told whether I would be paid for the
22 drive on the Solar Site Access Road. After I had worked on the Solar Site for a while and I
23 started to receive my paychecks, I learned that the other Sachs workers and I were not being paid
24 for the time it took us to drive in the morning from the Security Gate Entrance to the end of the
25 Solar Site Access Road and back at the end of the day to the Security Gate Entrance.

26 12. Based on this and based on the degree of control Sachs, McCarthy and the Solar Site had over
27 the workers while we traveled back and forth from the Security Gate Entrance, I believed that we
28

1 should have been paid for all the hours between the time that we badged in at the Security Gate
2 Entrance and when we badged out at the Security Gate Entrance.

- 3 13. While I worked at the Solar Site, I heard a lot of workers complain about not being paid for this
4 travel time. In worker meetings, I heard workers complain to foremen and the Sachs
5 superintendent about not being paid for the driving between the Security Gate Entrance and the
6 parking lots. Sachs management responded by saying that there was nothing that they could do.

7
8 **New Hire Orientation and Worker Meetings**

- 9 14. On my first day of work, I was required to attend a new hire orientation that was conducted by
10 Sachs and McCarthy.

- 11 15. During the time that I worked on the Solar Site, there were also many other worker meetings that
12 included safety meetings, monthly all-hands meetings and other worker meetings. These
13 meetings were also conducted by a combination of Sachs, McCarthy and/or First Solar people.

- 14 16. At these meetings, we were constantly told about the job site rules and the rules of road for the
15 Solar Site Access Road.

- 16 17. At these meetings, we were told by Sachs and McCarthy management that McCarthy was also
17 running the Solar Site and that the workers needed to follow all of the McCarthy rules and
18 instructions just the same as they needed to follow the Sachs rules and instructions, and that
19 McCarthy had the same authority as Sachs in terms of disciplining, suspending, and terminating
20 Sachs workers.

21 **Waiting in Line For The Sun To Come Up**

- 22 18. At my new hire orientation and at worker meetings, other workers and I were told by Sachs and
23 McCarthy management that, workers were not allowed to enter the Solar Site until the sun came
24 up. Although Sachs and McCarthy gave us an approximate start time for each day, the start time
25 did not always match when the sun actually came up. As a result, at times, other workers and I
26 would arrive and have to sit in our vehicles in a line outside the Security Gate Entrance for 10 -
27 20 minutes waiting for the sun to fully come up and for the Security Gate Entrance to open. Once
28

1 the sun was fully up, the security guards at the Security Gate Entrance would give workers the
2 okay and they would start letting us badge in.

3
4 **Rules About Being Off the Worksite By Sunset**

5 19. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
6 management that all workers had to be off the Solar Site by sunset. We were also told that, if we
7 arrived at the Security Gate Entrance too early at the end of the day, we could be suspended or
8 terminated.

9 **Badging In and Out at the Security Gate Entrance**

10 20. On my first day, I received my scan-in ID badge during my new hire orientation.

11 21. My scan-in ID badge had my picture and name on it. My badge also said both McCarthy and
12 Sachs on it.

13 22. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
14 management that, workers could not go beyond the Security Gate Entrance without their badges
15 and without being scanned in. We were also told that, once we entered, we had to have our
16 badges on us at all times until we exited the gate at the end of the day and were scanned out.

17 23. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
18 management that, if a worker forgot his or her scan-in badge, the worker wouldn't be allowed to
19 work without either going home and getting his or her badge or having the Solar Site make them
20 a new badge.

21 24. There were generally two security guards at the Security Gate Entrance. Sometimes, especially
22 toward the end of the project when there were more workers on the Solar Site to badge in or out,
23 they would both scan badges with one security guard on each side of the vehicles. At earlier
24 times during my employment and sometimes during the later part of my employment, there was
25 only one security guard who scanned the badges of the workers. To get into and out of the
26 Security Gate Entrance, the badges of each of the workers inside of each of the vehicles were
27 scanned before letting us go through the Security Gate Entrance – either in or out.
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25. Even when the sun coming up was not delaying entering into the Solar Site, because there was only one Security Gate Entrance or occasionally only two security guards to scan people in, a line of cars would form and workers would have to wait in line in their vehicles while vehicles ahead of them were being processed through the gate and scanned in. Depending on where you were in the line, the wait in the line to get into the Security Gate Entrance could average 10 to 20 minutes or so -- give or take. However, when leaving the Solar Site, I normally had to wait even more time to get through the badging-out of the Security Gate Entrance because there were so many vehicles trying to get out of the Solar Site. At some point, the Security Gate Entrance was moved a bit further away from Highway 41 because the lines of cars and trucks got so long that they were extending onto the highway.

26. At a work meeting, I recall that there were discussions about the line of vehicles going out of the Solar Site through the badging out process at the Security Gate Entrance at the end of the work day being very slow and clogged up.

Monitoring While On The Solar Site Access Road

27. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy management that, all workers were being monitored while we were on the Solar Site and the Solar Site Access Road. I was told that both Sachs and McCarthy had the power to terminate workers on the Solar Site for violating any of the job site rules, including the rules that applied to the Solar Site Access Road -- even if the worker was not officially working for the company that was doing the firing. Regarding the monitoring on the Solar Site Access Road, Sachs and McCarthy management would use hand-held radar guns, take pictures and wave down vehicles that were being accused of violating the rules of the road.

28. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy management that we had to enter the Security Gate Entrance on time and leave on time and that our badge times would be tracked by them. We were told that, if we were late arriving to the job site or if we left early, either Sachs or McCarthy could suspend or terminate us.

29. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy

1 management that, from the time that we went through the Security Gate Entrance in the morning
2 until we went out of the Security Gate Entrance at the end of the work day, we were subject to all
3 of the job site rules and could be terminated at any time for violating them.

4 30. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
5 management that we were subject to having our bodies, personal property, and vehicle searched
6 by Sachs, McCarthy, and First Solar personnel at any time that we were inside the Security Gate
7 Entrance or on the Solar Site Access Road. For example, we were told by Sachs and McCarthy
8 management in safety meetings that there were going to be random searches of lunch boxes
9 during the workday without any notice to look for alcohol. During the time that I worked at the
10 Solar Site, I saw Sachs and McCarthy personnel searching workers lunch boxes and vehicles
11 while they were inside of the Security Gate Entrance.

12 31. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
13 management that, we were subject to drug and alcohol testing at any time that were inside the
14 Security Gate Entrance or on the Solar Site Access Road.

15 32. I remember seeing workers with McCarthy and Sachs Company vehicles on the Solar Site
16 Access Road who were monitoring the behavior of workers while they were driving on the road.
17 I also observed these company vehicles stop people for violations. There were also biologists
18 patrolling the road.

19 33. From the time that I entered the Security Gate Entrance in the morning until I exited the Security
20 Gate Entrance at the end of the day, I believed that I was under the control of Sachs, McCarthy,
21 and First Solar because of the job site rules and the rules of the road.

22 **Rules On The Solar Site Access Road**

23
24 34. At my new hire orientation and at worker meetings, I was told that all of the job site rules applied
25 once we entered the Security Gate Entrance until we left the Security Gate Entrance. These rules
26 were in addition to safety and personal protective equipment rules, discrimination rules,
27 harassment rules, environmental rules, alcohol and drug policies, rules related to being subject to
28 searches for alcohol, drugs and other things, no practical jokes or no horseplay rules, no

1 gambling rules, and other rules.

2 35. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
3 management about the rules that applied to the Solar Site Access Road. These rules were in
4 addition to the instructions on the signs that I saw before and after I entered the Security Gate
5 Entrance and in materials that we were given for the job site.

6 36. There were a lot workers on the Solar Site while I was working there. Ultimately, there were
7 hundreds of workers who came through the Security Gate Entrance and traveled to their work
8 areas using the Solar Site Access Road at the same time at the beginning of the day and left the
9 Solar Site using the Solar Site at the end of the day. There were also a lot of delivery, water and
10 construction trucks using the road. We were told that because of the large number of workers and
11 trucks on the road, everyone must strictly follow the rules of the road.

12 37. At my new hire orientation meeting and at worker meetings, we were told by Sachs and
13 McCarthy management that, workers had been suspended or terminated for things they did
14 wrong on the Solar Site Access Road, such as exceeding the speed limit, passing cars, and
15 smoking in their cars.

16 38. At my new hire orientation meeting and at worker meetings, we were told by Sachs and
17 McCarthy management that, we were required to immediately report any accidents or damage to
18 any vehicle that occurred while driving on the Solar Site Access Road.

19 **Signs On The Road and at the Security Gate Entrance**

20
21 39. On Turkey Flats Road, at and around the Security Gate Entrance, there were signs along the
22 road, as well as at and around the Security Gate Entrance displaying a number of instructions.
23 At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
24 management that we had to obey the instructions on the signs of the Solar Site. I recall that these
25 instructions, among other things, included things like:

- 26 • PPE (Personal Protective Equipment) beyond this point
- 27 • all visitors check in
- 28 • prepare to show badge

- speed limit
- kit fox pictures and speed limits
- sun up times and sundown times
- no photography
- signs with company names: First Solar, Sachs, and McCarthy.

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6 40. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
7 management that we were required to wear our PPE (Personal Protective Equipment) at all times
8 when we were on the Solar Site, including from the time that we entered the Security Gate
9 Entrance in the morning until the time that we left the Security Gate Entrance at the end of the
10 day.

11
12 **Following The Pace Car**

13 41. At some point, I was told by Sachs and McCarthy management that, once we drove through the
14 Security Gate Entrance in the morning, we were supposed to drive up the road a short distance,
15 stop and make a line with our vehicles on the side of the Solar Site Access Road. I was told that
16 the first vehicle was supposed to stop behind a vehicle that would act as the pace car. I was told
17 to wait in line until the pace car began leading all of us workers up the Solar Site Access Road to
18 our assigned parking lot. The pace car was often a water truck that sprayed water on the road
19 while we drove. This reduced dust but made the road very muddy and slippery.

20 42. That pace car would then lead the worker vehicles along the Solar Site Access Road and control
21 their progress and speed along the Solar Site Access Road to the parking lots.

22 **Rules About Speeding In The Road**

23 43. I recall that there were speed limits signs with speed limits between 5 miles per hour and 20
24 miles per hour posted on the Solar Site Access Road.

25 44. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
26 management that they were monitoring our activities and the speeds of vehicles on the Solar Site
27 Access Road, and that if we violated the speed limits or rules of the road or other job site rules
28

1 we would be suspended or terminated.

2 45. I saw speed radar machines installed along the Solar Site Access Road. At least one of these
3 radar machines was located approximately at the midway point between the Security Gate
4 Entrance and the first parking lot and had a digital sign that would tell us how fast we were
5 going. I also saw people using hand-held radar machines to monitor the speed of workers.

6 46. At times on the Solar Site Access Road, I was often only allowed to drive at 5 to 10 miles per
7 hour because of animals near the road, the conditions of the road, cattle grids, the road being wet
8 because of the Solar Site watering of the road, poor road conditions, and other reasons.

9 47. At worker meetings we were told by Sachs and McCarthy, that workers who were caught
10 speeding were disciplined by suspension or termination.

11 48. The crew members on my crew were told by our foreman that a guy on our crew got fired for
12 speeding.

13 **Rules About Passing on the Solar Site Access Road**

14
15 49. During our drive on the Solar Site Access Road, gaps would form between cars for any number
16 of reasons such as animals on the road, someone’s car breaking down, someone driving more
17 slowly than the rest of the cars, or a whole range of the conditions related to the road. Regardless
18 of these gaps, we were told by Sachs and McCarthy management that, we were not allowed to
19 pass another moving vehicle for any reason -- except when a car had broken down or pulled over
20 to the side of the road.

21 **Rules About Livestock And Endangered Animals On The Solar Site Access Road**

22
23 50. The Solar Site Access Road was a long, rough double-lane dirt road that was very difficult to
24 drive on and very hard on vehicles. Along the Solar Site Access Road, there were several steel
25 cattle grids that we were required to drive over. Cattle grazed along the Solar Site Access Road
26 and would frequently be very near or on the road and they interfered with the ability of vehicles
27 to travel on the road.

28 51. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy

1 management that, we were not allowed to disturb the cattle or local wildlife in any way while we
2 were driving on the Solar Site Access Road. I was told that if we saw animals on or near the
3 road, we had to let them do whatever they needed to do. I was told that this means we weren't
4 allowed to do anything to try to get them to move off the road. I was told that we had to slow
5 down or stop our vehicle and just stay in our vehicles and wait for them to go away from the
6 road. We were told that we mainly had to be careful about cattle and kit foxes, but there were
7 also other animals that we were supposed to watch out for. The presence of animals on or around
8 the road frequently slowed down the drive on the Solar Site Access Road. Often, the biologists
9 would post signs for kit fox zones on the road and a require traffic to slow down to 5 miles per
10 hour in the zones.

11 52. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy that,
12 we were not supposed to honk our horns when driving on the Solar Site Access Road because
13 our horns could disturb the local wildlife and the cattle. I recall Sachs and McCarthy
14 management telling us in a worker meeting that one of the workers got into trouble because he
15 honked at an animal on the Solar Site Access Road.

16 53. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
17 management that, we could not play load music that could be heard outside our vehicle while we
18 were on the Solar Site Access Road because the noise from the music could disturb the local
19 wildlife and the cattle.

20 54. At my new hire orientation, we were told by Sachs and McCarthy management that, we were not
21 supposed to touch or feed anything to the local wildlife or cattle on the Solar Site or along the
22 Solar Site Access Road.

23 **Rules About Creating Dust On The Solar Site Access Road**

24
25 55. At new hire orientation and at worker meetings, we were told by Sachs and McCarthy
26 management that, there were dust control rules related to the Solar Site that required the workers
27 not to create dust.

28 56. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy

1 management not to drive on the Solar Site Access Road in a way that created dust and that we
2 needed to drive slower if dust was happening. We were told that if we were creating dust, we
3 were driving too fast.

4 57. As a result, we were told that the Solar Site had water trucks that would spray water on the Solar
5 Site Access Road to prevent too much dust from being created by the vehicles that were driving
6 on it. Because of this watering, the Solar Site Access Road was sometimes muddy and slippery.
7 When it was muddy and slippery, it was even slower and more difficult to drive on the Solar Site
8 Access Road.

9
10 **Rules About Smoking**

11 58. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
12 management that, we were not allowed to smoke either inside or outside of our vehicles while
13 we were driving on the Solar Site or Solar Site Access Road or inside or outside of our vehicles
14 in the parking lots. We were told that we could only smoke in designated smoking areas. We
15 were also told that no smoking was allowed at the portable toilet stations.

16 **Rules About Staying On The Solar Site Access Road**

17 59. At my new hire orientation and at crew meeting, we were told by Sachs and McCarthy
18 management that, once we were released to drive on the Solar Site Access Road in the morning
19 or at the end of the day, we had to drive directly on the road to our assigned parking lot in the
20 morning and from our assigned parking lot back to the Security Gate Entrance at the end of the
21 day and that we were to stay only on the road. We were told that, although there were other
22 intersecting roads along the Solar Site Access Road, we were not permitted to go onto any of
23 those roads.

24 **Rules About Stopping On The Solar Site Access Road**

25
26 60. At my new hire orientation and in worker meetings, we were told by Sachs and McCarthy
27 management that, we must strictly follow the rules of the road and keep the flow of traffic
28

1 constantly moving on the Solar Site Access Road.

2 61. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy that,
3 except for emergencies, we were not supposed to stop on the Solar Site Access Road at any
4 places that we were not specifically designated to stop. For example, we were told that we could
5 stop where the portable toilets were located.

6 62. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
7 management that, if we had to stop and get out of our vehicles for any reason, we were not
8 allowed to go outside of the boundary fences, stakes and ribbons that ran about 15 feet or so
9 along the sides of the road.

10 63. At my new hire orientation and in worker meetings, we were told by Sachs and McCarthy that, if
11 we had to stop and get out of our vehicles along the Solar Site Access Road for any reason, we
12 could not disturb the environment. For example, we were told that we could not trample or
13 disturb any plants or litter in any way or relieve ourselves except at the portable toilet sites.

14 **Rules About Using the Bathroom While on the Solar Site Access Road**

15
16 64. While I worked at the Solar Site, there were also generally a couple of places along the Solar Site
17 Access Road where portable toilets were set up. However, for a while I remember that there was
18 only one portable toilet site on the road. At worker meetings, we were told by Sachs and
19 McCarthy management that, if we needed to use the bathroom during the drive on the Solar Site
20 Access Road, we had to use these portable toilet sites. For example, we were told that we could
21 not stop and get out of our vehicles to relieve ourselves at any location along the Solar Site
22 Access Road other than at these portable toilet sites once we entered the Security Gate Entrance.

23 **Poor Road Conditions**

24
25 65. Vehicles, especially small cars, regularly broke down due to the poor conditions of Solar Site
26 Access Road. It was a rough gravel road. I recall seeing some cars or other vehicles stopped
27 along the road due to mechanical problems.
28

Arriving at Our Assigned Parking Lots and Getting to Our Installation Site

1
2
3 66. As the Solar Site developed, at worker meetings, we were told by Sachs and McCarthy
4 management that, once we got to the parking lot where we were assigned to park, we needed to
5 park and walk to where there were buggies for us to ride further into the Solar Site. The buggies
6 were kind of like golf carts and each one fit about 5-6 people. We were told to wait at the
7 buggies until our crew was assembled and then use a buggy that would take us to a safety
8 meeting, an all-hands meeting, or our daily Installation Site. This buggy ride could take between
9 5 and 15 minutes.

10 67. At the end of workday, we would have to ride the buggies from the Installation Site to the
11 parking lot where our vehicles were. We were told that we were required to ride the buggies to
12 get back and forth to the Installation Site. Because the distance between the parking lot and our
13 daily Installation Sites were considerable, it was not possible to walk between them and get to
14 and from work on time given the restrictions that were placed on us about getting into and out of
15 the Solar Site.

16 68. While I worked at the Solar Site, the buggies were the only forms of transportation that I saw
17 that were available for transporting the workers between the parking lot and the morning meeting
18 sites and the work sites. For example, we were not allowed and it was not possible for workers to
19 drive their own vehicles to either of these sites.

Meal and Rest Breaks

20
21 69. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy that,
22 we were required to stay on the job site during the entire workday from the beginning of the
23 workday to the end of the workday. At worker meetings, we were told that it would be a
24 violation of the job site rules if we reached the Security Gate Entrance too early at the end of the
25 workday and that we could be suspended or terminated if we violated that rule. We were told
26 that we were required to eat our lunches at our daily Installation Sites and that we could not go
27 back to our vehicles in the parking lots at any time during the workday.
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70. At a certain point, Sachs and McCarthy personnel started checking workers to see if worker had any alcohol on them. They told us and I observed that they checked vehicles of workers in the parking lots and checked workers' lunch boxes at the Installation Sites. They did this at different times, including during our rest and meal breaks.

71. To my knowledge, the other workers and I were never paid for the time while we were on meal breaks and never paid anything when meal breaks or rest breaks were interrupted by Sachs or McCarthy personnel for any reason.

I declare under penalty of perjury under the laws of California and the United States that the foregoing is true and correct.

DATED: July 14, 2018



KEVIN MANHART

Exhibit 6



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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Justin Griffin, an individual, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

Sachs Electric Company, a Missouri corporation;
First Solar, Inc., a Delaware corporation;
California Flats Solar, LLC, a Delaware Limited
Liability Company, and Does 1 through 10,

Defendants.

Case No. 17-cv-03778-BLF

**DECLARATION OF MARIA JIMENEZ IN
OPPOSITION TO DEFENDANT SACHS
ELECTRIC COMPANY'S MOTION FOR
SUMMARY JUDGMENT**

Date: October 25, 2018

Time: 9:00 a.m.

Courtroom: 3

Action Filed: April 27, 2017

Removed: June 30, 2017

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1 I, Maria Jimenez, declare:

- 2
- 3 1. I have personal knowledge of the following facts.
- 4 2. I began working as a journeyman electrician for Sachs Electric Company (“Sachs”) in or around
- 5 May 2016 at the California Flats Solar Site (“the Solar Site”) in Monterey County, California. A
- 6 few weeks later, I was promoted to a foreman. My employment with Sachs was terminated by
- 7 Sachs in or around April 2017. Thereafter, I went back to work at the Solar Site for Sachs for
- 8 about a month after that as a journeyman electrician. I was one of the first group of workers
- 9 hired to work at the Solar Site for Sachs.
- 10 3. I signed up to start working for Sachs at the Solar Site through IBEW Local 234 who dispatched
- 11 me to the Solar Site. My dispatch provided me with a start time, job location, rate of pay, and the
- 12 person to whom to report. The Union dispatch told me to report to a McCarthy office in Paso
- 13 Robles. I attended my new hire orientation at that office on my first day of work and I then
- 14 reported to the Security Gate Entrance on that same day.

15 **The Security Gate Entrance to the Solar Site**

- 16 4. The Solar Site is on the Jack Ranch. The security gate entrance to the Solar Site was a short
- 17 distance from the intersection of Highway 41 and Turkey Flats Road (“Security Gate Entrance”).
- 18 5. To get to the Solar Site, it was necessary to pull off of Highway 41 and drive onto Turkey Flats
- 19 Road. The Security Gate Entrance is across Turkey Flats Road where the road meets the Solar
- 20 Site.
- 21 6. At the beginning, in order to get to the daily sites where work was being conducted, the other
- 22 workers and I were required to go through the Security Gate Entrance where Turkey Flats Road
- 23 started and drive on Turkey Flats Road (“the Solar Site Access Road”) to an area where a
- 24 parking lot was going to be developed. This was about a 10 mile drive. After about a month,
- 25 Sachs and McCarthy required the other workers and me to park our vehicles near the Security
- 26 Gate Entrance and ride a yellow school bus on the Solar Site Access Road down the same
- 27 approximately 10 mile drive to where we working. That busing process lasted for about a month.
- 28 After that, a parking lot at the end of the approximately 10 mile drive was created. We were told

1 to drive our own vehicle on the Solar Site Access Roads to that parking lot. During my
2 employment, there was an additional parking lot created at the end of the Solar Site Access
3 Road. The first and second parking lots were around 2 or more miles apart. As indicated above,
4 the distance between the Security Gate Entrance and the first parking lot was approximately 10
5 miles or so. So, the distance to from the Security Gate Entrance to the second parking lot was a
6 total of 12 or more miles.

- 7 7. At my new hire orientation, I was told that the only way for workers to get into and out of the
8 Solar Site was through the Security Gate Entrance and the Solar Site Access Road and that we
9 should always use the Security Gate Entrance to enter the Solar Site.
- 10 8. While I worked at the Solar Site, the drive to the parking lots was about a 35 minutes at best to
11 almost an hour drive at worst on the Solar Site Access Road from the Security Gate Entrance.
12 After I was assigned to park in the new second parking lot, my drive time between the Security
13 Gate Entrance and the second parking lot was obviously longer than the drive to the first parking
14 lot. I estimate that it took about an additional 10 to 15 minutes to drive between the first parking
15 lot and the second parking lot. The drive back from the parking lots to the Security Gate
16 Entrance took about the same amount of time.
- 17 9. At my new hire orientation, we were told that there was no other way to get to the parking lots
18 on the Solar Site than going through the Security Gate Entrance and driving the 10 to 12 or more
19 miles to the assigned parking lots. There was no possible way to walk from the Security Gate
20 Entrance to the parking lot in the morning and get to work on time, or to get off the Solar Site on
21 time at the end of the day. This was because the distance was so long and we were restricted as
22 to when we could get into or get out of the Security Gate Entrance.
- 23 10. When I first started working at the Solar Site, I was not told whether I would be paid for the
24 drive on the Solar Site Access Road. After I had worked on the Solar Site for a while and I
25 started to receive my paychecks, I learned that the other Sachs workers and I were not being paid
26 for the time it took us to drive in the morning from the Security Gate Entrance to the end of the
27 Solar Site Access Road and back at the end of the day to the Security Gate Entrance. This
28

1 seemed wrong to me because some of the McCarthy employees told me that they were getting
2 paid something for the drive.

3 11. Based on this and based on the degree of control Sachs, McCarthy and the Solar Site had over
4 the workers while we traveled back and forth from the Security Gate Entrance, I believed that we
5 should have been paid for all the hours between the time that we badged in at the Security Gate
6 Entrance and when we badged out at the Security Gate Entrance.

7 12. While I worked at the Solar Site, I heard a lot of workers complain about not being paid for this
8 travel time.

9 13. As explained below, I personally complained to Sachs management about not being paid for
10 these daily drives on behalf of myself and on behalf of my crew, and I believe that ultimately I
11 was retaliated against for doing so.

12 **New Hire Orientation and Worker Meetings**

13 14. On my first day of work, I was required to attend a new hire orientation that was conducted by
14 by Sachs, McCarthy and First Solar.

15 15. During the time that I worked on the Solar Site, there were also many other worker meetings that
16 included safety meetings, monthly all-hands meetings and other worker meetings. These
17 meetings were also conducted by a combination of Sachs, McCarthy and/or First Solar people.

18 16. At these meetings, we were constantly told about the job site rules and the rules of road for the
19 Solar Site Access Road.

20 17. At these meetings, we was told by Sachs and McCarthy management that McCarthy was also
21 running the Solar Site and that the workers needed to follow all of the McCarthy rules and
22 instructions just the same as they needed to follow the Sachs rules and instructions and that
23 McCarthy had the same authority as Sachs in terms of disciplining, suspending and terminating
24 Sachs workers.

25 **Waiting in Line For The Sun To Come Up**

26
27 18. At my new hire orientation and at worker meetings, other workers and I were told by Sachs and
28 McCarthy personnel that workers were not allowed to enter the Solar Site until the sun came up.

1 Although we were given an approximate start time for each day by Sachs and McCarthy, the
2 start time did not always match when the sun actually came up. As a result, at times, other
3 workers and I would arrive and have to sit in our vehicles in a line outside the Security Gate
4 Entrance for 10 to 20 minutes waiting for the sun to fully come up and for the Security Gate
5 Entrance to open. Once the sun was fully up, the security guards at the Security Gate Entrance
6 would give workers the okay and they would start letting us badge in.

7
8 **Rules About Being Off the Worksite By Sunset**

9 19. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
10 personnel that all workers had to be off the Solar Site by sundown. We were also told that, if we
11 arrived at the Security Gate Entrance too early at the end of the day, we could be suspended or
12 terminated.

13 **Badging In and Out at the Security Gate Entrance**

- 14 20. On my first day, I received my scan-in ID badge during my new hire orientation.
- 15 21. My scan-in ID badge had my picture and name on it. My badge also said both McCarthy and
16 Sachs on it.
- 17 22. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
18 personnel that workers could not go beyond the Security Gate Entrance without their badges and
19 without being scanned in. We were also told that, once we entered, we had to have our badges
20 on us at all times until we exited the gate at the end of the day and were scanned out.
- 21 23. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
22 personnel that, if a worker forgot his or her scan-in badge, the worker wouldn't be allowed to
23 work without either going home and getting his or her badge or having the Solar Site make them
24 a new badge.
- 25 24. There were generally two security guards at the Security Gate Entrance. Sometimes, especially
26 toward the end of the project when there were more workers on the Solar Site to badge in or out,
27 they would both scan badges with one security guard on each side of the vehicles. At earlier
28

1 times during my employment, there was only one security guard who scanned the badges of the
2 workers. To get into and out of the Security Gate Entrance, the badges of each of the workers
3 inside of each of the vehicles were scanned before letting us go through the Security Gate
4 Entrance – either in or out.

5 25. Even when the sun coming up was not delaying entering into the Solar Site, because there was
6 only one Security Gate Entrance and only two potential security guards to scan people in, a line
7 of cars would form, and workers would have to wait in line in their vehicles while vehicles ahead
8 of them were being processed through the gate and scanned in. Depending on where you were in
9 the line, the wait in the line to get into the Security Gate Entrance could average 15 minutes or so
10 -- give or take. But because I was sometimes one of the earliest workers to arrive, I sometimes
11 only had to wait to get in 5 minutes or so -- give or take. However, when leaving the Solar Site, I
12 normally had to wait an average of 15 minutes to get through the badging-out of the Security
13 Gate Entrance because there were so many vehicles trying to get out of the Solar Site.

14 **“Policed” While On The Solar Site Access Road**

15
16 26. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
17 personnel that all workers were being watched carefully while we were on the Solar Site and the
18 Solar Site Access Road. I was told that both Sachs and McCarthy had the power to terminate
19 workers on the Solar Site for violating any of the job site rules, including the rules that applied to
20 the Solar Site Access Road -- even if the worker was not officially working for the company that
21 was doing the firing.

22 27. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
23 personnel that we had to enter the Security Gate Entrance on time and leave on time and that our
24 badge times would be tracked by them. We were told that, if we were late arriving to the job site
25 or if we left early, either Sachs or McCarthy could suspend or terminate us.

26 28. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
27 personnel that, from the time that we went through the Security Gate Entrance in the morning
28 until we went out of the Security Gate Entrance at the end of the work day, we were subject to all

1 of the job site rules and could be terminated at any time for violating them.

2
3 29. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
4 personnel that we were subject to having our bodies, personal property and vehicle searched by
5 Sachs, McCarthy and First Solar personnel at any time that we were inside the Security Gate
6 Entrance or on the Solar Site Access Road. During the time that I worked at the Solar Site, I saw
7 Sachs and McCarthy personnel searching workers lunch boxes and vehicles while they were
8 inside of the Security Gate Entrance.

9
10 30. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
11 personnel that we were subject to drug and alcohol testing at any time that were inside the
12 Security Gate Entrance or on the Solar Site Access Road.

13
14 31. I remember seeing workers with McCarthy and Sachs uniforms and company vehicles on the
15 Solar Site Access Road who were monitoring the behavior of workers while they were driving
16 on the road. I also observed these company vehicles stop people for violations. There were also
17 biologists patrolling the road.

18
19 32. Early during my employment, I witnessed a man named Jared get fired by McCarthy and Sachs
20 for speeding on the Solar Site Access Road. They immediately escorted him off of the Solar Site
21 without his tools and would not let him return to the Solar Site to pick them up. Because I felt
22 bad that he was not able to get his tools, I ultimately got his tools off of the Solar Site and took
23 them home with me. I called him and he came to my home and picked them up.

24
25 33. From the time that I entered the Security Gate Entrance in the morning until I exited the Security
26 Gate Entrance at the end of the day, I believed that I was under the control of Sachs, McCarthy
27 and First Solar because of the job site rules that we were subject to, because of how much Sachs
28 and McCarthy warned us about them and how strictly the rules were being enforced.

Rules On The Solar Site Access Road

26 34. At my new hire orientation and at worker meetings, I was told that all of the job site rules applied
27 once we entered the Security Gate Entrance until we left the Security Gate Entrance. These were
28 in addition to safety and personal protective equipment rules, discrimination rules, harassment

1 rules, environmental rules, alcohol and drug policies, rules related to being subject to searches
2 for alcohol, drugs and other things, no practical jokes or no horseplay rules, no gambling rules
3 and other rules.

4 35. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
5 personnel about the rules that applied to the Solar Site Access Road. These instructions were in
6 addition to those on the signs that I saw before and after I entered the Security Gate Entrance and
7 in materials that we were given for the job site.

8 36. There were a lot workers on the Solar Site while I was working there. Ultimately, there were
9 hundreds of workers who came through the Security Gate Entrance and traveled to their work
10 areas using the Solar Site Access Road at the same time at the beginning of the day and left the
11 Solar Site using the Solar Site at the end of the day. There were also a lot of delivery, water and
12 construction trucks using the road. We were told that because of the large number of workers and
13 trucks on the road, everyone must strictly follow the rules of the road.

14 37. At my new hire orientation meeting and at worker meetings, we were told by Sachs and
15 McCarthy personnel that workers had been suspended or terminated for things they did wrong on
16 the Solar Site Access Road, such as exceeding the speed limit and smoking in their cars.

17 38. At my new hire orientation meeting and at worker meetings, we were told by Sachs and
18 McCarthy personnel that, we were required to immediately report any accidents or damage to
19 any vehicle that occurred while driving on the Solar Site Access Road.

20
21 **Signs On The Road and at the Security Gate Entrance**

22 39. On Turkey Flats Road, at and around the Security Gate Entrance, there were signs along the
23 road, as well as at and around the Security Gate Entrance displaying a number of instructions.
24 At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
25 personnel that we had to obey the instructions on the signs of the Solar Site. I recall that these
26 instructions, among other things, included things like:

- 27 • be prepared to wear PPE (Personal Protective Equipment) beyond this point
- 28 • all visitors must check in at the guard shack

- must have badge
- speed limit
- pictures of animals that I was told to look out for and not to interfere with
- no smoking
- no drugs
- no firearms
- the signs with company names: First Solar, Sachs and McCarthy.

40. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy personnel that we were required to wear our PPE (Personal Protective Equipment) at all times when we were on the Solar Site, including from the time that we entered the Security Gate Entrance in the morning until the time that we left the Security Gate Entrance at the end of the day. As indicated above, I recall that there were signs near the Security Gate Entrance that said the same thing.

Following The Pace Car

41. At some point, I was told by Sachs and McCarthy personnel that, once we drove through the Security Gate Entrance in the morning, we were supposed to drive up the road a short distance, stop and make a line with our vehicles on the side of the Solar Site Access Road. I was told that the first vehicle was supposed to stop behind a vehicle that would act as the pace car. I was told to wait in line until the pace car began leading all of us workers up the Solar Site Access Road to our assigned parking lot. The pace car was usually a McCarthy work truck, but I recall at times it was a First Solar work truck. I recall that this occurred for a least a 3 month period while I worked there.

42. That pace car would then lead the worker vehicles along the Solar Site Access Road and control their progress and speed along the Solar Site Access Road to the parking lots.

Rules About Speeding In The Road

43. I recall that there were speed limits signs with speed limits between 5 miles per hour and 20

1 miles per hour posted on the Solar Site Access Road.

2
3 44. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
4 personnel that they were monitoring our activities and the speeds of vehicles on the Solar Site
5 Access Road and that if we violated the speed limits or “rules of the road” or other job site rules
6 we would be suspended or terminated.

7 45. At the new hire orientation and at worker meetings, we were told by Sachs and McCarthy
8 personnel that there were speed radar machines and cameras installed along the Solar Site Access
9 Road. At least one of these radar machines was located approximately at the midway point
10 between the Security Gate Entrance and the first parking lot and had a digital sign that would tell
11 us how fast we were going. I also saw people using hand-held radar machines to monitor the
12 speed of workers.

13 46. At times on the Solar Site Access Road, I was often only allowed to drive at 5 to 10 miles per
14 hour because of animals near the road, the conditions of the road, cattle grids, the road being wet
15 because of the Solar Site watering of the road, poor road conditions and other reasons.

16 47. At worker meetings, we were told that workers who were caught speeding were disciplined by
17 suspension or termination by Sachs and McCarthy.

18 **Rules about Passing on the Solar Site Access Road**

19 48. During our drive on the Solar Site Access Road, gaps would form between cars for any number
20 of reasons such as animals on the road, someone’s car breaking down, someone driving more
21 slowly than the rest of the cars or a whole range of the conditions related to the road. Regardless
22 of these gaps, we were told by Sachs and McCarthy personnel that we were not allowed to go
23 above the speed limit or pass another moving vehicle for any reason -- except when a car had
24 broken down or pulled over to the side of the road.

25 **Rules About Livestock And Endangered Animals On The Solar Site Access Road**

26 49. The Solar Site Access Road was a long, rough double-lane dirt road that was very difficult to
27 drive on and very hard on vehicles. Along the Solar Site Access Road, there were several steel
28

1 cattle grids that we were required to drive over. Cattle grazed along the Solar Site Access Road
2 and would frequently be very near or on the road and they interfered with the ability of vehicles
3 to travel on the road.

4 50. At new hire orientation and at worker meetings, we were told by Sachs and McCarthy personnel
5 that we were not allowed to disturb the cattle or local wildlife in any way while we were driving
6 on the Solar Site Access Road. I was told that if we saw animals on or near the road, we had to
7 let them do whatever they needed to do. I was told that this means we weren't allowed to do
8 anything to try to get them to move off the road. I was told that we had to slow down or stop our
9 vehicle and just stay in our vehicles and wait for them to go away from the road. We were told
10 that we mainly had to be careful about cattle and kit foxes, but there were also other animals that
11 we were supposed to watch out for. The presence of animals on or around the road frequently
12 slowed down the drive on the Solar Site Access Road. Often, the biologists would post signs for
13 kit fox zones on the road and a require traffic to slow down to 5 miles per hour in the zones.

14 51. At new hire orientation and at worker meetings, we were told by Sachs and McCarthy that we
15 were not supposed to honk our horns when we driving on the Solar Site Access Road because
16 our horns could disturb the local wildlife and the cattle.

17 52. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
18 personnel that we could not play load music that could be heard outside our vehicle while we
19 were on the Solar Site Access Road because the noise from the music could also disturb the local
20 wildlife and the cattle.

21 53. At my new hire orientation, we were told by Sachs and McCarthy personnel that we were not
22 supposed to touch or feed anything to the local wildlife or cattle on the Solar Site or along the
23 Solar Site Access Road.

24 **Rules About Creating Dust On The Solar Site Access Road**

25
26 54. At new hire orientation and at worker meetings, we were told by Sachs and McCarthy personnel
27 that there were dust control rules related to the Solar Site that required the workers not to create
28 too much dust.

1 55. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
2 personnel not to drive on the Solar Site Access Road in a way that created dust and that we
3 needed to drive slowing if dust was happening. We were told that if we were creating dust, we
4 were driving too fast.

5 56. As a result, we were told that the Solar Site had water trucks that would spray water on the Solar
6 Site Access Road to prevent too much dust from being created by the vehicle that were driving
7 on it. Because of this watering, the Solar Site Access Road was sometimes muddy and slippery.
8 When it was muddy and slippery, it was even slower and more difficult to drive on the Solar Site
9 Access Road.

10 **Rules About Smoking**

11
12 57. At some point during my employment, before the Security Entrance Gate at the beginning of
13 Turkey Flats Road, a designated smoking area was created. At worker meetings, we were told by
14 Sachs and McCarthy personnel that, if we wanted to smoke, we would have to pull over to this
15 area and smoke outside of our vehicles before we entered the Solar Site through the Security
16 Gate Entrance.

17 58. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
18 personnel that we were not allowed to smoke either inside or outside of our vehicles while we
19 were driving on the Solar Site or Solar Site Access Road or inside or outside of our vehicles in
20 the parking lots. We were told that we could only smoke in designated smoking areas. We were
21 also told that no smoking was allowed at the portable toilet stations.

22 **Rules About Staying On The Solar Site Access Road**

23
24 59. At my new hire orientation and at crew meeting, we were told by Sachs and McCarthy personnel
25 that, once we were released to drive on the Solar Site Access Road in the morning or at the end
26 of the day, we had to drive directly on the road to our assigned parking lot in the morning and
27 from our assigned parking lot back to the Security Gate Entrance at the end of the day and that
28 we were to stay only on the road. We were told that, although there were other intersecting roads

1 along the Solar Site Access Road, we were not permitted to go onto any of those roads.

2
3 **Rules About Stopping On The Solar Site Access Road**

4 60. At my new hire orientation and in worker meetings, we were told by Sachs and McCarthy
5 personnel that we must strictly follow the “rules of the road” and keep the flow of traffic
6 constantly moving on the Solar Site Access Road.

7 61. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy that,
8 except for emergencies, we were not supposed to stop on the Solar Site Access Road at any
9 places that we were not specifically designated to stop. For example, we were told that we could
10 stop where the portable toilets were located.

11 62. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
12 personnel that, if we had to get out of our vehicles for any reason, we were not allowed to go
13 outside of the boundary fences, stakes and ribbons that ran about 15 feet or so along the sides of
14 the road.

15 63. At my new hire orientation and in worker meetings, we were told by Sachs and McCarthy that if
16 we had to get out of our vehicles along the Solar Site Access Road for any reason, we could not
17 disturb the environment. For example, we were told that we could not trample or disturb any
18 plants or litter in any way or relieve ourselves except at the portable toilet sites.

19 **Rules about Using the Bathroom while on the Solar Site Access Road**

20
21 64. While I worked at the Solar Site, there were also generally a couple of places along the Solar Site
22 Access Road where portable toilets were set up. At worker meetings, we were told by Sachs and
23 McCarthy personnel that if we needed to use the bathroom during the drive on the Solar Site
24 Access Road, we had to use these portable toilet sites. For example, we were told that we could
25 not stop and get out of our vehicles to relieve ourselves at any location along the Solar Site
26 Access Road other than at these portable toilet sites once we entered the Security Gate Entrance.
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Poor Road Conditions

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3 65. Vehicles, especially small cars, regularly broke down due to the poor conditions of Solar Site
4 Access Road. It was a rough gravel road. I recall seeing some cars or other vehicles stopped
5 along the road due to a mechanical problems or flat tires.

6 **Arriving at Our Assigned Parking Lots and Getting to Our Installation Site**

7 66. As the Solar Site developed, at worker meetings, we were told by Sachs and McCarthy personnel
8 that, once we got to the parking lot where we were assigned to park, we needed to park and walk
9 to where there were buggies for us to ride further into the Solar Site. The buggies were kind of
10 like golf carts and each one fit about 5-6 people. We were told to wait at the buggies until our
11 crew was assembled and then use a buggy that would take us to a safety meeting, an all-hands
12 meeting or our daily Installation Site.

13 67. I was told by Jose Torres and Danny Venezuela (both Sachs management) that the start time for
14 the 8 hour work day began either when the buggies got to morning meeting site or to the work
15 site. As a result, workers were not paid for the buggy drive from the parking lot to the morning
16 meeting site or to the work site. This buggy ride could take between 5 and 15 minutes.

17 68. At the end of workday, we would have to ride the buggies from the Installation Site to the
18 parking lot where our vehicles were. We were told that we were required to ride the buggies to
19 get back and forth to the Installation Site. Because the distance between the parking lot and our
20 daily Installation Sites were considerable, it was not possible to walk between them and get to
21 and from work on time given the restrictions that were placed on us about getting into and off of
22 the Solar Site.

23 69. While I worked at the Solar Site, the buggies were the only forms of transportation that I saw
24 that were available for transporting the workers between the parking lot and the morning meeting
25 sites and the work sites. For example, we were not allowed and it was not possible for workers to
26 drive their own vehicles to either of these sites.

Meal and Rest Breaks

1
2
3 70. At new hire orientation and at worker meetings, we were told by Sachs and McCarthy that we
4 were required to stay on the job site during the entire workday from the beginning of the
5 workday to the end of the workday. At worker meetings, we were told that it would be a
6 violation of the job site rules if we reached the Security Gate Entrance too early at the end of the
7 workday and that we could be suspended or terminated if we violated that rule. We were told
8 that we were required to eat our lunches at our daily Installation Sites and that we could not go
9 back to our vehicles in the parking lots at any time during the workday.

10 71. During our breaks, we were permitted to make cell phone calls but often we did not have any
11 reception. Cell phone reception varied on the site and, depending on the area where we
12 allowed to eat, we may not have service. We were told by Sachs and McCarthy personnel, that,
13 even if we did not have good reception, we were not permitted to walk to other locations where
14 we to get better reception and make calls.

15 72. At a certain point, Sachs and McCarthy personnel started checking workers to see if worker had
16 any alcohol on them. They told us and I observed that they checked vehicles of workers in the
17 parking lots and checked workers' lunch boxes at the Installation Sites. They did this at different
18 times, including during our rest and meal breaks.

19 73. To my knowledge, the other workers and I were never paid for the time while we were on meal
20 breaks and never paid anything when meal breaks or rest breaks were interrupted by Sachs or
21 McCarthy personnel for any reason.

My Termination

22
23 74. In April of 2017, I was the foreman of a crew. On a particular day, my crew hit what I
24 considered to be a very high amount of production. So at the end of the day, I told them to clean
25 up at little early and just go to the parking lot when done. So, just a few minutes before quitting
26 time, about 6 of my 10 crew members got into a buggy only a few minutes early and headed to
27 the parking lot. Because I had paperwork to do, I stayed at work site. The other crew members
28

1 stayed with me to finish cleaning up.

2 75. Based upon conversations with my crew and Sachs management, I learned that, when the buggy
3 with about 6 of my crew members got to the parking lot, they arrived just a few minutes before
4 quitting time. I was told that, when they got there, they were stopped and interrogated by either
5 Sachs or McCarthy personnel. I was told that Danny Venezuela was angry about this. I went to
6 the parking lot and heard about all of this and, then, we all went home.

7 76. The next day, I was told by Jose Torres that Sachs and McCarthy were going to terminate me
8 and my whole crew, even the members of my crew who didn't go to the parking lot early. I told
9 Jose that it was unfair to take it out on my crew and that they should not all be terminated,
10 especially the ones that did not go to the parking lot early. I told Jose that it was my decision to
11 let them go early because they had worked so hard and that, if they were going to fire someone,
12 it should not be my crew but instead only me. I told him that I made the judgment call and if
13 there were any consequences, it should be on me and not on my crew. I told him that I didn't
14 understand why it was such a big deal because it was only a couple of minutes early and no one
15 even left the parking lot early, especially since my crew had been so productive that day. I told
16 Jose that I didn't understand why they were being so unfair and vindictive. Nonetheless, they
17 fired all of us that day.

18 77. It is interesting to note that, before my crew and I were fired, I had very strongly complained to
19 Sachs management (including Jose Torres) about us workers not being paid anything for the
20 drive time from the Security Gate Entrance to the parking lots and back.

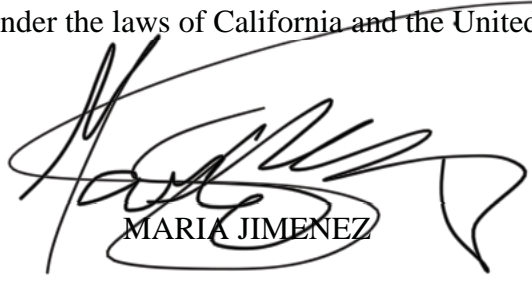
21 **Other Retaliation**

22
23 78. While I worked at the Solar Site, I was aware of other actions by Sachs and McCarthy that I
24 thought were wrongful. For example, I remember that a worker named George Huerta hurt his
25 leg at the job site. After he was hurt, he was terminated. I was told by his foreman that Danny
26 Venezuela forced her to get rid of him. This foreman told me that she had fought for George
27 because he was one of her best workers, but Danny forced her to get rid of him anyway.

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I declare under penalty of perjury under the laws of California and the United States that the foregoing is true and correct.

DATED: July 13, 2018



MARIA JIMENEZ

Exhibit 7



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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Justin Griffin, an individual, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

Sachs Electric Company, a Missouri corporation;
First Solar, Inc., a Delaware corporation;
California Flats Solar, LLC, a Delaware Limited
Liability Company, and Does 1 through 10,

Defendants.

Case No. 17-cv-03778-BLF

**DECLARATION OF ERIC MANHART IN
OPPOSITION TO DEFENDANT SACHS
ELECTRIC COMPANY'S MOTION FOR
SUMMARY JUDGMENT**

Date: October 25, 2018

Time: 9:00 a.m.

Courtroom: 3

Action Filed: April 27, 2017

Removed: June 30, 2017

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1 I, Eric Manhart, declare:

- 2
- 3 1. I have personal knowledge of the following facts.
- 4 2. I am 59 years old and have worked in construction most of my adult life. I have worked as an
5 electrician for many years and often worked as a general foreman supervising electricians.
- 6 3. I began working as a journeyman wireman for Sachs Electric Company (“Sachs”) in or around
7 October 2016 at the California Flats Solar Site (“the Solar Site”) in Monterey County, California.
8 My employment with Sachs terminated in or around April 2017.
- 9 4. I signed up to start working for Sachs at the Solar Site through IBEW Local 234 that then
10 dispatched me to the Solar Site for my new hire orientation. My dispatch provided me with a
11 start time, job location, rate of pay, and the person to whom to report. The Union dispatch told
12 me to report to the Security Gate Entrance on my first day of work.

13 **The Security Gate Entrance to the Solar Site**

- 14 5. The Solar Site is on the Jack Ranch. The security gate entrance to the Solar Site was a short
15 distance from the intersection of Highway 41 and Turkey Flats Road (“Security Gate Entrance”).
16 To get to the daily Installation Sites where the solar modules were being installed, the other
17 workers and I were required to go through the Security Gate Entrance at the beginning of Turkey
18 Flats Road and drive on Turkey Flats Road (“the Solar Site Access Road”) to get to the parking
19 lot to which we were assigned. At some point during my employment, there were two parking
20 lots at the end of the Solar Site Access Road. These parking lots were about 2 or more miles
21 apart. The distance between the Security Gate Entrance and the first parking lot was
22 approximately 10 miles or so. So, the distance to from the Security Gate Entrance to the second
23 parking lot was a total of about 12 or more miles.
- 24 6. At my new hire orientation, I was told that the only way for workers to get in and out of the Solar
25 Site was through the Security Gate Entrance and to use the Solar Site Access Road to get to the
26 parking lots.
- 27 7. While I worked at the Solar Site, the first parking lot was about a 45-minute drive on the Solar
28 Site Access Road from the Security Gate Entrance. Sometime after I started working there, the

1 second parking lot was created further inside the Solar Site. After I was assigned to the second
2 new parking lot, my drive time between the Security Gate Entrance and my assigned parking lot
3 and back was even longer. I estimate that it took about an additional 10 minutes, more or less, to
4 drive between the first parking lot and the second parking lot.

5 8. At my new hire orientation, we were told that there was no other way to get to the parking lots
6 on the Solar Site other than going through the Security Gate Entrance and driving the 10 to 12
7 miles to the assigned parking lots. For example, there was no possible way to walk from the
8 Security Gate Entrance to the parking lot in the morning and get to work on time or walk from
9 the parking lot off the Solar Site on time at the end of the day, because of the restrictions as to
10 when we could get in or get out of the Security Gate Entrance. It is also obvious that 10 or 12
11 miles was too far to walk. In addition, there was also a sign on the side of Turkey Flats Road
12 before the Security Gate Entrance that said something like “no pedestrians beyond this point.”

13 9. When I first started working at the Solar Site, I was not sure whether I would be paid for the
14 drive on the Solar Site Access Road. After I had worked on the Solar Site for a while and I
15 started to receive my paychecks, I learned that the other workers and I were not being paid for
16 the time it took us to drive from and to the Security Gate Entrance. When I started working at
17 the Solar Site, I thought that I was going to be paid something for the drive in and out, but I was
18 not paid anything.

19 10. Based on this and based on the degree of control Sachs, McCarthy and the Solar Site had over
20 the workers while we traveled back and forth from the Security Gate Entrance, I believe that we
21 should have been paid for all hours between the time that we badged in at the Security Gate
22 Entrance and when we badged out at the Security Gate Entrance.

23 11. While I worked at the Solar Site, I heard a lot of workers complain about not being paid for this
24 travel time. I heard Sachs workers complain about not being paid for the drive in and out on the
25 Solar Site Access Road in the workers meetings that we had on the Solar Site, they complained
26 about these things to Sachs and McCarthy management and I heard this topic being discussed
27 with them by Sachs and McCarthy management at these meetings. In these meetings, Sachs and
28

1 McCarthy management told Sachs workers that they were not going to pay us for this drive time.

2
3 **New Hire Orientation and Worker Meetings**

4 12. On my first day of work, I was required to attend a new hire orientation that was conducted by
5 Sachs, McCarthy and First Solar at the Solar Site.

6 13. During the time that I worked on the Solar Site, there were also many other worker meetings
7 which included safety meetings, monthly all-hands meetings and other meetings. These
8 meetings were also conducted by a combination of Sachs, McCarthy and/or First Solar
9 management people.

10 14. At these meetings, we were constantly told about the job site rules and the rules of road for the
11 Solar Site Access Road.

12 15. At these meetings, we were told by Sachs and McCarthy management that McCarthy was also
13 running the Solar Site and that the workers needed to follow all of the McCarthy rules and
14 instructions just the same as they needed to follow the Sachs rules and instructions and that
15 McCarthy had the same authority as Sachs in terms of disciplining, suspending and terminating
16 Sachs workers.

17 **Waiting in Line For The Sun To Come Up**

18 16. At my new hire orientation and at worker meetings, other workers and I were told by Sachs and
19 McCarthy management that workers were not allowed to enter the Solar Site until the sun came
20 up fully. Although Sachs and McCarthy gave us the approximate start time for each day, the start
21 time did not always match when the sun came up. As a result, at times, other workers and I
22 would arrive and have to sit in our vehicles in a line outside the Security Gate Entrance for
23 approximately 10-20 minutes waiting for the sun to come up and for the security guards at
24 Security Gate Entrance to open up the Solar Site and let us in. Once the sun was up, the security
25 guards at the Security Gate Entrance would give workers the okay, and they would start letting
26 us badge in.
27
28

1 **Rules About Being Off the Worksite By Sunset**

2
3 17. At my new hire orientation and at worker meetings, Sachs and McCarthy management told us
4 that all workers had to be off the Solar Site by sunset. We were also told that, if we arrived at the
5 Security Gate Entrance too early at the end of the day, we could be suspended or terminated.

6 **Badging In and Out at the Security Gate Entrance**

7 18. On my first day, before I had a scan-in ID badge, I had to park to the side of the Turkey Flats
8 Road before going through the Security Gate Entrance and walk up to the Security Gate
9 Entrance. There, I gave the security guard my name, the company that I was supposed to be
10 working under, and my dispatch paperwork. The security guard then checked my information on
11 a computer and printed out a temporary ID badge. I was then allowed to drive my vehicle
12 through the Security Gate Entrance.

13 19. When I got my permanent scan-in ID badge, it had my photo and name on it. My badge also said
14 both McCarthy and Sachs on it.

15 20. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
16 management that workers could not go beyond the Security Gate Entrance without their badges
17 and without being scanned in and that, once we entered, we had to have our badges on us at all
18 times until we exited the gate at the end of the day and were scanned out.

19 21. At my new hire orientation and at worker meetings, Sachs and McCarthy management told us
20 that, if a worker forgot his or her scan-in badge, the worker wouldn't be allowed to work without
21 either going home and getting his or her badge or having the Solar Site make him or her a new
22 badge. We were told that if, a worker lost his or her badge, the Solar Site would charge that
23 worker a fee to get a new one.

24 22. There were generally two security guards at the Security Gate Entrance. Sometimes they would
25 both scan badges with one security guard on each side of each vehicle. At other times, one
26 security guard would stay in the guard shack while the other guard scanned the badges of the
27 workers. The security guards would scan the badges of each of the workers inside of each of the
28

1 vehicles before letting a vehicle go through the Security Gate Entrance.

2
3 23. Even when the sun coming up was not delaying entering into the Solar Site, because there was
4 only one Security Gate Entrance and only two security guards to scan people in, a line of cars
5 would form, and workers would have to wait in line in their vehicles while vehicles ahead of
6 them were being processed through the gate and workers were scanned in. Depending on where
7 you were in the line, the wait in the line to get into the Security Gate Entrance could, in my
8 experience, average between 10 to 20 minutes.

9 **Policed While On The Solar Site Access Road**

10 24. At my new hire orientation and at worker meetings, Sachs and McCarthy management told us
11 that our badging in and badging out were being tracked and that all workers were being watched
12 and policed while we were on the Solar Site and the Solar Site Access Road. I was told that both
13 Sachs and McCarthy had the power to terminate workers on the Solar Site for violating any of
14 the job site rules, including the rules that applied to the Solar Site Access Road -- even if the
15 worker did not work for the company that was doing the termination.

16 25. At my new hire orientation and at worker meetings, Sachs and McCarthy management told us
17 that we had to enter the Security Gate Entrance on time and leave on time and that our badge
18 times would be tracked by them. We were told that, if we were late arriving to the job site or if
19 we left early, either Sachs or McCarthy could suspend or terminate us.

20 26. At my new hire orientation and at worker meetings, Sachs and McCarthy management told us
21 that, from the time that we went through the Security Gate Entrance in the morning until we went
22 out of the Security Gate Entrance at the end of the work day, we were subject to all of the job site
23 rules and the rules of the Solar Site Access Road and could be terminated at any time for
24 violating them.

25 27. At my new hire orientation and at worker meetings, Sachs and McCarthy management told us
26 that we were subject to having our bodies, personal property and vehicles searched by Sachs,
27 McCarthy and First Solar personnel at any time that we were inside the Security Gate Entrance
28 or on the Solar Site Access Road. During the time that I worked at the Solar Site, I recall seeing

1 Sachs and McCarthy personnel searching peoples' lunch boxes and vehicles to look for alcohol
2 while they were inside of the Security Gate Entrance. At worker meetings, we were told by
3 Sachs and McCarthy management that there were going to conduct these random searches
4 without giving us any notice of when they were going to do them.

5 28. At my new hire orientation and at worker meetings, Sachs and McCarthy management told us
6 that we were subject to drug and alcohol testing at any time that were inside the Security Gate
7 Entrance or on the Solar Site Access Road.

8 29. I remember seeing workers with McCarthy and Sachs people and company vehicles on the Solar
9 Site Access Road who were monitoring the behavior of workers while they were driving on the
10 road. I also observed these company vehicles stop people for violations.

11 30. From the time that I entered the Security Gate Entrance in the morning until I exited the Security
12 Gate Entrance at the end of the day, I believed that I was under the control of Sachs, McCarthy
13 and First Solar.

14 **Rules On The Solar Site Access Road**

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16 31. At my new hire orientation and at worker meetings, I was told that all of the job site rules applied
17 once we entered the Security Gate Entrance until we left the Security Gate Entrance. These rules
18 included, among other things, safety and personal protective equipment rules, discrimination
19 rules, harassment rules, environmental rules, alcohol and drug policies, rules related to being
20 subject to searches for alcohol, drugs and other things, no practical jokes or horseplay rules and
21 no gambling rules and other rules. When I was hired, I was required to sign documents that
22 confirmed that I would comply with these rules.

23 32. At my new hire orientation and at worker meetings, Sachs and McCarthy management told us
24 about the rules of the road that applied to the Solar Site Access Road. These instructions were in
25 addition to those on the signs that I saw before and after I entered the Security Gate Entrance and
26 in materials that we were given for the job site.

27 33. There were many workers on the Solar Site while I was working there. At my new hire
28 orientation meeting and at worker meetings, we were told by Sachs and McCarthy management

1 that there were hundreds of workers who came through the Security Gate Entrance and traveled
2 to their work areas using the Solar Site Access Road at the same time at the beginning of the day
3 and left the Solar Site using the Solar Site Access Road at the end of the day. We were told that
4 there were also many trucks that were going to use the road. We were told that because of the
5 large number of workers and the large number of trucks, everyone must strictly follow the rules
6 of the road.

7 34. At my new hire orientation meeting and at worker meetings, we were told by Sachs and
8 McCarthy management that workers had been suspended or terminated for things they did wrong
9 on the Solar Site Access Road, such as exceeding the speed limit, smoking in their cars, passing
10 other cars and leaving too early at the end of the day.

11 35. At my new hire orientation meeting and at worker meetings, Sachs and McCarthy management
12 told us that, we were required to immediately report any accidents or damage to any vehicle that
13 occurred while driving on the Solar Site Access Road.

14 **Signs On The Road and at the Security Gate Entrance**

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16 36. On Turkey Flats Road, at and around the Security Gate Entrance, there were signs along the
17 road, as well as at and around the Security Gate Entrance displaying a number of instructions.
18 At my new hire orientation and at worker meetings, Sachs and McCarthy management told us
19 that we had to obey the instructions on these signs. I recall that these instructions, among other
20 things, included things like:

- 21 • PPE (Personal Protective Equipment) beyond this point
- 22 • all visitors must check in
- 23 • must have badge
- 24 • speed limit
- 25 • kit fox warning pictures
- 26 • no smoking
- 27 • no drugs
- 28 • no firearms

- no photography
- signs with company names: First Solar, Sachs and McCarthy.

1
2
3 37. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
4 management that we were required to wear our PPE (Personal Protective Equipment) at all times
5 when we were on the Solar Site, including from the time that we were entered the Security Gate
6 Entrance in the morning until the time that we left the Security Gate Entrance at the end of the
7 day. I recall that there were signs near the Security Gate Entrance that said the same thing.

8 38. At worker meetings, Sachs and McCarthy management told us that we had to take full
9 responsibility for any damage done to our own vehicles while on the Solar Site.

10
11 **Following The Pace Car**

12 39. At my new hire orientation and at worker meetings, I was told by Sachs and McCarthy
13 management that, once we drove through the Security Gate Entrance in the morning, we were
14 supposed to drive up the road a short distance, stop and make a line of vehicles on the side of the
15 Solar Site Access Road behind a truck that would act as a pace car. I estimate that this line of
16 stopped cars started about a quarter mile or more past the Security Gate Entrance. I was told to
17 wait in line until this pace car began leading all of us workers up the Solar Site Access Road to
18 our assigned parking lot. The pace car was typically a water truck that sprayed water while we
19 drove up for dust control purpose. This made the road wet, muddy and slick to drive on.

20 40. That pace car would then lead the worker vehicles along the Solar Site Access Road and control
21 their progress and speed along the Solar Site Access Road to the parking lots.

22 **Rules About Speeding In The Road**

23 41. I recall that there were speed limits signs with speeds between 5 miles per hour and 20 miles per
24 hour posted on the Solar Site Access Road.

25 42. I observed that there were speed radar machines installed along the Solar Site Access Road. One
26 of these radar machines was located at approximately the midway point between the Security
27 Gate Entrance and the first parking lot and had a digital sign that would tell us how fast we were
28

1 going. I recall that there was one of these digital signs on both sides of the Solar Site Access
2 Road – one for traffic going it and one for traffic going out.

3 43. On the Solar Site Access Road, I was often only allowed to drive at 5 or 10 miles per hour
4 because of things like animals near the road, the conditions of the road, cattle grids, pace car
5 speed restrictions, the road being wet because of the Solar Site watering of the road, poor road
6 conditions and other reasons.

7 44. At worker meetings, we were told by Sachs and McCarthy management that at least one worker
8 who was caught speeding was terminated.

9
10 **Rules About Passing on the Solar Site Access Road**

11 45. While driving on the Solar Site Access Road, gaps would form between cars for any number of
12 reasons such as animals on the road, someone’s car breaking down, someone driving more
13 slowly than the rest of the cars or a whole range of the conditions related to the road. Regardless
14 of these gaps, at my new hire orientation and at worker meetings, we were told by Sachs and
15 McCarthy management that we were not allowed to pass another moving vehicle for any reason -
16 - except when a car had pulled over to the side of the road for some emergency.

17 **Rules About Livestock And Endangered Animals On The Solar Site Access Road**

18 46. The Solar Site Access Road was a long, rough double-lane dirt road that was very difficult to
19 drive on and very hard on vehicles. Along the Solar Site Access Road, there were several steel
20 cattle grids that we were required to drive over. Cattle grazed along the Solar Site Access Road
21 and would frequently be very near or on the road and they interfered with the ability of vehicles
22 to travel on the road.

23 47. At new hire orientation and at worker meetings, Sachs and McCarthy management told us that
24 we were not allowed to disturb the cattle or local wildlife in any way while we were driving on
25 the Solar Site Access Road. I was told that if we saw animals on or near the road, we had to let
26 them do whatever they needed to do. I was told that this means we couldn’t do things like honk
27 at them, yell at them, throw things at them, push them out of the way with our vehicles or do
28

1 anything to try to get them to move off the road. I was told that we had to slow down or stop our
2 vehicles and just stay in our vehicles and wait for them to go away from the road. We were told
3 that we mainly had to look out for cattle and kit foxes, but there were also other animals that
4 were supposed to watch out for. The presence of animals on or around the road slowed down the
5 drive on the Solar Site Access Road. The biologists on the Solar Site would sometimes post kit
6 fox zone signs with 5 mile per hour speed limits on the Solar Site Access Road that would slow
7 the traffic for miles.

8
9 48. At new hire orientation and at worker meetings, we were told by Sachs and McCarthy
10 management that we were not supposed to honk our horns when we driving on the Solar Site
11 Access Road because our horns could disturb the local wildlife and the cattle.

12 49. At my new hire orientation and at worker meetings, Sachs and McCarthy management told us
13 that we could not play loud music that could be heard outside our vehicle while we were on the
14 Solar Site Access Road because the noise from the music could disturb the local wildlife and the
15 cattle. We were told that we would even get in trouble if we were caught driving on the Solar
16 Site Access Road with ear buds or ear pods in our ears.

17 50. At my new hire orientation, Sachs and McCarthy management told us that we were not supposed
18 to touch or feed anything to the cattle or local wildlife on the Solar Site or along the Solar Site
19 Access Road.

20 **Rules About Creating Dust On The Solar Site Access Road**

21 51. At my new hire orientation and at worker meetings, Sachs and McCarthy management told us
22 that there were dust control rules related to the Solar Site that required the workers not to create
23 dust. As a result, we were told that the Solar Site had water trucks that would spray water on the
24 Solar Site Access Road to prevent dust from being created by the vehicles that were driving on it.
25 Because of this watering, the Solar Site Access Road was sometimes muddy and slippery. When
26 it was muddy and slippery, it was even slower and more difficult to drive on the Solar Site
27 Access Road.

28 52. At my new hire orientation and at worker meetings, Sachs and McCarthy management told us

1 not to drive on the Solar Site Access Road in a way that created dust and that we needed to drive
2 slowly if dust was happening. We were told that, if dust was being created, we were driving too
3 fast.

4 **Rules About Smoking**

5
6 53. At my new hire orientation and at worker meetings, Sachs and McCarthy management told us
7 that we were not allowed to smoke either inside or outside of our vehicles while we were driving
8 on the Solar Site Access Road or inside or outside of our vehicles in the parking lots. We were
9 told that we could only smoke in designated smoking areas. We were also told that no smoking
10 was allowed at the portable toilet stations.

11 **Rules About Staying On The Solar Site Access Road**

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13 54. At my new hire orientation and at crew meetings, Sachs and McCarthy management told us that,
14 once we were released to drive on the Solar Site Access Road we had to drive directly on the
15 road to our assigned parking lot in the morning and directly from our assigned parking lot back
16 to the Security Gate Entrance at the end of the day and that we were not supposed to do anything
17 other than drive directly on the road. We were told that, although there were other intersecting
18 roads along the Solar Site Access Road, we were not permitted to go onto any of those roads.

19 **Rules About Stopping On The Solar Site Access Road**

20 55. At my new hire orientation and in worker meetings, Sachs and McCarthy management told us
21 that we must strictly follow the rules of the road and keep the flow of traffic constantly moving
22 on the Solar Site Access Road because there was such a large number of workers using the road
23 and because of the other trucks and construction vehicles using Solar Site Access Road.

24 56. At my new hire orientation and at worker meetings, Sachs and McCarthy management told us
25 that, except for emergencies, we were not supposed to stop on the Solar Site Access Road at any
26 places that were not designated to stop.

27 57. At new hire orientation and at worker meetings, we were told by Sachs and McCarthy
28

1 management that, if we had to stop and get out of our vehicles for any reason, we were not
2 allowed to go outside of the boundary fences, stakes and ribbons that ran about 15 feet or so
3 along the side of the road.

4 58. At new hire orientation and in worker meetings, Sachs and McCarthy management told us that, if
5 we had to get out of our vehicles along the Solar Site Access Road for any reason, we were not
6 allowed to disturb the natural environment. We were told that this meant that we could not
7 disturb any plants or litter in any way or relieve ourselves except at the portable toilet sites.

8 **Rules About Using the Bathroom while on the Solar Site Access Road**

9
10 59. Near the smoking area just outside of the Security Gate Entrance, there were a couple of portable
11 toilets. At my new hire orientation and at worker meetings, Sachs and McCarthy management
12 told us that we could use those toilets before entering the Solar Site if we needed to use the
13 bathroom.

14 60. While I worked at the Solar Site, there were a couple of places along the Solar Site Access Road
15 where portable toilets were set up. At my new hire orientation and at worker meetings, Sachs
16 and McCarthy management told us that, if we needed to use the bathroom during the drive on the
17 Solar Site Access Road, we had to use these portable toilet sites. For example, we were told that
18 we could not stop and get our of our vehicle to relieve ourselves at any location along the Solar
19 Site Access Road other than at these portable toilet sites once we entered the Security Gate
20 Entrance.

21 **Poor Road Conditions**

22 61. Solar Site Access Road was a rough gravel road.

23 62. I recall seeing some cars or other vehicles stopped along the road due to mechanical problems.

24 **Arriving at Our Assigned Parking Lots and Getting to Our Installation Site**

25
26 63. At my new hire orientation, Sachs and McCarthy management told us that, once we got to the
27 parking lot where we were assigned to park, we needed to park and walk to where there were
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1 buggies parked for us to ride further into the Solar Site. The buggies were kind of like golf carts
2 and each one fit about 5-6 people. We were told to wait at the buggies until our whole crew was
3 assembled and then get into a buggy that would take us to either a safety meeting, an all-hands
4 meeting or our daily installation site.

5 64. At the end of workday, we would have to ride the buggies from the installation sites to the
6 parking lot where our vehicles were. We were told that we were required to ride the buggies to
7 get back and forth to the installation sites. Because the distance between the parking lot and our
8 daily installation sites were considerable, it was also not possible to walk between them to get to
9 and from work on time – given the restrictions that were placed upon us about getting into and
10 off of the Solar Site.

11 65. While I worked at the Solar Site, the buggies were the only forms of transportation that I saw
12 that were available for transporting the workers between the parking lot and the daily installation
13 sites. For example, we were not allowed and it was not possible for workers to drive their own
14 vehicles to the daily installation sites.

15 **Meal and Rest Breaks**

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17 66. At new hire orientation and at worker meetings, Sachs and McCarthy management told us that
18 we were required to stay on the job site during the entire workday from the beginning of the
19 workday to the end of the workday. We were told that it would be a violation of the job site
20 rules if we reached the Security Gate Entrance too early at the end of the workday and that it we
21 could be suspended or terminated if we violated that rule. We were told that we were required to
22 eat our lunches at our daily installation sites and that we could not go back to our vehicles in the
23 parking lots at any time during the workday.

24 67. At our daily installation sites, the foreman or lead would keep track of the timing of our meal and
25 rest breaks and would tell us when to start and when to end our rest and meal breaks.

26 68. In my experience working at the Solar Site, workers were not provided separate shade structures
27 or seating for our breaks. When we took our breaks, we would have to sit on the ground under
28 one of the solar arrays to try to get in the shade.

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69. During our breaks, we were permitted to make cell phone calls but often we did not have any reception. Cell phone reception varied on the site and, depending on the area where we were allowed to eat, we may not have service. Sachs and McCarthy management told us that even if we did not have good reception we had to stay at our daily installation sites and were not permitted to walk to other locations where we could get better reception and make calls.

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70. At a certain point, Sachs and McCarthy management started checking workers to see if we had any alcohol. They told us and I observed that they checked people's cars in the parking lots and checked people's lunch boxes at the installation sites. They did this at different times, including during our rest and meal breaks.

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71. To my knowledge, I was never paid for the time while I was on meal breaks and was never paid anything when my meal breaks or rest breaks were interrupted by Sachs or McCarthy personnel for any reason.

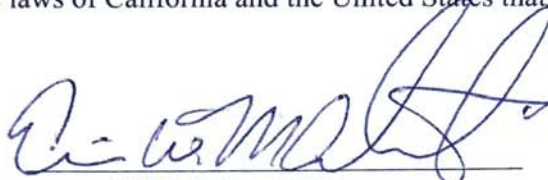
Text Messaging about Start Times Being Messed Up

72. There were many times when the Solar Site was closed down because of bad weather.

73. Sachs and McCarthy management told us that they would send us text messages about when the site was going to be closed down so that we would not show up to work if there was no work. However, the text messaging was not always clear or working properly. The issue of the confusing and messed up text messages and the consequences of the text messaging not working properly were discussed in workers meetings with Sachs management. It was discussed that workers would show up sometimes in the morning at the Security Gate Entrance for work and the site would be closed and they would be turned away. When this would happen, the workers were not being paid any reporting time pay. This happened to me a couple of times, and I never got paid any reporting time pay.

1 I declare under penalty of perjury under the laws of California and the United States that the
2 foregoing is true and correct.

3
4 DATED: July 14, 2018


ERIC MANHART

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DECLARATION IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Exhibit 8



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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Justin Griffin, an individual, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

Sachs Electric Company, a Missouri corporation;
First Solar, Inc., a Delaware corporation;
California Flats Solar, LLC, a Delaware Limited
Liability Company, and Does 1 through 10,

Defendants.

Case No. 17-cv-03778-BLF

**DECLARATION OF MARK BUNDREN IN
OPPOSITION TO DEFENDANT SACHS
ELECTRIC COMPANY'S MOTION FOR
SUMMARY JUDGMENT**

Date: October 25, 2018

Time: 9:00 a.m.

Courtroom: 3

Action Filed: April 27, 2017

Removed: June 30, 2017

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1 I, Mark Bundren, declare:

2 1. I have personal knowledge of the following facts.

3 2. I began working as a construction wireman 3 for Sachs Electric Company (“Sachs”) in or around
4 June 2016 at the California Flats Solar Site (“the Solar Site”) in Monterey County, California.
5 My employment with Sachs was terminated by Sachs in or around May 2017.

6 3. I signed up to start working for Sachs at the Solar Site through IBEW Local 234 who dispatched
7 me to the Solar Site. My dispatch provided me with a start time, job location, rate of pay, and the
8 person to whom to report. The Union dispatch told me to report to a McCarthy office in Paso
9 Robles. I attended my new hire orientation at that office on my first day of work and I then
10 reported to the Security Gate Entrance on that same day.

11 **The Security Gate Entrance to the Solar Site**

12
13 4. The Solar Site is on the Jack Ranch. The security gate entrance to the Solar Site was a short
14 distance from the intersection of Highway 41 and Turkey Flats Road (“Security Gate Entrance”).

15 5. To get to the Solar Site, it was necessary to pull off of Highway 41 and drive onto Turkey Flats
16 Road. The Security Gate Entrance is across Turkey Flats Road.

17 6. At the beginning, in order to get to the daily sites where work was being conducted, the other
18 workers and I were required to go through the Security Gate Entrance where Turkey Flats Road
19 started and drive on Turkey Flats Road (“the Solar Site Access Road”) to an area where a
20 parking lot was being developed. This was about a 10 mile drive. After a short period of time,
21 Sachs and McCarthy required the other workers and me to park our vehicles near the Security
22 Gate Entrance and ride a yellow school bus on the Solar Site Access Road down the same
23 approximately 10 mile drive to where we working. That busing process lasted for about a month
24 or more. At some point, riding that bus was changed from mandatory to optional. During the
25 period of time that the school buses were used, I sometimes drove a bus. When I drove a bus, I
26 was paid for the drive but when I was a passenger in one of the buses, I was not paid.

27 Ultimately, the school bus rides were abandoned.

28 7. When a parking lot at the end of the approximately 10 mile drive was created, we were told to

1 drive our own vehicles on the Solar Site Access Roads to the parking lot. The distance between
2 the Security Gate Entrance and the first parking lot was approximately 10 miles or so. During my
3 employment, there was another parking lot created at the end of the Solar Site Access Road. The
4 first and the second parking lots were around 2 or more miles apart. So, the distance from the
5 Security Gate Entrance to the second parking lot was a total of 12 or more miles.

6 8. At my new hire orientation, I was told that the only way for workers were to get into and out of
7 the Solar Site was through the Security Gate Entrance and the Solar Site Access Road, and that
8 we should always use the Security Gate Entrance to enter the Solar Site.

9 9. While I worked at the Solar Site, the drive to the parking lot was about 45 minutes on the Solar
10 Site Access Road from the Security Gate Entrance. After I was assigned to park in the new
11 second parking lot, my drive time between the Security Gate Entrance and the second parking lot
12 was obviously longer than the drive to the first parking lot. I estimate that it took about an
13 additional 5 to 10 or more minutes to drive between the first parking lot and the second parking
14 lot. The drive back from the parking lots to the Security Gate Entrance took about the same
15 amount of time.

16 10. At my new hire orientation, we were told that there was no other way to get to the parking lots
17 on the Solar Site than going through the Security Gate Entrance and driving the 10 to 12 or more
18 miles to the assigned parking lots. There was no possible way to walk from the Security Gate
19 Entrance to the parking lot in the morning and get to work on time, or to get off the Solar Site on
20 time at the end of the day. This was because the distance was so long and we were restricted as
21 to when we could get into or get out of the Security Gate Entrance.

22 11. When I first started working at the Solar Site, I was not told whether I would be paid for the
23 drive on the Solar Site Access Road. After I had worked on the Solar Site for a while and I
24 started to receive my paychecks, I learned that the other Sachs workers and I were not being paid
25 for the time it took us to drive in the morning from the Security Gate Entrance to the end of the
26 Solar Site Access Road and back at the end of the day to the Security Gate Entrance. This
27 seemed wrong to me because some of the McCarthy employees told me that they were getting
28

1 paid something for the drive.

2 12. Based on this and based on the degree of control Sachs, McCarthy and the Solar Site had over
3 the workers while we traveled back and forth from the Security Gate Entrance, I believed that we
4 should have been paid for all the hours between the time that we badged in at the Security Gate
5 Entrance and when we badged out at the Security Gate Entrance.

6 13. While I worked at the Solar Site, I heard a lot of workers complain about not being paid for this
7 travel time. In worker meetings, I heard workers complain to foremen and the Sachs
8 superintendent about not being paid for the driving between the Security Gate Entrance and the
9 parking lots. Sachs management responded by saying that there was nothing that they could do.
10 We never received a good answer as to why there was nothing they could do.

11 **New Hire Orientation and Worker Meetings**

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13 14. On my first day of work, I was required to attend a new hire orientation that was conducted by
14 McCarthy and First Solar. I don't recall seeing Sachs management at the orientation. I did
15 however see a guy with a First Solar hardhat. There were Sachs, McCarthy, and First Solar
16 workers however who were receiving the orientation with me.

17 15. During the time that I worked on the Solar Site, there were also many other worker meetings that
18 included safety meetings, monthly all-hands meetings and other worker meetings. These
19 meetings were also conducted by a combination of Sachs, McCarthy and/or First Solar people.

20 16. At these meetings, we were constantly told about the job site rules and the rules of road for the
21 Solar Site Access Road.

22 17. At these meetings, we were told by Sachs and McCarthy management that McCarthy was also
23 running the Solar Site and that the workers needed to follow all of the McCarthy rules and
24 instructions just the same as they needed to follow the Sachs rules and instructions, and that
25 McCarthy had the same authority as Sachs in terms of disciplining, suspending, and terminating
26 Sachs workers.

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24. There were generally two security guards at the Security Gate Entrance. Sometimes, especially toward the end of the project when there were more workers on the Solar Site to badge in or out, they would both scan badges with one security guard on each side of the vehicles. At earlier times during my employment and sometimes during the later part of my employment, there was only one security guard who scanned the badges of the workers. To get into and out of the Security Gate Entrance, the badges of each of the workers inside of each of the vehicles were scanned before letting us go through the Security Gate Entrance – either in or out.

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25. Even when the sun coming up was not delaying entering into the Solar Site, because there was only one Security Gate Entrance or occasionally only two security guards to scan people in, a line of cars would form, and workers would have to wait in line in their vehicles while vehicles ahead of them were being processed through the gate and scanned in. Depending on where you were in the line, the wait in the line to get into the Security Gate Entrance could average 10 to 20 minutes or so -- give or take. However, when leaving the Solar Site, I normally had to wait even more time to get through the badging-out of the Security Gate Entrance because there were so many vehicles trying to get out of the Solar Site.

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26. At a work meeting, I recall that there were discussions about the line of vehicles going out of the Solar Site through the badging out process at the Security Gate Entrance at the end of the work day being very slow and clogged up.

Monitoring While On The Solar Site Access Road

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27. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy management that, all workers were being monitored while we were on the Solar Site and the Solar Site Access Road. I was told that both Sachs and McCarthy had the power to terminate workers on the Solar Site for violating any of the job site rules, including the rules that applied to the Solar Site Access Road -- even if the worker was not officially working for the company that was doing the firing.

28
28. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy management that we had to enter the Security Gate Entrance on time and leave on time and that

1 our badge times would be tracked by them. We were told that, if we were late arriving to the job
2 site or if we left early, either Sachs or McCarthy could suspend or terminate us.

3 29. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
4 management that, from the time that we went through the Security Gate Entrance in the morning
5 until we went out of the Security Gate Entrance at the end of the work day, we were subject to all
6 of the job site rules and could be terminated at any time for violating them.

7 30. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
8 management that, we were subject to having our bodies, personal property, and vehicle searched
9 by Sachs, McCarthy, and First Solar personnel at any time that we were inside the Security Gate
10 Entrance or on the Solar Site Access Road. During the time that I worked at the Solar Site, I saw
11 Sachs and McCarthy personnel searching workers lunch boxes and vehicles while they were
12 inside of the Security Gate Entrance.

13 31. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
14 management that, we were subject to drug and alcohol testing at any time that were inside the
15 Security Gate Entrance or on the Solar Site Access Road.

16 32. I remember seeing workers with McCarthy and Sachs company vehicles on the Solar Site Access
17 Road who were monitoring the behavior of workers while they were driving on the road. I also
18 observed these company vehicles stop people for violations. There were also biologists
19 patrolling the road.

20 33. From the time that I entered the Security Gate Entrance in the morning until I exited the Security
21 Gate Entrance at the end of the day, I believed that I was under the control of Sachs, McCarthy,
22 and First Solar because of the job site rules and the rules of the road.

23 **Rules On The Solar Site Access Road**

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25 34. At my new hire orientation and at worker meetings, I was told that all of the job site rules applied
26 once we entered the Security Gate Entrance until we left the Security Gate Entrance. These rules
27 were in addition to safety and personal protective equipment rules, discrimination rules,
28 harassment rules, environmental rules, alcohol and drug policies, rules related to being subject to

1 searches for alcohol, drugs and other things, no practical jokes or no horseplay rules, no
2 gambling rules, and other rules.

3 35. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
4 management about the rules that applied to the Solar Site Access Road. These rules were in
5 addition to the instructions on the signs that I saw before and after I entered the Security Gate
6 Entrance and in materials that we were given for the job site.

7 36. There were a lot workers on the Solar Site while I was working there. Ultimately, there were
8 hundreds of workers who came through the Security Gate Entrance and traveled to their work
9 areas using the Solar Site Access Road at the same time at the beginning of the day and left the
10 Solar Site using the Solar Site at the end of the day. There were also a lot of delivery, water and
11 construction trucks using the road. We were told that because of the large number of workers and
12 trucks on the road, everyone must strictly follow the rules of the road.

13 37. At my new hire orientation meeting and at worker meetings, we were told by Sachs and
14 McCarthy management that, workers had been suspended or terminated for things they did
15 wrong on the Solar Site Access Road, such as exceeding the speed limit, passing cars, and
16 smoking in their cars.

17 38. At my new hire orientation meeting and at worker meetings, we were told by Sachs and
18 McCarthy management that, we were required to immediately report any accidents or damage to
19 any vehicle that occurred while driving on the Solar Site Access Road.

20 **Signs On The Road and at the Security Gate Entrance**

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22 39. On Turkey Flats Road, at and around the Security Gate Entrance, there were signs along the
23 road, as well as at and around the Security Gate Entrance displaying a number of instructions.
24 At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
25 management that we had to obey the instructions on the signs of the Solar Site. I recall that these
26 instructions, among other things, included things like:

- 27
- PPE (Personal Protective Equipment) beyond this point
 - all visitors check in at the guard shack
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- must have badge or prepare to show badge
- speed limit
- kit fox pictures and speed limits
- no smoking
- no drugs
- no firearms
- the signs with company names: First Solar, Sachs, and McCarthy.

40. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy management that we were required to wear our PPE (Personal Protective Equipment) at all times when we were on the Solar Site, including from the time that we entered the Security Gate Entrance in the morning until the time that we left the Security Gate Entrance at the end of the day. As indicated above, I recall that there were signs near the Security Gate Entrance that said the same thing.

Following The Pace Car

41. At some point, I was told by Sachs and McCarthy management that, once we drove through the Security Gate Entrance in the morning, we were supposed to drive up the road a short distance, stop and make a line with our vehicles on the side of the Solar Site Access Road. I was told that the first vehicle was supposed to stop behind a vehicle that would act as the pace car. I was told to wait in line until the pace car began leading all of us workers up the Solar Site Access Road to our assigned parking lot. The pace car was often a water truck that sprayed water on the road while we drove. This reduced dust but made the road very muddy and slippery.

42. That pace car would then lead the worker vehicles along the Solar Site Access Road and control their progress and speed along the Solar Site Access Road to the parking lots.

Rules About Speeding In The Road

43. I recall that there were speed limits signs with speed limits between 5 miles per hour and 20 miles per hour posted on the Solar Site Access Road.

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44. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy management that they were monitoring our activities and the speeds of vehicles on the Solar Site Access Road, and that if we violated the speed limits or rules of the road or other job site rules we would be suspended or terminated.

45. I saw speed radar machines installed along the Solar Site Access Road. At least one of these radar machines was located approximately at the midway point between the Security Gate Entrance and the first parking lot and had a digital sign that would tell us how fast we were going. I also saw people using hand-held radar machines to monitor the speed of workers. There were also discussions with our foreman about cameras on the Solar Site Access Road and Sachs and McCarthy personnel taking pictures of workers while driving on the road

46. At times on the Solar Site Access Road, I was often only allowed to drive at 5 to 10 miles per hour because of animals near the road, the conditions of the road, cattle grids, the road being wet because of the Solar Site watering of the road, poor road conditions, and other reasons.

47. At worker meetings, we were told that workers who were caught speeding were disciplined by suspension or termination by Sachs and McCarthy.

Rules About Passing on the Solar Site Access Road

48. During our drive on the Solar Site Access Road, gaps would form between cars for any number of reasons such as animals on the road, someone's car breaking down, someone driving more slowly than the rest of the cars, or a whole range of the conditions related to the road. Regardless of these gaps, we were told by Sachs and McCarthy management that, we were not allowed to pass another moving vehicle for any reason -- except when a car had broken down or pulled over to the side of the road.

Rules About Livestock And Endangered Animals On The Solar Site Access Road

49. The Solar Site Access Road was a long, rough double-lane dirt road that was very difficult to drive on and very hard on vehicles. Along the Solar Site Access Road, there were several steel cattle grids that we were required to drive over. Cattle grazed along the Solar Site Access Road

1 and would frequently be very near or on the road and they interfered with the ability of vehicles
2 to travel on the road.

3 50. At new hire orientation and at worker meetings, we were told by Sachs and McCarthy
4 management that, we were not allowed to disturb the cattle or local wildlife in any way while we
5 were driving on the Solar Site Access Road. I was told that if we saw animals on or near the
6 road, we had to let them do whatever they needed to do. I was told that this means we weren't
7 allowed to do anything to try to get them to move off the road. I was told that we had to slow
8 down or stop our vehicle and just stay in our vehicles and wait for them to go away from the
9 road. We were told that we mainly had to be careful about cattle and kit foxes, but there were
10 also other animals that we were supposed to watch out for. The presence of animals on or around
11 the road frequently slowed down the drive on the Solar Site Access Road. Often, the biologists
12 would post signs for kit fox zones on the road and a require traffic to slow down to 5 miles per
13 hour in the zones.

14 51. At new hire orientation and at worker meetings, we were told by Sachs and McCarthy that, we
15 were not supposed to honk our horns when driving on the Solar Site Access Road because our
16 horns could disturb the local wildlife and the cattle. I recall Sachs and McCarthy management
17 telling us in a worker meeting that one of the workers got into trouble because he honked at an
18 animal on the Solar Site Access Road.

19 52. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
20 management that, we could not play load music that could be heard outside our vehicle while we
21 were on the Solar Site Access Road because the noise from the music could also disturb the local
22 wildlife and the cattle.

23 53. At my new hire orientation, we were told by Sachs and McCarthy management that, we were not
24 supposed to touch or feed anything to the local wildlife or cattle on the Solar Site or along the
25 Solar Site Access Road.

26 **Rules About Creating Dust On The Solar Site Access Road**

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28 54. At new hire orientation and at worker meetings, we were told by Sachs and McCarthy

1 management that, there were dust control rules related to the Solar Site that required the workers
2 not to create dust.

3 55. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
4 management not to drive on the Solar Site Access Road in a way that created dust and that we
5 needed to drive slower if dust was happening. We were told that if we were creating dust, we
6 were driving too fast.

7 56. As a result, we were told that the Solar Site had water trucks that would spray water on the Solar
8 Site Access Road to prevent too much dust from being created by the vehicles that were driving
9 on it. Because of this watering, the Solar Site Access Road was sometimes muddy and slippery.
10 When it was muddy and slippery, it was even slower and more difficult to drive on the Solar Site
11 Access Road.

12 **Rules About Smoking**

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14 57. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
15 management that, we were not allowed to smoke either inside or outside of our vehicles while
16 we were driving on the Solar Site or Solar Site Access Road or inside or outside of our vehicles
17 in the parking lots. We were told that we could only smoke in designated smoking areas. We
18 were also told that no smoking was allowed at the portable toilet stations.

19 **Rules About Staying On The Solar Site Access Road**

20 58. At my new hire orientation and at crew meeting, we were told by Sachs and McCarthy
21 management that, once we were released to drive on the Solar Site Access Road in the morning
22 or at the end of the day, we had to drive directly on the road to our assigned parking lot in the
23 morning and from our assigned parking lot back to the Security Gate Entrance at the end of the
24 day and that we were to stay only on the road. We were told that, although there were other
25 intersecting roads along the Solar Site Access Road, we were not permitted to go onto any of
26 those roads.
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Rules About Stopping On The Solar Site Access Road

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3 59. At my new hire orientation and in worker meetings, we were told by Sachs and McCarthy
4 management that, we must strictly follow the rules of the road and keep the flow of traffic
5 constantly moving on the Solar Site Access Road.

6 60. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy that,
7 except for emergencies, we were not supposed to stop on the Solar Site Access Road at any
8 places that we were not specifically designated to stop. For example, we were told that we could
9 stop where the portable toilets were located.

10 61. At my new hire orientation and at worker meetings, we were told by Sachs and McCarthy
11 management that, if we had to stop and get out of our vehicles for any reason, we were not
12 allowed to go outside of the boundary fences, stakes and ribbons that ran about 15 feet or so
13 along the sides of the road.

14 62. At my new hire orientation and in worker meetings, we were told by Sachs and McCarthy that, if
15 we had to stop and get out of our vehicles along the Solar Site Access Road for any reason, we
16 could not disturb the environment. For example, we were told that we could not trample or
17 disturb any plants or litter in any way or relieve ourselves except at the portable toilet sites.

Rules About Using the Bathroom While on the Solar Site Access Road

18
19 63. While I worked at the Solar Site, there were also generally a couple of places along the Solar Site
20 Access Road where portable toilets were set up. However, for a while I remember that there was
21 only one portable toilet site on the road. At worker meetings, we were told by Sachs and
22 McCarthy management that, if we needed to use the bathroom during the drive on the Solar Site
23 Access Road, we had to use these portable toilet sites. For example, we were told that we could
24 not stop and get out of our vehicles to relieve ourselves at any location along the Solar Site
25 Access Road other than at these portable toilet sites once we entered the Security Gate Entrance.

Poor Road Conditions

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28 64. Vehicles, especially small cars, regularly broke down due to the poor conditions of Solar Site

1 Access Road. It was a rough gravel road. I recall seeing some cars or other vehicles stopped
2 along the road due to mechanical problems.

3
4 **Arriving at Our Assigned Parking Lots and Getting to Our Installation Site**

5 65. As the Solar Site developed, at worker meetings, we were told by Sachs and McCarthy
6 management that, once we got to the parking lot where we were assigned to park, we needed to
7 park and walk to where there were buggies for us to ride further into the Solar Site. The buggies
8 were kind of like golf carts and each one fit about 5-6 people. We were told to wait at the
9 buggies until our crew was assembled and then use a buggy that would take us to either a safety
10 meeting, an all-hands meeting, or our daily Installation Site. This buggy ride could take between
11 5 and 15 minutes.

12 66. At a Sachs worker meeting, I heard Danny Venezuela (Sachs management) say that the start time
13 for the 8 hour work day is supposed to begin at the point that the buggies got to the morning
14 meeting site or to the work site, and not when we started the buggy ride.

15 67. At the end of workday, we would have to ride the buggies from the Installation Site to the
16 parking lot where our vehicles were. We were told that we were required to ride the buggies to
17 get back and forth to the Installation Site. Because the distance between the parking lot and our
18 daily Installation Sites were considerable, it was not possible to walk between them and get to
19 and from work on time given the restrictions that were placed on us about getting into and out of
20 the Solar Site.

21 68. While I worked at the Solar Site, the buggies were the only forms of transportation that I saw
22 that were available for transporting the workers between the parking lot and the morning meeting
23 sites and the work sites. For example, we were not allowed and it was not possible for workers to
24 drive their own vehicles to either of these sites.

25 **Text Messaging about Start Times Being Messed Up**

26 69. There were many times when the Solar Site was closed down because of bad weather.

27 70. Sachs and McCarthy management told us that they would send us text messages about when the
28

1 site was going to be closed down so that we would not show up to work and there would be no
2 work. However, the text messaging not always clear or working properly. This issue about
3 messed up text messaging and the consequences of the text messaging not working properly
4 were discussed in workers meetings with Sachs management. It was discussed that workers
5 would show up sometimes in the morning at the Security Gate Entrance for work and the site
6 would be closed and they would be turned away and the workers were not being paid any
7 reporting time pay.

8 **Meal and Rest Breaks**

9
10 71. At new hire orientation and at worker meetings, we were told by Sachs and McCarthy that, we
11 were required to stay on the job site during the entire workday from the beginning of the
12 workday to the end of the workday. At worker meetings, we were told that it would be a
13 violation of the job site rules if we reached the Security Gate Entrance too early at the end of the
14 workday and that we could be suspended or terminated if we violated that rule. We were told
15 that we were required to eat our lunches at our daily Installation Sites and that we could not go
16 back to our vehicles in the parking lots at any time during the workday.

17 72. At a certain point, Sachs and McCarthy personnel started checking workers to see if worker had
18 any alcohol on them. They told us and I observed that they checked vehicles of workers in the
19 parking lots and checked workers' lunch boxes at the Installation Sites. They did this at different
20 times, including during our rest and meal breaks.

21 73. To my knowledge, the other workers and I were never paid for the time while we were on meal
22 breaks and never paid anything when meal breaks or rest breaks were interrupted by Sachs or
23 McCarthy personnel for any reason.

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I declare under penalty of perjury under the laws of California and the United States that the foregoing is true and correct.

DATED: July 14, 2018



MARK BUNDREN

DECLARATION IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Exhibit 9



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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Justin Griffin, an individual, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

Sachs Electric Company, a Missouri corporation;
First Solar, Inc., a Delaware corporation;
California Flats Solar, LLC, a Delaware Limited
Liability Company, and Does 1 through 10,

Defendants.

Case No. 17-cv-03778-BLF

**DECLARATION OF FRANCIS SCOTT
LEE RICHMOND, JR. IN OPPOSITION
TO DEFENDANT SACHS ELECTRIC
COMPANY'S MOTION FOR SUMMARY
JUDGMENT**

Date: October 25, 2018

Time: 9:00 a.m.

Courtroom: 3

Action Filed: April 27, 2017

Removed: June 30, 2017

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1 I, Francis Scott Lee Richmond, Jr. declare:

- 2 1. I have personal knowledge of the following facts.
- 3 2. I began working for Sachs Electric Company (“Sachs”) at the California Flats Solar Site (“the
4 Solar Site”) in Monterey County, California as a journeyman wireman (“JW”) in or around
5 October of 2016, but about 3-4 weeks later, I was promoted to a foreman position and asked to
6 run a crew. Later, after I made complaints about Sachs failure to pay wages that I felt were due
7 to us, I was demoted back to a JW. After further complaints about damage being done to my
8 truck on site by a company vehicle, my employment with Sachs terminated in or around mid-
9 May 2017.
- 10 3. I was a non-exempt, hourly worker.
- 11 4. I signed up to start working for Sachs at the Solar Site through the IBEW Union, Local 234 that
12 then dispatched me to the Solar Site. My dispatch provided me with a start time, job location,
13 rate of pay, list of tools needed, and person to report to.
- 14 5. The Solar Site is on the Jack Ranch. The security gate entrance to the Solar Site was at the
15 entrance of the Jack Ranch off Highway 46. To get to where the solar modules were being
16 installed, we took Turkey Flats Road (“the Solar Site Access Road” or “the road”) to a parking
17 lot. I would estimate that the distance between the security gate and the location where the solar
18 modules were being installed was approximately 14 miles.
- 19 6. When the union dispatched me, I understood that there was going to be a long road but I
20 assumed, based on my experience working on other union jobs, that when we badged in at
21 security, we’d be clocked in and paid from that time forward.
- 22 7. At the orientations, I don’t recall McCarthy or Sachs saying anything to us about not being paid
23 for our drive time on the Solar Site Access Road. Then, a few days in, at safety meetings,
24 McCarthy management told us what was expected of us and what our start times meant and I
25 realized the badge in time, was not considered our start time. I contacted the union and asked
26 about this because it didn’t seem right but the steward didn’t have any clear answers for me.
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1 8. When I asked different Sachs management people about it, they just gave me the runaround.
2 Sachs would say McCarthy controlled it, and McCarthy would say First Solar controlled it and
3 so on so I couldn't get any answers about who was actually making the decision that we
4 wouldn't be paid after we badged in.

5 9. I have worked in this field on and off for almost 30 years. Until this job, I had never worked a
6 union job at a site where the drive times between a security gate entrance and the parking lot or
7 installation location were so long and not compensated at all.

8 **The Security Gate Entrance to the Solar Site**
9

10 10. The Solar Site is located on the Jack Ranch. To get to the Solar Site, it was necessary to pull off
11 Highway 46 and drive onto the Solar Site Access Road. I would estimate that the manned and
12 secured entrance ("Security Gate Entrance") to the Solar Site was about an eighth of a mile or
13 more from the intersection of Highway 46 and this road

14 11. The Security Gate Entrance is located across the road at the border of the Solar Site. There were
15 portable office spaces that were like shipping containers that were located at either side of the
16 gate. Security personnel could close off road access to the Solar Site. The portable office spaces
17 were generally for security personnel but we also received checks at them sometimes. I was told
18 by a union steward, BJ, that First Solar ran the Security Gate Entrance but later I had an
19 encounter with a security guard that made me believe that McCarthy employed the security
20 personnel.

21 12. On one occasion I came into work and was running late. No one was at the gate and cones were
22 blocking the road. I honked to get security to badge me in. A security guard came out yelling at
23 me that I was rude for honking. He refused to scan my badge and actually tried to reach into my
24 car to take my badge. I told him I was late for work I was going in whether he scanned me or not.
25 He then told me to pull over while he called McCarthy management. I did, but after waiting 5-10
26 minutes, I decided I didn't have time to wait for such nonsense and drove in to the Solar Site.

27 Once I got up to the installation site, I was confronted my foreman, Will Arcy, about the
28

1 incident. He told me that McCarthy had contacted Sachs about what happened, and, as a result,
2 he gave me a verbal warning.

3 13. Sachs management had told us that not badging in was grounds for termination, but not showing
4 up was also grounds for termination so I was forced to make a decision.

5 14. There were two lanes for badging and one lane for busses to drive through the Security Gate
6 Entrance without badging. The people on the busses badged in at a bus stop that was not on the
7 Solar Site. The way busses worked was discussed in mandatory safety meetings conducted by
8 Sachs and McCarthy.

9 15. McCarthy ran an awards system for people who road the bus by which they were provided a \$5
10 Amazon gift card for every day they road. If they road it all of the scheduled days of the week
11 they were supposed to get an additional \$25 bonus gift card. I'm not sure whether they got the
12 bonus when some of the workdays were cancelled due to rain. I know about the gift cards
13 because they were discussed in meetings run by McCarthy and because my Sachs general
14 foreman would give me the cards to disburse to guys on my crew. The guys on my crew
15 frequently complained about not receiving all of the gift cards that were due to them.

16 16. To get to the sites where the solar modules were being installed ("Installation Sites"), the other
17 workers and I were required to go through the Security Gate Entrance and drive on the Solar Site
18 Access Road to the parking lot to which we were assigned. Initially, I would go to an area near
19 the laydown yard and then later I was told to park further down the road.

20 17. These parking lots were roped off areas of flat ground comprised of dirt, mud, and some rock.
21 McCarthy cleared the areas that became lots.

22 18. I would estimate that the first parking lot, by the laydown yard, was about 10 miles or more from
23 the Security Gate Entrance. It was about a 45-minute drive from the gate on average.

24 19. At some point during my employment, McCarthy created a parking lot further down the Solar
25 Site Access Road. This lot was more than a mile or further in from the Security Gate Entrance. I
26 would estimate that the distance between the Security Gate Entrance and the second parking lot
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1 was about 12 miles or so. Depending on a number of factors, I estimate that this drive took about
2 55 minutes.

3 20. McCarthy stated in the weekly mandatory safety meeting that the second parking lot was created
4 further inside the Solar Site to accommodate more workers. They told us that, if we weren't
5 driving a company vehicle, we had to park in that further lot. Even the busses had to go there.
6 This parking lot got workers closer to where the arrays were being installed and meant more
7 unpaid time on the road for the workers.

8 21. As I mentioned, I learned at the McCarthy safety meetings that the road wasn't considered part
9 of our compensable time. While I worked at the Solar Site, I heard a lot of people including
10 Sachs workers, foremen and general foremen complain about not being paid for this travel time.

11 22. I was not paid for mileage when I drove my own vehicle on the Solar Site Access Road either.

12 23. In a conversation with laborers who worked through the Local 3, under McCarthy, the laborers
13 told me and some of the guys who worked under me that they were getting paid for the drive
14 time plus getting per diems. They suggested to the Sachs CWs that they come over and work
15 with them so they could be compensated.

16 24. McCarthy and Sachs management told us in orientation that there was only one way in and one
17 way out, but actually there was another road that came in on the west end of the Solar Site. I
18 knew about it because I worked in that area and I was told in meetings with McCarthy and Sachs
19 management that we were not permitted to go on this road or the grounds beyond the gated or
20 fenced areas. I saw that they had gated the road off and made it off limits. In the meetings they
21 told us it was because the road went close to a rancher's house.

22 **New Hire Orientation and Crew Meetings**

23
24 25. On my initial day of work, I was required to first attend a new hire orientation that was
25 conducted by McCarthy. They told us about wildlife, speed limits, job production goals and
26 safety rules.

27 26. McCarthy told us they were the job contractor and that it was their jobsite. They told us they
28 controlled the site and that we were subject to their rules when we were on the site. They told us

1 that as soon as we crossed the Security Gate Entrance that we had to follow their rules. They also
2 said things like, “As soon as you hit the dirt road, you follow our rules.” By “dirt road” I
3 understood them to mean, as soon as we got through the Security Gate Entrance.

4 27. After the McCarthy orientation, I had to go to a separate orientation with the head safety person
5 from Sachs. In the Sachs orientation, among other things, they covered job safety assessments
6 (“JSAs”), task assignments, safety hazards and environmental awareness.

7 28. We would fill out our JSAs and sign them at our Installation Sites. McCarthy safety guys would
8 drive around watch us and they weren’t supposed to talk to us unless we were doing something
9 unsafe because Sachs had their own safety guys. But then McCarthy would report back to Sachs
10 management if they saw something they didn’t like. In weekly safety meetings, McCarthy would
11 complain that we were taking too long with our JSAs and would tell us we needed to finish them
12 within a certain amount of time. This seemed strange since the whole point of the JSA was to
13 assess and discuss safety risks at particular locations. I would have thought McCarthy safety
14 guys would want us to take our time with this.

15 29. During the time that I worked on the Solar Site, there were many other meetings including
16 mandatory weekly meetings, safety meeting, monthly all-hands meetings and other meetings. In
17 my experience, these meetings were primarily conducted by a combination of personnel from
18 McCarthy and Sachs. At times, McCarthy would relay information or instructions to us that they
19 said came from First Solar.

20 30. Most of the meetings were about safety issues but they would color their discussions of safety
21 issues with language about how we could get suspended or terminated if we didn’t follow all the
22 rules.

23 31. It started to feel like the mandatory safety meetings were just a time for McCarthy to scold and
24 threaten all the workers and tell us about other workers who broke their rules and how they were
25 suspended or terminated.

26 **Rules about Being on the Solar Site only between Sunrise and Sunset**

1 32. During McCarthy conducted meetings, other workers and I were told that workers were not
2 allowed to enter the Solar Site until the sun had fully risen. Although Sachs and McCarthy
3 personnel gave us the approximate start time for each day, the start time was when they expected
4 workers to be at what they called, their “work sites,” not when they were supposed to be at the
5 security gates. Because the drive was long and unpredictable, we frequently had to arrive at the
6 Security Gate Entrance before the sun fully came up. As a result, at times, other workers and I
7 would arrive and be required to sit in our vehicles in a line outside the Security Gate Entrance.
8 Even on really cloudy days or due to fog, Bio (Biologists who I believe worked under McCarthy)
9 could keep us off the road if they thought the kit fox might still be out due to low light and their
10 nocturnal nature. At times, I had to wait for up to 15 minutes for the sun to fully come up and for
11 the Security Gate Entrance to open. When I would arrive at the line of vehicles, a lot of guys
12 would already be there in front of me and would have been waiting longer than me.

13 33. Sachs and McCarthy personnel also told us that all workers had to be off of the Solar Site by
14 sunset.

15 34. At the same time, Sachs and McCarthy told us that if we arrived at the Security Gate Entrance
16 too early at the end of the day, we could be suspended or terminated.

17 35. There was no possible way to walk or ride a bicycle from the Security Gate Entrance to the
18 parking lot in the morning and get to work on time or to get from the parking lot to the Security
19 Gate Entrance on time at the end of the day – among other reasons, because we were restricted as
20 to when we were allowed to be on the Solar Site.

21 **Badging In and Out at the Security Gate Entrance**

22
23 36. McCarthy gave me my badge at my orientation. They took my picture and printed out my badge.
24 My badge said “McCarthy” on it and then a little smaller it said “Sachs.”

25 37. At my new hire orientation and at worker meetings, Sachs and McCarthy personnel told us that
26 workers could not go beyond the Security Gate Entrance without their badges and without being
27 scanned in, and that, once we entered the Solar Site, we had to have our badges on us at all times
28 until we exited the gate at the end of the day and were scanned out.

1 38. If a worker forgot his or her scan-in badge, the worker would not be allowed to work and would
2 usually get sent home.

3 39. There were generally two to three security guards at the Security Gate Entrance. They worked
4 under McCarthy. Sometimes, usually in the morning, two or more would scan badges with
5 guards on each side of the vehicles. At other times, usually at night, only one security guard
6 would scan the workers' badges. It seemed like McCarthy and Sachs wanted us to get in but
7 were in no hurry to let us out. The security guards would scan each worker's badge while they
8 were inside their vehicles before letting us go through the Security Gate Entrance.

9 40. On the first day of orientation I had to get out of my vehicle and go sign in and get a temporary
10 badge.

11 41. Because there was only one Security Gate Entrance and only two to three security guards to
12 scan-in people in the morning, a line of cars would form up to the gate, and workers would have
13 to wait in their vehicles while other workers in vehicles ahead of them were being scanned in.
14 Depending on where I was in the line, the wait to get through the Security Gate Entrance in the
15 morning, for me, would usually be about 3-5 minutes or so.

16 42. At times, especially at night, when, often, only one security guard was scanning badges, there
17 would be a longer line waiting to get out of the Solar Site. I would sometimes have to wait an
18 extra 20-25 minutes sitting in line waiting to get badged out.

19 43. For a period of my employment, even though, Sachs would release us to clean up and go back to
20 the parking lot at the end of the day, if we arrived at the lot before our official stop time,
21 McCarthy and/or Sachs would have guys there blocking our ability to get on the Site Access
22 Road to leave for the day. They changed the rules on us regarding when we could arrive and/or
23 leave the parking lot frequently.

24 44. During other periods, Sachs and McCarthy would let guys leave the lot but then would terminate
25 them for getting to the Security Gate Entrance too early. In safety meetings Sachs management
26 would tell us basically when we could start cleaning up and drive into the parking lot. On one
27 occasion, a group of crews, including mine, was given a cleanup-and-leave time but my crew
28

1 happened to be stationed really close to the lot so we got back to the lot earlier than some of the
2 other crews. One of the CW's on my crew was ridesharing and the other guys in his car wanted
3 to leave right away. I said that was fine but when the car arrived at the guard shack, Sachs
4 management was there and terminated them for arriving too early. I know this because my
5 worker called me right afterward and told me he had been fired. I asked my General Foreman
6 about it and he told me the workers got to the Security Gate Entrance too soon and everyone who
7 arrived there before a specific time was terminated whether they were drivers or passengers. I
8 asked, "No warnings or anything?" He told me, in effect, "No. Those guys are gone." The CW
9 who was terminated was one of my better workers.

10 45. There was incentive to leave early if you were just waiting in the parking lot because if you were
11 one of the first guys out it would take a lot less time to drive the Security Site Access Road and
12 badge out than if you were in the crowd of hundreds of guys trying to leave at the same time and
13 had to wait in lines to get badged out.

14 46. The security guards were in radio contact with other locations on the Solar Site. I know this
15 because when I had a confrontation with a guard, he told me he was contacting other McCarthy
16 personnel.

17 **Workers Were Monitored While On The Solar Site Access Road**

18
19 47. At orientation, safety meetings and worker meetings, Sachs and McCarthy personnel told us that
20 our badging in and badging out were being tracked and that all workers were being monitored
21 while we were on the Solar Site and the Solar Site Access Road. Sachs and McCarthy personnel
22 said that both Sachs and McCarthy had the power to terminate workers on the Solar Site for
23 violating any of the job site rules, including the rules that applied to the Solar Site Access Road.

24 48. At the mandatory meeting, McCarthy emphasized, "zero tolerance" on their rules and said that
25 they would terminate us with no questions asked. My general foreman told me that if I got
26 caught smoking in non-designated areas, not wearing safety belts in the buggy or speeding in the
27 buggy, McCarthy would fire me on the spot. The buggies didn't even have speedometers.

1 49. In orientation and at worker meetings, Sachs and McCarthy personnel told other workers and me
2 that from the time that we went through the Security Gate Entrance in the morning until we went
3 out of the Security Gate Entrance at the end of the work day, we were subject to all of the job site
4 rules and could be terminated at any time for violating them.

5 50. At worker meetings, Sachs and McCarthy personnel told us that we were subject to having our
6 vehicle and property such as lunch pails searched by Sachs or McCarthy at any time we were on
7 the Solar Site or the Solar Site Access Road.

8 51. At orientation and at worker meetings, Sachs and McCarthy personnel told us that we were
9 subject to drug and alcohol testing at any time that we were inside the Security Gate Entrance or
10 on the Solar Site Access Road. They told us that the rule was that when there was any accident
11 anywhere on the site, including on the Solar Site Access Road, the people involved were
12 required to submit to testing for drugs and alcohol.

13 52. One day, I was talking to an African American guy in one of the smoking areas. He said he had
14 seen another African-American guy on the Solar Site in a really intoxicated state. He went over
15 to the intoxicated guy to check on him and see if he was okay. Then McCarthy personnel came
16 up and demanded that they both submit to testing for drugs and alcohol. The guy who was trying
17 to help out told me he felt like he was being lumped in with the other guy just because they were
18 both black, even though he had just come over to try to help.

19 53. I recall seeing workers wearing McCarthy and Sachs uniforms and in company vehicles on the
20 Solar Site Access Road monitoring other workers while they were driving on the road. I saw
21 McCarthy and Sachs trucks stopped with worker cars pulled over in front of them.

22 54. At a certain point McCarthy managerial personnel told us in a mandatory meeting that if we were
23 listening to headphones on the Installation Site, we could be escorted off the job. McCarthy
24 personnel would sometimes use the words, “escorted off the job” to mean termination.

25 55. On one occasion, a Sachs general foreman was sitting in the back of a Sachs work truck Indian-
26 style taking pictures of cars. I saw him take my picture just beyond the parking lot and I pulled
27 over and confronted him about it because we weren’t supposed to take any pictures on the site. I
28

1 believe he was taking my picture to claim I was leaving early but he denied that when I
2 confronted him. I described the incident to my GF at the time, William Durham, who said he'd
3 tell the other general foreman not to take pictures of his guys.

4 56. At orientation and at worker meetings, McCarthy and Sachs managerial personnel told us we
5 could not take pictures anywhere on the site or on the access road because they considered it
6 industrial espionage.

7 57. McCarthy managerial personnel told us in orientation and in mandatory meetings that drivers
8 could be terminated for talking on their phone while driving on the Solar Site Access Road.

9 58. From the time that I entered the Security Gate Entrance in the morning until I exited the Security
10 Gate Entrance at the end of the day, I believe that I was under the control of Sachs, McCarthy
11 and First Solar because of the job site rules to which we were subject, because we were
12 constantly being reminded of them, and because we were warned about being terminated if we
13 violated them.

14 **Rules On The Solar Site Access Road**

15
16 59. At orientation and mandatory worker meetings, I was told that all the job site rules applied once
17 we entered the Security Gate Entrance until we left out of the Security Gate Entrance at the end
18 of the day. These rules included, among other things, safety and personal protective equipment
19 rules, discrimination rules, anti-harassment rules, environmental rules, alcohol and drug policies,
20 rules related to being subject to searches for alcohol, drugs and other things, no horseplay rules,
21 no smoking rules, no photography or other recording rules, no loud music rules, and no talking
22 on the phone while driving rules.

23 60. At orientation and safety meetings, Sachs and McCarthy managerial personnel told us about the
24 "rules of the road" that applied to the Solar Site Access Road.

25 61. There were many workers on the Solar Site while I was working there. Hundreds of workers
26 came through the Security Gate Entrance and traveled to their work areas using the Solar Site
27 Access Road at about the same time at the beginning of the day and left the Solar Site using the
28 Solar Site Access Road at about the same time at the end of the day. I also witnessed materials

1 delivery trucks and sanitation trucks using the Solar Site Access Road. We were told at
2 orientation and at worker meetings that because of the large number of workers and the large
3 number of material deliveries and other vehicles, everyone was required to strictly follow the
4 rules of the road.

5 62. At worker meetings, Sachs and McCarthy personnel told us that workers had been suspended or
6 terminated for things they did wrong. They would say things like “An iron worker was
7 terminated because he was speeding in a buggy.” I also remember McCarthy management saying
8 that they caught a person on the phone driving on the Solar Site Access Road into the Solar Site
9 and they pulled that person’s badge. “Pulling a Badge” was another way that McCarthy
10 described terminating people.

11 63. At orientation and at safety meetings, Sachs and McCarthy personnel told us that we were
12 required to immediately report any accidents or damage to any vehicle that occurred while
13 driving on the Solar Site Access Road.

14 64. On one occasion, we were in a line of buggies trying to get back to the parking lot. I saw a
15 person in a buggy speed up right next to my truck, park and then get into a bus and leave. When I
16 got to my truck, I saw it was damaged and reported it to my steward. She eventually told me she
17 didn’t have time to report it to Sachs or McCarthy so I reported it to McCarthy. McCarthy sent
18 me back to Sachs management. This process took 2-3 weeks and eventually Sachs management
19 complained that I was late in telling them and gave me the runaround. Eventually a Sachs
20 managerial employee told me that because I didn’t catch the guy who caused the damage
21 insurance wouldn’t cover it and they wouldn’t pay me. I ended up getting my own insurance
22 involved and told them what happened. My own insurance contacted Sachs.

23 65. I was laid off about two weeks later. Sachs managerial staff claimed they were dissolving my
24 crew but I was let go and they kept CWs who were working under me. Usually for layoffs, they
25 start with the lower ranked people first. It didn’t make sense to me because my GF at the time
26 told me he wanted to keep me but Sachs had decided to lay me off. I believe I was being
27
28

1 retaliated against for complaining about my truck being hit and about Sachs and McCarthy not
2 taking responsibility for it.

3 Signs at the Security Gate Entrance and on the Solar Site Access Road
4

5 66. There were signs along Turkey Flats Road at and around the Security Gate Entrance displaying
6 numerous instructions. I recall that these instructions, among other things, included things like:

- 7 • Be prepared to wear PPE (Personal Protective Equipment) beyond this point
- 8 • All visitors must check in at the guard shack
- 9 • Speed limits
- 10 • Positions for different types of vehicles going through the Security Gate Entrance
- 11 • No Smoking Signs
- 12 • Signs that said First Solar
- 13 • McCarthy construction signs
- 14 • Sachs signs

15 67. I also observed signs with pictures of kit fox that we needed to look out for, be aware of, and not
16 interfere with or harm while on the Solar Site.

17 68. We were told in orientation and at McCarthy and Sachs safety meetings that we were required to
18 wear our PPE (Personal Protective Equipment) at all times when we were on the Solar Site,
19 including from the time that we entered the Security Gate Entrance in the morning until the time
20 we left the Security Gate Entrance at the end of the day.

21 69. On occasion workers under my supervision called me to tell me they were sent home due to not
22 having their hard hat. I would then complain to McCarthy management because at times guys,
23 including me would get their hard hats stolen on the site and then could get in trouble for it. My
24 hard hat was stolen when I took it off to use a toilet and left it outside the door. I was able to get
25 mine replaced because at the time I was a foreman and knew the Safety guy but regular workers
26 would have been sent home.

27 70. There were more signs along the Solar Site Access Road after the Security Gate Entrance. I
28 recall seeing radar speed sign that showed the speed that we were driving.

Clearing the Road

1
2
3 71. After getting through security, even after the sun had come up, other workers and I still had to
4 wait in a line for Bio to “clear the road.” In mandatory meetings McCarthy management told us
5 that they had personnel in sensitive zones watching sensitive environmental areas who had
6 control to stop or slow the flow of traffic on the Solar Site Access Road. I witnessed that Bio
7 would restrict the Solar Site Access Road in some way like changing the parameters of the kit
8 fox zones where we had to drive at lower speeds.

9
Rules About Speeding In The Road

10 72. I recall that there were speed limits signs with speed limits between 5 miles per hour and 20
11 miles per hour posted on the Solar Site Access Road.

12 73. As mentioned above, sometimes McCarthy Bio changed the kit fox zones and we would be
13 required to go only 5 mph through those zones. The zones could be around 2 miles long at times.

14 74. Sachs and McCarthy management personnel told me and I observed that they would fire workers
15 if they were caught going over the speed limit on the Solar Site Access Road. I recall several
16 worker meetings during which McCarthy and Sachs managerial personnel told us about the most
17 recent people who they had terminated for speeding and for other reasons. This was one of the
18 ways that Sachs and McCarthy wielded control in and out of the site on the Solar Site Access
19 Road.

20 75. At times, I was only allowed to drive at 5 or 10 miles per hour on the Solar Site Access Road
21 because of animals near the road, the conditions of the road, cattle grids, speed restrictions, the
22 road being wet because of the Solar Site watering of the road, poor road conditions and other
23 reasons. The road was also rough and unsafe at times.

24 76. At worker meetings, Sachs and McCarthy personnel told us that they were monitoring our
25 activities and the speeds on the Solar Site Access Road and that if we violated the speed limits or
26 “rules of the road” or other job site rules we would be suspended or terminated. Almost every
27 meeting contained some kind of threat about suspension or termination.

Rules about Passing on the Solar Site Access Road

1
2
3 77. On the Solar Site Access Road, the road was long and gaps would form between cars for any
4 number of reasons, such as animals on the road, someone’s car breaking down, someone driving
5 more slowly than the rest of the cars, getting stuck behind a sanitation or delivery truck or a
6 whole range of conditions related to the road. This would make people want to go faster or pass
7 to catch up and be on time to meet with their crew at the beginning of the day or to leave the site
8 at the end of the day. Regardless of these gaps, at worker meetings, Sachs and McCarthy
9 managerial personnel told us that we were not allowed to go above the speed limit or pass
10 another moving vehicle for any reason -- except when a car had broken down or pulled over to
11 the side of the road.

Rules About Livestock And Animals On The Solar Site Access Road

12
13 78. Along the Solar Site Access Road, there were at least 3 steel cattle grids that we were required to
14 drive over. Cattle grazed along the Solar Site Access Road and would frequently be very near or
15 on the road, and they sometimes interfered with the ability of vehicles to travel on the road.

16 79. At orientation and at worker meetings, Sachs and McCarthy personnel told us that we were not
17 allowed to disrupt the local wildlife or the cattle in any way while we were driving on the Solar
18 Site Access Road. We were told that if we saw animals on or near the road, we had to let them
19 do whatever they needed to do. We were told that this meant we could not honk, yell at them,
20 throw things at them, push them out of the way with our vehicles, or do anything to attempt to
21 get them to move off the road. We were told that we had to slow down or stop our vehicles and
22 just stay in our vehicles and wait for them to get off the road. We were told that we mainly had to
23 look out for cattle and kit foxes, but there were also a lot of other animals that we were supposed
24 to watch out for. The presence of animals on or around the road frequently slowed down the
25 drive on the Solar Site Access Road.
26
27
28

1 80. At orientation and at worker meetings, McCarthy managerial personnel told us that we were not
2 supposed to honk our horns when we were driving on the Solar Site Access Road because our
3 horns could disturb the local wildlife and the cattle.

4 81. At worker meetings, Sachs and McCarthy managerial personnel told us that we could not play
5 loud music that could be heard outside our vehicles while we were on the Solar Site Access Road
6 because the noise from the music could disturb the local wildlife and the cattle.

7 82. At my new hire orientation, McCarthy managerial personnel told us that we were not supposed
8 to touch or feed anything to the local wildlife or cattle on the Solar Site or along the Solar Site
9 Access Road.

10 **Rules About Creating Dust On The Solar Site Access Road**

11
12 83. At safety meetings, Sachs and McCarthy personnel told us that there were dust control rules
13 related to the Solar Site that required the workers not to create too much dust. We were told that
14 if we made dust on the road, we were going too fast, regardless of the speed limit. We were told
15 not to drive on the Solar Site Access Road in a way that created a lot of dust and that we needed
16 to drive more slowly if we were creating dust.

17 84. Because of such restrictions, water trucks would spray water on the Solar Site Access Road to
18 prevent the creation of too much dust by the vehicles. Due to this watering, the Solar Site Access
19 Road was sometimes muddy and slippery. When it was muddy and slippery, we had to drive
20 even more slowly and the drive was even more difficult.

21 **Rules About Smoking**

22
23 85. At orientation and worker meetings, Sachs and McCarthy managerial personnel told us that we
24 were not allowed to smoke either inside or outside of our vehicles while we were driving on the
25 Solar Site Access Road or inside or outside of our vehicles in the parking lots. We were told that
26 we could only smoke in designated smoking areas. We were also told that no smoking was
27 allowed at the portable toilet stations.
28

1 86. The only places I saw workers smoking were at designated smoking areas. There were very few
2 designated smoking areas on the jobsite. I am a smoker and I recall seeing about three designated
3 smoking areas.

4 87. A foreman friend of mine who I had commuted with to the jobsite named Jeremy told me he was
5 terminated because he was smoking outside of his car in the parking lot. Management from
6 McCarthy would give examples in meetings of people who they terminated for smoking in non-
7 designated areas.

8 **Rules About Staying On The Solar Site Access Road**

9
10 88. At meeting, Sachs and McCarthy managerial personnel told us that once we were released to
11 drive on the Solar Site Access Road in the morning or at the end of the day, we had to drive
12 directly on the road to our assigned parking area in the morning and from our assigned parking
13 area back to the Security Gate Entrance at the end of the day and that we were not supposed to
14 do anything other than drive directly on the road, unless we stopped at a designated stopping area
15 like a portable toilet.

16 **Rules About Stopping On The Solar Site Access Road**

17
18 89. At orientation and at worker meetings, Sachs and McCarthy managerial personnel told us that we
19 must strictly follow the “rules of the road” and keep the flow of traffic constantly moving on the
20 Solar Site Access Road because there were so many workers using the Solar Site Access Road
21 and many materials delivery vehicles were using it.

22 90. At orientation and worker meetings, Sachs and McCarthy managerial personnel told us that,
23 except for emergencies or due to cattle or local wildlife, we were not supposed to stop on the
24 Solar Site Access Road at any places that were not designated stop areas, such as where the
25 portable toilets were located.

26 91. At orientation and at worker meetings, Sachs and McCarthy managerial personnel told us that if
27 we had to stop on the Solar Site Access road for any reason, we had to pull off the road but could
28 not, for any reason, go beyond the stakes, barriers or fences that were located along the road.

1 92. They also told us that if we had to get out of our vehicles for any reason, we were required to
2 leave the ground condition undisturbed and that this meant that we could not trample or disturb
3 any plants or litter in any way or relieve ourselves except at the portable toilet sites.
4

5 **Rules about Using Toilets while on the Solar Site Access Road**

6 93. There were a couple of portable toilets near the smoking area just outside of the Security Gate
7 Entrance.

8 94. While I worked at the Solar Site, there were also generally a couple of places along the Solar Site
9 Access Road where portable toilets were set up. At my new hire orientation and at worker
10 meetings, Sachs and McCarthy personnel told us that if we needed to go to the bathroom during
11 the drive on the Solar Site Access Road, we had to use these portable toilets and could not stop
12 and get out of our vehicles to relieve ourselves at any location along the Solar Site Access Road
13 other than at these portable toilet sites once we entered the Security Gate Entrance.

14 **Poor Road Conditions**

15 95. The Solar Site Access Road was a long, rough double-lane road. Originally, it was dirt. Later
16 they added a lime compaction treatment, which made it smoother but made it very slick. After
17 the road was treated, if it started raining, the Solar Site would have to be closed and they'd have
18 to get people out immediately or they could get stuck in the parking lot or on the Solar Site
19 Access Road and not be able to get out.

20 96. As mentioned above, when it rained, the parking lots and road became very slick and muddy. I
21 observed workers getting stuck in the parking lots because of these conditions. There were times
22 that the cars and busses couldn't make it out of the Solar Site.

23 97. Vehicles, especially small cars, regularly broke down due to the poor conditions of the Solar Site
24 Access Road.

25 98. One of the cattle crossings was horrendous to get over. You had to nearly come to a stop to get
26 over it. I had to drive at an angle to get over it. I (and other people) brought it up at more than
27
28

1 one safety meetings. I would say at least 5 or 6 people complained about it over at least 3 weeks
2 worth of meetings and then about a couple weeks later they finally replaced it.

3 99. At times, especially if you had to follow water trucks, the road got extremely slick and wasn't
4 safe.

5 100. In a mandatory safety meeting McCarthy management told us that if anyone got in an accident
6 on the road, regardless of whose fault it was, they would be terminated.

7 **Arriving at Our Assigned Parking Lots and Getting to Our Work Site**

8
9 101. At orientation and at worker meetings, Sachs and McCarthy managerial personnel told us that,
10 once we got to our designated parking area, we were required to walk to buggies that we would
11 take further into the Solar Site and to the location where we would be doing install work that
12 day. The buggies were kind of like golf carts or ATVs, and generally could carry about four to
13 six people. As a foreman I would drive the buggies with workers to various kinds of meetings, to
14 our daily Installation Sites or to other locations we might be required to go.

15 102. At times, I would have to leave the parking lot without all of my workers. This was because
16 buggies would break down and we wouldn't have enough buggies to give everyone a ride at
17 once. I was initially assigned 3 buggies for a crew of about 12 workers but later only had 2
18 buggies and so I'd have to take part of the crew in then come back to get anyone who was left at
19 the lot.

20 103. We were told by Sachs and McCarthy managerial personnel at worker meetings that we had to
21 be at the worksite by our start time. My GF told us that if we were supposed to start at 8am he
22 wanted us to be in the parking lot at least 5 minutes before that. Other general foremen would
23 require their workers to get to their installation site by the start time.

24 104. McCarthy and Sachs managerial personnel told us that we were required to ride the buggies to
25 get back and forth between our daily Installation Sites and the parking lot because the distances
26 between the parking lot and the Installation Sites were considerable. There was also so much
27 activity on the road to the daily Installation Sites that it wasn't safe to walk. Coming in and going
28 out was a madhouse of buggies. Hundreds of workers in buggies were trying to take the same

1 access road at the same time at the beginning and end of the day. It got so packed that sometimes
2 workers would still be on the access road in buggies while others were leaving the lot to go
3 home.

4 105. Sometimes, in addition to changing the rules about when we could arrive at and leave the
5 parking lot, McCarthy and Sachs would change the parking lot layout and change how people
6 entered and exited the lot. They and Sachs post personnel in the parking lot directing or holding
7 traffic at areas around the lot. They would rope off some areas and routes and make us take a
8 serpentine route through the rows of cars rather than drive directly beside the lanes to the exit.
9 This all added more time that we had to be in our vehicles navigating the parking lot to get
10 parked and get to our Installation site at the beginning of the day or to get out of the parking lot
11 and get home at the end of the day.

12 106. While I worked at the Solar Site, the buggies were the only forms of transportation designated
13 for general workers. Foremen would usually be in charge of driving the buggies and other
14 workers would ride with us. There were no rules regulating who sat where on the buggies. It was
15 not allowed for workers to drive their own vehicles from the parking lots to the daily Installation
16 Site. They would have been terminated on the spot for driving their own vehicles in to the daily
17 Installation Sites.

18 107. At the end of the workday, workers were required to ride buggies from their daily Installation
19 Sites to the parking lot where their vehicles were located. McCarthy and Sachs managerial staff
20 told us in meetings that our day ended at the parking lot but at times workers would be stationed
21 at Installation Sites that were miles from the parking lot and we foremen had to estimate how
22 long it would take to get back to the parking lot from these Installation Sites.

23 108. In terms of the timing of getting back to the parking lots, on certain days, Sachs management
24 would do “sting” operations in which they would secretly wait at the parking lots to see if
25 anyone arrived before the designated stop time. If they did, workers would be fired even if they
26 arrived only a few minutes early. It would be out of the workers control because the foremen
27 were leading them and out of the foremen’s control because we would be given a basic clean up
28

1 time and after we finished our work and clean up, we had to kind of estimate how long it would
2 take us to get back to the lot. Given the traffic on the access road, this was hard to figure out.

3 109. On one occasion, in a mandatory meeting Sachs and McCarthy personnel told us that they fired a
4 whole crew for showing up a few minutes early. It was clearly a threat.

5 110. Because of these arriving early rules and the fear of being fired, other foremen and I normally
6 had our crews arrive in the buggies back in the parking lots a few minutes after the scheduled
7 stop time so that we would not get in trouble. I estimate that most crews arrived at the parking
8 lots five to ten minutes or so after the scheduled stop time because of this. We didn't want to be
9 the first back to the lot because we could get fired and we didn't want to be the last because we'd
10 be stuck behind longer lines trying to get off the Solar Site.

11 **Meal and Rest Breaks**

12
13 111. With few exceptions, workers were required to stay at their daily Installation Sites during their
14 meal and rest breaks.

15 112. At orientation and worker meetings, Sachs and McCarthy personnel told us that we were
16 required to stay on the job site during the entire workday from the beginning of the workday to
17 the end of the workday and we were told that we were required to eat their lunches at our
18 Installation Sites.

19 113. Generally, workers were not permitted to go back to their vehicles or even the parking lots at any
20 time during the workday. If workers got caught in parking lot during the workday, they would be
21 fired unless they had requested and received special permission to go back to their vehicle, for
22 example, if someone needed to take an insulin shot.

23 114. At our Installation Sites, the foreman or lead would keep track of the timing of workers' meal
24 and rest breaks and would tell them when to start and when to end their rest and meal breaks. I
25 did this when I was a foreman.

26 115. My crew was provided a separate shade structure but it only sat about four people. There were
27 not sufficient shade areas for all the workers on our crew and in general I witnessed a shortage of
28 shade structures for workers.

1 116. In worker meetings, McCarthy and Sachs managerial personnel expressed that guys were taking
2 too long on smoking breaks but the smoking break areas were so far apart that it took workers,
3 including me, a long time to drive in buggies out to a designated smoke area, smoke, then drive
4 back to our daily installation site. There often wasn't enough time to smoke on a rest break
5 because the designated break areas were too far away. Also once you got to the smoke break
6 areas, there would be 20 guys trying to fit into a very small, roped-off area. A designated
7 smoking area was just an approximately 10-foot x 10-foot area, roped off, with a butt can and a
8 fire extinguisher. Guys requested in meetings that McCarthy and Sachs provide more smoking
9 areas but they weren't provided. When workers complained, McCarthy and Sachs management
10 would threaten that they could just make the whole jobsite smoke free.

11 117. During our breaks, workers were permitted to make cell phone calls, but often there was no
12 reception. Cell phone reception varied on the site and, depending on the area where we were
13 stationed, workers may not have had service. If we did not have good reception, we were not
14 permitted to walk to other locations where we might get better reception and make calls. We had
15 to stay in or near our daily Installation Sites.

16 118. On one occasion, my crew spotted a snake. In a meeting or orientation, McCarthy management
17 personnel told us that if we spotted a snake we had to report it and keep an eye on it until it was
18 removed by Bio. I reported the snake to Sachs safety and they told me to stay with it. Once I
19 called, it was lunchtime, but Sachs told me I had to sit tight and keep an eye on the snake. I
20 reported on my timecard that I had to work though my lunch break but was not paid for it.

21 119. I was never paid for the time while on my meal breaks and was never, to my recollection, paid
22 anything when my meal breaks or rest breaks were interrupted by Sachs or McCarthy personnel
23 for any reason.

24 **Pay Check Pick Up**

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26 120. Paychecks generally were issued to the foremen and then the foremen handed them out. When I
27 was a foreman I was upset sometimes because if a guy wasn't there, I didn't want to be
28 responsible for his check.

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121. After a certain amount of days, we were supposed to get paid sick leave. During the rainy season Sachs management told us we could report up to three rain-out days as sick time to get paid for them. Workers, including myself, tried to report sick time on these days and wouldn't be paid for all of them. I reported sick time on my timecard but I didn't get all the days I reported even though I reported 3 days or less. I complained about it and Sachs managers claimed payroll must not have gotten the information I submitted. Workers who worked under me would complain to me about not getting all of the sick days they reported and because I disbursed checks they would want me to do something about it, but I didn't have control over it.

122. At times, due to weather conditions or for other reasons, Sachs and McCarthy would call off work, usually by sending a message with as little as a few hours notice. It was confusing to follow and difficult to plan for.

123. Sometimes Sachs and McCarthy would even shut down work without prior notice. On these occasions, we were turned away at the Security Gate Entrance. This, again, confirms that McCarthy and Sachs controlled all the Solar Site grounds beyond the Security Gate Entrance and that our work time and pay should have begun at the Security Gate Entrance.

124. When the site was closed, Sachs provided checks at the Security Gate Entrance. They also mailed checks out. Guys complained to me that they didn't get their checks in the mail. My general foreman told me there was a lack of communication and there was a lot of confusion about who wanted their checks mailed and who wanted to pick them up. Also Sachs would designate only specific times that guys could get their checks so it would make it difficult to get them because a lot of guys had to drive a long way to get to the Solar Site. I had to drive over 2 hours on average to get the Solar Site from my home. Even after making that drive, the payroll person, Julie, would occasionally be late so we'd have to wait there to get paid. On one occasion I arrived to pick up my check on time and had to wait for about 30 minutes before she arrived to pass out checks.

125. When Sachs and McCarthy called off work, they did not always make it clear how or when workers would receive their paychecks.

1 126. Sometimes I'd be well on my way into work and then they would call the job right before I
2 arrived. At other times we would have to sit in lines of vehicles up to the gate waiting for
3 McCarthy or Sachs to make the call about whether we'd be working that day. If I had badged in,
4 and then they called off work, they would pay me reporting time, but if they held us at the gate,
5 and then called work off, or if I arrived and found out that they had just called work off, Sachs
6 generally wouldn't pay me for reporting to work.

7 127. The main reason they'd shut down the job was that the road was too slick when wet.

8 128. On some rain days, they'd have a skeleton crew. We physically couldn't get on the job site in our
9 own vehicles so they would let us park just after the security area and then take a buggy up. I
10 both road the buggy in and drove the buggy up with other workers. We were not paid for this
11 time driving on the Solar Site Access Road even though we were only able to access the site in
12 company vehicles and we had to operate those vehicles to transport other workers.

13 **Warnings and Terminations for Violating the Site Rules - Retaliation**

14
15 129. As a foreman, I once wrote a guy up on my crew for a no call/no show and let my general
16 foreman, Sean Kelson, know about it. Kelson didn't initially do much about it until the worker
17 complained to his steward about reprimand and termination protocol. Then my GF came back to
18 me and told me to think of other things he had done wrong and put together another write up so
19 they could terminate him. He said they needed a "paper trail."

20 130. I observed that Sachs and McCarthy leadership considered anyone who questioned their
21 authority to be a troublemaker and they would usually figure out a way to get rid of those
22 workers. I observed and heard from Sachs upper management personnel, that workers who stood
23 up for themselves or didn't cower to authority were considered troublemakers even if they didn't
24 really do anything wrong. Usually those people would be warned or even terminated.

25 131. In a production meeting, Sean Kelson told the foremen under him, including me, that Sachs was
26 going to have a layoff and they wanted to get rid of the "trouble makers and people who couldn't
27 make it to work." I took "troublemakers" to mean, people who questioned their authority or
28 pointed out the mistakes of Sachs management.

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132. I became a foreman about a month after I started, workers at the jobsite were upset about not being paid for all the time we were under the control of Sachs and McCarthy. They kept talking about it, and eventually, due to all the complaints around the jobsite, I researched California law regarding the badging in and out and whether we should be paid. Based on my research, I believed they should have been paying us for our time after we badged in and before we badged out. I brought the information to my GF, Sean Kelson, and he told me that they don't have to pay for it.

133. Three weeks to a month later, I was demoted to a JW. Kelson didn't give me any reason for the demotion. He just demoted me. I believe if another GF, William Durham, hadn't taken me under his supervision, I'd have been let go at that point. About two weeks or so after I was demoted back to being a JW, my truck got damaged. I was really upset about Sachs and McCarthy not taking responsibility for my truck being hit by a company buggy and I kept at them for 3 weeks or so after the incident, and then about two weeks after I finally handed it over to my own insurance to deal with them, Sachs laid me off without logical reason. They said it was a reduction of workforce but they kept CW's from my crew even though they were ranked lower than me. I wanted to keep working.

134. I was really upset when I found out they were laying me off but keeping CW's who had been on my crew.

I declare under penalty of perjury under the laws of California and the United States that the foregoing is true and correct.

DATED: 7-13-18

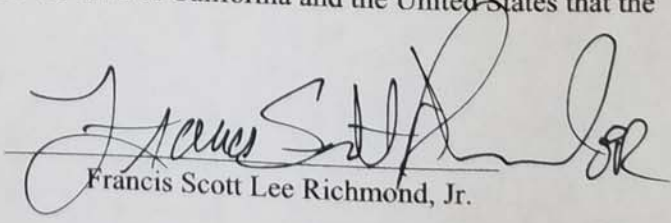

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Exhibit 10

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JUSTIN GRIFFIN, an individual, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

SACHS ELECTRIC COMPANY, a Missouri
corporation; FIRST SOLAR, INC., a
Delaware corporation; CALIFORNIA
FLATS SOLAR, LLC, a Delaware Limited
Liability Company; and DOES 1 through 10,

Defendants.

Lead *Sachs* Case No. 17-cv-03778-BLF
McCarthy Case No. 18-cv-02623-BLF

**DEFENDANT SACHS ELECTRIC COMPANY'S
REPLY BRIEF IN SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT**

Date: October 25, 2018
Time: 9:00 a.m.
Courtroom: 3

Action Filed: April 27, 2017
Removed: June 30, 2017

JUSTIN GRIFFIN, an individual, on behalf of
himself and all others similarly situated, and as
a representative of aggrieved employees,

Plaintiff,

v.

McCARTHY BUILDING COMPANIES,
INC., and DOES 1 through 10,

Defendants.

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1 **I. INTRODUCTION**

2 Under Plaintiff's theory of liability, unless employees are permitted to race their cars through an employer's
3 parking lot, then an employer must pay them from the moment that they drive on to the employer's premises.
4 According to Plaintiff, speed limits "control" him, as do signs on the employer's roads warning about animal
5 crossings and signs prohibiting creating dust when driving. Plaintiff's theory of liability also requires employees to
6 be paid for all time on the employer's premises unless they are permitted to loiter, litter, or smoke on the property.
7 Plaintiff is essentially challenging an employer's right to enforce rules on its property against employees during the
8 time that they navigate those premises before and after work unless it pays employees during that time.

9 In its motion for summary judgment, Sachs laid out in detail the absurdity of such a test for compensation,
10 as it would effectively revive a theory of liability that was rejected at both the federal and state level more than 75
11 years ago. Plaintiff's primary response to Sachs' Motion for Summary Judgment is that state law requires
12 compensation for the Drive because Plaintiff could not use the time "effectively for his own purposes." Plaintiff, for
13 example, bemoans the fact that, during the Drive, he could not "run personal errands" or "buy a sandwich at a
14 neighboring shop." Plaintiff's argument in this regard borrows the reasoning and phraseology from California cases
15 requiring compensation during an employee's commute where the employer restricted what the employee could do
16 **on the way to work**. Here, by contrast, the "control" felt by Plaintiff resulted purely from restrictions from the
17 employer on what he could do **while at work** before starting and after ending his job duties.

18 This distinction is significant because rules that, for example, restrict an employee from driving with non-
19 employee passengers on the way to work have been held to deprive employees of valuable opportunities, such as
20 dropping off a child at school. But if the same rule applies only while an employee is driving on the employer's
21 premises, it does not deprive the employee of many opportunities at all. Similarly, a rule that prevents employees on
22 the way to work from making stops has been held to require compensation because it deprives the employee of the
23 chance to use the commute to run personal errands. But if the same rule applies only when an employee is driving
24 on the employer's property, then the alleged control does not even make sense. How can an employee run personal
25 errands while on employer property? By the same token, while a rule against employees "playing practical jokes" or
26 making loud noises, if enforced against employees while they are at home, is extremely intrusive, the same rule
27 applying to employees only while they are on the premises is not at all a meaningful restriction.

28 The reason that the same rules can require compensation in some, but not other, settings is that rules can

1 exert a different level of control in different environments. In *Morillion*, the Court held that “[t]he level of the
2 **employer’s control over its employees**” is determinative of whether time is compensable. *Morillion v. Royal*
3 *Packing*, 22 Cal. 4th 575, 587 (2000) (emphasis added). Simply put, rules regulating employee behavior on an
4 employer’s premises exert a level of control that is substantially different than the same rules applied off of the
5 premises. Therefore, the rules governing Plaintiff during the Drive, which solely relate to safety and logistics, as well
6 as general rules that govern the premises, do not rise to a level of control that require compensation.

7 Plaintiff also thinks that the Drive is compensable because he was required to access the Project from a guard
8 shack where he needed to roll down his window so that the security guard could scan his badge. Plaintiff compares
9 this process to a “bag check” procedure, in which an employee’s person or bags are searched prior to leaving work.
10 The two events are not even remotely similar. Plaintiff does not dispute that passing through the guard shack
11 requires just a few seconds, as he need only roll down his car window to extend his badge to be scanned, never
12 leaving the vehicle. The most obvious analogy to his process is stopping to pull a ticket at a parking garage, which
13 also requires the mere rolling down of the window and reaching out an arm to grab a ticket from the machine—an
14 act that is substantively identical to extending a badge to be scanned.

15 Plaintiff also declares that this event at the guard shack is the first place that he was required to report to,
16 thereby making all subsequent travel compensable. But employees who use a key or scan a card to open a door at
17 the entrance to the employer’s property are not paid from the moment that they pass through the door because they
18 have “reported” to the entrance. This requirement to compensate employee travel applies to the very common
19 situation where employees are required to gather at a certain location, and then are required to travel again to another
20 location. A reporting point such as this can be seen in the facts of *Morillion* (where workers were required to report
21 to a location to be transported to fields on a bus) and *Burnside v. Kiewit Pac. Corp.*, 491 F.3d 1053, 1056 (9th Cir.
22 2007) (where employees were “required to meet at a designated site” and then “traveled in company vans or pickup
23 trucks...to their jobsites”). There is even a reporting point in this case, but it is at the parking lot, not the guard shack,
24 where Plaintiff met his other crew and then traveled on buggies to his work site, while being paid.

25 Even if the guard shack is the first place where Plaintiff’s “presence was required,” the CBA under which he
26 worked expressly provided that such time was not compensable. Plaintiff argues that the CBA does not mention
27 Wage Order 16, but this is not necessary. The CBA need merely “expressly provide” that this travel time is not
28 compensable. Here, the CBA provides that the time when the Drive occurs is not part of the regular workday, and

1 further that an employee's travel to a distant location, such as the Project, occurs on his own time. The CBA
 2 provides an increase to an employee's hourly rate for work performed at a distant location, but not for the travel time
 3 to get there. These express provisions exclude this travel time pay from union workers' compensation.

4 Finally, Plaintiff has effectively abandoned his claims for discrimination and wrongful termination. Plaintiff
 5 improperly, summarily, and exclusively directs the Court to 89 paragraphs in 17 pages of his declaration to respond
 6 to Sachs' argument. Such a haphazard approach is improper and should be rejected by this Court.

7 Therefore, Sachs' motion for summary judgment should be granted.¹

8 **II. THE DRIVE IS NOT COMPENSABLE UNDER CALIFORNIA LAW BECAUSE SACHS DID NOT EXERCISE THE REQUISITE LEVEL OF CONTROL OVER PLAINTIFF**

9 *Morillion* makes clear that an employer is not required to compensate employees whenever an employer
 10 exerts some "control" over employees. The touchstone for the inquiry is whether an employer exercises a sufficient
 11 "level of control" over an employee. Because the Drive involved travel solely on the employer's premises before
 12 and after work, the safety and logistical rules regulating travel and the series of prohibitory rules generally governing
 13 the workplace did not exert a meaningful level of control over Plaintiff rendering the Drive compensable.

14 **A. Under California Law, Time Is Compensable Only If An Employer Exerts A Certain Level Of Control Over An Employee**

15 As argued in the moving papers, travel on the employer's premises before and after work is not
 16 compensable, notwithstanding rules that employees must abide by which arguably "control" them while navigating
 17 to and away from their work stations before and after their shifts. Plaintiff is "puzzled" by Sachs' citation to federal
 18 law in its motion "because Plaintiff is not asserting a claim under the FLSA but only a claim under California law."
 19 (Opp. at 23.)² Federal law, however, is directly relevant here because both federal and state law were amended at the
 20 same time in response to the same United States Supreme Court decision, *Anderson v. Mt. Clemens Pottery Co.*, 328
 21 U.S. 680 (1946). At the federal level, the Portal-to-Portal Act overruled *Anderson* by declaring that the following
 22 activities are non-compensable: "walking, riding, or traveling to and from the actual place of performance of the
 23 principal activity or activities which such employee is employed to perform." 29 U.S.C. § 254(a).

24 _____
 25 ¹ There is significant disagreement between the parties about whether Griffin has asserted in the pleadings a claim for
 26 unpaid wages during a meal period. This is currently being briefed in Sachs' Motion to Strike the Consolidated
 27 Complaint [ECF-59] and in Sachs' Opposition to Plaintiff's Motion for Partial Summary Judgment [ECF-63]. The
 28 Court should, at a minimum, grant Sachs' Motion for Partial Summary judgment as to the compensability of the
 Drive now, and then can decide when ruling on those motions where there is anything left of this action.

² In order to capture all of Plaintiff's arguments, this brief will address and cite to both the Opposition to this Motion
 [ECF-54], and Plaintiff's Reply brief in support of its Motion for Partial Summary Judgment on the same issue
 [ECF-64].

1 At the state level, at exactly the same time, the legislature deleted language from the wage order that had
 2 provided that employees were compensated for “all times during which...an employee is required to be on the
 3 employer’s premises.” Wage Orders, § 2 (Mot. at 14, n. 1, 2). Given the *Anderson* Court’s holding that “all time
 4 during which an employee is necessarily required to be on the employer’s premises...must be accorded appropriate
 5 compensation,” and the timing of the amendment, the state’s intent to reject this holding is self-evident. *Anderson*,
 6 328 U.S. at 693.

7 As Plaintiff correctly points out, the 1947 California amendment does distinguish itself from federal law by
 8 focusing on “control.” As Plaintiff further correctly points out, the *Morillion* decision “expressly rejected the
 9 employer’s attempt to use the federal Portal-to-Portal Act to preclude compensation for the ‘hours worked’ in that
 10 case.” (Reply at 7.) *Morillion*’s rejection of federal law in that case, however, is not controlling here. The court did
 11 not hold or even suggest that California law is unlike the Portal-to-Portal Act in all respects or that California law is
 12 always different. The court in *Morillion*, rather, merely held that federal law is irrelevant where, as in that case, the
 13 employer exerts the requisite “level of control” over an employee. *Morillion*, 22 Cal. 4th at 587. Here, the alleged
 14 control over Plaintiff is of a wholly different nature than that in *Morillion*, where the employer required employees to
 15 meet and board a bus to the workplace. Here, by contrast, any control exerted over Plaintiff while he traveled on the
 16 Project before starting work and after ending work is merely a function of his presence on the premises.³

17 In *Morillion*, the Court did **not hold** that **any** control exerted by an employer requires compensation. The
 18 Court specifically rejected the employer’s argument that its holding was so “broad that it encompasses all activity the
 19 employer ‘requires,’ including...all grooming time, because employees might not, for example, shave unless the
 20 employer’s grooming policy required them to do so.” *Morillion*, 22 Cal. 4th at 586. The court acknowledged that it
 21 is “[t]he level of the employer’s control over its employees, rather than the mere fact that the employer requires the
 22 employees’ activity, [that] is determinative.” *Id.* at 587 (emphasis added).

23 In addition, Plaintiff’s attempt to distinguish *Overton v. Walt Disney Co.*, 136 Cal. App 4th 263 (2006),
 24 actually helps Sachs. Plaintiff acknowledges that, in that case, “the court held that the plaintiffs’ time on the shuttle
 25 buses was not compensable because, unlike in *Morillion*, Disney did not require its employees to take its shuttle
 26 buses; instead, they could have ‘walked, biked, (taken) the Metrolink train, or (been) dropped off (or) picked up.’”

27 _____
 28 ³ Sachs addressed the argument that *Morillion* rejected reliance on federal law for purposes of that case in the
 motion. (Mot. at 14, n.3.) The differences between the control in *Morillion* and here is further addressed below.

1 (Opp. at 18-19, citing *Overton*, 136 Cal. App 4th at 271, n.12.) Next, Plaintiff confusingly remarks that “[h]ere,
2 employees were required to use the buggies... Sachs **required** its workers to go through the Security Gate Entrance
3 and use the Solar Site Access Road to travel first to employee parking lots and then take buggies to their daily work
4 areas.” (Opp. at 19.) (Emphasis in original.)

5 While it is true that Sachs required its employee to use the buggies once they arrived at the parking lot,
6 Plaintiff was paid after boarding the buggy. And while it is true that Plaintiff was required to drive a particular route
7 on the Project to the parking lot, *Overton* confirmed *Morillion*’s holding that compensation is required only where
8 the employer requires one particular type of transportation, thereby depriving employees of choices during their
9 commute. See *Overton*, 136 Cal. App. 4th at 271 (“(E)mployers may provide optional free transportation to
10 employees without having to pay them for their travel time, as long as employers do not require employees to use
11 this transportation.”) (quoting *Morillion*, 22 Cal. 4th at 594); *Rutti v. LoJack Corp.*, 596 F.3d 1046, 1049 (9th Cir.
12 2010) (plaintiff was “required to travel to the job sites in a company-owned vehicle”). Here, Plaintiff does not
13 dispute that he could drive himself, or drive in carpools with others, or that a bus drove workers as well. Therefore,
14 under *Morillion*, *LoJack*, and *Overton*, these choices of transportation make the commute non-compensable.
15 Plaintiff only cites cases where mandatory employer-provided transportation created a sufficient “level of control,”
16 but not any cases where simply having to drive on employer property is alone sufficient to establish such control.

17 **B. The Rules And Restrictions Plaintiff Cites During The Drive Do Not Rise To A Level Of
18 Control That Warrants Compensation**

19 Plaintiff does not dispute that during the Drive he was always traveling on the employer’s premises before he
20 started and after he finished work. The only issues in contention are (1) whether travel on the employer’s premises
21 before and after work is generally compensable under California law, and (2) even if it is not generally compensable,
22 whether Sachs exerted a level of control over Plaintiff during the Drive that makes this particular travel compensable.

23 **1. Traveling on the employer’s premises before and after work is generally not
24 compensable under California law**

25 Without directly taking a position on the issue, Plaintiff suggests that all time spent traveling on the
26 employer’s premises should be compensated. Plaintiff asserts that “Sachs cites no California law holding that time
27 spent traveling on an employer’s premises before and after work is generally not compensable.” (Reply at 11.)
28 Conversely, Plaintiff, of course, has not cited any cases or any authority that travel on an employer’s premises before
and after work generally is compensable. Sachs did, moreover, spend a significant amount of time examining the

1 legislative history of the California wage orders (Mot. at 14), and argued that Plaintiff’s theory of liability had no
2 limiting principle (*id.* at 15-18). Plaintiff does not say a word about the state legislature removing language from the
3 wage orders requiring compensation for “all times during which...an employee is required to be on the employer’s
4 premises.” Plaintiff, moreover, was entirely too dismissive of the hypotheticals presented in the moving papers
5 illustrating that compensating employees for all time spent traveling on the employer’s premises before clocking in
6 and after clocking out would lead to absurd results and unfettered liability.

7 Plaintiff disclaims any need for him to address such scenarios, arguing that “[w]hat is at issue in this case are
8 the specific facts of this case, not the facts of some irrelevant hypotheticals that have nothing to do with the facts of
9 this case. If defense counsel is ever confronted with a fact pattern in one of its contrived hypotheticals, it can assert
10 whatever defenses is [*sic*] deems appropriate to that case...” (Reply at 13.) However, while this case must be
11 decided according to its specific facts, this Court must apply a theory of liability to those specific facts. Courts
12 constantly are confronted with defining the contours of a theory of liability and ensuring that there are limiting
13 principles. *See Chavez v. Martinez*, 538 U.S. 760, 778-79 (2003) (rejecting theory because there is “no limiting
14 principle or reason to foresee a stopping place short of liability in all such cases”); *City of Auburn v. Qwest Corp.*,
15 260 F.3d 1160, 1180 (9th Cir. 2001) (interpretation of statute rejected because it “would have no limiting principle”).

16 The unavoidable fact that Plaintiff does not and cannot dispute is that if California employers are required to
17 compensate employees for all time they spend traveling on the employer’s premises before and after work, then any
18 employee who clocks in and out in will have unreported time and will be owed wages. Employees always spend
19 some amount of time navigating towards a time clock or their workspace before a shift and away from the same area
20 after a shift, in their cars on employer property or walking across employer hallways or sidewalks. None of that time
21 is ever, **by definition**, recorded on a time clock and if it is compensable, then the “1,500 lawsuits” seeking
22 “\$6 billion in back pay” filed in the mere 6 months after the 1946 *Anderson* decision will pale in comparison to the
23 wave of lawsuits for unpaid overtime wages, missed meal and rest breaks, and penalties brought under California’s
24 4-year statute of limitations. *See Integrity Staffing Solutions, Inc. v. Busk*, 135 S. Ct. 513, 516 (2014).

25 The California Supreme Court’s recent rejection of the *de minimis* rule highlights the chaos that Plaintiff’s
26 theory of liability would cause. In *Troester v. Starbucks Corp.*, 5 Cal. 5th 829 (2018), the California Supreme Court
27 held that the “relevant [state] statutes and wage order do not allow employers to require employees to routinely work
28 for minutes off-the-clock without compensation” under the *de minimis* doctrine. The Court reasoned that “a few

1 extra minutes of work each day can add up.” *Id.* at 847. If Plaintiff’s theory in this case is upheld, then literally all
2 non-exempt employees who clock in or otherwise arrive at work stations to start getting paid will have claims for
3 years of unpaid wages. Every such employee spends at least a few minutes traveling on the employer’s property
4 before starting and after ending work, not free to do whatever he or she wants and subject to various rules of conduct.
5 If that is considered control worthy of compensation, then it is not an exaggeration to predict that workplace norms
6 that have persisted for almost 75 years will be challenged everywhere.

7 It is simply not an answer for Plaintiff to tell the Court not to worry about the clear staggering implications
8 that a ruling that travel on the employer’s premises before and after work is generally compensable will have. The
9 lack of a limiting principle, along with the legislative history and strong reaction to the *Anderson* decision, is a good
10 reason why this Court should reject any attempt by Plaintiff to recover for travel on the premises here.

11 **2. Plaintiff’s travel on the Project during the Drive did not subject him to a level of control that made the Drive compensable.**

12 The “rules” Plaintiff was required to follow while on the Drive did not exert a level of control that warrants
13 compensation. Plaintiff devotes most of his briefs describing the different rules and conditions on the Project that
14 subjected him to “control” and impeded his progress to his work station. All of these rules can be divided into two
15 categories: (1) rules establishing and regulating his path of travel to and from his work station, and (2) rules
16 prohibiting certain conduct that was generally not allowed on the premises. None of these rules, even cumulatively,
17 establish the level of control needed to require compensation.

18 Plaintiff contends that he was subject to the following rules establishing and regulating his path of travel to
19 his work station: speed limits, no passing other vehicles, do not create dust, follow pace cars, drive directly to work
20 station, must use portable toilets if needed, no stopping, and signs warning drivers about animal crossings and muddy
21 or slippery roads. (Opp. at 9-13.) None of these rules, however, required Plaintiff to do anything, and were all
22 reasonably related to an employer regulating traffic on its property. The fact that the Project, for example, took
23 proactive steps to control dust that had an effect on Plaintiff during the Drive does not mean that he should be
24 compensated for the Drive. Stop signs and speed bumps also slow an employee down while traveling on an
25 employer’s premises before work. An employer in the midst of inclement weather, moreover, will likely take
26 preemptive safety measures, such as drastically reducing automobile speeds, closing lanes, and directing traffic. An
27 employee on his way to work traveling on the employer’s property does not get paid extra because these safety
28 measures “controlled” him or added extra time to his commute.

1 Plaintiff's citation to general workplace rules restricting him on the Drive is nonsensical. Apparently,
2 Plaintiff felt controlled on the Drive because he could not "fight," engage in "horseplay or insubordination," "possess
3 firearms or dangerous weapons," "possess or use alcohol or narcotics," "gamble," "falsify records," commit "theft"
4 or "willful damage to Company property," "discriminate," or commit "sexual harassment." (Opp. at 8.) These rules
5 obviously are common to virtually all employers and did not exert a level of control on Plaintiff during the Drive
6 requiring compensation. For the same reason, as explained in the moving papers, the rules that prohibited smoking
7 anywhere on the Project and disturbing animals also do not entitle Plaintiff to be paid for the Drive.

8 The distinction drawn in the moving papers between rules for employees first entering the employer's
9 premises that may exert control and start the work day (such as donning and doffing or security checks) and rules
10 that do not (such as no littering and no soliciting other employees) is that the first set of rules require the employee to
11 do something (mandatory rules) and the second set of rules prohibit the employee from doing something (prohibitory
12 rules). (Mot. at 18-19.) Plaintiff objects to this distinction because it is "contrived" and cites several cases where
13 prohibitory rules warranted compensation. (Reply at 12-13.)

14 To be clear, Sachs certainly is not arguing that prohibitory rules ordinarily do not warrant compensation or
15 that such rules cannot control employees. Context, however, is everything, and the "level of control" that prohibitory
16 rules impose on an employee traveling on the employer's premises before work is significantly less than the same
17 prohibitory rules at a different time and a different place. The best example of this distinction is in this very case and
18 the alleged control that Plaintiff felt from being prohibited from "running errands" during the Drive.

19 In *Morillion*, the Court held that a bus ride—not on the employer's premises—was compensable because it
20 was required and therefore "prohibit[ed] [the employees] from effectively using their travel time for their own
21 purposes." *Morillion*, 22 Cal. 4th at 586. The Court even noted that "during the bus ride plaintiffs could not drop off
22 their children at school, stop for breakfast before work, or run other errands requiring the use of a car. Plaintiffs were
23 foreclosed from numerous activities **in which they might otherwise engage if they were permitted to travel to**
24 **the fields by their own transportation.**" *Id.* (emphasis added); *LoJack*, 596 F.3d at 1061-62 (plaintiff "was
25 required to drive the company vehicle, could not stop off for personal errands, could not take passengers [and] was
26 forbidden from attending to any personal business along the way"). In both cases, the courts held that these
27 prohibitory rules exerted a sufficient level of control over the employees during commutes to warrant compensation.
28 The central reasoning behind these decisions is that employees were controlled because they were unable to use their

1 commute time effectively for their own purposes.

2 Like trying to fit a square peg in a round hole, Plaintiff attempts to force this reasoning to apply to his travel
3 on the Project by using the language used by the Courts in *Morillion* and *LoJack*. (Opp. at 18 [workers “cannot
4 choose to run a personal errand either after they passed through the Security Gate Entrance at the beginning of the
5 day”]; *id.* [“Sachs workers had no ability to run errands once they passed through the Security Gate Entrance...they
6 were not free to use the time effectively for their own purposes”]; Reply at 11]“Plaintiff could [not], for instance
7 ‘buy a sandwich at a neighboring shop’ or ‘attend to any personal activity’”). This argument strains logic.

8 The reasoning of *Morillion* is inapt here because the employer in that case required employees to substitute
9 an ordinary commute for a ride on the employer’s bus. An ordinary commute is an **opportunity** for employees to
10 drive passengers, run errands, take detours, drop their children off at school, and stop for coffee. These opportunities
11 were taken from employees by the employer in *Morillion* by requiring them to report to a bus stop, board a bus, and
12 be driven to the agricultural fields where they worked. This, therefore, entailed a high level of control.

13 By contrast, when an employee is travelling on the employer’s premises before work, he obviously cannot
14 drop off his child at school. As soon as an employee turns her vehicle onto the employer’s property, she can no
15 longer stop at the grocery store or run personal errands. The plain disconnect between the reasoning of the
16 *Morillion/LoJack* commute cases and this case is that neither case considered the salient issue here: an employee
17 traveling on the employer’s premises before starting work and after ending work.

18 Unlike the workers in *Morillion*, moreover, Plaintiff was not told by what means he could get to the Project.
19 Plaintiff elected to drive himself in his own vehicle by himself or to get picked up by other workers. (Supp.
20 Chammas Decl., Exh. A [Plf.’s Dep., 23:12-15; 44:5-18].) There was also an option to take a private bus that picked
21 workers up from a meeting place, and drove some workers to the Project. (*Id.*, 52:12-53:7.) Unlike the workers in
22 *LoJack*, moreover, Plaintiff did, in fact, choose to get gas, stop by the store, and pick up lunch on the way to work.
23 (*Id.*, 116:1-7.) The fact that Plaintiff could no longer run an errand while on the Project does not speak to the level of
24 control that Sachs exerted over him, but rather the unremarkable fact that the Project is on private property.
25 Therefore, the critical inquiry is not whether Plaintiff could use the Drive “effectively for his own purposes.” If that
26 were the test, then every employee would be compensated while traveling on the employer’s premises before and
27 after work.

28 It is for these reasons that, in the cases cited by Plaintiff, the prohibitory rules during “on call” time, a lunch

1 break, or an ordinary commute exercise a level of control over an employee that is substantial and requires an
2 employer to compensate him for that time. Indeed, just like in *Morillion* and *LoJack*, such rules deprive the
3 employees of opportunities to use the time in question effectively for their own purposes. *See, e.g., LoJack*, 596 F.3d
4 at 1062 (“Here, **the level is total control**. To repeat, Rutti was required to use the company truck and was permitted
5 no personal stops or any other personal use.”) (Emphasis added.)

6 The California Supreme Court, moreover, has recently held that an employee walking on the employer’s
7 premises is not subject to a “level of control” sufficient to warrant compensation. In *Augustus v. ABM Security*
8 *Services, Inc.*, 2 Cal. 5th 257, 269 (2016), the court held that, like meal periods, “during rest periods employers must
9 relieve employees of all duties and relinquish control over how employees spend their time.” Critically, the court
10 recognized that the fact that an employee may need to stay on the premises and close to his or her work station was
11 not a sufficient level of control to render the rest period inadequate. Specifically, the court held that “[b]ecause rest
12 periods are 10 minutes in length...they impose practical limitations on an employee’s movement. That is, during a
13 rest period an employee generally **can travel at most five minutes from a work post before returning to make it**
14 **back on time**. Thus, one would expect that employees will ordinarily have to remain on site or nearby. This
15 constraint, which is of course common to all rest periods, **is not sufficient to establish employer control.**” *Id.* at
16 270 (emphasis added).

17 The *Augustus* court, therefore, held that an employer complies with its obligation to release employees from
18 its control even when an employee is practically limited to walking on its premises. During the 5 minutes walking
19 away from a “work post,” and another 5 minutes walking back—at all times on the employer’s premises—
20 employees are certainly subject to all the rules of the premises that ordinarily apply at all other times. Therefore,
21 even though the employees in *Augustus* certainly could not “fight,” engage in “horseplay or insubordination,”
22 “possess firearms or dangerous weapons,” “possess or use alcohol or narcotics,” “gamble,” “falsify records,” commit
23 “theft” or “willful damage to Company property,” “discriminate,” or commit “sexual harassment” during their rest
24 periods near their work posts (Opp. at 8), the California Supreme Court notes the obvious—that such restrictions that
25 arise from being on the premises “is not sufficient to establish employer control.” *Augustus*, 2 Cal. 5th. at 270.

26 In the same way, the fact that an employee on the employer’s property going to his work station before his
27 shift is also subject to prohibitory rules is not sufficient to establish employer control. How does a rule prohibiting
28 employees from entering the premises with non-employees in their vehicles exert control over them? While a

1 similar rule in effect starting at an employee's home can certainly work a hardship on an employee needing to drop a
 2 child off at school, a rule regarding passengers in vehicles on employer property does not come close to the same
 3 level of control. The same can be said for an employer's rule that an employee drive to his or her work station
 4 without stopping. If the employer forbids stops during an ordinary commute, then the level of control is substantial.
 5 But if the employer requires direct travel to an employee's work station without making any stops or diversions only
 6 after he or she has entered the employer's premises, then any perceived control is minor, if not illusory.⁴

7 Accordingly, the prohibitory rules cited by Plaintiff that warrant compensation under the circumstances in
 8 those cases have no relevance here. All of the prohibitory rules cited by Plaintiff did not deprive him of any
 9 opportunities as he made his way across the Project either on his way to or from his work station, and such rules did
 10 not reach the level of control necessary to warrant compensation for the Drive.⁵

11 **C. The Requirement That Plaintiff Enter And Exit The Project At The Guard Shack Did Not**
Start Or Extend The Workday

12 Perhaps realizing that the "rules" during the Drive are plainly insufficient to trigger compensable control,
 13 Plaintiff makes much of the fact that he was required to enter and exit the Project at a single point—a guard shack.
 14 First, Plaintiff emphasizes that the Project was on "secured premises" that could be accessed from only one point.
 15 Plaintiff, however, does not provide any basis for his argument that limiting the Project to just employees and that
 16 having only one entrance has any relevance to the compensability of all time after passing that single secured
 17 entrance. Most workplaces are not open to the public and only employees or authorized visitors can enter. The fact
 18 that Plaintiff needed to "check in" at the guard shack to enter the Project is neither unique nor rare, and this fact
 19 certainly does not change the level of control over him during his travel across the Project that immediately followed.

20
 21 ⁴ As noted in the Motion, and not disputed, if Plaintiff needed a ride from a third party to work, "that person could
 22 have dropped Plaintiff off at the guard shack and Sachs would have arranged for Plaintiff to have been brought down
 to the parking lot." (Mot. at 9.) Plaintiff does not claim to have ever needed a third party to get to work.

23 ⁵ In his declaration in opposition to Sachs' motion for summary judgment, Plaintiff asserts that he was told of many
 24 rules he needed to follow on the Drive, but in his deposition Plaintiff testified that he was told of only 5 rules: the
 speeding law, no smoking, no loud music, respect the animals' habitat, and drive directly to the parking lot. (Plf.'s
 25 Dep., 45:24-46:9; 63:9- 64:3.) When asked if there were "[a]ny other rules about the animals and the drive that you
 remember from orientation or anytime during your employment," he replied "no." (*Id.*, 49:22-50:1.) See also Plf.'s
 26 Dep., 50:18 25 ("Q. Were you told that there were any other restrictions on your drive other than those? A. No.").
 On summary judgment, Plaintiff is not permitted to contradict his deposition testimony and suddenly add that there
 27 were a vast number of other rules that controlled him. See *Jack v. TWA*, 854 F. Supp. 654, 660 (N.D. Cal. 1994).
 Therefore, Plaintiff is not entitled to "remember" new rules about the Drive that were told to him, and they should be
 28 ignored for purposes of this motion. In any event, none of these new rules change anything, as they are still either
 rules regulating the path of travel or prohibiting certain conduct on the premises, none of which deprived Plaintiff of
 any opportunities or exerted the requisite level of control to warrant compensation.

1 Plaintiff next attempts to compare driving past the guard shack to being required to submit to searches. The
2 security check cases that Plaintiff cites, however, are completely unlike the time at the guard shack. Plaintiff argues
3 that “the time spent by workers going from the Security Entrance Gate to the work site and from the work site to the
4 Security Entrance Gate is no different tha[n] the time spent by the employees going through the bag check security
5 procedures in *Pelz* or *Cervantez*.” (Reply at 10-11.) Plaintiff further argues that he was “subject to extensive
6 security procedures required to access [the] secured premises.” (*Id.* at 13.) This, of course, is mere hyperbole. In
7 those cases, the employees were directed by their employer to submit to an inspection of either their bags or their
8 persons. See *Cervantez v. Celestica Corp.*, 253 F.R.D. 562, 569 (C.D. Cal. 2008) (claim that employer “requir[ed]
9 employees to undergo security screening before clocking in for their shifts and after clocking out at the end of their
10 shift”); *Pelz v. Abercrombie & Fitch Stores*, 2015 U.S. Dist. LEXIS 186789, *6 (C.D. Cal. Jun. 4, 2015)
11 (“Abercrombie’s bag check policy requires employees to remain in the store until they pass through an inspection”).

12 The requirement that employees must proceed to a certain area to be subject to a search is a substantial
13 interaction with their employer that involves a level of control that is wholly absent in this case. Although the guard
14 shack here can be referred to, as Plaintiff does, as a “security gate,” Plaintiff does not dispute that he needed to do no
15 more than roll down his window and flash his badge to security, that he never left his car, and that it takes only a few
16 seconds. Plaintiff does not address the clear analogies to this badge scan raised in the moving papers, such as an
17 employee scanning a card to unlock a door to enter or leave a building, an employee pulling a ticket to get in a
18 parking garage, or an employee flashing a badge to workers to bypass a security line. (Mot. at 21-22.) Like using a
19 key to a door, this interaction is strictly for the purposes of ingress and egress, and does not involve any interaction
20 with the employer that is anywhere near the interaction during a bag check or other inspection.⁶

21 Plaintiff argues that Wage Order 16 requires that the Drive be compensated because it constitutes employer
22 mandated travel after the first location that Plaintiff’s “presence [was] required.” (Opp. at 20-21.) But the Drive
23 **precedes** rather than **follows** the first place that Plaintiff’s presence is required. As noted in the Motion, the Drive
24 took Plaintiff to the parking lot where he met other employees. (Mot. at 5-6.) At that parking lot, Plaintiff and other
25 employees boarded a buggy and were driven to their primary work locations. (*Id.*) The parking lot is the first
26 location where Plaintiff’s presence is required, and the subsequent buggy ride is therefore compensated. (*Id.*)

27 ⁶ Sachs is not arguing that the “few seconds” Plaintiff spends flashing his badge to security is not compensable
28 because it is *de minimis*, but rather is arguing that the nature of this time is like opening and closing a door, an
activity that does not start the workday or prevent the workday from having ended earlier.

1 Plaintiff protests that he had already been at the first location where his presence was required because he
2 scanned his badge at the guard shack. (Opp. at 20-21.) Plaintiff argues that his “presence at the Security Gate
3 Entrance is in fact required because that is the only way for [employees] to gain access to the Solar Site and
4 ultimately to their daily work areas.” (*Id.* at 21.) Plaintiff’s argument, therefore, appears to be that an employer with
5 a single locked entrance to its premises necessarily requires its employees’ presence at that entrance, and must
6 compensate employees for all time spent traveling past that entrance, even if the employee does no more than scan a
7 card or use a key to enter the premises. Plaintiff, of course, cites no authority for such a broad interpretation. Even if
8 the Project had multiple entrances, moreover, those entrances would still, under Plaintiff’s interpretation, be the “first
9 location where the employee’s presence is required by the employer,” thereby requiring compensated travel after an
10 employee passed the entrance in a car or on foot. An employee’s need to access a locked or manned entrance—
11 whether on foot or in a vehicle—simply cannot be the “first location where the employee’s presence is required.”

12 The one case cited by Plaintiff that interprets this provision applies it to a reporting that is nothing like the
13 badge scan here, but rather to a situation that comports with a common sense interpretation of the wage order. In
14 *Burnside*, the employees were “required to meet at a designated site in either Alpine, California or El Centro,
15 California,” and “[a]t these designated meeting sites Kiewit’s managers instructed the employees ‘on the day’s tasks’
16 and had them ‘retrieve equipment and plans for use on the Fiber Optic Projects.’” *Burnside*, 491 F.3d at 1056. “Once
17 these initial meetings concluded, the employees traveled in company vans or pickup trucks, frequently operated by
18 the employees themselves, to their jobsites.” *Id.* Here, by contrast, after flashing his badge at the guard shack, the
19 employee immediately passes, does not leave his vehicle, never parks his car, and therefore has not yet reached a
20 location where his presence is required. For the wage order provision to make any sense, there must be a **break** in
21 the employee’s travel, more than pulling a ticket at a parking gate or flashing a badge at a guard shack.

22 Even if the guard shack were the first place where Plaintiff’s “presence was required,” the Drive still need
23 not be compensated because the CBA expressly provides as much. In his Opposition, Plaintiff acknowledges that
24 Wage Order 16 requires “compensation for compulsory travel time,” but that such a right “may be eliminated only if
25 a CBA includes clear language to that effect.” (Opp. at 21.) While Plaintiff asserts that the CBA must actually
26 “mention[] paragraph 5 of the Wage Order” and “‘expressly provide’ that paragraph 5 does not apply to the covered
27 employees,” such an interpretation of the Wage Order is patently unreasonable. In *Burnside*, the court did not
28 discuss whether the CBA mentioned the state wage order, but rather noted that the CBA did “not address whether

1 the employer would be responsible for compensating his employees for any time spent traveling between these two
 2 points.” 491 F.3d at 1057-58, 1061 (the right to compensation for such travel time instantly attaches to all employees
 3 covered by Wage Order 16, “disappearing only if a governing CBA includes clear language to the contrary”).

4 Here, the CBA at issue in this case expressly provides that the Drive is not compensable. As noted in the
 5 moving papers, the CBA sets forth a regularly recurring eight hour work day, starting after the Drive and ending
 6 before the Drive. (Mot. at 22.) Plaintiff’s only response to this is that the CBA provides for compensation for
 7 “overtime hours outside the regular hours.” (Opp. at 22.) The CBA also provides, however, that “[n]o overtime
 8 work shall be performed without prior notification to the [union].” (Jensen Decl., Exh. A, CBA, § 3.03.) Therefore,
 9 it is impossible that the CBA provides for regularly recurring overtime that required prior notification before it could
 10 be worked. The CBA also expressly provides that employees would travel to distant locations (in Zone B) without
 11 being paid for such travel time. (Jensen Decl., Exh. A, § 3.04.) In section 3.04(b) of the CBA, employees may be
 12 required to report to Zone A or Zone B, both of which require the employees to travel there “on their own time.”
 13 (*Id.*) Distant locations in Zone B, such as the Project, entitled employees to a higher rate of compensation when they
 14 started work. (*Id.*) The exclusion of compensation for travel time for and the increased hourly rate during Zone B
 15 assignments confirms that the CBA expressly makes the shift differential the sole additional compensation for the
 16 remoteness of the Project and excludes compensation for travel time during the Drive. (*Id.*, ¶ 4.)

17 **III. PLAINTIFF UTTERLY FAILS TO RESPOND TO THE GROUNDS FOR SUMMARY
 JUDGMENT AGAINST HIS DISCRIMINATION CLAIMS**

18 Plaintiff’s defense of his claims in connection with his termination is non-existent. Somehow, Plaintiff felt
 19 that it was appropriate to summarily cite in his opposition brief, without any argument, 89 paragraphs in 17 pages of
 20 his declaration, and expect Sachs and this Court to sift through each paragraph and apply evidentiary facts to Sachs’
 21 argument. Plaintiff merely states that his “evidence demonstrates that the reasons for his termination were pretextual
 22 and in fact false. [Citing 89 paragraphs of Plaintiff’s Declaration.] In Griffin’s declaration, there is ample evidence
 23 to create triable issues of fact on the discrimination and retaliation claims.” (Opp. at 25.) This is not argument. This
 24 is, at best, exceeding the page limitations by incorporating by reference legal argument in a lay witness’s declaration.
 25 This is, at worst, abandoning Plaintiff’s individual claims by failing to address any arguments in the moving papers.

26 A “[c]ourt cannot comb through [a party’s] exhibits and create arguments for him.” *Marrapese v. Univ. of*
 27 *Cal. Bd. of Regents*, 2013 U.S. Dist. LEXIS 80520, *3-4 (S.D. Cal. Jun. 6, 2013). “Citations to exhibits must explain
 28 the significance of the cited evidence, and the parties cannot circumvent page limits by simply incorporating by

1 reference other documents, such as attached or lodged exhibits.” *De La Torre v. Legal Recovery Law Office*, 2013
2 U.S. Dist. LEXIS 141719, *7 (S.D. Cal. Sep. 30, 2013). “[I]t is not the Court’s role to read exhibits and use the
3 information it finds there to create arguments for parties.” *Id.* “[A]rguments must be raised in the brief itself, not
4 in exhibits. The Court is not required to read exhibits and infer arguments from them.” *Id.* (emphasis added).

5 “Whether the evidence is attached or not, Rule 56(e) requires that the adverse party’s ‘response,’ not just the
6 adverse party’s various other papers, ‘set forth specific facts’ establishing a genuine issue.” *Carmen v. S.F. Unified*
7 *Sch. Dist.*, 237 F.3d 1026, 1031 (9th Cir. 2001). “The gist of a summary judgment motion is to require the adverse
8 party to show that it has a claim or defense, and has evidence sufficient to allow a jury to find in its favor on that
9 claim or defense. **The opposition sets it out**, and then the movant has a fair chance in its reply papers to show why
10 the respondent’s evidence fails to establish a genuine issue of material fact.” *Id.* (emphasis added); *Desilva v.*
11 *DiLeonardi*, 181 F.3d 865, 867 (7th Cir. 1999) (“A brief must make all arguments accessible to the judges, rather
12 than ask them to play archaeologist with the record.”); *Golden Gate v. Ross*, 2018 U.S. Dist. LEXIS 105041, *3-4,
13 n.1 (E.D. Cal. Jun. 22, 2018) (chastising both parties for “incorporat[ing] by reference large amounts of argument
14 and explanation contained within lengthy declarations, meaning that in every practical sense both sides exceeded by
15 large margins the page limits imposed by this Court’s standing order. While **reference to declarations is** of course
16 necessary in many instances, they are **meant to support, not supplant, briefs**”) (emphasis added).

17 Plaintiff’s objections are similarly improper. Plaintiff summarily asserts that 28 paragraphs spanning 4
18 declarations are objectionable because they allegedly contain one or more of the following objections: “inadmissible
19 conclusion, the witness lacks personal knowledge of the facts stated, and the statements and exhibits constitute
20 inadmissible hearsay.” (Opp. at 25.) Sachs has no idea which challenged paragraph is objectionable on which
21 ground or the reasoning behind any of the objections. It is completely unreasonable to expect Sachs to fashion any
22 response to and the Court to evaluate this hurried, indiscriminate, and haphazard approach to raising objections.

23 **IV. CONCLUSION**

24 For the foregoing reasons, Sachs’ motion should be granted.

25 Dated: September 5, 2018

FORD & HARRISON LLP

26 By: /s/ Daniel B. Chammas

27 Attorneys for Defendant SACHS ELECTRIC
28 COMPANY, INC.

PROOF OF SERVICE

I, **CAROLINA MARTIS**, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 350 South Grand Avenue, Suite 2300, Los Angeles, California 90071.

On **September 5, 2018**, I served a copy of the following document(s) described as **DEFENDANT SACHS ELECTRIC COMPANY'S REPLY BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT** on the interested parties in this action as follows:

- BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- ELECTRONICALLY:** I caused a true and correct copy thereof to be electronically filed using the Court's Electronic Court Filing ("ECF") System and service was completed by electronic means by transmittal of a Notice of Electronic Filing on the registered participants of the ECF System.

SEE ATTACHED SERVICE LIST

- STATE:** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- FEDERAL:** I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on **September 5, 2018**, at Los Angeles, California.



CAROLINA MARTIS

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6 Attorneys for Defendant,
7 CSI Electrical Contractors, Inc.

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10
11 George Huerta, an individual on behalf of
12 himself and all others similarly situated and
as a representative plaintiff,

13 Plaintiff,

14 v.

15 First Solar, Inc., a Delaware corporation;
16 California Flats Solar, LLC, a Delaware
Limited Liability Company; CA Flats Solar
17 130, LLC, a Delaware Limited Liability
Company; CA Flats Solar 150, LLC, a
18 Delaware Limited Liability Company; Cal
Flats Solar CEI, LLC, a Delaware Limited
19 Liability Company; Cal Flats Solar Holdco,
LLC, a Delaware Limited Liability
20 Company; CSI Electrical Contractors, Inc.;
Milco National Constructors, Inc.;
21 California Compaction Corporation; and
Does 1 through 10,

22 Defendants.
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Case No.: 5:18-cv-06761-BLF

**DEFENDANT CSI ELECTRICAL
CONTRACTORS' NOTICE OF MOTION
AND SECOND MOTION FOR PARTIAL
SUMMARY JUDGMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: November 18, 2021
Time: 9:00 a.m.
Ctrm: 3

State Complaint Filed: July 30, 2018
State First Amended
Complaint Filed: October 1, 2018
Removal Filed: November 7, 2018

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on November 18, 2021, at 9:00 a.m., or as soon
3 thereafter as the matter may be heard, in the Courtroom of the Honorable Beth Labson Freeman,
4 located at 280 South First Street, San Jose, California 95113, and pursuant to the leave of Court
5 specifically granted at the case management conference on June 3, 2021, Defendant CSI
6 Electrical Contractors, Inc. (“CSI”) will and does hereby move the Court for an order granting
7 partial summary judgment in favor of CSI and against Plaintiff George Huerta (“Plaintiff”) under
8 rule 56(d) of the Federal Rules of Civil Procedure on the grounds that there is no dispute as to
9 any material fact as to Plaintiff’s claim for unpaid wages under California Wage Order 16,
10 paragraph 5(A), based on the allegation that the first location where Plaintiff’s presence was
11 required by CSI was the Security Gate where the badging occurred.

12 This motion is based upon this notice of motion and motion, the attached memorandum
13 of points and authorities, the declaration of Daniel Chammas, the declaration of Amy Arnold, the
14 pleadings, papers, and documents in the Court’s file in this action and such other and further
15 evidence as may be presented at or before the hearing on this motion.

16 Because trial is set for September 27, 2021, CSI respectfully requests that, in the event
17 that the Court feels a hearing is necessary, the Court advances the hearing to a date before the
18 scheduled trial.

19 Date: June 8, 2021

FORD & HARRISON LLP

20 By: /s/ Daniel B. Chammas

21 Daniel B. Chammas
22 Min K. Kim
23 Attorneys for Defendant,
24 CSI ELECTRIC COMPANY
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1 **I. STATEMENT OF UNDISPUTED FACTS**

2 First Solar Electric, Inc. is the owner of the California Flats Solar Facility located in San
 3 Miguel, California and retained CSI to perform procurement, installation, construction, and
 4 testing services on Phase 2 of the Project. (Declaration of Amy Arnold (“Arnold Decl.”), ¶ 3.)
 5 The Project was located on Jack Ranch, which is private property in San Luis Obispo County.
 6 CSI started its work on the Project on May 7, 2018, and it employed about 528 workers through
 7 June 19, 2019. (*Id.*) CSI also required its subcontractor, Defendant Milco National Constructors
 8 (“Milco”) to assign a few dozen of its workers to assist CSI in its work, and paid Milco on a time
 9 and material basis for such work. (*Id.*) Huerta worked on the Project, first as an employee of
 10 Defendant California Compaction, and then for Milco (Huerta Depo., 31:1-10; 119:17-121:23.)¹
 11 While he worked for Milco, which was subcontracted to perform work for CSI, Huerta was
 12 assigned by Milco to assist and participate in CSI’s work. (*Id.*, 131:2-7.)

13 When he worked for Milco/CSI, in order to access the Project, Huerta needed to pass a
 14 guard shack, which was at the perimeter of the Project (“Project Entrance”). (Arnold Decl., ¶ 3.)
 15 The Project Entrance opened each morning after a biologist cleared the road a little before
 16 sunrise. “[A]t the beginning of the day before the sun would come up, [the biologist] would
 17 come and clear the road for animal activity [to] [m]ake sure it’s safe access for [workers] to enter
 18 the project.” (Backus Depo., 36:14-22.) After the biologist cleared the road, Huerta could pass
 19 the Project Entrance **without stopping** and travel down the road (“Access Road”). (*Id.*, at
 20 36:23-25; 37:20-24.)

21 After traveling for 5.9 miles on the Access Road, Plaintiff was required to stop at a guard
 22 shack and present a badge for an attendant to scan (“Badging Gate”). (Arnold Decl., ¶ 4.) Plaintiff
 23 did not have to leave his vehicle and never even turned his badge over to the attendant. (*Id.*)
 24 Instead, Huerta at all times kept his badge on his person, only presenting it to be scanned. (*Id.*) At
 25 the Badging Gate, two lanes formed so that two lines of cars could be processed simultaneously
 26 by several attendants. (*Id.*) After passing the Badging Gate, Huerta continued traveling down the
 27 Access Road until he reached a parking lot (“Parking Lot”). (*Id.*)

28 ¹ All deposition transcripts are attached to the declaration of Daniel Chammas, filed herewith.

1 **II. THE GRIFFIN ACTION DEFINITELY AND RESOLUTELY FORECLOSES**
 2 **HUERTA’S CLAIMS FOR UNPAID WAGES PURSUANT TO WAGE ORDER 16,**
 3 **PARAGRAPH 5(A), BASED ON THE ALLEGATION THAT FIRST LOCATION**
 4 **WHERE PLAINTIFF’S PRESENCE WAS REQUIRED BY CSI WAS THE**
 5 **SECURITY GATE WHERE THE BADGING OCCURRED**

6 The FAC cites to and quotes from Paragraph 5(A) of Wage Order 16: “[a]ll employer-
 7 mandated travel that occurs after the first location where the employee’s presence is required by
 8 the employer shall be compensated at the employee’s regular rate of pay.” (FAC, at ¶ 29 (quoting
 9 Wage Order 16, ¶ 5(A)).) The FAC goes on to allege that “Defendants required [Huerta] and
 10 other class members to arrive at the Security Gate Entrance controlled by Defendants, to wait in
 11 vehicle lines for Defendants’ biologists to approve the road for travel, then wait in a vehicle line to
 12 have their badges swiped (‘badge in’) by a person or persons employed or controlled by
 13 Defendants.” (*Id.*, at ¶ 30.)

14 In the *Griffin* case, this Court rejected any claim under Paragraph 5(A) of Wage Order 16
 15 that Plaintiff’s presence was first required at the security gate where badging occurred. This Court
 16 held that “[t]he Security Gate was not ‘the first location where Plaintiff’s presence was required’
 17 under Wage Order 16 ¶ 5(A).” *Griffin v. Sachs*, 390 F. Supp. 3d 1070, 1096 (N.D. Cal. 2019).
 18 The Court held that “Plaintiff’s brief stop at the guard shack to enable scanning of his badge was
 19 not a ‘location where the employee’s presence is required’ within the meaning of Wage Order 16
 20 ¶ 5(A).” *Id.*, 1096-97. The Court reasoned that “simply [holding] up [a] badge[] for scanning by
 21 the person(s) manning the guard shack...is no different than that of any employee who enters a
 22 work campus or premises that requires scanning an employee badge to gain access.” *Id.*, at 1097.
 23 “Plaintiff drove his own vehicle, did not exit his vehicle, and simply presented his badge for
 24 scanning. It is simply illogical that merely scanning a badge to gain access triggers the right to
 25 compensation under Wage Order 16. If so, a massive swath of squarely non-compensable walking
 26 or commute time from the first ‘badge’ checkpoint of a given work location would be covered by
 27 paragraph 5(A).” *Id.* This Court concluded that “**as a matter of law**, Plaintiff’s pass through the
 28 Security Gate was not ‘the first location where Plaintiff’s presence was required’ and that Plaintiff
 is not entitled to compensation for his travel time on the Access Road under Wage Order 16 ¶

1 5(A).” *Id.* (emphasis added). On appeal, the Ninth Circuit unanimously affirmed this ruling. *See*
2 *Griffin v. Sachs Elec. Co.*, 2020 U.S. App. LEXIS 38840, *3-4 (9th Cir. Dec. 11, 2020) (“the
3 security gate was not the first location where employees’ presence is required under the meaning
4 of paragraph 5(a) of Wage Order 16-2001”).

5 Huerta worked on the same Project as Griffin. Just as in *Griffin*, the security gate was not
6 the location where Huerta’s presence was required. Like Griffin, Huerta did no more than flash a
7 badge to a security attendant for scanning before driving past the guard shack without ever
8 leaving his vehicle. Therefore, the claim in this case under Paragraph 5(A) to compensate Huerta
9 based on the allegation that the security gate where he badged in was the first location where his
10 presence was required should be summarily adjudicated in CSI’s favor.

11 **III. CONCLUSION**

12 For the foregoing reasons, the motion for partial summary judgment should be granted.

13 Date: June 8, 2021

FORD & HARRISON LLP

14

15

By: /s/ Daniel B. Chammas

16

Daniel B. Chammas

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Min K. Kim

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Attorneys for Defendant,

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CSI ELECTRIC COMPANY

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PROOF OF SERVICE

I, Lillian Marquez, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 350 South Grand Avenue, Suite 2300, Los Angeles, California 90071.

On **June 8, 2021**, I served a copy of the following document(s) described below on the interested parties in this action as follows:

DEFENDANT CSI ELECTRICAL CONTRACTORS' NOTICE OF MOTION AND SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

BY U.S. MAIL: By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

ELECTRONICALLY: I caused a true and correct copy thereof to be electronically filed using the Court's Electronic Court Filing ("ECF") System and service was completed by electronic means by transmittal of a Notice of Electronic Filing on the registered participants of the ECF System.

SEE ATTACHED SERVICE LIST

FEDERAL: I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on **June 8, 2021**, at Los Angeles, California.



Lillian Marquez

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SERVICE LIST

<p>Lonnie Clifford Blanchard, III The Blanchard Law Group, APC 5211 East Washington Blvd., No. 2262 Commerce, CA 90040 Tel.: (213) 599-8255 Fax: (213) 402-3949 Email: lonnieblanchard@gmail.com</p>	<p>Attorneys for Plaintiff, George Huerta</p>
<p>Peter Roald Dion-Kindem The Dion-Kindem Law Firm Peter R. Dion-Kindem, P.C. 2945 Townsgate Road, Suite 200 Westlake Village, CA 91361 Tel.: (818) 883-4900 Fax: (818) 338-2533 Email: peter@dion-kindemlaw.com</p>	<p>Attorneys for Plaintiff, George Huerta</p>
<p>James A. Bowles Hill Farrer & Burrill LLP One California Plaza 300 S. Grand Avenue, 37th Floor Los Angeles, CA 90071 Tel.: (213) 621-0812 Fax: (213) 624-4840 Email: jbowles@hillfarrer.com</p>	<p>Attorneys for Defendant, Milco National Construction, Inc.</p>
<p>Daphne Mary Anneet Burke, Williams Sorensen, LLP 444 S. Flower Street Suite 2400 Los Angeles, CA 90071 Tel.: (213) 236-0600 Fax: (213) 236-2700 Email: dnneet@bwslaw.com</p>	<p>Attorneys for Plaintiff, California Compaction Corporation</p>

1 Daniel B. Chammas (SBN 204825)
Min K. Kim (SBN 305884)
2 FORD & HARRISON LLP
350 S. Grand Avenue, Suite 2300
3 Los Angeles, CA 90071
Telephone: (213) 237-2400
4 Facsimile: (213) 237-2401
Email: dchammas@fordharrison.com
5 mkim@fordharrison.com

6 Attorneys for Defendant,
CSI Electrical Contractors, Inc.
7

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10

11 George Huerta, an individual on behalf of
12 himself and all others similarly situated and
as a representative plaintiff,

13 Plaintiff,

14 v.

15 First Solar, Inc., a Delaware corporation;
16 California Flats Solar, LLC, a Delaware
Limited Liability Company; CA Flats Solar
130, LLC, a Delaware Limited Liability
17 Company; CA Flats Solar 150, LLC, a
Delaware Limited Liability Company; Cal
18 Flats Solar CEI, LLC, a Delaware Limited
Liability Company; Cal Flats Solar Holdco,
19 LLC, a Delaware Limited Liability
Company; CSI Electrical Contractors, Inc.;
20 Milco National Constructors, Inc.;
California Compaction Corporation; and
21 Does 1 through 10,

22 Defendants.
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Case No.: 5:18-cv-06761-BLF
Assigned to Hon. Beth Labson Freeman

**DECLARATION OF DANIEL B.
CHAMMAS IN SUPPORT OF
DEFENDANT CSI ELECTRICAL
CONTRACTORS, INC.'S SECOND
MOTION FOR PARTIAL SUMMARY
JUDGEMENT**

Date: November 18, 2021
Time: 9:00 a.m.
Ctrm: 3

State Complaint Filed: July 30, 2018
State First Amended
Complaint Filed: October 1, 2018
Removal Filed: November 7, 2018

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DECLARATION OF DANIEL B. CHAMMAS

I, Daniel B. Chammas, declare as follows:

1. I am an attorney at law licensed to practice in the State of California and before this Court, and am a Partner with the law firm of Ford & Harrison, LLP, attorneys of record for defendant CSI Electrical Contractors, Inc. (“CSI”). I am providing this declaration in support of CSI’s Second Motion for Partial Summary Judgment. I have personal knowledge of each of the matters set forth below and, if called as a witness could and would testify competently to each of them under oath.

2. Attached as **Exhibit A** hereto is a true and correct copy of the relevant portions of the deposition transcript of Plaintiff George Huerta whom I deposed in this matter on August 27, 2020.

3. Attached as **Exhibit B** hereto is a true and correct copy of the relevant portions of the deposition transcript of Richard James Backus, a construction manager at First Solar, Inc., whom Plaintiff’s counsel deposed in this matter on October 24, 2019.

I declare under penalty of perjury under the laws of the state of California and the United States of America that the foregoing is true and correct. Executed this 8th day of June 2021, at Los Angeles, California.

/s/ Daniel B. Chammas
DANIEL B. CHAMMAS

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

George Huerta, an individual
on behalf of himself and all
others similarly situated and
as a representative plaintiff,

Plaintiff,

vs.

CASE NO. 5:18-cv-06761-BLF

First Solar, Inc., a Delaware
corporation; California Flats
Solar, LLC, a Delaware Limited
Liability Company; CA Flats
Solar 130, LLC, a Delaware
Limited Liability Company CA
Flats Solar 150, LLC, a
Delaware Limited Liability
Company; Cal Flats Solar CEI,
LLC, a Delaware Limited
Liability Company; Cal Flats
Solar Holdco, LLC, a Delaware
Limited Liability Company;
CSI Electrical Contractors,
Inc.; Milco National
Constructors, Inc.; California
Compaction Corporation and Does
1 through 10,

Defendants.

VIDEOTAPED DEPOSITION OF GEORGE HUERTA

APPEARING REMOTELY FROM FRESNO COUNTY, CALIFORNIA

August 27, 2020

10:10 a.m.

REPORTED STENOGRAPHICALLY BY:

Deborah L. Heskett, CSR No. 11797

APPEARING REMOTELY FROM LOS ANGELES COUNTY

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REMOTE APPEARANCES:

For Plaintiff:

THE BLANCHARD LAW GROUP, APC
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5211 East Washington Boulevard, Number 2262
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213.599.8255
lonnieblanchard@gmail.com

For CSI Electrical Contractors, Inc.:

FORD & HARRISON LLP
DANIEL B. CHAMMAS
350 South Grand Avenue, Suite 2300
Los Angeles, California 90071
213.237.2400
dchammas@fordharrison.com

Also Present:

STAN BEVERLY, VIDEOGRAPHER

DULCE GONZALEZ

ARTHUR DRAPER

1 Q So on the phone did they mention anything
2 about what the work would be or who it would be for,
3 or just there's work and do you want to do it? Is
4 that kind of what they said?

5 A I asked who the company was and what the
6 project was.

7 Q And what did they say, the union person who
8 called you?

9 A They told me it was for California
10 Compaction and it was in Phase II.

11 Q Okay. How did you respond on the phone?
12 Did you say yes? Did you say I'll think about it?
13 What did you say?

14 A I told them yes.

15 Q And then what did they say once you said
16 yes? We'll send you over the order, or what did
17 they say?

18 A They told me to pick up my order in Fresno.

19 Q So you had traveled somewhere to pick up an
20 order; is that correct?

21 A Yes, from Laton to Fresno.

22 Q And in Fresno did you go to the union shop
23 or hall, or where did you go to pick up the order?

24 A At the union hall.

25 Q And what did the order say? Did it say,

1 A Okay. I'm -- I'm not really good at math,
2 but --

3 Q Okay. But -- so let's just -- I'm
4 wondering, the break was 30 minutes -- the lunch
5 break was 30 minutes; correct?

6 A That's correct.

7 Q So are you saying that you should have been
8 paid eight and a half hours a day just based off
9 start time and end time?

10 A Yes.

11 Q And do you know if you were? because that's
12 a half hour of overtime every day.

13 A No, I was not paid.

14 Q But you believe that you should have been
15 paid for that half hour of overtime; correct?

16 A That is correct.

17 Q All right. So then eventually you -- you
18 went to -- how did you start -- how did you hear
19 about Milco?

20 A I knew that they were there, and it just so
21 happened that one day my supervisor told me that --
22 he would call me, let me know about the workday, the
23 next workday. I waited for a phone call. I did not
24 receive a phone call. I called him. He never
25 responded, so I called my dispatcher, my union

1 dispatcher, let that person know that, Hey, I wanted
2 to move on, and that's when I was told about Milco.

3 Q So you said you wanted to move on?

4 A I wanted to move on, yes.

5 Q Why?

6 A If he wasn't going to respond -- if my
7 supervisor wasn't going to respond to my text or my
8 phone call, I thought, Okay, it's terminated; my job
9 is terminated.

10 Q What was the supervisor's name?

11 A Derek.

12 Q That's the foreman we were talking about?

13 A That's correct.

14 Q And so -- and so did you want to move on to
15 Milco? I'm still not -- was there an opportunity
16 that you were made aware of at Milco?

17 A No. I just -- I just inquired about it.

18 Q Because were some people from your union
19 assigned to work at Milco -- work for Milco?

20 A That's correct.

21 Q And you knew about that while you were
22 working for California Compaction; correct?

23 A That's correct.

24 Q And so did you think, well, maybe you could
25 also join Milco and work for them; is that right?

1 A That is correct.

2 Q And so is the reason you asked to work for
3 Milco because your supervisor at California
4 Compaction didn't call you back?

5 A Yes, that's correct.

6 Q All right. And then did your union say,
7 sure, we can accommodate that?

8 A Yes.

9 Q And so what did they -- did they -- is this
10 on the phone, or did you have to go there in person?

11 A To?

12 Q This is your union. Did you do this on the
13 phone with your union, make the request, e-mail, or
14 did you call, or did you show up in person when you
15 were trying to get this opportunity at Milco?

16 A For that -- for that work area, that --
17 that job, the dispatch came out of Santa Clara.
18 They told me that they would send the dispatch to
19 Fresno and that I could pick up the dispatch there
20 in Fresno.

21 Q And the dispatch is the order for you to go
22 to Milco?

23 A That is correct.

24 Q Okay. And so did they tell you the kind of
25 work you'd be doing for Milco?

1 Milco to California Compaction and CSI.

2 Q Okay. Well, we will get to CSI in a
3 minute, but -- so after you did your orientation on
4 the first day at Milco, what did you do?

5 A I was told that I would be working for CSI.

6 Q On the first day you were told that?

7 A That's correct.

8 Q So what did they say about that? Just
9 like, FYI, or did they say you had to do something,
10 or what did that mean to you?

11 A It meant to me that I was subcontracted out
12 to CSI.

13 Q And, again, that was on your first day;
14 correct?

15 A That's correct.

16 Q And who told you that in particular? Do
17 you know?

18 A The person that was giving me the
19 orientation.

20 Q Do you know that person's name?

21 A I don't recall.

22 Q But it was a Milco person; right?

23 A That's correct.

24 Q So -- so then what happened after they told
25 you that, that you're working for CSI, what happened

George Huerta
August 27, 2020

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DECLARATION UNDER PENALTY OF PERJURY

I, GEORGE HUERTA, do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on August 27, 2020; that I have made such corrections as appear noted on the Deposition Errata Page, attached hereto, signed by me; that my testimony as contained herein, as corrected, is true and correct.

Dated this 29 day of September, 2020,
at Laton, California.



GEORGE HUERTA

George Huerta
August 27, 2020

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DEPOSITION ERRATA SHEET

Page No. 35 Line No. 9

Change: Add: We were instructed to arrive earlier than the start time and to plan accordingly so
the drive in would not interfere with the start time.
Reason for change: _____

Page No. 36 Line No. 20

Change: Add: We were instructed to arrive earlier than the start time and to plan accordingly so
the drive in would not interfere with the start time, so I had to give myself enough time to arrive on time.
Reason for change: _____

Page No. 39 Line No. 2

Change: Add: I was told to wait in line until the security guards let cars in and to get a visitors
badge to enter.
Reason for change: _____

Page No. 39 Line No. 22

Change: Add: I was told to wait in line until the security guards let cars in and to get a visitors badge
to enter, I could not enter until the security guards opened the gate and scanned my visitors badge.
Reason for change: _____

Page No. 40 Line No. 17

Change: Add: I was also told to wait in line until the security guards opened the gate, after the road
was cleared they would scan my visitors badge and then I could enter.
Reason for change: _____

Page No. 40 Line No. 22

Change: Replace: "2:20" with "5:20"
Reason for change: _____

Page No. 41 Line No. 8

Change: Add: I was also told to wait in line until the security guards opened the gate
and they scanned my visitors badge.
Reason for change: _____


George Huerta

September 29, 2020
Dated

Letter to Deposition Office/ Errata Sheet

Case: George Huerta vs. First Solar, Inc., et al.,

Deposition of George Huerta

Date of Deposition: August 27, 2020

The following are the additional corrections, which I have made to my transcript:

Page #	Line #	Correction	Reason
48	19	Add: I also followed the signs and rules posted on the road.	
50	2	Add: The drive from the Phase 1 security gate to the parking lot can take longer if there were a lot of other employees on the road.	
50	5	Add: But there were other rules and signs posted.	
50	17	Add: Usually it took longer from the first security gate to the parking lot because of the rules of the road and the conditions of the road.	
51	10	Add: Sometimes more if there were a lot of people on the road at the same time, or if environmentalists changed the kit fox zones or if there was cattle on the road.	
52	13	Add: Sometimes more if there were a lot of people on the road at the same time, or if environmentalists changed the kit fox zones or if there was cattle on the road.	
53	25	Add: 15 minutes if there was no one on the road, and if it was cleared of animals and kit fox zones.	
56	19	Add: We were instructed to follow all the rules of the road verbally shared with us and the signs posted on the road, we had to watch the speed limit and see if new signs were posted.	
62	11	Add: Not often and not for California Compaction	
64	25	Add: Usually a supervisor or foreman would instruct us when to break for lunch.	
67	14	Add: Our supervisors told us we could only have lunch at the assigned work or break areas.	
71	12	Add: Even if possible, we were not allowed to leave back to the parking lot until our shift had ended.	
71	23	Add: We were not allowed to leave to the parking lot until our shift had ended.	
75	9	Add: We drove to the security gate and followed the rules of the road, at the gate the security guards	

		would scan our badges and then follow the road out of the site.	
77	7	Add: We were instructed to arrive earlier than the start time and to plan accordingly so the drive in would not interfere with the start time, so I had to give myself enough time to arrive on time.	
77	17	Add: We were instructed to arrive earlier than the start time and to plan accordingly so the drive in would not interfere with the start time. Supervisors said to come in early or with enough time not to be late.	
78	15	Add: We were instructed to arrive earlier than the start time and to plan accordingly so the drive in would not interfere with the start time. Supervisors said to come in early or with enough time not to be late.	
79	20	Add: We were instructed to arrive earlier than the start time and to plan accordingly so the drive in would not interfere with the start time. Supervisors said to come in early or with enough time not to be late.	
80	22	Add: However, the guards would wait for the sunrise and they kept gate closed until the road had been cleared by biologist, this could change the time they allowed cars to come in.	
82	7	Add: We were instructed to arrive earlier than the start time and to plan accordingly so the drive in would not interfere with the start time. Supervisors said to come in early or with enough time not to be late.	
83	22	Add: We were instructed to arrive earlier than the start time and to plan accordingly so the drive in would not interfere with the start time. Supervisors said to come in early or with enough time not to be late.	
87	25	Add: We were instructed to arrive earlier than the start time and to plan accordingly so the drive in would not interfere with the start time. Supervisors said to come in early or with enough time not to be late.	
88	18	Add: We were instructed to arrive earlier than the start time and to plan accordingly so the drive in would not interfere with the start time. Supervisors said to come in early or with enough time not to be late.	
88	25	Add: These are all things we considered when	

		calculating our arrival time.	
98	7	Add: A supervisor or foreman would tell us it was time for lunch.	
99	12	Add: If we were given permission by our supervisor, we would board the buggy and go to the shade structure.	
100	6	Add: We only had a 30-minute lunch break, so we made sure we were back at our equipment on time.	
101	5	Add: We were also told at company meetings and by supervisors.	
101	23	Add: We were also verbally told by supervisors.	
103	8	Add: I was told verbally in meetings and by the supervisors.	
106	20	Add: If we were given permission to use the buggy then we would be allowed to use it to go to the shade structure.	
109	1	Add: We could only have lunch in our work area or assigned shade structure if it wasn't too far, we would get permission to use the buggy and ride together to have lunch.	
110	16	Add: If we had permission to use the buggy then we can drive it to a shade structure.	
110	25	Add: If you asked for permission. The same buggy was used to multiple employees so the foreman would have to approve.	
113	8	Add: I would have to ask the foreman or a supervisor to use the buggy or inform a co-worker so that my use of the buggy did not interfere with the rest of the crew returning to work.	
113	19	Add: If you asked a foreman or supervisor for permission.	
115	21	Add: After our scheduled stop times.	
121	17	Replace: "Santa Clara" with "Morgan Hill"	
126	25	Add: We were told that the same rules applied to all the companies on the project.	
135	4	Add: I was told that the same rules applied for all the companies on the project.	
146	3	Add: I was told that the same rules applied for all companies.	
147	9	Add: They also told us this in meetings and by supervisors.	
148	23	Add: We were told we could not use the buggies without permission.	
149	1	Add: Most likely after getting permission to do so.	
149	22	Add: We were told we could not use the buggy without permission.	

150	11	Add: If you had permission to do so.	
152	12	Add: We were told at meetings and by supervisors to have our lunch at our assigned lunch or work areas.	
153	13	Add: and were I had permission to be at, so I would not get in trouble.	
154	23	Add: We were told that the company's rule was for employees to eat at their assigned work or lunch area, either a shaded structure or next to your equipment.	
161	21	Add: We were only given a 30-minute lunch break, so we tried to arrive back to our tools before the end of our meal break.	
167	9	Add: I would drive down to the security gate, follow the rules of the road and badge out. I would follow these rules until I was on the main highway.	
169	1	Add: We were instructed to arrive earlier than the start time and to plan accordingly so the drive in would not interfere with the start time. Supervisors said to come in early or with enough time not to be late.	
171	3	Add: They just said with enough time in advance to be there, after signing in, promptly at 7:00 am and that we knew how much time it could take to enter the site.	
185	6	Add: Mostly a supervisor or foreman would tell us when to go on lunch.	
185	14	Add: If we were given permission to use the buggy.	
186	25	Add: Depending on when lunch started is when we would end our lunch, we only took 30-minute meal break.	
187	11	Add: I was also told in meetings and by supervisors.	
215	15	Add: They were also working with me since I was subcontracted to CSI.	

Please sign your name and date it on the below line. As needed, use additional paper to note corrections, dating and signing each page. If you have no corrections, please write the word "None: above and sign, date, and return this page.

Executed this 29th day of September 2020.


George Huerta

1 STATE OF CALIFORNIA)
2) ss
3 COUNTY OF LOS ANGELES)
4

5 I, Deborah L. Heskett, a Certified
6 Shorthand Reporter duly licensed and qualified in
7 and for the State of California, do hereby certify
8 that there came before me remotely on the 27th day
9 of August 2020, the following named person, to-wit:
10 George Huerta, who was duly sworn to testify the
11 truth, the whole truth, and nothing but the truth of
12 knowledge touching and concerning the matters in
13 controversy in this cause; and that he was thereupon
14 examined under oath and his examination reduced to
15 typewriting under my supervision; that the
16 deposition is a true record of the testimony given
17 by the witness.

18 I further certify that pursuant to FRCP
19 Rule 30(e)(1) that the signature of the deponent:

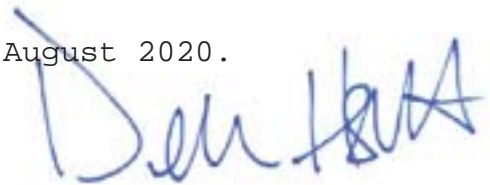
20 X was requested by the deponent or a
21 party before the completion of the deposition;

22 was not requested by the deponent
23 or a party before the completion of the deposition.
24

25 I further certify that I am neither

1 attorney or counsel for, nor related to or employed
2 by any of the parties to the action in which this
3 deposition is taken, and further that I am not a
4 relative or employee of any attorney or counsel
5 employed by the parties hereto, or financially
6 interested in the action.

7 CERTIFIED TO BY ME on this 30th day of
8 August 2020.



9
10 _____
11 DEBORAH L. HESKETT
12 CSR No. 11797

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EXHIBIT B

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
George Huerta, an individual, on
behalf of himself and all others
similarly situated and as a
representative plaintiff,
No. 5:18-CV-06761-BLF
Plaintiff,
vs.
First Solar, Inc., a Delaware
corporation; California Flats
Solar, LLC, a Delaware Limited
Liability Company; CA Flats
Solar 130, LLC, a Delaware
Limited Liability Company; CA
Flats Solar 150, LLC, a Delaware
Limited Liability Company; Cal
Flats Solar CEI, LLC, a Delaware
Limited Liability Company; Cal
Flats Solar Holdco, LLC, a
Delaware Limited Liability
Company; CSI Electrical
Contractors, Inc.; Milco
National Constructors, Inc.;
California Compaction
Corporation; and Does 1 through
10,
Defendants.

_____ /

DEPOSITION OF RICHARD JAMES BACKUS
San Francisco, California
Thursday, October 24, 2019

REPORTED BY:
LESLIE ROCKWOOD ROSAS, RPR, CSR 3462
Job No. 3524846

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

George Huerta, an individual, on
behalf of himself and all others
similarly situated and as a
representative plaintiff,

No. 5:18-CV-06761-BLF

Plaintiff,

vs.

First Solar, Inc., a Delaware
corporation; California Flats
Solar, LLC, a Delaware Limited
Liability Company; CA Flats
Solar 130, LLC, a Delaware
Limited Liability Company; CA
Flats Solar 150, LLC, a Delaware
Limited Liability Company; Cal
Flats Solar CEI, LLC, a Delaware
Limited Liability Company; Cal
Flats Solar Holdco, LLC, a
Delaware Limited Liability
Company; CSI Electrical
Contractors, Inc.; Milco
National Constructors, Inc.;
California Compaction
Corporation; and Does 1 through
10.

_____ /

Deposition of RICHARD JAMES BACKUS, taken on behalf
of the Plaintiff, at the offices of Jackson Lewis P.C.,
50 California Street, 9th Floor, San Francisco,
California, beginning at 9:56 A.M. and ending at 11:18
A.M., on Thursday, October 24, 2019, before Leslie
Rockwood Rosas, RPR, CSR No. 3462.

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APPEARANCES:

FOR THE PLAINTIFF GEORGE HUERTA:

THE DION-KINDEM LAW FIRM
BY: PETER R. DION-KINDEM, ESQ.
2945 Townsgate Road, Suite 200
Westlake Village, California 91361
(818) 883-4900
peter@dion-kindemlaw.com

FOR THE DEFENDANTS FIRST SOLAR, INC., CALIFORNIA FLATS
SOLAR, LLC, CA FLATS SOLAR 130, LLC, CA FLATS SOLAR 150,
CAL FLATS SOLAR CEI, LLC, CAL FLATS SOLAR HOLDCO, LLC,
CSI ELECTRICAL CONTRACTORS, INC., AND MILCO NATIONAL
CONSTRUCTORS, INC. AND THE WITNESS:

JACKSON LEWIS P.C.
BY: SHANNON BETTIS NAKABAYASHI, ESQ.
50 California Street, 9th Floor
San Francisco, California 94111-4615
(415) 394-9400
shannon.nakabayashi@jacksonlewis.com

1 APPEARANCES (Continued):

2

3 FOR THE DEFENDANTS FIRST SOLAR, INC., CALIFORNIA FLATS
4 SOLAR, LLC, CA FLATS SOLAR 130, LLC, CA FLATS SOLAR 150,
5 CAL FLATS SOLAR CEI, LLC, CAL FLATS SOLAR HOLDCO, LLC,
6 CSI ELECTRICAL CONTRACTORS, INC., AND MILCO NATIONAL
7 CONSTRUCTORS, INC.:

8 PACIFIC EMPLOYMENT LAW

9 BY: NOAH LEVIN, ESQ.

10 260 California Street, Suite 500

11 San Francisco, California 94111

12 (415) 985-7300

13 noah@pacificemploymentlaw.com

14

15 FOR THE DEFENDANT CALIFORNIA COMPACTION CORPORATION:

16 GIPSON HOFFMAN & PANCIONE

17 BY: WON M. PARK, ESQ.

18 1901 Avenue of the Stars, 11th Floor

19 Los Angeles, California 90067

20 (310) 569-3487

21 wpark@ghplaw.com

22

23 Also Present:

24 Kevin Mifflin, California Compaction Corporation

25

1 A. Probably.

2 Q. Okay.

3 A. Probably.

4 Q. That was --

5 A. I think Althouse is one word -- 10:41:35

6 Q. Okay.

7 A. -- I think.

8 MR. LEVIN: Yes. I googled it.

9 Q. BY MR. DION-KINDEM: That was the biological
10 subcontractors -- 10:41:48

11 A. They did all -- yeah.

12 Q. -- of First Solar?

13 A. The biologist was subcontractor to us, yes.

14 Q. And when you say they had to clear the road or
15 clear for people to go on the road, what do you mean by 10:41:57
16 that?

17 A. So typically, at the beginning of the day before
18 the sun would come up they would come and clear the road
19 for animal activity. Mostly, I think, looking for the
20 San Joaquin Kit Fox and identify any new dens or -- if 10:42:15
21 any, or just make sure wildlife is clear on the road.
22 Make sure it's safe access for us to enter the project.

23 Q. And then they would say, "Okay. You can -- you
24 can go now"?

25 A. Yes, sir. 10:42:32

1 Q. Okay.

2 A. Or we would follow -- follow with them, you
3 know.

4 Q. What do you mean by that?

5 A. I never really participated in that, because it 10:42:35
6 was too early for me, and I didn't want to drive ten
7 miles an hour when they were doing that, but some of the
8 supervision wanted to get there early, and -- I forgot
9 where I was going with that. What was the question?

10 Q. I think it was describing the process by which 10:42:55
11 you followed them.

12 A. Yes. So they were just making sure the road was
13 clear from any animals or mostly San Joaquin Kit Foxes.

14 Q. And would the cars then, sort of, be caravaning
15 behind them? 10:43:11

16 A. Yes, sir.

17 Q. As they were clearing it?

18 A. Yes, sir.

19 Q. I see.

20 And you said something about ten miles an hour. 10:43:15
21 That's how fast they were going?

22 A. If -- between sun- -- sundown to sunrise we
23 could only do 10 miles an hour. Other than that, it
24 was 20.

25 Q. From sunrise to sundown? 10:43:30

1 STATE OF CALIFORNIA) ss:
2 COUNTY OF MARIN)

3
4 I, LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462, do
5 hereby certify:

6 That the foregoing deposition testimony was
7 taken before me at the time and place therein set forth
8 and at which time the witness was administered the oath;

9 That testimony of the witness and all objections
10 made by counsel at the time of the examination were
11 recorded stenographically by me, and were thereafter
12 transcribed under my direction and supervision, and that
13 the foregoing pages contain a full, true and accurate
14 record of all proceedings and testimony to the best of my
15 skill and ability.

16 I further certify that I am neither counsel for
17 any party to said action, nor am I related to any party
18 to said action, nor am I in any way interested in the
19 outcome thereof.

20 IN WITNESS WHEREOF, I have subscribed my name
21 this 7th day of November, 2019.

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LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462

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PROOF OF SERVICE

I, Lillian Marquez, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 350 South Grand Avenue, Suite 2300, Los Angeles, California 90071.

On June 8, 2021, I served a copy of the following document(s) described below on the interested parties in this action, as follows:

DECLARATION OF DANIEL B. CHAMMAS IN SUPPORT OF DEFENDANT CSI ELECTRICAL CONTRACTORS, INC.'S SECOND MOTION FOR PARTIAL SUMMARY JUDGEMENT

BY U.S. MAIL: By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth above. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I electronically served the documents on the date shown below to the e-mail addresses of the person listed below. I did not receive within a reasonable time after the transmission any electronic message or other indication that the transmission was unsuccessful.

ELECTRONICALLY: I caused a true and correct copy thereof to be electronically filed using the Court's Electronic Court Filing ("ECF") System and service was completed by electronic means by transmittal of a Notice of Electronic Filing on the registered participants of the ECF System.

FEDERAL: I declare that I am employed in the office of a member of the State Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America and State of California that the above is true and correct.

Executed on June 8, 2021, at Los Angeles, California.



Lillian Marquez

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SERVICE LIST

<p>Lonnie Clifford Blanchard, III The Blanchard Law Group, APC 5211 East Washington Blvd., No. 2262 Commerce, CA 90040 Tel.: (213) 599-8255 Fax: (213) 402-3949 Email: lonnieblanchard@gmail.com</p>	<p>Attorneys for Plaintiff, George Huerta</p>
<p>Peter Roald Dion-Kindem The Dion-Kindem Law Firm Peter R. Dion-Kindem, P.C. 2945 Townsgate Road, Suite 200 Westlake Village, CA 91361 Tel.: (818) 883-4900 Fax: (818) 338-2533 Email: peter@dion-kindemlaw.com</p>	<p>Attorneys for Plaintiff, George Huerta</p>
<p>James A. Bowles Hill Farrer & Burrill LLP One California Plaza 300 S. Grand Avenue, 37th Floor Los Angeles, CA 90071 Tel.: (213) 621-0812 Fax: (213) 624-4840 Email: jbowles@hillfarrer.com</p>	<p>Attorneys for Defendant, Milco National Construction, Inc.</p>
<p>Daphne Mary Anneet Burke, Williams Sorensen, LLP 444 S. Flower Street Suite 2400 Los Angeles, CA 90071 Tel.: (213) 236-0600 Fax: (213) 236-2700 Email: dnneet@bwslaw.com</p>	<p>Attorneys for Plaintiff, California Compaction Corporation</p>

1 Daniel B. Chammas (SBN 204825)
Min K. Kim (SBN 305884)
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350 S. Grand Avenue, Suite 2300
3 Los Angeles, CA 90071
Telephone: (213) 237-2400
4 Facsimile: (213) 237-2401
Email: dchammas@fordharrison.com
5 mkim@fordharrison.com

6 Attorneys for Defendant,
CSI Electrical Contractors, Inc.
7

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10

11 George Huerta, an individual on behalf of
12 himself and all others similarly situated and
as a representative plaintiff,

13 Plaintiff,

14 v.

15 First Solar, Inc., a Delaware corporation;
16 California Flats Solar, LLC, a Delaware
Limited Liability Company; CA Flats Solar
130, LLC, a Delaware Limited Liability
17 Company; CA Flats Solar 150, LLC, a
Delaware Limited Liability Company; Cal
18 Flats Solar CEI, LLC, a Delaware Limited
Liability Company; Cal Flats Solar Holdco,
19 LLC, a Delaware Limited Liability
Company; CSI Electrical Contractors, Inc.;
20 Milco National Constructors, Inc.;
California Compaction Corporation; and
21 Does 1 through 10,

22 Defendants.
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Case No.: 5:18-cv-06761-BLF
Assigned to Hon. Beth Labson Freeman

**DECLARATION OF AMY ARNOLD IN
SUPPORT OF DEFENDANT CSI
ELECTRICAL CONTRACTORS, INC.’S
SECOND MOTION FOR PARTIAL
SUMMARY JUDGEMENT**

Date: November 18, 2021
Time: 9:00 a.m.
Ctrm: 3

State Complaint Filed: July 30, 2018
State First Amended
Complaint Filed: October 1, 2018
Removal Filed: November 7, 2018

DECLARATION OF AMY ARNOLD

I, Amy Arnold, do hereby declare as follows:

1. I am over the age of 18 years. I have personal knowledge of each of the matters set forth below and, if called and sworn as a witness, I could and would testify competently to these facts.

2. I am currently employed as a Project Manager for CSI Electrical Contractors (“CSI”). I was in charge of and managed CSI’s work on the California Flats Solar Project (“Project”), and worked at the Project for its entire length, from May 7, 2018 until June 19, 2019.

3. First Solar Electric, Inc. is the owner of the Project, which is located in San Miguel, California, and retained CSI to perform procurement, installation, construction, and testing services on Phase 2 of the Project. The Project was located on Jack Ranch, which is private property in San Luis Obispo County. CSI started its work on the Project on May 7, 2018, and it employed a total of about 528 workers (“CSI Employees”) through June 19, 2019. CSI also required its subcontractor, Milco National Constructors (“Milco”) to assign a few dozen of its workers, including Plaintiff George Huerta (“Milco Assigned Employees”) (collectively, CSI Employees and Milco Assigned Employees will be referred to herein as “CSI Class Members”), to assist CSI in its work, and paid Milco on a time and material basis for such work. In order to access the Project, CSI Class Members needed to pass a guard shack, which was at the perimeter of the Project (“Project Entrance”).

4. In order to access the Project, CSI Class Members needed to pass a guard shack, which was at the perimeter of the Project (“Project Entrance”). After traveling for 5.9 miles on the Access Road, CSI Class Members were required to stop at a guard shack and present a badge for an attendant to scan (“Badging Gate”). CSI Class Members did not leave their vehicles and never even turned their badges over to the attendant. Instead, CSI Class Members at all times kept their badges on their persons, only presenting them to be scanned. At the Badging Gate, two lanes formed so that two lines of cars could be processed simultaneously by several attendants. After passing the Badging Gate, CSI Class Members continued traveling down the Access Road until they reached a parking lot (“Parking Lot”).

1 5. Because of the location of the Project, the California Department of Fish and
2 Wildlife (“CDFW”) required a permit before work on the Project could begin. The CDFW
3 imposed rules that had to be followed on the Project because of the presence of two endangered
4 species: the San Joaquin Kit Fox and the California Tiger Salamander. Under the California
5 Endangered Species Act, an Incidental Take Permit (“ITP”) needed to be issued because of the
6 effect on the endangered species that the Project was expected to have. A true and correct copy of
7 the ITP permit granted for the Project is attached as **Exhibit A**.

8 6. The ITP required a biologist to monitor work on the Project to “help minimize and fully
9 mitigate or avoid the incidental take of Covered Species, minimizing disturbance of Covered Species’
10 habitat.” (*See*, Exhibit A attached, ITP, § 6.2.) The ITP further required “an education program for all
11 persons employed or otherwise working in the Project Area before performing any work,” which “shall
12 consist of a presentation from the Designated Biologist that includes a discussion of the biology and
13 general behavior of the Covered Species, information about the distribution and habitat needs of the
14 Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA
15 including legal protection, recovery efforts, penalties for violations, and Project-specific protective
16 measures described in this ITP.” (*Id.*, § 6.4.)

17 7. The ITP required the Project to “clearly delineate habitat of the Covered Species within
18 the Project Area with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as
19 necessary to minimize the disturbance of Covered Species’ habitat.” (*Id.*, § 6.12.) The ITP also strictly set
20 out the boundaries of the Project and the visitors’ access to the Project: “Project-related personnel shall
21 access the Project Area using existing routes, or new routes identified in the Project Description and shall
22 not cross Covered Species’ habitat outside of or en route to the Project Area.” (*Id.*, § 6.13.) The ITP also
23 required the restriction of “shall restrict Project-related vehicle traffic to established roads, staging, and
24 parking areas,” and “that vehicle speeds do not exceed 20 miles per hour to avoid Covered Species on or
25 traversing the roads.” (*Id.* [emphasis added].)

26 8. Moreover, at times, small portions of the 12-mile drive to the Project posted speed limits
27 of 5 miles per hour because of the presence of “kit fox” zones.

28 9. In CSI’s contract with First Solar Electric, Inc., it was required to observe all of

1 these rules and make sure its CSI Class Members did as well. A true and correct copy of the
2 construction subcontract by and between First Solar Electric, Inc. and CSI Electrical Contractors,
3 Inc. is attached as **Exhibit B**. CSI agreed that it will “ensure that the wildlife and the
4 burrows/dens/nests of such are not touched by anyone other than the biological Compliance
5 Monitor.” (*Id.*, Exhibit A, §1.2.13.6.4.) Further, CSI agreed that “[i]n certain circumstances Work
6 may be allowed within an Environmentally Sensitive Area (“ESA”) buffer if a Bio Monitor is
7 present. If [CSI] wishes to Work within a buffer, [CSI] shall contact a Lead Bio Monitor who can
8 determine if the buffer may be entered, and if so under what circumstances.” (*Id.*, § 1.2.13.7.1.3.)
9 CSI Class Members were “not allowed access to the [Project] until Site orientation requirements in
10 Exhibit D have been satisfied and all forms therein [were] provided to Contractor.” (*Id.*, §1.2.2.10;
11 Exhibit D.)

12 10. George Huerta was a member of the Operating Engineers Local 3 and was
13 dispatched to the Project by that union. A true and correct copy of the Operating Engineers Local 3
14 Dispatch Form assigning Huerta to the Project is attached as **Exhibit C**.

15 11. George Huerta’s employment on the Project was governed by two collective
16 bargaining agreements: the Operating Engineers Local Union No. 3 of the International Union of
17 Operating Engineers, AFL-CIO’s collective bargaining agreement (“Operating Engineers Master
18 Agreement”) and the Project Labor Agreement specific to the Project (“Cal Flats PLA”)
19 (collectively, “CBAs”).

20 12. A true and correct copy of the Operating Engineers Master Agreement is attached
21 as **Exhibit D**.

22 13. A true and correct copy of the Cal Flats PLA is attached as **Exhibit E**.


23 14. Pursuant to the CBAs, George Huerta received premium pay for all overtime hours
24 worked (*See*, Exhibit D attached, Operating Engineers Master Agreement, § 6.01.01), and earned a
25 regular hourly rate of at least \$22.97 per hour (*id.*, Addendum D, § 03.01.00). George Huerta also
26 received one 30-minute unpaid meal break during his shift. (*See*, Exhibit E attached, Cal Flats PLA,
27 §7.1.)

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I, Amy Arnold, hereby declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on this 3RD day of March, 2021.



AMY ARNOLD

EXHIBIT A



California Department of Fish and Wildlife
Central Region
1234 EAST SHAW AVENUE
FRESNO, CALIFORNIA 93710

California Endangered Species Act
Incidental Take Permit No. 2081-2015-027-04

CALIFORNIA FLATS SOLAR PROJECT

Authority: This California Endangered Species Act (CESA) incidental take permit (ITP) is issued by the California Department of Fish and Wildlife (CDFW) pursuant to Fish and Game Code section 2081, subdivisions (b) and (c), and California Code of Regulations, Title 14, section 783.0 et seq. CESA prohibits the take¹ of any species of wildlife designated by the California Fish and Game Commission as an endangered, threatened, or candidate species.² CDFW may authorize the take of any such species by permit if the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c) are met. (See Cal. Code Regs., tit. 14, § 783.4).

Permittee: California Flats Solar, LLC
Principal Officer: Brian Kunz
Contact Person: Scott Dawson, (949) 394-9175
Mailing Address: 135 Main Street, 6th Floor
San Francisco, California 94105

Effective Date and Expiration Date of this ITP:

This ITP shall be executed in duplicate original form and shall become effective once a duplicate original is acknowledged by signature of the Permittee on the last page of this ITP and returned to CDFW's Habitat Conservation Planning Branch at the address listed in the Notices section of this ITP. Unless renewed by CDFW, this ITP's authorization to take the Covered Species shall expire on **February 10, 2049**.

Notwithstanding the expiration date on the take authorization provided by this ITP, Permittee's obligations pursuant to this ITP do not end until CDFW accepts as complete the Permittee's Final Mitigation Report required by Condition of Approval 7.7 of this ITP.

¹Pursuant to Fish and Game Code section 86, "take' means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." (See also *Environmental Protection Information Center v. California Department of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 507 (for purposes of incidental take permitting under Fish and Game Code section 2081, subdivision (b), "take' ... means to catch, capture or kill"].)

²The definition of an endangered, threatened, and candidate species for purposes of CESA are found in Fish and Game Code sections 2062, 2067, and 2068, respectively.

Project Location:

The California Flats Solar Project (Project) is located north of the intersection of State Route (SR) 41 and SR 46 and northeast of Cholame Valley Road, approximately 25 miles northeast of the City of Paso Robles, in unincorporated Monterey County and San Luis Obispo counties (Figure 1).

Project Description:

The Project includes the construction, operation and maintenance (O&M), and decommissioning of a 280-megawatt (MW) solar power generating facility on approximately 2,367 acres of undeveloped grassland. The Project is comprised of four main components: solar development areas (SDAs), a transmission line corridor, an access road, and a utility corridor (Figure 2). Project activities include grubbing and grading for construction of temporary laydown and staging areas, permanent O&M buildings, substations, switching station, trenching for underground cables and wires, excavation for transmission pole footings and temporary water storage ponds, installation of a temporary above-ground water pipe and water storage tanks, mowing and/or disking and rolling for site preparation, installation of permanent solar modules and overhead transmission lines, construction of new internal roads (including water crossings), improvements to existing access roads (including new/improved water crossings), O&M (excluding O&M activities at the Pacific Gas and Electric Company (PG&E) owned switching station) and decommissioning activities (excluding decommissioning activities at the PG&E switching station), and other activities. Construction activities are anticipated to begin in late summer 2015 and end in December 2016. O&M activities are anticipated to occur from January 2017 to December 2047, with decommissioning activities anticipated to start January 2048 and end February 2049. If the Project is recommissioned, a new ITP or an amendment to this ITP would be required. Project activities include the following:

Construction Period:

- Grubbing and grading for the primary 38-acre construction staging/laydown area, which includes a temporary construction office area. Additional temporary staging/laydown areas will be development within the SDAs, but as construction progresses, these areas will be vacated to allow installation of solar modules.
- The northwest, 4-acre maximum, area will be used throughout the construction phase of the Project, and the southeast, 0.5-acre maximum, area will be used during improvements to SR 41.
- Installation of a temporary, above-ground water pipeline and up to four temporary pumps along the utility corridor (15,840 feet long by 415.25 feet wide). The pipeline will be supported on elevated piles through washes and creeks that are too wide to span unsupported and along upland areas to allow for wildlife movement.

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- Excavation of temporary storage ponds, installation of large, self-contained bladders, or installation of a 1,000-gallon storage tank to hold water for dust suppression purposes during the construction period.
- Surveying and staking or flagging of each area of the Project to be disturbed (Work Area) and resource buffers.
- Site preparation work, including mowing of vegetation, disking and rolling of soil, and grading. It is anticipated that 880,000 cubic yards of soil will be cut and filled within the Project Area.
- Clearing of vegetation and grading for the O&M facility, roads, substations, switching station, and staging/laydown areas. Switching station and roads will be stabilized with gravel, aggregate rock, or geotextile fabric.
- The existing, approximately 5.6-mile, private ranch road (access road) will be widened to a maximum width of 30 feet and resurfaced with aggregate rock. Existing stream crossing will also be improved to accommodate the larger width.
- Installation of temporary construction lighting located at the 38-acre construction laydown area, Project entrance, parking areas, and construction trailer.
- Installation of approximately 3 million solar modules, supported on tables and attached to steel posts that are driven into the ground up to 10 feet below the ground surface or posts requiring to be set in a foundation.
- Trenching for underground wires and cables.
- Construction of a 6-acre switching station (to be owned, operated, and decommissioned by PG&E) and two, 6-acre substations. A chain-link fence will permanently enclose each of these structures. The chain-link fence will be either raised 6-7 inches above the ground or outfitted with plastic slats along its entire length.
- Construction and installation of a new 230-kilovolt transmission line spanning 2.8 miles from the southern substation to the northern substation (transmission line corridor) supported with up to 19 steel monopole or lattice towers.
- Construction of a temporary, approximately 2,000-foot long electrical line supported by up to 10 wooden poles to be used until securing the interconnection to the new switching station.
- Construction of a permanent, approximately 4,000-square-foot O&M building on 5 acres within the 38-acre temporary staging/laydown area and will include a parking area, outdoor storage area and septic system and leach field.
- Construction of SR 41 improvements, including a new northbound left-turn lane, one new southbound right-turn lane, vehicle storage space, lance-taper striping, and lighting.

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- Improvements to existing roadways and stream crossings, including widening and rocking of roads and reconfiguring, modification of existing, and installation of new stream crossings.
- Construction of a new clear-span bridge over Cottonwood Creek.
- Construction of new internal roads to provide access to the solar panels and equipment. New internal roads will be graded up to 30 feet wide and may be graveled. This would also include new, modified, or upgraded stream crossings.
- Construction of an electrical distribution line consisting of wooden poles along a 3-mile-long utility corridor plus a redundant communication line that may be hung on the distribution line poles or buried along the pole alignment.
- Installation of perimeter security fencing consisting of either wire deer fencing with openings graduated from 3-7 inches square and installed inverted with the larger openings at the bottom or chain-link fencing material with the bottom of the fence raised 6-7 inches above the ground for its entire length. Installation of internal fencing consisting of chain-link fencing material with plastic slats installed to the ground for the entire length of the fence.

The following equipment (at least one of each) will be used during the construction period of the Project: forklift; pickup truck; post driver; back hoe; trash compactor; excavator; backhoe loader; grader; scraper; dump truck; crane; aerial lift truck; and cement mixer.

O&M Period:

- Routine inspection and maintenance of mechanical solar parts.
- Replacement of solar parts.
- Washing of solar panels.
- Road maintenance including re-grading, re-rocking, and erosion repair.
- Vegetation management, including mowing, grazing, and potential herbicide use when necessary to treat weed infestations.
- Maintenance and replacement of electrical equipment.

O&M activities associated with the PG&E-owned switching station are excluded from coverage under this ITP.

The following equipment (at least one of each) will be used during the O&M period of the Project: forklift; pickup truck; crane; and aerial lift truck.

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Decommissioning Period:

- Removal and recycling of solar modules.
- Removal and salvaging or recycling of solar components.
- Removal and recycling of underground collection system.
- Removal of access roads, as necessary, and recycling of aggregate rock.
- Disassembling, removal, and reprocessing, selling, salvaging, or otherwise disposing of overhead electrical collection lines, poles, and associated components.
- Removal and repurposing, salvaging, recycling, or otherwise disposing of substation components, transformers, fencing, etc.
- Removal and recycling of the O&M building and concrete foundation. Alternately, the O&M building may be left in place at the landowner’s discretion.
- Grading at road locations or areas where concrete foundations were removed.
- Re-vegetating areas that were disturbed by decommissioning activities or where vegetation has not naturally re-established itself during the O&M phase.

Decommissioning activities associated with the PG&E-owned switching station are excluded from coverage under this ITP.

The following equipment (at least one of each) will be used during the decommissioning period of the Project: forklift; pickup truck; excavator; backhoe loader; grader; scraper; dump truck; crane; aerial lift truck; cement crusher; and trash compactor.

Decommissioning activities will comply with all applicable laws, regulation, technology, and best practices at the time of decommissioning.

Covered Species Subject to Take Authorization Provided by this ITP:

This ITP covers the following species:

Name	CESA Status
1. San Joaquin kit fox (<i>Vulpes macrotis mutica</i>) (SJKF)	Threatened ³
2. California tiger salamander (<i>Ambystoma californiense</i>) (CTS)	Threatened ⁴

These species and only these species are the “Covered Species” for the purposes of this ITP.

³See Cal. Code Regs. tit. 14 § 670.5, subd. (b)(6)(E).

⁴See Cal. Code Regs. tit. 14 § 670.5, subd. (b)(3)(G).

Impacts of the Taking on Covered Species:

Project activities and their resulting impacts are expected to result in the incidental take of individuals of the Covered Species. The activities described above expected to result in incidental take of individuals of the Covered Species include the following: grubbing and grading and construction of temporary laydown and staging areas, permanent O&M buildings, substations, a switching station, and access roads; trenching for underground electrical and communication cables and wires; excavation for transmission pole footings, temporary water storage ponds, and solar modules; installation of a temporary above-ground water pipe; mowing and/or disking and rolling for site preparation; installation of permanent solar modules, fencing, and overhead transmission lines; construction of new access roads (including new water crossings); improvements to existing access roads (including new/improved water crossings); relocation activities related to Covered Species as required by this ITP and salvage of Covered Species habitat (top soil and seed bank removal and replacement); ground-disturbing O&M activities; and decommissioning activities (Covered Activities).

Incidental take of individuals of the Covered Species in the form of mortality ("kill") may occur as a result of Covered Activities such as grubbing, grading, excavating, mowing, disking and rolling; installation of solar modules, transmission line poles, fencing poles, underground cables and wires, above ground wires; construction of O&M buildings, substations, a switching station, new roads, new water crossings, an above ground pipeline; modification of existing roads and existing water crossings; vehicle strikes; and ground-disturbing O&M and decommissioning activities through crushing or entombment of individuals. Incidental take of individuals of the Covered Species may also occur from the Covered Activities in the form of pursue, catch, and capture of the Covered Species from relocation activities required by this ITP. Indirect take may occur during road improvements, new road construction, and temporary pond construction by reducing reproductive success through the disruption of surface flows and reduction of ponding duration in potential CTS breeding ponds. The areas where authorized take of the Covered Species is expected to occur include the 2,536.60-acre Project site that includes the 2,190-acre SDAs, 151.1-acre utility corridor, 135.5-acre transmission line corridor, and 60-acre access road (collectively, the Project Area).

Covered Species Habitat Impacts Acreage

Project Component	Permanent Disturbance	Temporary Disturbance
Inside Project Fence		
Solar farm – includes photovoltaic panel arrays, electrical infrastructure, internal roads and infrastructure, construction trailers, O&M buildings, southern substation, and perimeter array fencing	2,056	123
PG&E Switching Station – includes associated internal fencing	5	1

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Project Component	Permanent Disturbance	Temporary Disturbance
Northern Substation – includes associated internal fencing	3	1
Outside Project Fence		
Access Road – Includes Highway 41 improvements and construction laydown/staging areas	21	12
Generation-tie line (19 line structures) and road	65	10
Utility Corridor	0	56
Electrical collection system (outside perimeter fencing and between arrays)	2	5
Southern 34.5-volt collection system line	2	5
Total	2,154	213

The Project is expected to cause the permanent loss of 2,154 acres of habitat for the Covered Species and temporary loss of 213 acres of habitat for the Covered Species (Figure 2). Impacts of the authorized taking also include adverse impacts to the Covered Species related to temporal losses, increased habitat fragmentation and edge effects, and the Project's incremental contribution to cumulative impacts (indirect impacts). These impacts include: stress resulting from noise, vibrations and capture and relocation; and long-term effects due to increased pollution, displacement from preferred habitat, increased competition for food and space, and increased vulnerability to predation.

Incidental Take Authorization of Covered Species:

This ITP authorizes incidental take of the Covered Species and only the Covered Species. With respect to incidental take of the Covered Species, CDFW authorizes the Permittee, its employees, contractors, and agents to take Covered Species incidentally in carrying out the Covered Activities, subject to the limitations described in this section and the Conditions of Approval identified below. This ITP does not authorize take of Covered Species from activities outside the scope of the Covered Activities, take of Covered Species outside of the Project Area, take of Covered Species resulting from violation of this ITP, or intentional take of Covered Species, except for capture and relocation of Covered Species as authorized by this ITP.

Conditions of Approval:

Unless specified otherwise, the following measures apply to all Covered Activities within the Project Area, including areas used for vehicular ingress and egress, staging and parking, and noise and vibration generating activities that may cause take. CDFW's issuance of this ITP and Permittee's authorization to take the Covered Species are subject to Permittee's compliance with and implementation of the following Conditions of Approval:

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1. **Legal Compliance:** Permittee shall comply with all applicable federal, state, and local laws in existence on the effective date of this ITP or adopted thereafter.
2. **CEQA Compliance:** Permittee shall implement and adhere to the mitigation measures related to the Covered Species in the Biological Resources section of the Environmental Impact Report (EIR) (SCH No.: 2013041031) certified by Monterey County on February 10, 2015 as lead agency for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).
3. **LSA Agreement Compliance:** Permittee shall implement and adhere to the mitigation measures and conditions related to the Covered Species in the Lake and Streambed Alteration Agreement (LSAA) (Notification No.: 1600-2015-0041-R4, as amended) for the Project that will be executed by CDFW pursuant to Fish and Game Code section 1600 et seq.
4. **ESA Compliance:** Permittee shall implement and adhere to the terms and conditions related to the Covered Species in any subsequent Biological Opinion prepared for the Project pursuant to the Federal Endangered Species Act (ESA). For purposes of this ITP, where the terms and conditions for the Covered Species in the federal authorization are less protective of the Covered Species or otherwise conflict with this ITP, the conditions of approval set forth in this ITP shall control.
5. **ITP Time Frame Compliance:** Permittee shall fully implement and adhere to the conditions of this ITP within the time frames set forth below and as set forth in the Mitigation Monitoring and Reporting Program (MMRP), which is included as Attachment 1 to this ITP.
6. **General Provisions:**
 - 6.1. Designated Representative. Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.
 - 6.2. Designated Biologist. Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a biological monitor (Designated Biologist) before starting Covered Activities. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology, natural history, collecting, and handling of the Covered Species. The Designated

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Biologist shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species, minimizing disturbance of Covered Species' habitat, and conducting all Covered Activities that may result in take of the Covered Species (i.e., burrow excavation, trapping, handling, relocating, etc.). Permittee shall obtain written approval of the Designated Biologist from CDFW before starting Covered Activities and if the Designated Biologist must be changed.

- 6.3. Designated Biologist Authority. To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist shall have authority to immediately stop any activity that does not comply with this ITP, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species.
- 6.3.1. Biological Monitors. The Designated Biologist(s) may authorize biological monitors to assist in ITP compliance efforts, under the direct supervision of the Designated Biologist(s). The Designated Biologist(s) is responsible for assuring that any biological monitors working under his or her direct supervision is knowledgeable and experienced in the biology and natural history of the Covered Species, the Conditions of Approval of this ITP, the definition of "take" in CESA, and in implementation of standard avoidance and minimization measures used on construction projects in Covered Species' habitat.
- 6.4. Education Program. Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations, and Project-specific protective measures described in this ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures. This training shall be repeated at least once annually for long-term and/or permanent employees that will be conducting work (including O&M) in the Project Area.

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- 6.5. Construction Monitoring Notebook. The Designated Biologist shall maintain a construction-monitoring notebook on-site throughout the construction period, which shall include a copy of this ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall ensure a copy of the construction-monitoring notebook is available for review at the Project site upon request by CDFW.
- 6.6. Trash Abatement. Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of the Project. Permittee shall ensure that trash and food items are contained in animal-proof containers and removed at least once a week to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.
- 6.7. Dust Control. Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Designated Biologist. Permittee shall keep the amount of water used to the minimum amount needed, and shall not allow water to form puddles.
- 6.8. Erosion Control Materials. Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as monofilament netting (erosion control matting) or similar material, in potential Covered Species' habitat.
- 6.9. Pest Control Methods. Permittee shall prohibit the use of rodenticides within the Project Area. If animal pests need to be controlled, Permittee shall use humane methods such as live trapping. Permittee shall prohibit the use of other pesticides within Covered Species habitat or within 150 feet of aquatic Covered Species habitat, except where prior written authorization by CDFW is obtained.
- 6.10. Domestic Animals. Permittee shall prohibit all pets within the Project Area. All working dogs (livestock herding and scent-detection dogs) shall be under the control of a handler at all times when within the Project Area. Working dogs shall be immunized against rabies, parvovirus, and distemper and their immunization records submitted to CDFW prior to entering the Project Area.
- 6.11. Delineation of Property Boundaries. Before starting Covered Activities within the SDAs and along each part of the linear Work Areas (i.e., access route, transmission line corridor, and utility corridor) in active construction, Permittee shall clearly delineate the boundaries of the Project Area with fencing, stakes, or flags. Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged areas. Permittee shall maintain all fencing, stakes, and flags until the completion of Covered Activities in the SDAs or linear Work Areas.

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- 6.12. Delineation of Habitat. Permittee shall clearly delineate habitat of the Covered Species within the Project Area with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species' habitat.
- 6.13. Project Access. Project-related personnel shall access the Project Area using existing routes, or new routes identified in the Project Description and shall not cross Covered Species' habitat outside of or en route to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. Permittee shall ensure that vehicle speeds do not exceed 20 miles per hour to avoid Covered Species on or traversing the roads. If Permittee determines construction of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to this ITP, among other reasons, if additional take of Covered Species will occur as a result of the Project modification.
- 6.14. Staging Areas. Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area unless provided for as described in Condition of Approval 6.11.
- 6.15. Hazardous Waste. Permittee shall immediately stop and, pursuant to pertinent state and federal statutes and regulations, arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so. Permittee shall exclude the storage and handling of hazardous materials from the Project Area and shall properly contain and dispose of any unused or leftover hazardous products off-site. Any hazardous materials stored on-site shall be the minimum necessary for Project implementation and shall be stored in contained areas that preclude exposure to wildlife.
- 6.16. CDFW Access. Permittee shall provide CDFW staff with reasonable access to the Project and mitigation lands under Permittee control, and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.
- 6.17. Refuse Removal. Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all fill material and construction refuse, including, but not limited to, broken equipment parts, wrapping material,

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cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.

7. Monitoring, Notification and Reporting Provisions:

- 7.1. Notification Before Commencement. The Designated Representative shall notify CDFW 14 calendar days before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.
- 7.2. Notification of Non-compliance. The Designated Representative shall immediately notify CDFW in writing if it determines the Permittee is not in compliance with any Condition of Approval of this ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in this ITP and/or the MMRP. The Designated Representative shall report any non-compliance to CDFW within 24 hours.
- 7.3. Compliance Monitoring. The Designated Biologist shall be on-site daily when Covered Activities occur during construction, O&M, and decommissioning periods. The Designated Biologist shall conduct compliance inspections to (1) minimize incidental take of the Covered Species; (2) prevent unlawful take of species; (3) check for compliance with all measures of this ITP; (4) check all exclusion zones; and (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area. The Designated Representative or Designated Biologist shall prepare daily written observation and inspection records summarizing: oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP. The Designated Biologist shall conduct compliance inspections a minimum of once per week during periods of inactivity and after clearing, grubbing, and grading are completed.
- 7.4. Quarterly Compliance Report. The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition of Approval 7.3 into a Quarterly Compliance Report and submit it to CDFW along with a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. Quarterly Compliance Reports shall be submitted to the CDFW offices listed in the Notices section of this ITP and via e-mail to CDFW's Regional Representative. At the time of this ITP's approval, the CDFW Regional Representative is Lisa Gymer (Lisa.Gymer@wildlife.ca.gov). CDFW may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW

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determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.

- 7.5. Annual Status Report. Permittee shall provide CDFW with an Annual Status Report (ASR) no later than August 31 of every year beginning with issuance of this ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Quarterly Compliance Reports for that year identified in Condition of Approval 7.4; (2) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (3) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (5) all available information about Project-related incidental take of the Covered Species; (6) an accounting of the number of acres subject to both temporary and permanent disturbance, both for the prior calendar year, and a total since ITP issuance; (7) results of any revegetation initiated and monitoring results (first 5 years); (8) information about other Project impacts on the Covered Species; and (9) a summary of all compliance monitoring associated with ground-disturbing O&M and/or decommissioning activities.
- 7.6. CNDDDB Observations. The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 60 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next Quarterly Compliance Report or ASR, whichever is submitted first relative to the observation.
- 7.7. Final Mitigation Report. No later than 45 days after completion of all mitigation measures, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Quarterly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.

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- 7.8. Notification of Take or Injury. Permittee shall immediately notify the Designated Biologist if a Covered Species is taken or injured by a Project-related activity, or if a Covered Species is otherwise found dead or injured within the vicinity of the Project. The Designated Biologist or Designated Representative shall provide initial notification to CDFW by calling the Regional Office at (559) 243-4005. The initial notification to CDFW shall include information regarding the location, species, and number of animals taken or injured and the ITP Number. Following initial notification, Permittee shall send CDFW a written report within two calendar days. The report shall include the date and time of the finding or incident, location of the animal or carcass, and if possible provide a photograph, explanation as to cause of take or injury, and any other pertinent information.
- 7.9. CTS Relocation Plan. Permittee shall provide CDFW with a CTS relocation plan prior to the start of Covered Activities for review and written approval from CDFW. The relocation plan shall include at a minimum: (1) the capture, handling, and relocation methods; (2) a map and legal description of the receiver site; (3) a comparison of the receiver site's and source site's soil, plant communities, and topography to demonstrate that the site is suitable; (4) a description of the CTS's existing (pre-Project) status on the receiver site (including density and distribution, if feasible); (5) a monitoring plan; and (6) identification of a wildlife rehabilitation center or veterinary facility. Only the approved Designated Biologist(s) are authorized to capture and handle CTS.

8. Take Minimization Measures:

The following requirements are intended to ensure the minimization of incidental take of Covered Species in the Project Area during Covered Activities. Permittee shall implement and adhere to the following conditions to minimize take of Covered Species:

- 8.1. Night Work. Permittee shall conduct all Covered Activities during daylight hours (sunrise to sunset) only except for the following activities: (1) capacitor bank wiring, connecting, and testing; (2) planned and unplanned maintenance activities that must occur after dark to ensure PV arrays are not energized; (3) interior use of the O&M facility; (4) unanticipated emergencies (defined by an imminent threat to life or a significant property interest), including forced outages and non-routine maintenance or repair requiring immediate attention; or (5) security patrols. Permittee shall ensure: (1) that any vehicle traffic necessary during nighttime hours associated with these activities are conducted with extra caution to minimize impacts to Covered Species; (2) the speed limit during allowable night work is reduced to 10mph for non-emergency activities; and (3) that CDFW is notified as soon as possible and no later than 24 hours after commencement of any emergency nighttime O&M activities, except those occurring inside the O&M facility. Permittee shall use sunrise and sunset times established by the

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U.S. Naval Observatory Astronomical Applications Department for determining when Covered Activities shall terminate and resume.

- 8.2. Equipment Fueling. Permittee shall ensure that mobile equipment fueling and maintenance occur at least 100 feet from Covered Species dens, burrows, or potential aquatic breeding habitat. Permittee shall locate permanent and temporary equipment fueling and maintenance areas at a distance of at least 100 feet from Covered Species dens, burrows, or potential aquatic breeding habitat, and shall include permanent containment devices that will preclude fuel or other liquids from exiting the equipment fueling maintenance area in the event of a spill or leak. Permittee shall ensure that sufficient spill containment and cleanup equipment are present at all mobile, temporary, and permanent equipment fueling locations.
- 8.3. Lighting. Permittee shall ensure that no permanent or temporary, fixed, exterior lighting, including motion-triggered security lighting, will cast light on Covered Species habitat beyond the footprint of permanent or temporary Project facilities between sunset and sunrise. Permittee shall not use motion-triggered lighting (including visible spectrum and infrared) in solar panel arrays or elsewhere on the Project Area except within or at the perimeter of permanent and temporary buildings or covered assembly areas. Exterior, fixed lighting at all Project facilities shall be turned on only when people are present unless required by federal, state, or local law.
- 8.4. Covered Species Inspection. Workers shall inspect for Covered Species under all vehicles and equipment prior to moving. If a Covered Species is present, the worker shall wait for the Covered Species to move on its own to a safe location. Alternatively, the Designated Biologist(s) shall be contacted to determine if the animal may be safely moved within the conditions of the ITP.
- 8.5. Covered Species Observations. During Project implementation, all workers shall inform the Designated Biologist(s) if a Covered Species is seen within or near the Project Area. Permittee shall cease all work near the Covered Species until it is moved by the Designated Biologist(s) or it moves from the Project area of its own accord.
- 8.6. Pre-Activity Surveys. The Designated Biologist(s) shall perform pre-activity surveys for Covered Species no more than 30 days prior to ground- or vegetation-disturbing activities during construction, O&M, or decommissioning periods for each Work Area. Surveys shall include 100 percent coverage of Work Area and a 500-foot buffer for detection of Covered Species dens/burrows. All potential Covered Species burrows/dens detected shall be flagged and mapped.

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The Designated Biologist shall submit a report documenting the results of the pre-construction surveys to CDFW before starting ground- or vegetation-disturbing activities in each Work Area. Pre-construction surveys may not be possible for forced outages and other unanticipated emergencies (defined by potential for harm to persons, property or the environment) requiring immediate attention. The Designated Biologist(s) shall be notified of forced outage activities that result in ground or vegetation disturbance as soon as is practicable and shall survey for Covered Species dens or burrows within each Work Area and 500-foot buffer during the SJKF pupping season (February through May) or 50-foot buffer outside of the pupping season (June through January) as soon as is practicable after being notified of forced outages and other unanticipated emergencies. Permittee shall notify CDFW no later than 24-hours after commencement of any ground- or vegetation-disturbing forced outage or emergency activities. If any life stages (adults, eggs, or larvae) of CTS are found, the Designated Biologist(s) shall relocate them from the each Work Area in accordance with the CDFW-approved CTS Relocation Plan (Condition of Approval 7.9).

- 8.7. Perimeter Fence Design. Permittee shall ensure that perimeter fencing is installed around the solar panel arrays so it does not impede Covered Species movements. The Designated Biologist(s) shall accompany the fencing crew to ensure that Covered Species are not killed or injured during installation. Perimeter fencing shall consist of wire fencing designed to exclude deer, with openings graduated from 3-7 inches square and will be installed inverted, with the larger openings at the bottom to allow SJKF to pass through. Chain-link fencing may also be used if it is installed with a 6-7 inch gap from the bottom of the fencing material to the ground surface. The bottom of the fencing material shall be knuckled back. Alternate designs may be constructed with prior written approval from CDFW. If chain-link fencing is used within the solar array perimeter fencing (i.e., around substations, O&M buildings, etc.), it shall be installed with the same bottom gap as described above or it shall be outfitted with plastic slats for the entire length of the internal fencing to avoid entrapment of SJKF.
- 8.8. SJKF Den Avoidance. Permittee shall ensure avoidance of SJKF dens in the following manner: (1) if a potential SJKF den (one that shows evidence of current or past use) is discovered or a SJKF is found in an "a-typical" den (e.g., a pipe or culvert), a 50-foot buffer shall be established around each den opening using flagging; (2) if a known SJKF den is discovered, a buffer of at least 100 feet shall be established using SJKF-permeable fencing; (3) if a natal den (den in which SJKF young are reared) is discovered, a buffer of at least 200 feet shall be established using SJKF-permeable fencing; and (4) if a natal dens with pups is discovered a buffer of at least 500 feet shall be established using SJKF-permeable fencing. Permittee shall restrict equipment and personnel entry

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into buffer zones. Permittee shall notify the United States Fish and Wildlife Service (USFWS) and CDFW's Regional Representative immediately by telephone or e-mail if any of the four types of SJKF dens are discovered.

- 8.9. SJKF Den Excavation. The Designated Biologist may destroy a den within the portion of the Project Area to be disturbed, that cannot be avoided as per ITP Condition of Approval 8.8, if, after five consecutive days of monitoring with tracking medium and infrared cameras, the Designated Biologist(s) has determined that SJKF is not currently present. Any hole 3 inches or larger and exhibiting no signs of SJKF use or characteristics suggesting it is a SJKF den, may be excavated under the supervision of the Designated Biologist(s) without advance tracking and camera monitoring. The Designated Biologist shall not excavate natal dens until the pups and adults have vacated and then only after consultation with the USFWS and CDFW. If the excavation process reveals evidence of current use by SJKF, then den destruction shall cease immediately and tracking and camera monitoring as described above shall be conducted/resumed. Destruction of the den may be completed when, in the judgment of the Designated Biologist(s), the animal has escaped from the partially destroyed den. Destruction of all types of SJKF dens shall be accomplished by careful excavation until it is certain no individuals are inside. Dens to be destroyed shall be fully excavated, filled with soil, and compacted to ensure that SJKF cannot reenter or use the den during the construction period. Permittee shall contact CDFW and the USFWS and get written guidance (e-mail will suffice) from both agencies prior to proceeding with den destruction or blockage if an individual SJKF does not vacate a den in the Work Area within a reasonable timeframe.
- 8.10. Small Mammal Burrow Avoidance. Permittee shall avoid all burrows suitable for CTS by a minimum of 50 feet from each burrow opening. Permittee shall delineate avoidance buffers on the ground with flagging and maintain the buffers during construction activities in each Work Area.
- 8.11. Small Mammal Burrow Excavation. All small mammal burrows identified during the Pre-Activity Surveys (Condition of Approval 8.6) which exist within 0.35 miles⁵ of potential CTS breeding habitat and which cannot be fully avoided by at least 50 feet shall be fully excavated under direct supervision by the Designated Biologist(s). The Designated Biologist(s) shall relocate any live CTS discovered during small mammal burrow excavation in accordance with the CTS Relocation Plan required in Condition of Approval 7.9. Excavation shall occur no more than

⁵ U. S. Fish and Wildlife Service. 2004. Endangered and threatened wildlife and plants; determination of threatened status for the California tiger salamander; and special rule exemption for existing routine ranching activities; Final Rule. Federal Register, Vol. 69:47212-47248.

14 days after the completion of the Pre-Activity Surveys as described in Condition of Approval 8.6.

- 8.12. CTS Exclusion Fencing. If Permittee initiates or extends Covered Activities into the CTS breeding season (December through May) and occur within 0.35 miles of a potential or known CTS breeding pond, the Permittee shall install CTS exclusion fencing around each active Work Area to prevent breeding adults from moving into the active Work Areas. Permittee shall have the fencing material and design reviewed and approved in writing by CDFW before installation. The exclusion fence shall be installed after all small mammal burrows inside the Work Areas are excavated under the direct supervision of the Designated Biologist(s) in accordance with Condition of Approval 8.11 to prevent entrapment of CTS within the active Work Areas. When small mammal burrows cannot be avoided by a 50-foot no-disturbance buffer from the fence line, they shall be excavated as described in Condition of Approval 8.11 prior to commencing fence installation. If exclusion fence is not erected at a Work Area that is located in whole or in part within 0.35 miles of known or potential breeding habitat (Figure 3) outside the CTS breeding season (June through November), all Covered Activities shall cease when a 70 percent or greater chance of rainfall is predicted within 72 hours in accordance with Condition of Approval 8.17.
- 8.13. CTS Exclusion Fence Installation. The Designated Biologist(s) shall accompany the fencing crew to ensure that CTS are not killed or injured during installation. Permittee shall construct the exclusion fence so its integrity is maintained under all weather conditions for the duration of the Covered Activities in each Work Area. Permittee shall inspect the exclusion fence at least once weekly during the non-breeding season and as needed, but at least daily during the breeding season (December through May) and maintain/repair the fence as necessary. The Designated Biologists(s) shall relocate any CTS found up against the exclusion fencing to prevent desiccation or predation in accordance with the CDFW-approved CTS Relocation Plan (Condition of Approval 7.9). Permittee shall remove the CTS exclusion fence immediately upon completion of Covered Activities in each Work Area.
- 8.14. Water Pipeline Installation. The Permittee shall install the temporary aboveground water pipeline so it is off the ground at least 2 inches along its entire length to prevent obstruction of CTS movement.
- 8.15. Water Pond Excavation and Fencing. The Permittee shall excavate temporary ponds used to store water for dust suppression or other construction purposes within the Project Area and no less than 500 feet from potential CTS breeding ponds as identified on Figure 3. Permittee shall fence the temporary ponds within

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the Project Area to completely exclude Covered Species. The fence shall be at least six feet tall, buried at least two feet deep, and be fine enough at the bottom to exclude Covered Species. The design of the fencing shall incorporate a fine woven wire stainless steel mesh material for the base section that has openings no more than ¼-inch in size. This bottom portion shall be buried below grade a minimum of 24 inches, and shall extend up above grade 36 inches. At the top of this portion of the fence, a jump and climb barrier shall be installed. The barrier shall be constructed of solid material sloped downward, out at least 12 inches from the vertical plane of the fence. Above this fine mesh section, a standard chain-link fence shall complete the fence up to the required six-foot height. The Designated Biologist shall inspect the pond exclusion fencing daily during construction activities and Permittee shall maintain the fencing until the ponds are removed.

- 8.16. Covered Species Record of Handling. The Designated Biologist shall document the following information upon all Covered Species captures, relocations, and observations: the date, time, and location of each occurrence using Global Positioning System (GPS) technology; the name of the party that actually identified the Covered Species; circumstances of the incident; the general condition and health of each individual; any diagnostic markings, sex, age (juvenile or adult); actions undertaken; and habitat description. Permittee shall also submit this information to the CNDDB as per Condition of Approval 7.6. The Designated Biologist shall also include this information in the Quarterly Compliance and ASR.
- 8.17. Rain Forecast. The Designated Biologist(s) and Permittee shall monitor the National Weather Service 72-hour forecast for the Project Area. If a 70 percent or greater chance of rainfall is predicted within 72 hours, Permittee shall cease all Covered Activities in all Work Areas where CTS exclusion fencing has not been installed until a zero percent chance of rain is forecast. The Permittee may continue work 24 hours after the rain ceases and there is a zero percent chance of precipitation in the 72-hour forecast. Work Areas that have been cleared of CTS and enclosed with CTS exclusion fencing, in accordance with Conditions of Approval 8.12 and 8.13, may continue Covered Activities during rainfall events.
- 8.18. Fieldwork Code of Practice. The Permittee and Designated Biologist(s) shall follow the, *Declining Amphibian Populations Task Force Fieldwork Code of Practice* (Attachment 2), at all times to ensure that disease is not conveyed between Work Areas. The Designated Biologist(s) may substitute a bleach solution (0.5 to 1.0 cup of bleach to 1.0 gallon of water) for the ethanol solution. The Designated Biologist(s) shall ensure that all traces of the disinfectant are removed before entering the next aquatic habitat.

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8.19. Preventing Entrapment in Excavations. To prevent the inadvertent entrapment of Covered Species and other animals, the Designated Biologist(s) shall:

- Inspect all excavations (covered or open) for entrapped animals at the beginning, middle, and end of each day until the excavation is backfilled, including weekends and any other non-work days;
- Inspect all excavated holes and trenches for animals immediately before the excavation is backfilled;
- Ensure all trenches, holes, and other excavations with sidewalls steeper than a 1:1 (45 degree) slope and that are up to two feet deep shall be covered when workers or equipment are not actively working in the excavation or shall have an escape ramp of earth or a non-slip material with a less than 1:1 (45 degree) slope;
- Ensure all trenches, holes, and other excavations with sidewalls steeper than a 1:1 (45 degree) slope and greater than two feet deep shall be covered when workers or equipment are not actively working in the excavation and at the end of each work day;
- Ensure the outer two feet of excavation covers conform to solid ground so that gaps do not occur between the cover and the ground. Covering such gaps with dirt or laying covers on excavated soil will not satisfy this requirement. The outer two feet of cover material shall be semi-rigid and secured to the ground to preclude animals from lifting the edge (hardware cloth shall be used unless another material is pre-approved in writing by CDFW). The edges of the covers shall be secured with re-bar, minimum 10 inch soil staples, or similar means every 12 inches to prevent animals from lifting the edges; and
- The Designated Biologist(s) shall notify CDFW by telephone and e-mail within one working day if at any time a trapped or injured animal is discovered.

8.20. Entrapment in Pipes or other Structures. The Permittee shall ensure that all construction pipes, culverts, or similar structures with a diameter of 1 inch or greater that are stored at the construction site for one or more overnight periods will be thoroughly inspected for Covered Species before the pipe is subsequently moved, buried, or capped. If a Covered Species is discovered inside a pipe during inspection, that section of pipe shall not be moved until the animal has escaped on its own or moved in accordance with Condition of Approval 7.9 or 8.9.

8.21. Habitat Restoration. The Permittee shall restore the 213 acres of Covered Species habitat that will be temporarily disturbed to pre-Project or better

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conditions. Within six months of issuance of this ITP, the Permittee shall prepare a Vegetation Management, Habitat Restoration, and Re-vegetation Plan (Plan) to facilitate revegetation of the 213 acres of temporary construction disturbance on-site, and shall ensure the Plan is successfully implemented by the contractor. Permittee shall submit the Plan to CDFW for review and written approval prior to the start of Covered Activities. Permittee shall restore the ground and vegetation to a condition conducive to Covered Species recolonization. Permittee shall ensure the Plan includes the following requirements, at a minimum:

- Identification of the final soil compaction rate less than that of representative adjoining Covered Species habitat to a depth of no less than three feet;
- Description of surface grading needed to match adjacent low-relief areas;
- Description of how the native topsoil from the Project Area and/or seed will be applied over the area to establish suitable vegetation for Covered Species;
- A grazing plan, including residual dry matter sampling techniques and frequency;
- Fire control actions;
- Invasive plant species removal methods;
- Seed mix and shrub species to be used and planting method;
- Restoration actions and supplemental watering regime;
- Success criteria for revegetation efforts;
- Five-year monitoring plan; and
- Contingency plan if criteria are not met to ensure upland habitat suitability for Covered Species.

If the temporary impact lands have not returned to pre-Project conditions five years after completion of the Project, additional mitigation and an amendment to this ITP may be required.

- 8.22. Injury. If a Covered Species is injured as a result of Project-related activities, the Designated Biologist(s) shall immediately take it to a CDFW-approved wildlife rehabilitation or veterinary facility. The Permittee shall identify the facility before

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starting Covered Activities. The Permittee shall bear any costs associated with the care or treatment of such injured Covered Species. The Permittee shall notify CDFW of the injury to the Covered Species immediately by telephone and e-mail followed by a written incident report as described in Condition of Approval 7.8. Notification shall include the name of the facility where the animal was taken.

9. Habitat Management Land Acquisition and Project Area Restoration:

CDFW has determined that permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate Project-related impacts of the taking on the Covered Species that will result with implementation of the Covered Activities. This determination is based on factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the acreage required to provide for adequate compensation.

To meet this requirement, the Permittee shall provide for both the permanent protection and management of 4,454.71 acres of Habitat Management (HM) lands pursuant to Condition of Approval 9.2 below and the calculation and deposit of the management funds pursuant to Condition of Approval 9.4 below. Permanent protection and funding for perpetual management of compensatory habitat must be complete before starting Covered Activities or within 18 months of the effective date of this ITP if Security is provided pursuant to Condition of Approval 10 below for all uncompleted obligations. Permittee shall also restore on-site 213 acres of temporarily impacted Covered Species habitat pursuant to Condition of Approval 8.21 above.

9.1. Cost Estimates. CDFW has estimated the cost of acquisition, protection, and perpetual management of the HM lands and restoration of temporarily disturbed habitat as follows:

9.1.1. Land acquisition costs for HM lands identified in Condition of Approval 9.2 below, estimated at \$2,700.00/acre for 4,454.71 acres: **\$12,027,717.00**. Land acquisitions costs are estimated using local fair market current value for lands with habitat values meeting mitigation requirements;

9.1.2. Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 9.2.5 below, estimated at **\$535,580.60**;

9.1.3. Interim management period funding as described in Condition of Approval 9.2.6 below, estimated at **\$332,664.60**;

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- 9.1.4. Long-term management funding as described in Condition of Approval 9.3 below, estimated at \$1,028.68/acre for 4,454.71 acres: **\$4,582,471.08**. Long-term management funding is estimated initially for providing Security to ensure implementation of HM lands management.
- 9.1.5. Related transaction fees including but not limited to account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW as described in Condition of Approval 9.4, estimated at **\$9,000.00**.
- 9.1.6. Restoration of on-site temporary effects to Covered Species habitat as described in Condition of Approval 8.21, calculated at \$5,000.00/acre for 213 acres: **\$1,065,000.00**.
- 9.2. Habitat Acquisition and Protection. To provide for the acquisition and perpetual protection and management of the HM lands, the Permittee shall:
- 9.2.1. Fee Title/Conservation Easement. Transfer fee title to the HM lands to CDFW pursuant to terms approved in writing by CDFW. Alternatively, CDFW, in its sole discretion, may authorize a governmental entity, special district, non-profit organization, for-profit entity, person, or another entity to hold title to and manage the property provided the district, organization, entity, or person meets the requirements of Government Code sections 65965-65968, as amended. If CDFW does not hold fee title to the HM lands, CDFW shall act as grantee for a conservation easement over the HM lands or shall, in its sole discretion, approve a non-profit entity, public agency, or Native American tribe to act as grantee for a conservation easement over the HM lands provided that the entity, agency, or tribe meets the requirements of Civil Code section 815.3. If CDFW does not hold the conservation easement, CDFW shall be expressly named in the conservation easement as a third-party beneficiary. The Permittee shall obtain CDFW written approval of any conservation easement before its execution or recordation. No conservation easement shall be approved by CDFW unless it complies with Government Code sections 65965-65968, as amended and includes provisions expressly addressing Government Code sections 65966(j) and 65967(e);
- 9.2.2. HM Lands Approval. Obtain CDFW written approval of the HM lands before acquisition and/or transfer of the land by submitting, at least three months before acquisition and/or transfer of the HM lands, a formal Proposed Lands for Acquisition Form (see Attachment 3A) identifying the

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land to be purchased or property interest conveyed to an approved entity as mitigation for the Project's impacts on Covered Species;

- 9.2.3. HM Lands Documentation. Provide a recent preliminary title report, initial hazardous materials survey report, and other necessary documents (see Attachment 3B). All documents conveying the HM lands and all conditions of title are subject to the approval of CDFW, and if applicable, the Wildlife Conservation Board and the Department of General Services;
- 9.2.4. Land Manager. Designate both an interim and long-term land manager approved by CDFW. The interim and long-term land managers may, but need not, be the same. The interim and/or long-term land managers may be the landowner or another party. Documents related to land management shall identify both the interim and long-term land managers. Permittee shall notify CDFW of any subsequent changes in the land manager within 30 days of the change. If CDFW will hold fee title to the mitigation land, CDFW will also act as both the interim and long-term land manager unless otherwise specified;
- 9.2.5. Start-up Activities. Provide for the implementation of start-up activities, including the initial site protection and enhancement of HM lands, once the HM lands have been approved by CDFW. Start-up activities include, at a minimum: (1) preparing a final management plan for CDFW approval (see <https://www.wildlife.ca.gov/Conservation/Planning/Banking/Templates>); (2) conducting a baseline biological assessment and land survey report within four months of recording or transfer; (3) developing and transferring Geographic Information Systems (GIS) data if applicable; (4) establishing initial fencing; (5) conducting litter removal; (6) conducting initial habitat restoration or enhancement, if applicable; and (7) installing signage;
- 9.2.6. Interim Management (Initial and Capital). Provide for the interim management of the HM lands. The Permittee shall ensure that the interim land manager implements the interim management of the HM lands as described in the final management plan and conservation easement approved by CDFW. The interim management period shall be a minimum of three years from the date of HM land acquisition and protection and full funding of the Endowment and includes expected management following start-up activities. Interim management period activities described in the final management plan shall include fence repair, continuing trash removal, site monitoring, vegetation and invasive species management, and biological surveys. Permittee shall either (1) provide a security to CDFW for the minimum of three years of interim management that the land

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owner, Permittee, or land manager agrees to manage and pay for at their own expense, (2) establish an escrow account with written instructions approved in advance in writing by CDFW to pay the land manager annually in advance, or (3) establish a short-term enhancement account with CDFW or a CDFW-approved entity for payment to the land manager.

- 9.3. Endowment Fund. The Permittee shall ensure that the HM lands are perpetually managed, maintained, and monitored by the long-term land manager as described in this ITP, the conservation easement, and the final management plan approved by CDFW. After obtaining CDFW approval of the HM lands, Permittee shall provide long-term management funding for the perpetual management of the HM lands by establishing a long-term management fund (Endowment). The Endowment is a sum of money, held in a CDFW-approved fund that provides funds for the perpetual management, maintenance, monitoring, and other activities on the HM lands consistent with the management plan(s) required by Condition of Approval 9.2.5. Endowment as used in this ITP shall refer to the endowment deposit and all interest, dividends, other earnings, additions and appreciation thereon. The Endowment shall be governed by this ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.

After the interim management period, Permittee shall ensure that the designated long-term land manager implements the management and monitoring of the HM lands according to the final management plan. The long-term land manager shall be obligated to manage and monitor the HM lands in perpetuity to preserve their conservation values in accordance with this ITP, the conservation easement, and the final management plan. Such activities shall be funded through the Endowment.

- 9.3.1. Identify an Endowment Manager. The Endowment shall be held by the Endowment Manager, which shall be either CDFW or another entity qualified pursuant to Government Code sections 65965-65968, as amended. Permittee shall submit to CDFW a written proposal that includes: (i) the name of the proposed Endowment Manager; (ii) whether the proposed Endowment Manager is a governmental entity, special district, nonprofit organization, community foundation, or congressionally chartered foundation; (iii) whether the proposed Endowment Manager holds the property or an interest in the property for conservation purposes as required by Government Code section 65968(b)(1) or, in the alternative, the basis for finding that the Project qualifies for an exception pursuant to Government Code section 65968(b)(2); and (iv) a copy of the proposed Endowment Manager's certification pursuant to Government Code section

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65968(e). Within thirty days of CDFW's receipt of Permittee's written proposal, CDFW shall inform Permittee in writing if it determines the proposal does not satisfy the requirements of Fish and Game Code section 2081(b)(4) and, if so, shall provide Permittee with a written explanation of the reasons for its determination. If CDFW does not provide Permittee with a written determination within the thirty-day period, the proposal shall be deemed consistent with Section 2081(b)(4).

9.3.2. Calculate the Endowment Funds Deposit. After obtaining CDFW written approval of the HM lands, long-term management plan, and Endowment Manager, Permittee shall prepare a Property Analysis Record (PAR) or PAR-equivalent analysis (hereinafter "PAR") to calculate the amount of funding necessary to ensure the long-term management of the HM lands (Endowment Deposit Amount). The Permittee shall submit to CDFW for review and approval the results of the PAR before transferring funds to the Endowment Manager.

9.3.2.1. Capitalization Rate and Fees. Permittee shall obtain the capitalization rate from the selected Endowment Manager for use in calculating the PAR and adjust for any additional administrative, periodic, or annual fees.

9.3.2.2. Endowment Buffers/Assumptions. Permittee shall include in PAR assumptions the following buffers for endowment establishment and use that will substantially ensure long-term viability and security of the Endowment:

9.3.2.2.1. 10 Percent Contingency. A 10 percent contingency shall be added to each endowment calculation to hedge against underestimation of the fund, unanticipated expenditures, inflation, or catastrophic events.

9.3.2.2.2. Three Years Delayed Spending. The endowment shall be established assuming spending will not occur for the first three years after full funding.

9.3.2.2.3. Non-annualized Expenses. For all large capital expenses to occur periodically but not annually such as fence replacement or well replacement, payments shall be withheld from the annual disbursement until the year of anticipated need or upon request to Endowment Manager and CDFW.

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9.3.3. Transfer Long-term Endowment Funds. Permittee shall transfer the long-term endowment funds to the Endowment Manager upon CDFW approval of the Endowment Deposit Amount identified above. The approved Endowment Manager may pool the Endowment with other endowments for the operation, management, and protection of HM lands for local populations of the Covered Species but shall maintain separate accounting for each Endowment. The Endowment Manager shall, at all times, hold and manage the Endowment in compliance with this ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.

9.4. Reimburse CDFW. Permittee shall reimburse CDFW for all reasonable expenses incurred by CDFW such as transaction fees, account set-up fees, administrative fees, title and documentation review, related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW.

10. Performance Security

The Permittee may proceed with Covered Activities only after the Permittee has ensured funding (Security) to complete any activity required by Condition of Approval 9 that has not been completed before Covered Activities begin. Permittee shall provide Security as follows:

10.1. Security Amount. The Security shall be in the amount of **\$18,552,433.28**. This amount is based on the cost estimates identified in Condition of Approval 9.1 above.

10.2. Security Form. The Security shall be in the form of an irrevocable letter of credit (see Attachment 4) or another form of Security approved in advance in writing by CDFW's Office of the General Counsel.

10.3. Security Timeline. The Security shall be provided to CDFW before Covered Activities begin or within 30 days after the effective date of this ITP, whichever occurs first.

10.4. Security Holder. The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW.

10.5. Security Transmittal. If CDFW holds the Security, Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form (see Attachment 5) or by way of an approved instrument such as escrow, irrevocable letter of credit, or other.

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10.6. Security Drawing. The Security shall allow CDFW to draw on the principal sum if CDFW, in its sole discretion, determines that the Permittee has failed to comply with the Conditions of Approval of this ITP.

10.7. Security Release. The Security (or any portion of the Security then remaining) shall be released to the Permittee after CDFW has conducted an on-site inspection and received confirmation that all secured requirements have been satisfied, as evidenced by:

- Written documentation of the acquisition of the HM lands;
- Copies of all executed and recorded conservation easements;
- Written confirmation from the approved Endowment Manager of its receipt of the full Endowment; and
- Timely submission of all required reports.

Even if Security is provided, the Permittee must complete the required acquisition, protection and transfer of all HM lands and record any required conservation easements no later than 18 months from the effective date of this ITP. CDFW may require the Permittee to provide additional HM lands and/or additional funding to ensure the impacts of the taking are minimized and fully mitigated, as required by law, if the Permittee does not complete these requirements within the specified timeframe.

Amendment:

This ITP may be amended as provided by California Code of Regulations, Title 14, section 783.6, subdivision (c), and other applicable law. This ITP may be amended without the concurrence of the Permittee as required by law, including if CDFW determines that continued implementation of the Project as authorized under this ITP would jeopardize the continued existence of the Covered Species or where Project changes or changed biological conditions necessitate an ITP amendment to ensure that all Project-related impacts of the taking to the Covered Species are minimized and fully mitigated.

Stop-Work Order:

CDFW may issue Permittee a written stop-work order requiring Permittee to suspend any Covered Activity for an initial period of up to 25 days to prevent or remedy a violation of this ITP, including but not limited to the failure to comply with reporting or monitoring obligations, or to prevent the unauthorized take of any CESA endangered, threatened, or candidate species. Permittee shall stop work immediately as directed by CDFW upon receipt of any such stop-work order. Upon written notice to Permittee, CDFW may extend any stop-work order issued to Permittee for a period not to exceed 25 additional days. Suspension and revocation of this ITP shall be governed by California Code of Regulations, Title 14,

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section 783.7, and any other applicable law. Neither the Designated Biologist nor CDFW shall be liable for any costs incurred in complying with stop-work orders.

Compliance with Other Laws:

This ITP sets forth CDFW's requirements for the Permittee to implement the Project pursuant to CESA. This ITP does not necessarily create an entitlement to proceed with the Project. Permittee is responsible for complying with all other applicable federal, state, and local law.

Notices:

The Permittee shall deliver a fully executed duplicate original ITP by registered first class mail or overnight delivery to the following address:

Habitat Conservation Planning Branch
California Department of Fish and Wildlife
Attention: CESA Permitting Program
1416 Ninth Street, Suite 1266
Sacramento, California 95814

Written notices, reports and other communications relating to this ITP shall be delivered to CDFW by registered first class mail at the following address, or at addresses CDFW may subsequently provide the Permittee. Notices, reports, and other communications shall reference the Project name, Permittee, and ITP Number (2081-2015-027-04) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

Regional Manager
California Department of Fish and Wildlife
1234 East Shaw Avenue
Fresno, California 93710
Telephone (559) 243-4005
Fax (559) 243-4022

and a copy to:

Habitat Conservation Planning Branch
California Department of Fish and Wildlife
Attention: CESA Permitting Program
1416 Ninth Street, Suite 1266
Sacramento, California 95814

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Unless Permittee is notified otherwise, CDFW's Regional Representative for purposes of addressing issues that arise during implementation of this ITP is:

Lisa Gymer, Senior Environmental Scientist (Specialist)
 California Department of Fish and Wildlife
 1234 East Shaw Avenue
 Fresno, California 93710
 Telephone (559) 243-4014, extension 238
 Fax (559) 243-4020

Compliance with CEQA:

CDFW's issuance of this ITP is subject to CEQA. CDFW is a responsible agency pursuant to CEQA with respect to this ITP because of prior environmental review of the Project by the lead agency, Monterey County. (See generally Pub. Resources Code, §§ 21067, 21069.) The lead agency's prior environmental review of the Project is set forth in the California Flats Solar Project EIR, (SCH No.: 2013041031) dated December 2014, that Monterey County certified for the California Flats Solar Project on February 10, 2015. At the time the lead agency certified the EIR and approved the Project, it also adopted various mitigation measures for the Covered Species as conditions of Project approval.

This ITP, along with CDFW's related CEQA findings, which are available as a separate document, provide evidence of CDFW's consideration of the lead agency's EIR for the Project and the environmental effects related to issuance of this ITP (CEQA Guidelines, § 15096, subd. (f)). CDFW finds that issuance of this ITP will not result in any previously undisclosed potentially significant effects on the environment or a substantial increase in the severity of any potentially significant environmental effects previously disclosed by the lead agency. Furthermore, to the extent the potential for such effects exists, CDFW finds adherence to and implementation of the Conditions of Project Approval adopted by the lead agency, and that adherence to and implementation of the Conditions of Approval imposed by CDFW through the issuance of this ITP, will avoid or reduce to below a level of significance any such potential effects. CDFW consequently finds that issuance of this ITP will not result in any significant, adverse impacts on the environment.

Findings Pursuant to CESA:

These findings are intended to document CDFW's compliance with the specific findings requirements set forth in CESA and related regulations. (Fish & G. Code § 2081, subs. (b)-(c); Cal. Code Regs., tit. 14, §§ 783.4, subds, (a)-(b), 783.5, subd. (c)(2).)

CDFW finds based on substantial evidence in the ITP application, the California Flats Solar Project EIR, the results of a site visits and consultations, and the administrative record of proceedings, that issuance of this ITP complies and is consistent with the criteria governing the issuance of ITPs pursuant to CESA:

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- (1) Take of Covered Species as defined in this ITP will be incidental to the otherwise lawful activities covered under this ITP;
- (2) Impacts of the taking on Covered Species will be minimized and fully mitigated through the implementation of measures required by this ITP and as described in the MMRP. Measures include: (1) permanent habitat protection; (2) establishment of avoidance zones; (3) worker education; and (4) Quarterly Compliance Reports. CDFW evaluated factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the acreage required to provide for adequate compensation. The Project Area will remain pervious to Covered Species. Vegetative cover will be retained, allowed to reestablish, or be re-vegetated allowing Covered Species continued use of the Project Area. SJKF were only detected in the southern portion of the Project Area on the access road. No potential SJKF dens were found within the Project Area during survey efforts; however, the entire Project Area is considered SJKF habitat. CTS were not detected within the Project Area during survey efforts, though they were conducted in years that did not obtain sufficient precipitation to allow the negative survey results to be valid. All appropriately sized ponds were assumed to have CTS breeding potential and all uplands located within the Project Area and within 1.3 mile of a pond were considered appropriate for CTS. Compensatory habitat was proposed based on the above and using a decreasing multiplier the further from potential CTS breeding ponds. Based on this evaluation, CDFW determined that the protection and management in perpetuity of 4,454.71 acres of compensatory habitat that is contiguous with other protected Covered Species habitat and/or is of higher quality than the habitat being destroyed by the Project, contains at least one known CTS breeding pond, and with at least one third of the impacted area acreage contributing to regional habitat connectivity for the Covered Species, along with the minimization, monitoring, reporting, and funding requirements of this ITP minimizes and fully mitigates the impacts of the taking caused by the Project;
- (3) The take avoidance and mitigation measures required pursuant to the conditions of this ITP and its attachments are roughly proportional in extent to the impacts of the taking authorized by this ITP;
- (4) The measures required by this ITP maintain Permittee's objectives to the greatest extent possible;
- (5) All required measures are capable of successful implementation;
- (6) This ITP is consistent with any regulations adopted pursuant to Fish and Game Code sections 2112 and 2114;

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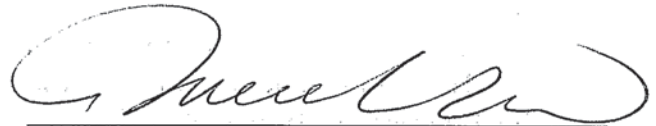
- (7) Permittee has ensured adequate funding to implement the measures required by this ITP as well as for monitoring compliance with, and the effectiveness of, those measures for the Project; and
- (8) Issuance of this ITP will not jeopardize the continued existence of the Covered Species based on the best scientific and other information reasonably available, and this finding includes consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (1) known population trends; (2) known threats to the species; and (3) reasonably foreseeable impacts on the species from other related projects and activities. Moreover, CDFW's finding is based, in part, on CDFW's express authority to amend the terms and conditions of this ITP without concurrence of the Permittee as necessary to avoid jeopardy and as required by law.

Attachments:

FIGURE 1	Project Location Map
FIGURE 2	Project Area Map
FIGURE 3	Map of Potential CTS Breeding Ponds
ATTACHMENT 1	Mitigation Monitoring and Reporting Program
ATTACHMENT 2	Declining Amphibian Populations Task Force Fieldwork Code of Practice
ATTACHMENT 3A, 3B	Proposed Lands for Acquisition Form; Habitat Management Lands Checklist
ATTACHMENT 4	Letter of Credit Form
ATTACHMENT 5	Mitigation Payment Transmittal Form

ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 10/23/15



Julie Vance, Regional Manager
Central Region

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EXHIBIT B

License State of California
Contractor License No. 617804
License Classification A – General Engineering Contractor, C-7 – Low Voltage Systems, C-10 - Electrical
Federal Tax ID No. 95-4268169

CONSTRUCTION SUBCONTRACT

by and between

FIRST SOLAR ELECTRIC (CALIFORNIA), INC.

and

CSI ELECTRICAL CONTACTORS, INC.

dated as of May 21, 2018

California Flats – South 150

92100 Turkey Flats Road, San Miguel, CA 93451 – Monterey County

Balance of Systems

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CONSTRUCTION SUBCONTRACT

This CONSTRUCTION SUBCONTRACT (this “**Agreement**”) is made and entered into as of this 21st day of May, 2018 (the “**Effective Date**”) by and among First Solar Electric (California), Inc., a Delaware corporation (“**Contractor**”) and CSI Electrical Contractors, Inc., a California corporation (“**Subcontractor**”). Each of Contractor and Subcontractor is sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

WHEREAS, CA Flats Solar 150, LLC, a Delaware limited liability company, or an affiliate thereof (“**Owner**”) is developing a 150 MW AC power plant at the Site;

WHEREAS, Owner has entered into, or will enter into, an Engineering, Procurement and Construction Agreement with Contractor, pursuant to which Contractor will design, engineer, procure, install, construct, test, commission and start-up the Project (the “**Prime Contract**”); and

WHEREAS, Contractor wishes to engage Subcontractor to procure, install, and construct the Project for the Contract Price, and Subcontractor desires to provide such services, all in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the sums to be paid to Subcontractor by Contractor and of the covenants and agreements set forth herein, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS AND RULES OF INTERPRETATION

1.1 Definitions. For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following terms shall have the following meanings.

“**AAA**” has the meaning set forth in Section 29.2.3.

“**Abandons**” means that, other than as a result of a Force Majeure Event or an Excusable Event, Subcontractor has substantially reduced personnel at the Site or removed required equipment from the Site such that Subcontractor would not be capable of maintaining progress sufficient to achieve Block Substantial Completion of any Block by the applicable Guaranteed Block Substantial Completion Date or Project Substantial Completion by the Guaranteed Project Substantial Completion Date.

“**AC**” means alternating current.

“**Affiliate**” means, with respect to a specified Person, any other Person that directly or indirectly, through one or more intermediaries, Controls, is under common Control with, or is Controlled by such specified Person. For purposes hereof, “**Control**” (including with correlative meaning the terms “**Controlled**”, “**Controls**” and “**Controlled by**”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“**Agreement**” has the meaning set forth in the Preamble.

“**Applicable Law**” means and includes any applicable statute, license, law, rule, regulation, code, ordinance, judgment, arbitral

award, decree, writ, legal requirement, order or the like of any Governmental Authority, any requirement or condition contained in any Permit relating to the Work or the performance thereof, including any condition on or with respect to the issuance, maintenance, renewal or transfer of any Permit or any application therefor, and the binding and written interpretations thereof, regulating, relating to or imposing liability or standards of conduct on or in respect of the Work, the Site, the Parties, or the Facility. Without limitation of the foregoing, the term “**Applicable Law**” shall include all requirements and recommendations of the Federal Energy Regulatory Commission, North American Electric Reliability Corporation and similar state and local regulatory and quasi-regulatory authorities.

“**As-Builts**” means all Design Documents reflecting the status of the Work as completed by Subcontractor.

“**Bill of Materials**” means all Contractor-provided materials set forth in Exhibit A-2.

“**Block**” means any one or more blocks 5, 6, 7 and 8 of the Project, with each block consisting of all electrical components (in total or portion of it), as well as all associated structural elements, Site work and interconnecting cables that will allow the block to generate and output the AC power as defined per Blocks 5, 6, 7 and 8 to the metering point. The Block and the blocks are shown as such on the Plan.

“**Block Delay Damages**” has the meaning set forth in Section 14.2.

“**Block Substantial Completion**” means, with respect to a Block, the satisfaction by Subcontractor of all of the requirements set forth in Section 13.3, except for any requirements waived in writing by Contractor.

“**Business Day**” means a day, other than a Saturday or Sunday or a public holiday, on which banks are open for business in New York, New York.

“**CBP**” has the meaning set forth in Section 30.10.

“**Change**” has the meaning set forth in Section 15.1.

“**Change In Law**” means the enactment, adoption, promulgation, modification (including a written change in interpretation by a Governmental Authority) or repeal after the Effective Date of any Applicable Law; provided, however, that the following shall not constitute a Change in Law hereunder: (a) a change in any requirement of any Permit that arises out of any act or omission of Subcontractor or a Sub-subcontractor; (b) a change in any taxes for which Subcontractor (or any Sub-subcontractor) is responsible hereunder; (c) a change in any licensing or code requirement that, at the date of Subcontractor’s first proposal for the Work herein, was enacted or adopted, though not yet effective; and (d) the enactment, modification, amendment or repeal of an Applicable Law prior to the Effective Date with an effective date of such action that falls after the Effective Date.

“**Change Order**” has the meaning set forth in Section 15.1.

“**Claim Notice**” has the meaning set forth in Section 21.4.

“**Claimant**” has the meaning set forth in Section 29.2.3.2

“**Conditions Precedent**” has meaning set forth in Section 7.1.

“**Confidential Information**” has the meaning set forth in Section 22.1.

“**Contract Interest Rate**” means, as of the due date of a payment, an annual rate of interest equal to the prime rate, as published in “The Money Rates” Section of The Wall Street Journal (U.S. Edition), but not to exceed the maximum rate permitted by Applicable Law, to be calculated on a simple, not compound, basis, and once established for a given payment, shall not fluctuate.

“**Contract Price**” has the meaning set forth in Section 5.1.

“**Contractor**” has the meaning set forth in the Preamble.

“**Contractor Default**” has the meaning set forth in Section 18.3.

“**Contractor Delay**” means: (a) a failure by Contractor to perform any obligation under this Agreement (other than by exercise of its rights under this Agreement); or (b) any unreasonable interference with the Work by Contractor or Contractor’s Separate Subcontractors; or (c) issuance of a Notice to Proceed after the required date in Section 7.1.

“**Contractor Indemnitee**” has the meaning set forth in Section 21.2.

“**Contractor Interests**” has the meaning set forth in Section 22.1.

“**Contractor Permits**” means those Permits set forth in Exhibit C-1.

“**Contractor Representative**” has the meaning set forth in Section 2.2 and is designated in Section 27.1.

“**Contractor’s Separate Subcontractors**” means each contractor or other Person that is in direct or indirect contractual privity with Contractor and that performs any work in respect of the Facility but excluding Subcontractor, each Sub-subcontractor and each Person in direct or indirect contractual privity with either.

“**Contractor’s Site Construction Manager**” has the meaning set forth in Section 2.1.

“**Contractor’s Work Schedule**” means the dates for the beginning and completion of certain Work (including of weekly Work, Milestones, Guaranteed Dates and any other dates, as applicable and set out on Exhibit F.

“**Daily Report**” means a written report prepared and submitted daily by Subcontractor in form and content generally in accordance with the daily report required by Contractor on Site. Contractor and Subcontractor shall, no later than the time of the issuance of Subcontractor’s first Payment Requisition hereunder, agree upon a Daily Report form suitable to provide information to Contractor regarding Subcontractor’s performance of the Work. Subcontractor’s Daily Report shall include, without limitation, quantity and percentage of locally hired personnel and labor classifications

“**Defect**” means any design, fabrication, manufacture, construction, installation or other workmanship or service or item (except for Design Criteria and equipment or materials listed in the Bill of Materials) required hereunder that (a) does not conform to the Scope of Work hereunder (including the Design Documents (Exhibit A-1), the Site Information (Exhibit J) or the Subcontractor Deliverables (Exhibit B)); or (b) could reasonably be expected to adversely affect the timely performance of any Person’s performance of duties hereunder or the mechanical, electrical or structural integrity, or operation of the Facility during its design life.

“**Delay Damages**” means Block Delay Damages and Project Delay Damages.

“**Deliverable**” means all deliverables required by this Agreement or Applicable Law, including those set forth on Exhibit B attached hereto.

“**Demand**” has the meaning set forth in Section 29.2.3.2.

“**Design Documents**” means the documents as referenced in Exhibit A-1.

“**Dispute**” has the meaning set forth in Section 29.2.

“**Dollars**” “**dollars**” or “**\$**” means, unless otherwise specified in this Agreement, the lawful currency of the United States of America.

“**Equipment**” means all materials, supplies, apparatus, devices, equipment, machinery, tools, components, instruments and appliances to be provided by Subcontractor.

“**ESI**” means electronically stored information.

“**Excusable Event**” means the occurrence of either (a) a Change In Law or (b) a Contractor Delay.

“**Effective Date**” has the meaning set forth in the Preamble.

“**EHASP**” has the meaning set forth in Section 3.9.

“**Facility**” means (a) the Plant that is designed, engineered, procured, and constructed in accordance with the Prime Contract and (b) the PVI.

“**Final Completion**” has the meaning set for in Section 13.4.1.

“**Final Completion Certificate**” means a certificate from Contractor certifying that Final Completion has occurred in accordance with Section 13.4.2.

“**Final Lien Waiver**” has the meaning set forth in Annex 3.

“**Financing Party**” means (a) any and all lenders providing senior or subordinated construction, interim or long-term debt financing or refinancing to Owner, Contractor or its or their Affiliates, (b) any and all equity investors in Owner, Contractor or its or their Affiliates providing Tax equity investment or leveraged lease-financing or refinancing (or any other equity investor that makes a capital contribution to Owner or its Affiliates in cash or in kind), or (c) any Person providing credit support to Owner, Contractor or its or their Affiliates in connection with the Facility or a portfolio of projects (including the Facility and any trustee or agent acting on Contractor or its Affiliates’ behalf).

“**Force Majeure Event**” means an event, or combination of events, which event(s) is (i) not a result of the failure of a Party to perform its obligations hereunder and (ii) could not have been prevented or overcome through the exercise of reasonable care or diligence, including, to the extent satisfying the foregoing conditions: war, blockade, revolution, insurrection, riot, act of terrorism; expropriation, requisition, confiscation or nationalization; acts or omissions of a Governmental Authority (other than (1) a Change In Law and (2) the delay or denial of any Subcontractor Permit, unless the same is without justifiable cause or is arbitrary or capricious); embargoes or sanctions; fire; flood; earthquake; volcano; tidal wave or perils of the sea; lightning strikes at the Site; an epidemic or quarantine at the Site; acts of God; provided, however, that the following shall not constitute a “Force Majeure Event”: (a) economic hardship or changes in financial markets (b) any Labor Difficulty; (c) late delivery or failure of equipment or materials or non-performance or delay by Sub-subcontractors, unless otherwise caused by a Force Majeure

Event within the meaning hereof; (d) weather conditions, unless weather conditions are more severe than the most recent ten (10) year historical mean for the same calendar days plus two (2) standard deviations using National Oceanic Atmospheric Administration weather data from the nearest reporting station to the Project, (e) any item, event, or occurrence which might conform to the definitions herein but as to which Owner refuses to grant Contractor relief, or (f) an item, event, or occurrence which the Party invoking Force Majeure foresaw at or before the time of contracting.

“**Full Notice to Proceed**” means written Notice signed by a duly authorized representative of Contractor to Subcontractor authorizing Subcontractor to commence and complete all Work under this Agreement.

“**Governmental Authority**” means applicable national, federal, state, provincial, county, municipal and local governments and all agencies, authorities, departments, instrumentalities, courts, corporations, other authorities lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or other subdivisions of any of the foregoing having or claiming a regulatory interest in or jurisdiction over the Site, the Facility, the Work or the Parties and their respective employees and Sub-subcontractors (and their respective employees).

“**Guaranteed Block Substantial Completion Date(s)**” means the date(s), as specified in the Omnibus Schedule (Exhibit F), by which Subcontractor shall cause each Block to achieve Block Substantial Completion.

Guaranteed Date(s)” means Guaranteed Block Substantial Completion Date, and the Guaranteed Project Substantial Completion Date.

“**Guaranteed Project Substantial Completion Date**” means the date, as specified in the Omnibus Schedule (Exhibit F), by which Subcontractor shall cause the Project to achieve Project Substantial Completion.

“**Hazardous Materials**” means any chemical, substance or material regulated or governed by any Applicable Law, or any substance, emission or material now or hereafter deemed by any Governmental Authority to be a “regulated substance,” “hazardous material,” “hazardous waste,” “hazardous constituent,” “hazardous substance,” “toxic substance,” “radioactive substance,” “pesticide” or any similar classification that is regulated by Applicable Law, including by reason of deleterious properties, ignitability, corrosivity, reactivity, carcinogenicity or reproductive or other toxicity.

“**Immigration Laws**” has the meaning set forth in Section 4.1.5.

“**Indemnitee**” means a Contractor Indemnitee or a Subcontractor Indemnitee, as the context may require.

“**Industry Standards**” mean those standards of procurement, construction, workmanship, Equipment, and components specified in Exhibit G, as well as those standards of care and

diligence normally practiced by recognized EPC firms in performing services of a similar nature for PV projects in the United States and in accordance with good procurement, or construction practices, Applicable Laws and Permits in effect at the time the Work is performed.

“**Intellectual Property Claim**” means a claim or legal action for unauthorized disclosure or use of any trade secret, patent, copyright, trademark or service mark arising from Subcontractor’s performance (or that of its Affiliates or Sub-subcontractors) under this Agreement that: (a) concerns any Equipment or design, procurement, construction or any other services provided by Subcontractor, any of its Affiliates, or any Sub-subcontractor under this Agreement; (b) is based upon or arises out of the performance of the Work by Subcontractor, any of its Affiliates, or any Sub-subcontractor, including the use of any tools or other implements of construction by Subcontractor, any of its Affiliates, or any Sub-subcontractor; or (c) is based upon or arises out of the design, manner of procurement or construction of any item by Subcontractor or any of its Affiliates or Subcontractors under this Agreement or the operation of any item according to directions embodied in Subcontractor’s final process design, or any revision thereof, prepared or approved by Subcontractor.

“**Intellectual Property Rights**” means all licenses, trade secrets, copyrights, patents, trademarks, proprietary information and other ownership rights related to the Work or otherwise necessary for the provision of Equipment or the ownership, operation, and maintenance of the Project, including all Project-related documents, models, computer drawings and other ESI, and where necessary, the software and license needed to open and manipulate the ESI.

“**Interim Lien Waiver**” has the meaning set forth in Annex 3.

“**Item of Work**” means each item of Work specified in the Omnibus Schedule.

“**Labor Difficulty**” means work stoppages, slowdowns, strikes, disputes, disruptions, boycotts, walkouts and other labor difficulties, expressly including any and all shortages or other difficulty in attracting or retaining skilled or unskilled labor.

“**Limited Notice to Proceed**” means written Notice signed by a duly authorized representative of Contractor to Subcontractor authorizing Subcontractor to commence and complete certain designated Work under this Agreement.

“**Loss**” means, subject to Article 28, any and all liabilities (including liabilities arising out of the application of the doctrine of strict liability), obligations, losses, damages (including consequential or incidental damages), penalties, claims, actions, suits, judgments, costs, expenses and disbursements and, in the case of third-party claims, whether the foregoing be founded or unfounded (including actual legal fees and expenses and costs of investigation), and whether arising in equity, at common law, or by statute, or under the law of contracts, torts or property, of whatsoever kind and nature, including claims for property damage, personal injury (including emotional distress) and third-party economic loss.

“**Memorandum**” has the meaning set forth in Section 29.2.3.4.

“**Milestone**” means a discrete portion of the Work identified as a “Milestone” on the Omnibus Schedule.

“**Monthly Progress Report**” means a written monthly progress report prepared by Subcontractor, containing a summary of Subcontractor’s Work to date: Subcontractor’s personnel on Site, including Sub-subcontractors and suppliers; status of Milestones or items of Work required herein; total work force on site, total man-hours, and projected monthly manpower by craft; recordable incidents or near misses since last report; health and safety actions taken to mitigate future incidents; environmental compliance update, as applicable; major accomplishments achieved and goals; project schedule (containing percent complete against time, and progress curves for planned versus actual); quality control requirements and status and commissioning status; and any remaining issues impacting Subcontractor’s Work.

“**MW**” means megawatt.

“**NDA**” shall have the meaning set forth in Section 22.3.

“**Notice**”, “**Notify**” or “**Notification**” means a written communication between the Parties required or permitted by this Agreement and conforming to the requirements of Article 27.

“**Notice to Proceed**” means a Full Notice to Proceed or Limited Notice to Proceed, as applicable.

“**Omnibus Schedule**” means the schedule of groups of Milestones and correlating payments in respect of the Contract Price as set forth in Exhibit F and additional information as set forth therein.

“**Owner**” has the meaning set forth in the Recitals.

“**Payment Requisition**” has the meaning set forth in Annex 2.

“**Permit**” means each and every license, consent, appraisal, authorization, ruling, exemption, variance, order, judgment, decree, declaration, regulation, certification, filing, recording, permit (including, where applicable, conditional permits) or other approval with, from, by, or of any Governmental Authority, including each and every environmental, construction, operating or occupancy permit and any agreement, consent or approval from or with any other Person, that is required by any Applicable Law for the lawful performance of the Work by Subcontractor or the Sub-subcontractors or operation of the Facility, including the Contractor Permits and the Subcontractor Permits.

“**Person**” means any individual, corporation, company, voluntary association, partnership, incorporated organization, trust, limited liability company, or any other entity or organization, including any Governmental Authority and any officer, director, member, manager, employee or agent of such Person.

“**Plant**” means the 150 MW AC PV power plant being constructed on the Site.

“**Project Delay Damages**” has the meaning set forth in [Section 14.3](#).

“**Project Substantial Completion**” has the meaning set forth in [Section 13.3.2](#).

“**Pre-Functional Checklist**” means those checklist requirements set forth in [Exhibit D](#), which are a required Deliverable as set forth in [Exhibit B](#).

“**Prime Contract**” has the meaning set forth in the Recitals.

“**Project**” means the turn-key 150 MW AC PV power plant (or portions thereof) made up of each Block to be procured and constructed by Subcontractor as set forth in this Agreement (up to the boundary of, and connection to, and including, the PVI), together with (a) the Equipment supplied by Subcontractor, (b) equipment supplied by Contractor, and (c) all supporting improvements and interconnections, in each case as described in this Agreement and the As-Builts.

“**Project Manager**” has the meaning set forth in [Section 3.3](#).

“**Property Tax**” means any ad valorem Tax, including real property and personal property Taxes levied or imposed by any Governmental Authority on the value of real or personal property.

“**Proposal**” has the meaning set forth in [Section 29.2.3.4](#).

“**Punchlist**” has the meaning set forth in [Section 13.1](#).

“**PV**” means photovoltaic.

“**PVI**” means the PV interconnection switchgear that is to be connected to the Plant and which collects the feeds from the Plant and transforms voltage as required for electrical interconnection to Owner’s transmission provider.

“**Quality Plan**” has the meaning set forth in [Section 3.12](#).

“**Release**” means the release, discharge, deposit, injection, dumping, spilling, leaking or placing of any solid or Hazardous Material into the environment so that such solid or Hazardous Material or any constituent thereof may enter the environment, or be emitted into the air or discharged into any waters, including ground waters under Applicable Law.

“**Remedial Plan**” has the meaning set forth in [Section 7.4](#).

“**Respondent**” has the meaning set forth in [Section 29.2.3.2](#).

“**Response**” has the meaning set forth in [Section 29.2.3.2](#).

“**Retainage**” has the meaning set forth in [Section 6.4](#).

“**Rules**” has the meaning set forth in [Section 29.2.3.1](#).

“**Schedules**” means, as applicable, the Omnibus Schedule Contractor’s Work Schedule, the Work Schedule, the schedule of

Milestones and correlating payment values in respect of the Contract Price and the Guaranteed Dates.

“**Scope of Work**” means the requirements regarding the Work set forth in [Exhibit A](#) and all sub-exhibits thereto.

“**Site**” means the Facility site, as more particularly described in [Exhibit J](#).

“**Site Conditions**” means the physical and other conditions at the Site and the surrounding area as a whole, including conditions relating to the environment, transportation, access, waste disposal, handling and storage of materials, the availability and quality of electric power, water, roads and labor personnel, local work and labor rules, climatic conditions and seasons, topography, air and water (including raw water) quality conditions, ground surface conditions, surface soil conditions, sound attenuation, subsurface geology, nature and quantity of surface and subsurface materials to be encountered (including Hazardous Materials), the geological and subsurface conditions of the Site, all other local and other conditions which may be material to Subcontractor’s performance of its obligations under this Agreement and facilities needed before and during performance of Subcontractor’s obligations under this Agreement, as well as the existence and location of underground utilities, obstructions and equipment that may interfere with or impede the Work.

“**Site Information**” means the information set forth in [Exhibit J](#).

“**Subcontractor**” has the meaning set forth in the Preamble.

“**Subcontractor Default**” has the meaning set forth in [Section 18.1](#).

“**Subcontractor Indemnitee**” has the meaning set forth in [Section 21.3](#).

“**Subcontractor Lien**” has the meaning set forth in [Article 26](#).

“**Subcontractor Party**” means each or all of Subcontractor, its Affiliates, and its Sub-subcontractors.

“**Subcontractor Permits**” means those Permits set forth in [Exhibit C-2](#), and each other Permit other than the Contractor Permits.

“**Substantial Completion Certificate**” means a certificate from Contractor certifying that Block Substantial Completion of a Block or Project Substantial Completion, as applicable, has occurred.

“**Sub-subcontractor**” means any Person, including any supplier of Equipment, other than Subcontractor, that performs any portion of the Work (of whatever tier) in furtherance of Subcontractor’s obligations under this Agreement.

“**Supplier**” means a Sub-subcontractor, at any tier, that supplies equipment or materials that will be incorporated into the Project.

“**Taxes**” has the meaning set forth in Annex 3.

“**Transportation Claims**” has the meaning set forth in Section 21.2.2.

“**Warranty**” has the meaning set forth in Section 16.1.

“**Warranty Period**” has the meaning set forth in Section 16.1.

“**Work**” means all obligations, duties, and responsibilities of Subcontractor, expressly or impliedly required under this Agreement, including the Scope of Work at Exhibit A and all sub-exhibits thereto, and the other documents included in this Agreement. Where this Agreement describes a portion of the Work in general, but not in complete detail, the Parties acknowledge and agree that the Work includes any work and provision of Equipment required for the procurement and construction necessary for completion of the Project in accordance with the Scope of Work at Exhibit A, including the Design Documents (*see* Exhibit A-1), Industry Standards and the requirements of this Agreement and for the Project on a turn-key basis to be capable of being operated safely in accordance with Industry Standards for the design life of the Plant. The Parties further agree that Work includes all items necessarily required by the Agreement in order to complete the Work, even if not expressly stated. Unless and only if expressly provided in the Bill of Materials at Exhibit A-2 hereto, Subcontractor shall be responsible for the specification, selection, procurement, delivery and incorporation of all materials, supplies, apparatus, devices, equipment, machinery, tools, components, instruments and appliances necessary to complete the Work.

“**Work Documents**” has the meaning set forth in Section 30.14.1.

“**Work Schedule**” means a work schedule prepared by Subcontractor and consistent with Contractor’s Work Schedule, the Omnibus Schedule and this Agreement and describing the time of completion of the items therein and all other Work items, as such schedule may be modified in accordance with Section 15.1. The Work Schedule shall be prepared by Subcontractor based on critical path logic in Microsoft Project electronic format and describe the schedule for completion of certain key items, procurement milestones, and field-construction activities, which schedule shall be resource-loaded, shall identify the time durations for each Item of Work, as well as the dependencies and logic ties between each Item of Work. The Work Schedule will include in its logic milestones for Contractor or Owner (as the case may be) approvals (including reasonable review times) and shall include “look ahead” schedules of at least a one (1) to three (3) weeks. If the Work Schedule is required for analysis at any time before it has been prepared by Subcontractor and approved by Contractor, it shall mean the Work, consistent with the requirements of this Agreement and the critical path of Contractor’s schedule for the Work.

“**Work Week**” with respect to Work at the Site for the first Work Week means the date of the Notice to Proceed through 11:59 P.M. of the next occurring Sunday and with respect to each successive Work Week means 12:00 A.M. Monday through 11:59 P.M. Sunday.

1.2 **Interpretation.**

(a) Terms defined in a given number, tense, gender, or form shall have the corresponding meaning when used in this Agreement with initial capitals in another number, tense, gender, or form.

(b) When a reference is made in this Agreement to an Article, Section, subsection, Exhibit or Annex, such reference is to an Article, Section, subsection, Exhibit or Annex to this Agreement specified, each of which is made a part of this Agreement for all purposes. Terms such as “hereof,” “herein,” “hereto,” “hereinafter” and other terms of like import refer to this Agreement taken as a whole and are not limited to the specific provision within which such references are set forth.

(c) The word “include,” “includes,” and “including” mean, “including, without limitation” unless otherwise specified.

(d) A reference to any Party to this Agreement or any other agreement or document shall include such Party’s predecessors, successors and permitted assigns.

(e) Reference to any Applicable Law means such Applicable Law as amended, modified, codified, replaced or reenacted, and all rules and regulations promulgated thereunder.

(f) All headings or captions contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

(g) The Parties have participated jointly in the negotiation and drafting of this Agreement. Any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any Party by virtue of the authorship of this Agreement shall not apply to the construction and interpretation hereof.

1.3 Documentation. This Agreement, including the Exhibits and Annexes hereto and the documents and materials referenced therein (all of which are incorporated herein) shall be taken as mutually explanatory. Subcontractor has reviewed all provisions of this Agreement and Exhibits hereto (including the Scope of Work at Exhibit A, sub-exhibits thereto, and all plans, specifications or other documents attached to or expressly incorporated in this Agreement or any Exhibit or sub-exhibit) and has confirmed that such are adequate to allow Subcontractor to perform the Work within the Contract Price, the Guaranteed Dates. If Subcontractor becomes aware of any error, defect, ambiguity or conflict within or between or among the provisions of this Agreement or any Exhibit hereto (including the Scope of Work at Exhibit A, the Design Documents at Exhibit A-1, or any plans, specifications or other documents attached to or expressly incorporated in this Agreement or any Exhibit or sub-exhibit), Subcontractor shall Notify Contractor of such error, defect, ambiguity or conflict within five (5) Business Days of when Subcontractor first discovers or should reasonably have discovered such defect, ambiguity or conflict. Failure to provide proper Notice as contemplated in the preceding sentence shall

constitute a waiver by Subcontractor of any right to rely on any contractual provision or warranty (whether express or implied) concerning the adequacy or accuracy of such provision(s) of this Agreement or Exhibit(s) hereto (including the Scope of Work at Exhibit A, the Design Documents at Exhibit A-1, or any plans, specifications or other documents attached to or expressly incorporated in this Agreement or any Exhibit or sub-exhibit). In the event of a conflict between or among any provision in the body of this Agreement, an Annex, an Exhibit or any Deliverable, the following shall apply: (a) any provision in an Annex shall take precedence over any provision in the body of the Agreement, any provision in an Exhibit or any Deliverable; (b) any provision in the body of the Agreement shall take precedence over any provision in an Exhibit or any Deliverable, (c) any provision in an Exhibit shall take precedence over any Deliverable, and (d) in the event of a conflict among provisions that are each contained in Annexes, the body of the Agreement or the Exhibits, as applicable, the provision imposing the more stringent requirement on Subcontractor shall take precedence. Except where any Deliverable shall be solely in the form of an electronic data file, any other electronic data files furnished by Contractor pursuant to this Agreement are provided only for the convenience of Contractor. In the case of any discrepancies between the Deliverable represented by electronic data files and the plotted hardcopy of such files bearing the seal of Subcontractor's registered professional engineer, the sealed hardcopy shall govern.

1.4 Documentation Format. This Agreement and all documentation to be supplied hereunder shall be in the English language and, unless otherwise agreed to in writing by the Parties, all units of measurement in the design process, specifications, drawings and other documents shall be specified in dimensions as customarily used in the United States.

2. RESPONSIBILITIES OF CONTRACTOR

2.1 Contractor's Site Construction Manager. Contractor shall designate (by Notice to Subcontractor) an on-Site representative solely for the purposes of on-Site, day-to-day coordination of the Work ("**Contractor's Site Construction Manager**").

2.2 Contractor's Representative. Contractor shall designate in Section 27.1 a representative to act as Contractor's single point of contact for any issues relating to this Agreement, including all Notices (the "**Contractor Representative**"). Contractor may designate a new Contractor Representative from time to time by Notice to Subcontractor.

2.3 Contractor's Separate Subcontractors. Subcontractor acknowledges it has no exclusive right to the Site, or to any part thereof. Contractor may, and expressly reserves the right to, retain Contractor's Separate Subcontractors to perform other services on or about the Site during the Work in connection with Contractor's responsibilities under the Prime Contractor this Agreement (other than in respect of Contractor's payment obligations under this Agreement). Subcontractor shall cooperate and coordinate with any of Contractor's Separate Subcontractors regarding coordination of design, procurement or construction of the Work, as well as access to, storage at, and use of the Site for

the performance of the Work and any other services. Subcontractor shall coordinate its Work with the performance of such other services, and Contractor shall be responsible for delivering the dates or schedules therefor to Subcontractor. To the extent Contractor provides Subcontractor with the design for services to be performed by Contractor or Contractor's Separate Subcontractors, Subcontractor shall review such design and promptly Notify the Contractor Representative of any Defect discovered or of any conflict with any of Subcontractor's Work, including Subcontractor's construction of or design, procurement, construction of, or access to the Work. Subcontractor must provide Notice to Contractor within five (5) Business Days of when Subcontractor first discovers or should reasonably have discovered any defect, interference, impact, inconsistency or lack of coordination related to work performed by Contractor's Separate Subcontractors. Failure by Subcontractor to provide timely Notice as contemplated in the preceding sentence shall constitute a waiver by Subcontractor of the right to seek any Change Order or other relief arising out of such condition or event.

2.4 Access to Site. Except as may be prevented by the Owner or as may be noted on the drawings, Contractor shall make the Site available on a non-exclusive basis to Subcontractor and reasonably assure Subcontractor rights of access to the Site as necessary for performance of the Work, including any investigation of Site Conditions. Subcontractor shall coordinate and cooperate with Contractor regarding entry onto, storage at, and use of the Site and with the EHASP. Subcontractor must provide Notice to Contractor within five (5) Business Days of when Subcontractor first discovers or should reasonably have discovered any design or procurement issue, interference, impact, inconsistency or lack of coordination related to lack of access to the Site. Failure by Subcontractor to provide timely Notice as contemplated in the preceding sentence shall constitute a waiver by Subcontractor of the right to seek any Change Order or other relief arising out of such lack of access to the Site.

2.5 Remedies for Contractor's Failures under this Article 2. Any failure of Contractor to perform any obligation or covenant in accordance with this Article shall constitute a Contractor Delay subject to the provisions of Section 8.3 and shall not be considered a breach of any covenant, condition, representation or warranty of Contractor or a Contractor Default.

3. RESPONSIBILITIES OF SUBCONTRACTOR

Subcontractor shall, at Subcontractor's cost and expense:

3.1 General. Perform, furnish and be responsible for all of the Work. Subcontractor acknowledges and agrees that this Agreement constitutes a fixed-price (subject to the terms hereof) obligation to complete the Work within the time and for the purpose designated herein.

3.2 Performance of Work. Perform and complete all Work related to procurement and construction required for the completion of the Project, and cause each Sub-subcontractor to perform timely and complete each such Sub-subcontractor's portion of the Work, in accordance with the terms of this

Agreement, Exhibit(s) and Annexes hereto (including the Scope of Work at Exhibit A, the Design Documents at Exhibit A-1, the operating plans described in Exhibit D, or any plans, specifications or other documents attached to or expressly incorporated in this Agreement or any Exhibit or sub-exhibit), all Deliverables, Applicable Laws, Permits and Industry Standards. Subcontractor shall promptly advise Contractor of the need for and location of, and shall preserve, all permanent survey construction monuments and benchmarks during its performance of the Work.

3.3 Project Manager. Within two (2) Days of Notice to Proceed, Subcontractor shall designate in writing to Contractor a project manager who shall have full responsibility for the execution of the Work and shall act as a single point of contact in all matters on behalf of Subcontractor (the “**Project Manager**”). Contractor reserves the right to reject the Project Manager at any time in writing to Subcontractor. Any change to the person appointed as the Project Manager by Subcontractor shall be subject to Contractor’s prior written approval.

3.4 Utilities and Services. Install, connect and maintain during its performance under this Agreement all utilities, facilities and services required for the performance of the Work (including those described in Exhibit A); pay, when due, all construction utility usage charges and arrange with local authorities and utility companies having jurisdiction over the Site for the provision of such utilities and for the transition of such usage charges to the Contractor or Owner, as the case may be, upon and after Project Substantial Completion; obtain all supplies, labor, materials, consumables, construction equipment, tools, construction vehicles, other necessary equipment or services, of whatever kind or nature, required for the performance of the Work but which do not form a permanent part of the completed Work.

3.5 Inspection. Perform all design coordination, inspection, expediting, quality surveillance and other like services required for performance of the Work, including inspecting the Site, all Equipment and all other equipment, hardware and materials procured by, or delivered to Subcontractor (whether or not forming a permanent part of the completed Work or included in Subcontractor’s scope of supply hereunder) that is necessary for Subcontractor to install and construct the Project in accordance with the requirements of this Agreement.

3.6 Organization. Maintain staff dedicated to the procurement and construction services required for furnishing and completion of the Work that have the technical and managerial expertise to procure, control, and execute the Work in accordance with the requirements of this Agreement. Maintain a qualified and competent organization at the Site, with adequate capacity and numbers of procurement, construction and start-up personnel, equipment, and facilities to execute the Work in a safe, environmentally sound, timely, and professional manner. Provide Contractor, for its review and approval, the names and resumes of the individuals that Subcontractor proposes as its managers and superintendents that will be located on the Site for construction (including the Project Manager). Subcontractor shall not change any such managers or superintendents without Contractor’s prior written approval.

3.7 Subcontractor Permits. Obtain, maintain, and pay for all Subcontractor Permits, including any required PV installer licenses for all pertinent personnel as well as the appropriate general contractor, and specialty contractor’s license(s) for the jurisdiction in which the Work is being performed. Provide, at Subcontractor’s sole cost and expense, all testing, inspections and evaluations required by the applicable Governmental Authority in order to obtain and maintain Subcontractor and Contractor Permits. Provide support to Contractor free of charge by way of reasonable ministerial assistance, providing information, providing drawings, and attending meetings with permitting boards as reasonably requested by Contractor and in connection with obtaining the Contractor Permits.

3.8 Maintenance of Site. Maintain the Site clear of debris, waste material and rubbish and dispose of the same in accordance with Applicable Law. Prior to Final Completion, remove from the Site all of its waste materials and all equipment, materials, and supplies not forming a part of the permanent Plant.

3.9 Site Security and Safety. At all times while any of Subcontractor’s employees, agents or Sub-subcontractors are on the Site, be solely responsible for providing them with a safe place of employment, and Subcontractor shall inspect and promptly take action to correct conditions which cause or may be reasonably expected to cause the Site to be or become an unsafe place of employment for them. Subcontractor shall take all necessary precautions for the safety and security of its employees, Sub-subcontractors, agents, owner representatives and visitors on the jobsite, prevent accidents or injury to individuals on, about, or adjacent to the Site, and take all necessary precautions to prevent loss of, injury, or damage to property at, adjacent to, or on roadways approaching the Site. Subcontractor shall fully comply with all aspects of Contractor’s Environmental Health and Safety Plan (as so incorporated, the “**Contractor’s EHASP**”) in Exhibit D. If any aspects of the Work are not specifically addressed in Contractor’s EHASP, Subcontractor shall develop and provide a supplemental Site-specific EHASP addressing such Work (“**Subcontractor’s EHASP**”). Subcontractor shall submit Subcontractor’s EHASP within five (5) days of the Effective Date. Submission of Subcontractor’s EHASP shall not be considered a Change. Subcontractor shall ensure that Subcontractor’s EHASP complies with all Applicable Laws and any Site-specific requirements. Contractor shall have five (5) days to review and comment on Subcontractor’s EHASP; provided, however, that Subcontractor shall remain solely responsible for performing such Work in accordance with this Agreement. If Contractor provides Subcontractor with reasonable comments and/or revisions with respect to Subcontractor’s EHASP, then Subcontractor will revise Subcontractor’s EHASP to address and incorporate such, and resubmit Subcontractor’s EHASP to Contractor within two (2) Business Days. Such resubmission of Subcontractor’s EHASP shall not be considered a Change. Subcontractor shall perform the Work and cause its Sub-Subcontractors to perform the Work, at the Contract Price, in accordance with Contractor’s EHASP and Subcontractor’s EHASP (collectively, the “**EHASP**”), which shall be deemed incorporated into this Agreement in Exhibit D. As and when required by Owner, and at its sole cost and expense, Subcontractor shall modify Subcontractor’s EHASP to conform to Owner’s safety requirements. In addition, Subcontractor shall

erect and properly maintain at all times, as required by the conditions and progress of the Work, all safeguards and warnings for the protection of its employees and the general public that are reasonably prudent or required by Applicable Law. If Contractor discovers or becomes aware of any violation of or activity that is inconsistent with the EHASP or any circumstance that in Contractor's discretion is inconsistent with Subcontractor's obligation hereunder to provide a safe place of employment, and upon Contractor providing Notice thereof to Subcontractor and requesting that Subcontractor cease Work (in whole or in part as requested by Contractor), then Subcontractor shall cease Work (in whole or in part) until such time as the circumstance at issue has been resolved to Contractor's satisfaction and Contractor has provided Notice thereof. Contractor's right hereunder is not to be construed as a duty to identify safety issues with Subcontractor's Work, and there are no third party beneficiaries of this Section.

3.10 Occupational Health and Safety. Take necessary safety and other precautions to protect property and persons from damage, injury, illness, violence or harassment arising out of or in connection with the performance of the Work, wherever taking place, and shall be responsible for the compliance by all of its agents, employees and Sub-subcontractors with all Applicable Laws governing occupational health and safety.

3.11 Shipping. Arrange for timely procurement, testing, and complete shipping and handling of all Equipment necessary or advisable for completion of the Work, including inspections, expediting, quality assurance, shipping, loading, unloading, customs clearance, receiving, security, storage and claims and the receiving, unloading, handling, security and storage of all other equipment, hardware, and materials associated with the Work (whether or not forming a permanent part of the completed Work or included in Subcontractor's scope of supply hereunder) following delivery thereof to the Site in strict accordance with the applicable manufacturer's recommendations.

3.12 Quality Assurance Programs. Subcontractor shall develop, establish, document and implement appropriate checking, coordination, and other quality control procedures to assure a quality, well-developed design consistent with the requirements of this Agreement ("**Subcontractor's Quality Plan**"). Subcontractor's Quality Plan shall specifically address all aspects of Subcontractor's Work. Subcontractor shall submit Subcontractor's Quality Plan within five (5) days of the Effective Date. Submission of Subcontractor's Quality Plan shall not be considered a Change. Contractor shall have five (5) days to review and comment on Subcontractor's Quality Plan; provided, however, that Subcontractor shall remain solely responsible for performing such Work in accordance with this Agreement. If Contractor provides any comments with respect to Subcontractor's Quality Plan, then Subcontractor shall incorporate changes into Subcontractor's Quality Plan addressing such comments, and resubmit Subcontractor's Quality Plan to Contractor within two (2) Business Days. Such resubmission of Subcontractor's Quality Plan shall not be considered a Change. Upon acceptance by Contractor, Subcontractor shall perform the Work and cause its Sub-Subcontractors to perform the Work, at the Contract Price, in accordance with Subcontractor's Quality Plan, which shall be deemed incorporated into this Agreement in Exhibit D.

3.13 Access. Use only the entrance to the Site designated by Contractor from time-to-time for ingress and egress of all personnel, Equipment, and materials, supplies, and equipment of any kind.

3.14 Deliverables. Issue Deliverables for Contractor review or approval in accordance with Exhibit B. If there are procurement "hold" points on Exhibit B, Milestones in Exhibit F, or otherwise required by the Contract Documents, Subcontractor shall not proceed past the "hold" point until it has received written approval from Contractor to do so. If Contractor identifies any errors or omissions with respect to any Deliverable submitted for review, then Subcontractor shall incorporate changes into such Deliverable addressing and remedying the errors and omissions and resubmit the same to Contractor, and such incorporation of changes to address Contractor's comments shall not be considered a Change. In no event shall Contractor's review of a Deliverable constitute acceptance of any condition or other attribute of the Deliverable which is contrary to, or different from, the requirements of this Agreement.

3.15 Subcontractor Performance Security. Subcontractor shall cause the Guaranty to be provided to Contractor as of the Effective Date and to be maintained in full force and effect in accordance with the terms thereof through expiry of the Warranty Period. At Contractor's request, Subcontractor shall also provide a performance bond to be maintained in full force and effect in accordance with the terms thereof through expiry of the Warranty Period, in form and substance acceptable to Contractor in Contractor's sole discretion, in an amount equal to the Contract Price (as the same may increase from time to time). Subcontractor shall submit documentation evidencing that its surety (a) is duly authorized to provide surety services in the State of California, (b) maintains a current A.M. Best financial strength and financial size rating category of A-VII or better, and (c) is listed on the current Federal Registrar Circular 570, including evidence of assets and underwriting limitation acceptable to Contractor. If, at Contractor's request, Subcontractor provides a performance bond, then the Contract Price shall [be increased by the amount quoted by Subcontractor for such bond in Subcontractor's bid for the Work / include the cost of such bond].

3.16 Reserved.

4. COVENANTS, WARRANTIES AND REPRESENTATIONS

4.1 Subcontractor. Subcontractor represents, warrants and covenants as follows:

4.1.1 Organization, Standing and Qualification. It is an organization, duly organized, validly existing and in good standing under the laws of the State of California, and has full power and authority, and is duly licensed, to execute, deliver and perform its obligations hereunder, and is and will be duly qualified and licensed to do business and in good standing under the laws of each other jurisdiction where the failure to be so qualified would have a material adverse effect on its ability to perform its obligations hereunder. Subcontractor also warrants that it has obtained, and will in the future maintain, all Permits required by Applicable Law to perform the Work.

4.1.2 Due Authorization; Enforceability. This Agreement has been duly authorized, executed and delivered by or on behalf of Subcontractor and is, upon execution and delivery, the legal, valid and binding obligation of Subcontractor, enforceable against Subcontractor in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and by general equitable principles.

4.1.3 No Conflict. The execution, delivery and performance by Subcontractor of this Agreement will not conflict with or cause any default under: (a) its organizational documents; or (b) any indenture, mortgage, chattel mortgage, deed of trust, lease, conditional sales contract, loan or credit arrangement or other agreement or instrument to which Subcontractor is a party or by which it or its properties may be bound or affected; or (c) as of the Effective Date, any Applicable Laws; and (d) will not subject the Plant, the Facility or any component part thereof or the Site or any portion thereof to any lien other than as contemplated or permitted by this Agreement.

4.1.4 Government Approvals and Applicable Laws. The Subcontractor Permits either have been or will be obtained by Subcontractor and are, or will be when required, in full force and effect so as to permit Subcontractor to commence and prosecute the Work in accordance with the Work Schedule. Neither the execution nor delivery by Subcontractor of this Agreement requires the consent or approval of, or the giving of notice to or registration with, or the taking of any other action in respect of, any Governmental Authority. Subcontractor has knowledge of all of the Applicable Laws that must be followed in performing the Work and, for the avoidance of doubt, Subcontractor represents and warrants that it has knowledge of all of the federal, state and local legal requirements and business practices that must be followed in performing the Work and the Work will be performed in conformity with such legal requirements and business practices.

4.1.5 Immigration Compliance. Subcontractor represents and warrants that it has complied with, and at all times during the term of this Agreement shall comply with, all federal, state and local immigration laws, statutes, rules, codes, orders, and regulations, including, without limitation, any Applicable Laws prohibiting or regulating the employment of unauthorized aliens and all federal and any applicable state or local laws relating to the verification of employee work authorization, including any Applicable Laws requiring the Subcontractor to enroll in and use E-Verify (collectively, the "**Immigration Laws**"). Failure to comply with the Immigration Laws will be considered a material breach of this Agreement.

4.1.6 No Suits, Proceedings; Solvency. As of the Effective Date, there are no actions, suits, proceedings, patent or license infringements, or investigations pending or, to Subcontractor's knowledge, threatened against it at law or in equity before any court (in the United States or otherwise) or before any Governmental Authority (whether or not covered by insurance) that individually or in the aggregate could result in any materially adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Subcontractor or in any impairment of Subcontractor's ability to perform its obligations

under this Agreement. Subcontractor also represents and warrants that Subcontractor is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete its obligations under this Agreement.

4.1.7 Business Practices. As of the Effective Date, neither Subcontractor nor its representatives have made any payment or given anything of value, and Subcontractor covenants that it will not, and will direct its employees, agents, and Sub-subcontractors and their employees or agents to not, make any payment or give anything of value, in either case to any government official (including any officer or employee of any Governmental Authority) to influence his, her, or its decision or to gain any other advantage for Owner, Contractor or Subcontractor in connection with the Work to be performed hereunder. Subcontractor shall follow Contractor's Code of Business Conduct and Ethics policy with respect to all of the Work, including the selection of Sub-subcontractors. Subcontractor shall immediately Notify Contractor of any violation of this covenant.

4.2 Contractor. Contractor represents, warrants and covenants as follows:

4.2.1 Organization, Standing and Qualification. It is a corporation duly formed, validly existing, and in good standing under the laws of the State of Delaware, and has full power and authority to execute, deliver and perform its obligations hereunder and is and will be duly qualified to do business and in good standing in each jurisdiction where the failure to be so qualified would have a material adverse effect on its ability to perform its obligations hereunder.

4.2.2 Due Authorization; Enforceability. This Agreement has been duly authorized, executed and delivered by or on behalf of Contractor and is, upon execution and delivery, the legal, valid, and binding obligation of Contractor, enforceable against Contractor in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and by general equitable principles.

4.2.3 No Conflict. The execution, delivery and performance by Contractor of this Agreement will not conflict with or cause any default under: (a) its organizational documents; or (b) any indenture, mortgage, chattel mortgage, deed of trust, lease, conditional sales contract, loan or credit arrangement or other agreement or instrument to which Contractor is a party or by which it or its properties may be bound or affected; or (c) as of the Effective Date, any Applicable Laws.

4.2.4 No Suits, Proceedings. As of the Effective Date, there are no actions, suits, proceedings, or investigations pending or, to Contractor's knowledge, threatened against it at law or in equity before any court (in the United States or otherwise) or before any Governmental Authority (whether or not covered by insurance) that individually or in the aggregate could result in any materially adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Contractor or in any impairment of its ability to perform its obligations under this Agreement.

5. COST OF WORK

5.1 Contract Price. Subcontractor hereby agrees to accept as full compensation for the performance of the Work Forty-One Million Seventy-Nine Thousand Two Hundred Sixty-Five Dollars (\$41,079,265), as same may be adjusted only in accordance with the provisions and limitations set forth herein (the “**Contract Price**”). The Contract Price shall not be changed, nor shall Subcontractor be entitled to any other compensation, reimbursement of expenses or additional payment of any kind, except in accordance with and subject to the limitations provided in Article 15. Payments shall be made at the times and in the manner provided in Article 6 and Annex 2.

5.2 Fixed Price Nature of Contract. Each Party acknowledges the cost risks inherent in the execution of a fixed price contract for procurement and construction, and acknowledges that it may have miscalculated the costs to perform the Work hereunder and that the actual costs incurred may be greater or less than the Contract Price. The fact that either Party may have so miscalculated shall not form the basis for any claim of relief hereunder, whether such claim arises in contract or tort or otherwise.

5.3 Subcontractor and Contractor to Cooperate. The Parties shall reasonably cooperate to minimize the Tax liability of each to the extent legally permissible, including separately stating taxable charges on Payment Requisitions and filing, presenting or supplying resale, deduction and exemption certificates, if applicable, and other information as reasonably requested. To the extent the Subcontractor fails to take all reasonable steps to minimize Excluded Taxes, the amount of Taxes related to such failure shall not be treated as Excluded Taxes, and Contractor shall not be required to compensate Subcontractor for any such Taxes. In addition, to the extent any deductions, exemptions, abatements, credits against or deferrals of any Taxes may be available to Contractor or Subcontractor under Applicable Law, the Parties shall reasonably cooperate in order to secure any such exemptions, abatements, credits against, or deferrals of, such Taxes.

6. TERMS OF PAYMENT

Payments to Subcontractor shall be made as follows:

6.1 Payments. Contractor’s obligation to make payments, and the payment requisition process, is set forth in Annex 2.

6.2 Required Documentation. Each Payment Requisition shall further include other documentation reasonably requested by Contractor, including Interim Lien Waiver(s) on behalf of Subcontractor and each Sub-subcontractor for payments previously made by Contractor pursuant to this Agreement and for payments to be made pursuant to such Payment Requisition. To the extent that Subcontractor does not provide Interim Lien Waivers as required above for Sub-subcontractor(s) for the applicable month, Subcontractor represents and warrants that payment is not due to such Sub-subcontractor(s) under the applicable sub-subcontract or purchase order for such month. Contractor shall at all times (without Notice to Subcontractor) have the right to contact any Sub-subcontractor and confirm

Work performed and status of accounting related in any manner to such Work (including amounts requisitioned, paid, due, withheld and/or in dispute). Any Payment Requisition that is inaccurate or incomplete or that lacks sufficient detail, specificity, or supporting documentation required by this Agreement as determined by Contractor, and, with respect to a Payment Requisition requesting final payment pursuant to Section 6.5, shall not, to the extent of such deficiency, constitute a valid request for payment.

6.3 Contractor Review and Payments. Without limiting Contractor’s rights of review under Article 11, within thirty (30) days after Contractor receives a Payment Requisition and all accompanying documentation required by Section 6.2 and Annex 2, including the applicable Monthly Progress Report and Contractor’s confirmation that all Daily Reports have been submitted through the Payment Requisition date, Contractor shall: (a) determine, at its discretion, whether the Payment Requisition has been properly submitted and (b) determine and Notify Subcontractor concerning any requisitioned amount that is in dispute and the basis for such dispute. All payments to be made to either Party under this Agreement shall be paid in Dollars. Payment of undisputed amounts shall be due within thirty (30) days of receipt of the Payment Requisition Subcontractor shall be responsible for paying all Sub-subcontractors and Contractor shall not have any obligation in respect thereof.

6.4 Retainage. Contractor shall retain (the “**Retainage**”) an amount equal to ten percent (10%) of each payment (whether such payment is a payment made in accordance with this Article 6 and Annex 2, payment on account of a Change Order or otherwise) made hereunder as performance security for Subcontractor’s obligation to achieve Project Substantial Completion and complete the items on the Punchlist to achieve Final Completion. Contractor shall release the Retainage as follows:

(a) At Final Completion, Contractor shall pay Subcontractor an amount equal to the entire amount of the Retainage.

6.5 Final Payment. On or after Subcontractor has achieved Final Completion, Subcontractor shall submit to Contractor a final Payment Requisition setting forth all amounts due to Subcontractor that remain unpaid in connection with the Work (including any remaining Retainage). The final Payment Requisition shall further include other documentation reasonably requested by Contractor, including, by way of illustration only, Final Lien Waiver(s) on behalf of Subcontractor and each Sub-subcontractor for payments previously made by Contractor pursuant to this Agreement and for payments to be made pursuant to such Payment Requisition. If Subcontractor is obligated under Section 3.15 to provide a performance bond, Subcontractor’s final Payment Requisition shall include written confirmation from Subcontractor’s surety that (a) such final Payment Requisition includes all amounts due to Subcontractor under this Agreement and (b) surety releases and discharges Contractor from any potential liability or claim(s) for amounts due Subcontractor or its surety arising out of or related to any aspect of Subcontractor’s performance on the Project or under the Agreement. Within thirty (30) days after delivery of the foregoing, Contractor shall pay to Subcontractor the amount due under such Payment Requisition.

6.6 Withholding.

6.6.1 Contractor Withholding. Any provision hereof to the contrary notwithstanding and in addition to the Retainage, upon the occurrence and/or continuance of any of the following events, or Contractor's anticipation thereof in its sole discretion, may withhold or retain a corresponding amount (including all) of any payment otherwise due to Subcontractor under this Agreement:

(a) Costs reasonably necessary to complete, or correct any Work that is not, or is reasonably believed by Contractor not to be, materially in compliance with this Agreement, to the extent, after the Work is fifty percent (50%) complete, such costs exceed an amount equal to fifty percent (50%) of the Retainage;

(b) Amounts Contractor is required to pay pursuant to an official notice from any Governmental Authority, or employee benefit trust fund, for which Contractor is or may be liable for any Subcontractor Party, in accordance with Applicable Law, including but not limited to costs and expenses of retaining any person or entity required by any Governmental Authority related to Subcontractor Permits and Contractor Permits;

(c) Costs or expenses to be incurred by Contractor in exercising its rights under Articles 18, 19, 21, 26, any other provision of this Agreement, or permitted or required to be withheld under any Applicable Laws, or under any combination of the foregoing;

(d) Block or Project Delay Damages, or both, as determined by Contractor in its sole discretion;

(e) Amounts reasonably deemed necessary by Contractor to protect itself from material breaches of this Agreement, notice of a plan to file, or notice of the filing of, a claim or lien, received from or on behalf of a Sub-subcontractor or Supplier, or for security for obligations hereunder;

(f) Amounts required to repair damages caused by Subcontractor to materials, equipment, and hardware on the Site; and

(g) Amounts required due to Subcontractor's failure to comply with, or Subcontractor's acts or omissions in the performance of, any part of this Agreement, including, but not limited to, violation of any Applicable Law, order, rule or regulation, including those regarding safety, hazardous materials or environmental requirements.

6.6.2 Notice of Withholding; Notice of Correction. If Contractor intends to withhold any amount pursuant to this Agreement, then Contractor shall provide a Notice to Subcontractor explaining the basis for such withholding. Within five (5) Business Days after receipt thereof, Subcontractor may Notify Contractor that (a) Subcontractor disputes such withholding pursuant to Article 29 (stating the grounds therefor) or (b) a condition described in Contractor's Notice has been corrected. Any such Notice shall sufficiently identify the scope and manner of the correction of the specified condition and shall

be signed by the Project Manager. Within thirty (30) days after receipt of a Notice from Subcontractor describing the corrective measures, Contractor shall either pay the amount withheld or shall object in writing to the scope and manner of the correction of the condition or reason for the withholding, providing the basis for such objection.

6.6.3 Subcontractor Backcharges. In the event the amounts Contractor is entitled to withhold under this Agreement are insufficient to fully compensate Contractor for costs incurred for events set forth in this Section, Contractor shall Notify Subcontractor of Subcontractor's obligation to pay the excess amount. Within five (5) Business Days after receipt thereof, Subcontractor may Notify Contractor that (a) Subcontractor disputes such amount pursuant to Article 29 (stating the grounds therefor). Subcontractor's failure to respond to Contractor's Notice as provided herein shall be deemed Subcontractor's acknowledgment of its obligation to pay the excess amount, and Subcontractor shall pay the excess amount within thirty (30) days after receipt of Contractor's Notice.

6.7 Disputes Regarding Payments. The Parties shall use reasonable efforts to resolve all disputed amounts expeditiously and in accordance with the provisions of Article 29. Failure by Subcontractor to provide Notice as described in Section 6.6.2 within five (5) Business Days after receipt thereof shall be deemed a waiver of Subcontractor's rights to dispute or defend against such withholding or recover the amounts withheld. No payment made hereunder shall be construed to be acceptance or approval of that part of the Work to which such payment relates or to relieve Subcontractor of any of its obligations hereunder.

6.8 Delinquent Payments. Any delinquent payment hereunder by either Party (including any disputed payments withheld and ultimately resolved in favor of the Party to whom such payment is due) that is not paid within ten (10) days following receipt of a Notice of delinquency from the other party shall incur interest at the Contract Interest Rate from the date on which the payment was originally due until the payment is made.

6.9 Withholding Taxes. If Contractor is required under Applicable Law to withhold any Taxes in connection with any payment under this Article 6, Contractor shall withhold such Tax and remit such Tax to the applicable Governmental Authority on a timely basis. The amount of any such withholding of Tax shall be treated as payment of the Contract Price. Contractor shall report any such withholding of Tax to subcontractor in accordance with Applicable Law, including for example the issuance of Form 1099-MISC to Subcontractor.

6.10 U.S. Information Reporting. Subcontractor shall submit to Contractor a properly completed form W-9 no later than five (5) Business Days after the execution of this Agreement. Subcontractor shall submit Taxpayer Identification Number and Certification, or other application form (such as a W-8) within five (5) Business Days after requested by Contractor.

7. COMMENCEMENT AND SCHEDULING OF THE WORK

7.1 Notice to Proceed. The issuance of a Notice to Proceed, in whole or in part, by Contractor shall be a condition precedent to the commencement of the Work, or a designated portion thereof, under this Agreement. Upon issuance of a Notice to Proceed, Subcontractor shall commence performance of the Work, or a designated portion thereof, as required by this Agreement. Contractor shall issue the Notice to Proceed on or before one hundred and eighty (180) days from the Effective Date. If Contractor has not issued any form of a Notice to Proceed for any period thereafter, then the Parties shall negotiate in good faith the cost and schedule impact to Subcontractor due to such delay, or, if directed in writing by Contractor, there shall be a termination of the obligations of this Agreement.

7.2 Work Schedule. Subcontractor shall prosecute the Work in accordance with the Work Schedule. Subcontractor shall achieve Block Substantial Completion and Project Substantial Completion by the applicable Guaranteed Date. Within five (5) Business Days after issuance of a Notice to Proceed, Subcontractor shall provide Contractor with one (1) electronic and one (1) hard copy of its proposed Work Schedule for Contractor's review and approval. If Contractor provides written comments to the Work Schedule, Subcontractor shall then revise the proposed Work Schedule to address such comments and resubmit the revised proposed Work Schedule for Contractor's further comments within two (2) additional days. Until Final Completion, Subcontractor shall update the Work Schedule weekly to reflect the current status of the Work and shall provide the same to Contractor weekly (in electronic and hard-copy form) as part of the Daily Report. Subcontractor shall at all times provide Contractor with a listing of forecast action dates by Contractor which could impact or affect Subcontractor's Work Schedule. Subcontractor shall be aware of any potential sources of delay to items on the Work Schedule and shall promptly notify Contractor of any changes in the scheduled completion thereof of more than five (5) days and the reasons therefor.

7.3 Progress Reporting. From and after the Effective Date, Subcontractor shall prepare and submit to Contractor (a) daily on each work day prior to the beginning of the next day a Daily Report reflecting such day's work and (b) the Monthly Progress Report. Subcontractor shall keep daily logs at the Site and shall provide to Contractor Daily Reports of actual procurement and construction progress as compared with the scheduled progress. If Subcontractor has failed to comply with this Section, it shall be deemed to be in default of the invoicing procedures of this Agreement, and no amount shall be due.

7.4 Remedial Plans. If Subcontractor fails to start, complete or meet any of the activities or approximate installation velocities listed in Exhibit F on or before the scheduled dates provided therein, or otherwise fails to start, complete or meet any of the items on the Work Schedule or the Omnibus Schedule on the date scheduled for start or completion of such item, as applicable, then Subcontractor shall, within two (2) days after Subcontractor becomes aware of such delay or potential future delay, submit for approval by Contractor a written plan (the "**Remedial Plan**") describing the actions Subcontractor will take to achieve Block Substantial Completion by the applicable Guaranteed Block Substantial Completion Date. The Remedial Plan shall provide in reasonably sufficient detail a daily schedule of the Work,

including but not limited to labor hours, quantity, and velocity as applicable. Within three (3) Business Days after receipt of the Remedial Plan, Contractor shall deliver written approval or disapproval of the Remedial Plan to Subcontractor, specifying those portions (if any) of the Remedial Plan that Contractor approves and providing comments to those portions of which it disapproves. Subcontractor shall then revise the Remedial Plan to address such comments as shall have been provided by Contractor and resubmit the revised Remedial Plan for Contractor's further comments within two (2) additional days. Upon approval by Contractor, and without prejudice to Subcontractor's obligation to meet the corresponding Guaranteed Dates, Subcontractor shall, at its sole cost and expense (except where such failure to start or complete is caused by an Excusable Event or Force Majeure Event and Subcontractor has complied with the Notice requirements pursuant to Section 8.2), promptly proceed with completing the Work in the manner specified by the Remedial Plan. Contractor's review of any such Remedial Plan shall not be a waiver of any other rights Contractor may have under this Agreement or Applicable Law as a result of Subcontractor's delay.

8. FORCE MAJEURE; EXCUSABLE EVENT

8.1 Certain Events. No failure or omission to carry out or observe any of the terms, provisions, or conditions of this Agreement shall give rise to any claim by Contractor against Subcontractor, or be deemed to be a breach or a Subcontractor Default under this Agreement if such failure or omission shall be caused by or arise out of a Force Majeure Event or Excusable Event. No failure to timely make payment hereunder, or obligations of Subcontractor, that matured before the occurrence of a Force Majeure Event or Excusable Event (as the case may be) shall be excused as a result of such occurrence. Damages or injuries to persons or properties resulting from a Force Majeure Event during the performance of the obligations provided for in this Agreement shall not relieve Subcontractor of any responsibility it may have pursuant to the terms of this Agreement to bear the cost of the damage or injuries as provided herein. The suspension of, or impact on, performance due to a Force Majeure Event or an Excusable Event shall be of no greater scope and no longer duration than is required by such event. Subcontractor shall have a duty to mitigate the duration, costs and Work Schedule impacts of a Force Majeure Event or Excusable Event, including promptly implementing any remedies recommended by Contractor, to continue to perform its obligations hereunder not affected by such event, and to remedy its inability to perform, as applicable. The affected Party shall notify the other when it is able to resume performance of its obligations under this Agreement.

8.2 Force Majeure Event, Excusable Event, Notice. If Subcontractor's ability to perform its obligations under this Agreement is affected by a Force Majeure Event or an Excusable Event, Subcontractor shall, within twenty-four (24) hours after Subcontractor becomes aware (or reasonably should have become aware) of the occurrence of the event, provide Notice thereof to Contractor, including the date on which Subcontractor became aware of the occurrence of such event and an estimate of the event's anticipated duration and effect upon the performance of Subcontractor's obligations and any action being taken to avoid

or minimize its effect. Notwithstanding the foregoing, Subcontractor shall, within five (5) Business Days after Subcontractor becomes aware (or reasonably should have become aware) of the occurrence of a delay in the delivery of Contractor provided materials, provide Notice thereof to Contractor, including the date on which Subcontractor became aware of the occurrence of such event and an estimate of the event's anticipated duration and effect upon the performance of Subcontractor's obligations and any action being taken to avoid or minimize its effect. If Subcontractor fails to provide the required Notice within such period, Subcontractor shall not be entitled to a Change relating to such Force Majeure Event or Excusable Event and such failure shall constitute a waiver of Subcontractor's rights to seek a Change Order and/or dispute or defend against liquidated damages associated with such Excusable Event or Force Majeure. Subcontractor acknowledges that the purpose of Notice is to allow Contractor to exercise its business judgment in accordance with whatever event or occurrence is notified, and that informal notice through Daily Reports, minutes, or emails that refer to an event or occurrence but which do not otherwise comply with the Notice requirements, shall not constitute Notice of any kind under or in accordance with the Agreement or Applicable Law. Subcontractor shall have a continuing obligation to deliver to Contractor regular updated reports and any additional documentation and analysis supporting its claim regarding a Force Majeure Event or an Excusable Event promptly after such information is available to Subcontractor. The burden of proof shall be on Subcontractor regarding the occurrence of the Force Majeure Event or Excusable Event and the impact thereof on the Work Schedule and Contract Price. Within twenty-four (24) hours after the date the Force Majeure Event or an Excusable Event has ended or five (5) Business Days after the Contractor provided material delay has ended, as the case may be, Subcontractor shall give Notice to Contractor of: (a) the length of time such Force Majeure Event or Excusable Event was in effect; (b) which Blocks were affected by such Force Majeure Event or Excusable Event; (c) the claimed effect on the Work Schedule, including the Guaranteed Dates; and (d) the purported impact on the Contract Price. If the Parties cannot agree on such cost or schedule extension claim (without prejudice to either Party's rights under Article 29), then Contractor shall be entitled to audit all claims made on the basis of a Force Majeure Event or Excusable Event in accordance with Section 30.14. All costs incurred by Subcontractor to document the existence of a Force Majeure Event or an Excusable Event (including such costs necessary to document the impact of such events, whether cost or schedule related) shall be borne by Subcontractor and shall not be subject to reimbursement hereunder.

8.3 Subcontractor's Remedies. Subcontractor is entitled to relief for such events only to the extent specifically set forth in Section 8.3.1 (with respect to a Force Majeure Event) and Section 8.3.2 (with respect to Excusable Events), and Subcontractor shall only be entitled to any such relief in the form of a Change Order subject to the conditions and limitations set forth in Section 7.2 and Article 15. If a Force Majeure or Excusable Delay claim is rejected by Owner under the Prime Contract, then Subcontractor agrees that it will not be entitled to relief from the Force Majeure or Excusable Delay; if the event of Force Majeure or Excusable Delay is agreed by Owner under the Prime Contract, Subcontractor agrees, notwithstanding the other provisions of this Agreement, that its remedy will be limited to any relief Contractor

receives on Subcontractor's behalf or as a result of Subcontractor's timely claim for relief.

8.3.1 Force Majeure Event. As Subcontractor's sole remedy for the occurrence of a Force Majeure Event, and provided that Subcontractor has otherwise complied with any applicable obligations hereunder: (a) the Work Schedule and the applicable Guaranteed Dates shall be correspondingly adjusted by the period of time (if any) that Subcontractor is actually and demonstrably delayed in the performance of critical path items on Contractor's Work Schedule solely as a result of such Force Majeure Event and (b) Contractor shall compensate Subcontractor for the mitigation measures implemented at Contractor's written request as and to the extent set forth in Sections 8.1. Subcontractor expressly waives any right to seek damages or other compensation as a result of a Force Majeure Event.

8.3.2 Excusable Event. As Subcontractor's sole remedy for the occurrence of an Excusable Event, and provided that Subcontractor has otherwise complied with any applicable obligations hereunder: (a) the applicable Schedules shall be correspondingly adjusted by the period of time (if any) that Subcontractor is actually and demonstrably delayed in the performance of critical path items on such applicable Schedules solely as a result of such Excusable Event; or (b) Contractor shall compensate Subcontractor for the mitigation measures implemented at Contractor's written request as and to the extent set forth in Sections 8.1; or (c) if Subcontractor's direct costs actually and demonstrably increase despite Subcontractor's commercially reasonable efforts to mitigate any such increases, the Contract Price shall be adjusted by the sum of: the direct costs (including supervisor and temporary facility costs, but excluding home office, profit and contingency) actually and demonstrably incurred by Subcontractor because of such Excusable Event, net of (1) savings incurred and costs not incurred in respect of such Excusable Event, (2) amounts due to the failure to comply with the mitigation provisions of Section 8.1 and (3) all insurance proceeds received by Subcontractor or Sub-subcontractors from the applicable insurers because of such Excusable Event; plus ten percent (10%) of such net costs as an allowance for profit and home office overhead. The build-up of such costs to be included in the applicable Change Order shall be in accordance with Section 15.3.2. Subcontractor expressly waives any other relief or compensation as a result of an Excusable Event. Notwithstanding the foregoing, Subcontractor shall be entitled to a markup no greater than five (5%) on all Sub-subcontractor costs and expenses.

8.3.3 Failure to Issue Notice to Proceed. Notwithstanding Section 8.3.2, if an Excusable Event occurs of the type identified in clause (c) of the definition of Contractor Delay, then, in lieu of the remedies contemplated in Section 8.3.2, as Subcontractor's sole remedy for the occurrence of such Excusable Event, Subcontractor shall be entitled to the following: (a) for the first one hundred and eighty (180) days of such Excusable Event, (i) the Schedules shall be extended on a day for day basis until issuance of Notice to Proceed, in whole or in part, and (ii) the Contract Price shall not be adjusted; and (b) for any period thereafter, then the Parties shall negotiate in good faith the cost and schedule impact to Subcontractor due to such delay.

9. SUB-SUBCONTRACTORS

9.1 Use of Sub-subcontractors or Affiliates. Absent prior written approval by Contractor, Subcontractor shall not be permitted to engage any Sub-subcontractor, other than a Supplier or an Affiliate, to perform or supply any portion of the Work. The review and approval by Contractor of any Sub-subcontractor for performance of the Work shall not (a) constitute any approval of the Work supplied or undertaken by any such Person, or (b) cause Contractor to have any responsibility for the actions, the Work, or payment of such Person or to be deemed to have any contractual relationship or be in an employer employee relationship with any such Person, or (c) in any way relieve Subcontractor of its responsibilities and obligations under this Agreement. Subcontractor alone, and not Contractor, shall at all times be responsible for the acts and omissions of, and performance of the Work by, any Subcontractor Party, whether employed directly or indirectly by Subcontractor. Unless expressly consented to by Owner, (i) this Agreement shall not bind or purport to bind Owner and (ii) Owner shall not be deemed by virtue of the Prime Contract or otherwise to have any contractual obligation to or relationship with Subcontractor or any Sub-subcontractor. Upon notification to Subcontractor from Owner or the Owner Financing Parties, that (a) Contractor's right to proceed with the Work (or aspect of the Work, as applicable) has been terminated; and (b) Owner or the Owner Financing Parties will thereafter be assuming Contractor's obligations under this Agreement, then Subcontractor shall continue to perform its responsibilities under this Agreement for the benefit of Owner and shall recognize Owner or the Owner Financing Parties as being vested with all the rights and responsibilities of Contractor under this Agreement. Notwithstanding the foregoing, it is specifically understood and agreed that Subcontractor shall not have any right to look to Owner or the Owner Financing Parties for the performance of Contractor's obligations under this Agreement unless and until Subcontractor has received such notice from Owner or the Owner Financing Parties

9.2 Assignment. Each sub-subcontract and purchase order with all Sub-subcontractors shall provide for assignment of such sub-subcontract or purchase order to Contractor, Owner and/or, at Contractor's request, any Financing Party upon any default (Article 18), termination (Article 19) or expiration of this Agreement, whether in whole or in part, upon notice thereof to Subcontractor and such Sub-subcontractor. Subcontractor hereby assigns to Contractor all its interest in all sub-subcontracts and purchase orders now existing or hereafter entered into by Subcontractor with all Sub-subcontractors except Suppliers for performance of any part of the Work, which assignment will be effective only upon acceptance by Contractor in writing. Upon such acceptance by Contractor, (a) Subcontractor shall promptly furnish to Contractor the originals or copies of the designated sub-subcontract(s) or purchase order(s) and (b) Contractor shall only be required to compensate the designated Sub-subcontractor(s) for compensation accruing to the same for Work done or materials delivered from and after the date as of which Contractor accepts assignment of the sub-subcontract(s) or purchase order(s) in writing. All liabilities arising thereunder prior to the effective date of such assignment shall remain obligations and liabilities of Subcontractor and Contractor shall have no liability of any kind in respect thereof.

9.3 Terms in Sub-subcontracts. All Work performed for Subcontractor or any of its Affiliates by Sub-subcontractors shall be pursuant to an appropriate written agreement between Subcontractor or such Affiliate and the Sub-subcontractor that contains provisions that are consistent with the requirements of this Agreement in all material respects, unless waived in writing by Contractor.

10. LABOR RELATIONS; MEANS AND METHODS OF CONTRACTOR

10.1 General Management of Employees and the Work. Subject to Contractor's rights under Sections 3.3, 3.6 and 10.4, Subcontractor shall preserve its rights to exercise and shall exercise its management rights in performing the Work, including in determining appropriate staffing and the means, methods, techniques, sequences and procedures of performance of the Work and Subcontractor shall be solely responsible therefor. Subcontractor shall use diligent efforts to maximize the number of local residents employed to prosecute the Work in the field, taking into account the qualifications and experience of such local workforce members. Such obligation shall not modify any other obligation of Subcontractor under this Agreement.

10.2 Labor Difficulties. Subcontractor acknowledges that Contractor and Contractor's Separate Subcontractors may employ non-union laborers to perform work in respect of the Facility such as the manufacturing of certain materials and Equipment to be incorporated into the Facility as well as grading, fencing, soil stability, dust mitigation, and other services. Subcontractor shall maintain harmony between its union laborers and such non-union laborers of Contractor and Contractor's Separate Subcontractors. As a material condition to this Agreement, Subcontractor shall maintain labor harmony between its workforce and the workforces of Contractor and Contractor's Separate Subcontractors, and all other materialmen and suppliers related to the Facility. If a project labor agreement is negotiated for Subcontractor's laborers, then Subcontractor shall provide Contractor with such project labor agreement for its review and approval within a reasonable period of time prior the execution of such agreement. Subcontractor shall adopt policies and practices designed to avoid Labor Difficulties, and to minimize the risk of labor-related delays or disruption of the progress of the Work. Subcontractor shall promptly Notify Contractor of any actual or threatened Labor Difficulty that might materially affect the performance of the Work or that might disrupt Work at the Site or on the Plant. Notwithstanding the foregoing, the settlement of Labor Difficulties shall be at the discretion of the Party having the difficulty. Subcontractor shall be responsible for, and defend, indemnify, and hold harmless Contractor from and against, any and all Losses and/or damages resulting from any Labor Difficulty involving in any manner the workers of Subcontractor or any Sub-subcontractor(s), including delays, additional work and increased costs relating to the Work and/or the work of Contractor and Contractor's Separate Subcontractors, and Contractor may suspend, in whole or in part, the Work of any Subcontractor Party pursuant to Section 19.3.2, without prejudice to its other rights in such event and remedies hereunder. Subcontractor shall cause the provisions in this Section to be included in all sub-subcontracts and purchase orders.

10.3 Personnel Documents. Subcontractor shall ensure that, at the time of assignment to the Work, or any portion thereof, all Subcontractor and Sub-subcontractor personnel performing the Work are in possession of all documents (including visas, driver’s and operating licenses and work permits) as may be required by any and all Applicable Laws. Subcontractor shall provide any such documentation to Contractor in a timely fashion in order for Contractor to comply with any request or requirement of any Governmental Authority or as otherwise required by Contractor.

10.4 Replacement of Employees and Other Persons at Contractor’s Request. Subcontractor shall remove, and cause its Sub-subcontractors to remove, any employee, agent, manager, superintendent (including the Project Manager) or other Person engaged in the performance of the Work for Subcontractor or such Sub-subcontractor, whose conduct Contractor believes is harming or having a negative effect on the Work, or the perception of the Facility, or Contractor’s relationship with the Owner or the surrounding community or the municipality in which the Facility is located. Notwithstanding anything herein to the contrary, Contractor shall have the right at any time, in its sole discretion, to require Subcontractor to remove from the Site or the Work any managers (including the Project Manager), superintendents, or safety manager and Subcontractor shall promptly enforce any such requirement from Contractor.

11. INSPECTION

11.1 Right to Reject Work. At any time before or after Project Substantial Completion, regardless of whether payment has been made therefor, Contractor may Notify Subcontractor of the rejection any portion, including all, of the Work that contains any Defect, including at Contractor’s discretion a direction to Subcontractor to remedy such Defect or to submit a written plan for the remedy of such Defect. Within two (2) days of receipt of Notice, as applicable, Subcontractor shall commence correction of the rejected Work or submit a written plan for the remedy of such Defect, including payment of collateral costs which may be occasioned by the removal of Defective Work. When a written plan is required, Subcontractor shall commence correction of the rejected Work pursuant to such written plan within two (2) days of Contractor’s approval of the written plan.

11.2 Inspection. Owner, Contractor and its or their respective representatives shall have access to and the right to observe and inspect the Work anywhere it is in progress and at the Site, and Subcontractor shall furnish them, or any of them, such information concerning its operations or the performance of the Work as shall be reasonably requested. It is Subcontractor’s responsibility to schedule and advise Owner, Contractor and their respective representatives of inspections in a manner that enables completion of related and subsequent Work in accordance with the Work Schedule and to identify and make easily accessible for inspection any Work covered.

12. SITE CONDITIONS; SITE INFORMATION

PRIOR TO ISSUANCE OF A NOTICE TO PROCEED, SUBCONTRACTOR MAY HAVE OBTAINED CERTAIN SITE INFORMATION FROM CONTRACTOR. CONTRACTOR MAKES NO REPRESENTATION OR

WARRANTY AS TO THE CORRECTNESS OR COMPLETENESS OF THE INFORMATION IN SUCH SITE INFORMATION. SUBCONTRACTOR REPRESENTS AND WARRANTS (AS OF THE DATE OF THE EXECUTION OF THIS AGREEMENT) THAT SUBCONTRACTOR HAS INVESTIGATED THE SITE AND EACH OTHER LOCATION WHERE ANY PORTION OF THE WORK SHALL BE PERFORMED AND SURROUNDING LOCATION, AND THAT SUBCONTRACTOR IS FAMILIAR WITH, AND HAS SATISFIED ITSELF WITH RESPECT TO, THE NATURE AND LOCATION OF THE WORK AND SITE CONDITIONS. SUBCONTRACTOR EXPRESSLY ACKNOWLEDGES AND AGREES THAT IT HAS AGREED TO TAKE ALL RISKS WITH RESPECT TO THE SITE CONDITIONS, INCLUDING THE DISCOVERY OF SITE CONDITIONS OF A DIFFERENT KIND OR NATURE THAN WHAT SUBCONTRACTOR ANTICIPATED AT, ABOVE OR BENEATH THE SITE, AND THAT THE CONTRACT PRICE CONTAINS AMOUNTS WHICH SUBCONTRACTOR BELIEVES WILL COMPENSATE IT FOR UNDERTAKING ADDITIONAL INVESTIGATIONS BEFORE PROCEEDING WITH PROCUREMENT OR CONSTRUCTION EFFORTS TO OVERCOME ANY DIFFERING SITE CONDITION, AND FOR AGREEING TO ASSUME ALL SUCH RISKS GENERALLY AND SPECIFICALLY.

13. BLOCK SUBSTANTIAL COMPLETION; PROJECT SUBSTANTIAL COMPLETION AND FINAL COMPLETION

13.1 Punchlists.

13.1.1 Creation of Punchlists. When Subcontractor believes that a Block or the Project is substantially complete, Subcontractor shall prepare and submit to Contractor a draft punchlist for Contractor’s approval that is a complete list containing all items of Work for a Block or for the Project that (a) Contractor or Subcontractor identifies as requiring completion or containing Defects; (b) do not impede the safe operation of the applicable Block or the Facility; (c) do not materially increase the cost of operating the applicable Block or the Facility; and (d) do not affect the capacity, efficiency, reliability, operability, safety or mechanical or electrical integrity of the applicable Block or the Facility. Following delivery thereof to Contractor, the Parties shall jointly walk-down the Block or the Project, as the case may be, and confer together as to the items that meet the requirements outlined above and should be included on the finalized Punchlist. Joint walk-down shall occur within five (5) Business Days after receipt of draft punchlist or as agreed upon by Contractor and Subcontractor. Subcontractor shall then update the draft punchlist incorporating Contractor’s additions and comments, including in the draft punchlist the cost or estimated cost to complete all Punchlist items. Within two (2) Business Days of receipt of Contractor’s additions and comments, Subcontractor shall deliver the draft punchlist to Contractor for its review and approval. Upon Contractor’s approval, the draft punchlist shall be deemed effective (the “Punchlist”).

13.1.2 Completion of Punchlists. Subcontractor shall complete and correct all items on the Punchlist for each Block and for the Project within thirty (30) days after such Punchlist has been approved by Contractor unless Subcontractor receives a written time extension by Contractor. On a weekly basis after Block Substantial Completion of a Block or Project Substantial Completion, as the case may be, Subcontractor shall revise and update the pertinent Punchlist to include the date(s) that items listed on such Punchlist are completed by Subcontractor and inspected and accepted by Contractor, as evidenced by Contractor's notation on the updated Punchlist.

13.2 Reserved

13.3 Substantial Completion.

13.3.1 Block Substantial Completion for each Block. "Block Substantial Completion" means, with respect to each Block, the Block has achieved Block Mechanical Completion, and the satisfaction by Subcontractor (or waiver in writing by Contractor) of all of the requirements set forth in the Scope of Work in Exhibit A as well as the following: (a) all requirements other than Punchlist items have been satisfied; (b) Subcontractor has paid all undisputed Block Delay Damages calculated pursuant to Section 14.2; (c) Contractor has received all required Deliverables (if any); (d) the Punchlist is in final form or is deemed approved as provided in Section 13.1; (e) Subcontractor has delivered all duly executed Interim Lien Waivers required hereunder as of the claimed date of Block Substantial Completion; and (f) those Subcontractor Permits required to be obtained under Applicable Law in order for Owner to operate the Block on an ongoing basis (if any) have been obtained and are valid, provided that any such required Subcontractor Permit need not be "closed out" if Applicable Law does not require the same in order for Owner to operate the Block as designed.

13.3.2 Project Substantial Completion. "Project Substantial Completion" means the satisfaction by Subcontractor (or waiver in writing by Contractor) of all of the requirements for Project Substantial Completion in the Scope of Work in Exhibit A as well as the following: (a) each Block has achieved Block Substantial Completion; (b) Subcontractor has paid all undisputed Project Delay Damages calculated and due pursuant to Section 14.3; (c) Contractor has received all required Deliverables for the Project, other than final As-Builts; (d) Subcontractor has delivered all Interim Lien Waiver(s) required hereunder as of the claimed date of Project Substantial Completion Date; (e) the Punchlist is in final form or is deemed approved as provided in Section 13.1; and (f) Subcontractor has obtained and delivered a copy to Contractor of all Subcontractor Permits.

13.3.3 Notice of Substantial Completion. When Subcontractor believes that it has satisfied the provisions of Section 13.3.1 or Section 13.3.2, as applicable, Subcontractor shall deliver to Contractor a Notice stating that Subcontractor has satisfied the requirements for Block Substantial Completion or Project Substantial Completion, as applicable. Contractor shall, within ten (10) Business Days after receipt of such Notice, issue a Substantial Completion Certificate for such Block or the

Project, as applicable, or if Contractor rejects Subcontractor's Notice, respond in writing giving its reasons for such rejection and Subcontractor shall take the appropriate corrective action. Upon completion of such corrective action, Subcontractor shall provide to Contractor a new Notice for approval. This process shall be repeated on an iterative basis until Contractor accepts the Notice from Subcontractor claiming Block Substantial Completion or Project Substantial Completion, as applicable, and issues a Substantial Completion Certificate. Block Substantial Completion for a Block and Project Substantial Completion, as applicable, shall be deemed to have occurred the day after the date on which the last of the conditions of Section 13.3.1 or Section 13.3.2, as applicable, was satisfied or, in the discretion of Contractor, waived. Under no circumstances will the Work or a Block thereof be deemed to have achieved Substantial Completion if the Owner or any Financing Party (including any Financing Party's independent engineer) interposes any objection to the status of the Work.

13.4 Final Completion.

13.4.1 Requirements for Final Completion. "Final Completion" means the satisfaction by Subcontractor (or waiver in writing by Contractor) of all of the following: (a) Project Substantial Completion has been achieved; (b) Subcontractor shall have completed all items on the Punchlist for each Block; (c) all Subcontractor's and Sub-subcontractors' personnel have left the Site, and all surplus Equipment, waste materials, rubbish and other Work not included in the permanent Work other than those to which Contractor holds title has been removed from the Site, and any permanent facilities used by Subcontractor and the Site has been restored to the same condition that such permanent facilities and the Site were in upon issuance of a Notice to Proceed, ordinary wear and tear excepted; (d) Subcontractor has assigned or provided to Owner or Contractor all warranties or guarantees with respect to the Work that Subcontractor received from Sub-subcontractors pursuant to Section 16.2; (e) Contractor has received all Deliverables in relation to each Block, copies of As-Builts, and electronically prepared computer drawing file(s) and other ESI in their native format, as prepared by Subcontractor, along with appropriate software and licenses for viewing and use of such ESI; (f) Subcontractor has delivered a Final Lien Waiver from itself and from each Sub-subcontractor; (g) all Subcontractor Permits have been obtained by Subcontractor and are in full force and effect; and (h) Subcontractor has paid to Contractor all Delay Damages.

13.4.2 Notice of Final Completion. Subcontractor shall deliver to Contractor a Notice stating that Subcontractor believes it has satisfied the provisions of Section 13.4.1. Within ten (10) Business Days after receipt of such Notice, Contractor shall either issue a Final Completion Certificate or respond in writing to such Notice giving Contractor's reasons for such rejection and Subcontractor shall promptly take the appropriate corrective action. If Contractor fails to timely respond to such a Notice, Final Completion shall be deemed to have occurred as of the date of Subcontractor's Notice. Upon completion of any required corrective action, Subcontractor shall provide a new Notice to Contractor for approval. This process shall be repeated on an iterative basis until Contractor accepts Subcontractor's Notice and issues a Final Completion Certificate. Final

Completion for the Project shall be deemed to have occurred the day after the date on which the last of the conditions of Section 13.4.1 was satisfied. Owner's and any Financing Party's (including any Financing Party's independent engineer's) acceptance of the Work shall also be a condition precedent to Final Completion. No certificate of Substantial Completion or Final Completion shall waive any defect in Work not in compliance with this Agreement.

14. LIQUIDATED DAMAGES

14.1 Reserved.

14.2 Block Delay Damages. If Block Substantial Completion for a Block is not achieved by the corresponding Guaranteed Block Substantial Completion Date, then Subcontractor shall pay liquidated damages ("**Block Delay Damages**") to Contractor in the amount specified as Block Delay Damages in Exhibit F per day for each day of delay thereafter in achieving Block Substantial Completion for such Block. If after achieving Block Substantial Completion for a Block, such Block is materially damaged or altered due to any act of a Subcontractor Party, then Subcontractor shall pay Block Liquidated Damages to Contractor in the amount specified as Block Delay Damages in Exhibit F for each day that such Block requires corrective action.

14.3 Project Delay Damages. If Project Substantial Completion is not achieved by the Guaranteed Project Substantial Completion Date, then Subcontractor shall pay liquidated damages ("**Project Delay Damages**") to Contractor in the amount specified as Project Delay Damages in Exhibit F per day for each day of delay in achieving Project Substantial Completion.

14.4 Schedule for Payment of Delay Damages. Any amount Subcontractor is obligated to pay under Sections 14.1, 14.2 or 14.3 shall be subject to the limitations set forth in Sections 28.2 and shall be due and payable within twenty (20) calendar days after Contractor has requisitioned Subcontractor for such amounts. Such amounts may be set off by Contractor against unpaid portions of the Contract Price (including against the Retainage). Subcontractor shall be entitled to a credit against Delay Damages due under this Section for all amounts held back from prior Payment Requisitions (and not theretofore released) pursuant to Section 6.6 based upon anticipated Delay Damages.

14.5 Sole Remedy; Liquidated Damages Not a Penalty.

14.5.1 Except (i) to the extent such failure contributes to a Subcontractor Default pursuant to Section 18.1.4 and (ii) as set forth in Section 14.5.2, Contractor's sole and exclusive remedies for Subcontractor's failure to perform the Work in accordance with the Work Schedule or for Subcontractor's failure to achieve the Milestones, Block Substantial Completion and Project Substantial Completion, in each case, by the applicable Guaranteed Date, shall be the payment of Delay Damages pursuant to Sections 14.1, 14.2 and 14.3, as applicable, and, with respect to timely achieving other portions of the Work Schedule, the acceleration rights set forth in Section 7.4. For the avoidance of doubt, Block Delay Damages

may be assessed concurrently for more than one Blocks and concurrently with Project Delay Damages.

14.5.2 The Parties agree that Contractor's actual damages in the event of such delays would be extremely difficult or impracticable to determine and that Contractor's estimate of its costs if such delays significantly exceed the amount of the liquidated damages provided herein. The Parties have agreed that the Delay Damages are in the nature of liquidated damages, are a reasonable and appropriate measure of the damages that Contractor would incur as a result of such delays, and do not represent a penalty. The Parties explicitly agree and intend that the provisions of this Article shall be fully enforceable by any court or arbitrator exercising jurisdiction over any dispute arising under this Agreement. Each Party hereby irrevocably waives any defenses available to it under law or equity relating to the enforceability of the liquidated damages set forth in this Article. To the extent Subcontractor challenges the application of the remedies relating to the Delay Damages in this Article, Contractor shall have the right to avail itself of any right or remedy available to it in law or equity for the failure of Subcontractor to timely achieve the Milestones, Block Substantial Completion and Project Substantial Completion.

15. CHANGES IN THE WORK

15.1 Change. Changes to the Work shall only be valid if accomplished pursuant to a written agreement duly executed by Contractor and Subcontractor and substantially in the form attached hereto as Exhibit I (a "**Change Order**" pursuant to this Article). A "**Change**" under this Agreement shall only result from one of the following:

(a) Changes in the Work pursuant to Section 15.2 or suspension in the Work pursuant to Section 19.3.1 requested by Contractor;

(b) As agreed by the Parties, the addition to, modification of, or deletion from the Work (performed or yet to be performed) during the performance of the Work; and

(c) The occurrence of an Excusable Event or a Force Majeure Event (as and only to the extent permitted by Sections 8.3.1, 8.3.2, or 8.3.3, as applicable).

Subcontractor acknowledges and agrees that obtaining a Change Order under this Article shall be the sole and exclusive remedy available to Subcontractor for any adjustment of the Contract Price, the Work Schedule or the Guaranteed Dates, regardless of the nature of the circumstance, event, act or omission allegedly justifying such adjustment.

15.2 By Contractor. Contractor shall have the right to make changes in the Work, within the general scope thereof, whether such changes are modifications, accelerations, alterations, additions, or deletions. All such changes shall be documented in accordance with Section 15.3.1 and shall be considered, for all purposes of this Agreement, as part of the Work. No such change shall require the consent of Subcontractor's surety or Guarantor.

15.3 Preparation of Change Order.

15.3.1 Scope and Timing. Upon the occurrence of any of the events set forth in Section 15.1 or Section 15.2, Subcontractor shall provide Contractor with a Notice of the occurrence of such event or Change within five (5) Business Days of when Subcontractor discovered or reasonably should have discovered the existence of any such event or Change, whichever comes first, and Subcontractor shall prepare and submit to Contractor a Change Order request within five (5) Business Days of providing Notice hereunder, including (a) any projected change in the cost of the performance of the Work and any projected modification of the Contract Price occasioned by such Change, (b) the effect such Change could be expected to have on the Schedules or any other schedule or dates for performance by Subcontractor hereunder, and (c) the potential effect of such Change on Subcontractor's ability to comply with any of its obligations hereunder, including Subcontractor's warranties. At Contractor's request, within such period as shall be agreed upon by the Parties, Subcontractor shall submit to Contractor a detailed estimate relating to the contemplated change on a written Change Order. Failure by Subcontractor to submit the above-described Notice within five (5) Business Days of when Subcontractor discovered or reasonably should have discovered the existence of any such event or Change, whichever comes first, or failure to provide a Change Order request within five (5) Business Days of providing such Notice, shall constitute a waiver of Subcontractor's rights to seek adjustment of the Work Schedule or Contract Price arising out of such event or Change (and any Change shall thereafter be deemed part of the Work without any such adjustment), as well as a waiver of Subcontractor's right to dispute or defend against any associated Delay Damages, Disputes, or damages of any kind asserted by Contractor.

15.3.2 Cost Calculations. Subcontractor's build-up of the cost of any Change shall include and identify all elements of cost determined in accordance with the rates set forth in Exhibit I (which rates shall be net of profit and home office overhead) and a total lump sum (unless otherwise directed by Contractor) using the following guidelines (with reasonable back-up provided (including backup for Sub-subcontractors)): (i) labor to include category, unit rate, total rate and hours, travel and other related expenses; (ii) materials to include category, unit rate, total rate and quantity; and (iii) solely in the case of a Change in Work pursuant to Section 15.2 hereof, an amount equal to up to ten (10%) of all costs as an allowance for profit and home office overhead. Notwithstanding the foregoing, Subcontractor shall be entitled to a markup no greater than five (5%) on all Sub-subcontractor costs and expenses.

15.3.3 Sole Remedy. Subcontractor agrees that obtaining a fully executed Change Order subject to the requirements and limitations set forth in this Article shall be the sole and exclusive remedy available to Subcontractor for any adjustment of the Contract Price, the Schedules or any other amount, date or performance by Subcontractor hereunder, and Subcontractor hereby waives and shall not be entitled to any other compensation, extension of time, reimbursement of expenses or additional payment of any kind regardless of the nature of the circumstance, condition, event, act, omission, theory of recovery

or damages allegedly justifying such adjustment or recovery in any form.

15.4 No Obligation or Payment Without Executed Change Order. Subcontractor shall not be entitled to undertake or be obligated to undertake a Change until Subcontractor has received a Change Order submitted by Subcontractor and accepted in writing by Contractor, except as set forth in Section 15.5, or if immediate action is reasonably required to address an emergency which endangers human health or property otherwise, any work performed by Subcontractor shall be at Subcontractor's sole risk and expense.

15.5 Disputed Changes In Work. Any disputes regarding a Change Order or whether a Change has occurred or that are otherwise related to a Change shall be subject to the dispute resolution provisions of Article 29. Notwithstanding any such dispute, Subcontractor shall not suspend the Work, or any part thereof, unless directed by Contractor in writing in accordance with Section 19.3 and Contractor shall continue to make payments of undisputed amounts to Subcontractor based on the Omnibus Schedule then in effect, pending resolution of such dispute. If the Parties are unable to agree (a) on Subcontractor's Scope of Work or the sufficiency of Subcontractor's performance thereof, (b) whether a Change has occurred, or (c) on the matters described in a Change Order, and without prejudice to either Party's rights to resolve the dispute in accordance with Article 29, Contractor may, in writing, direct Subcontractor to perform the Work in dispute or as modified by the contemplated Change on a time and materials basis (according to the rates set forth in Exhibit I) pending resolution of any dispute and/or agreement on a Change Order. Subcontractor shall proceed to perform the Work identified therein and shall submit a Payment Requisition to Contractor for payment for such time and material costs upon conclusion of such Work, any such payment being subject to resolution of the dispute in accordance herewith. Subcontractor must account for all time and material costs separately from its submission of Payment Requisitions for Work that remains unchanged or not in dispute, and submit current and detailed summaries thereof to Contractor on a monthly basis along with its Payment Requisitions. Failure by Subcontractor to separately and accurately account for all such time and material costs, or to submit current summaries thereof to Contractor on a monthly basis, shall constitute waiver of any rights Subcontractor may have to obtain a Change Order or assert a corresponding Dispute pursuant to Article 29.

15.6 Owner Change. To the extent allowed by law, if a Change request or claim by Subcontractor involves in whole or in part any act, error, or omission by Owner, then Subcontractor's remedy shall be first to await the outcome of any change or claim negotiation, or dispute resolution, by Contractor with Owner and then, upon completion, Subcontractor's recovery will be only and solely its pro rata share of any recovery, with respect to Subcontractor's claim, obtained by Contractor from Owner; provided, however, that this clause shall be inapplicable if Contractor does not proceed within a reasonable time with the claim against the Owner or if Contractor's claim, on behalf of Subcontractor, fails solely because of an act or omission by Contractor.

16. WARRANTIES CONCERNING THE WORK

16.1 General. Subcontractor warrants to Contractor for a period of the eighteen (18) months following the Project Substantial Completion Date (the “**Warranty Period**”) that all Work furnished, installed or otherwise performed by any Subcontractor Party shall (i) be in compliance with the Scope of Work, (ii) be free of Defects, errors and damage in design, materials, construction, fabrication and workmanship, (iii) with respect to the Equipment, be new and of good and suitable quality and condition when installed and shall conform to all applicable requirements of this Agreement, the Deliverables, Applicable Laws and the Permits, and (iv) conform to the manufacturer’s requirements (the “**Warranty**”). The Warranty Period for any Work required to be re-performed, repaired, corrected or replaced following discovery of a Defect or other non-compliance with the Warranty during the applicable Warranty Period shall continue for one (1) year from the date of completion of such repair or replacement, or conclusion of the applicable default Warranty Period, whichever is later. As part of the Warranty, Subcontractor further warrants to Contractor that all Work shall be free from excessive wear and tear during the Warranty Periods.

16.2 Enforcement by Contractor; Subcontractor Warranties. Commencing on the expiration of the applicable Warranty Period or prior to expiry thereof if a Subcontractor Default exists, and without prejudice to Contractor’s rights to enforce any claim hereunder against Subcontractor, Contractor shall be entitled to enforce all unexpired representations, warranties, guarantees and obligations from Sub-subcontractors, and Subcontractor shall provide reasonable assistance to Contractor, at no additional cost, in enforcing the same. Subcontractor shall assign all unexpired representations, warranties, guarantees and obligations of all Sub-subcontractors (other than Suppliers), at the request of Contractor, to Owner or Contractor. Subcontractor shall obtain defect warranties for all Work performed or Equipment supplied by each Sub-subcontractor on terms not materially less favorable than the applicable Warranty set out in this Article.

16.3 Correction of Defects. If, during the applicable Warranty Period, Contractor determines that Work does not conform to the Warranty, it shall so Notify Subcontractor and, at Subcontractor’s own cost and expense, Subcontractor shall promptly refinish, re-purchase, repair or replace, at Contractor’s option and as applicable, such non-conforming or defective part of the Work, including the cost of removing any Defect and of re-performing, repairing, replacing or testing such other part of the Work or work performed by others as shall be necessary to cause the applicable portion of the Work to conform to the applicable Warranty. If Subcontractor does not commence correction of the Work within two (2) days following Notice from Contractor or proceed diligently to complete the Warranty work, Contractor shall, after giving Subcontractor at least one (1) day prior Notice, have the right to perform some or all of the necessary warranty work to remedy the Warranty claim, or have third parties perform the necessary warranty work and Subcontractor shall reimburse Contractor for all costs and expenses incurred by Contractor and its Affiliates (including costs of Contractor’s personnel) plus ten percent (10%). If, during the applicable Warranty Period, any item of Equipment fails more than once to meet the Warranty,

Contractor shall determine what changes, repairs or replacements to the component are necessary to correct the Defect and its non-compliance with the Warranty or to avoid further failures of such component, and Subcontractor shall make such necessary changes, repairs or replacements.

16.4 Limitations on Warranties. EXCEPT FOR THE EXPRESS WARRANTIES AND REPRESENTATIONS SET FORTH IN THIS AGREEMENT, SUBCONTRACTOR DOES NOT MAKE ANY OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, OF ANY KIND, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

17. EQUIPMENT IMPORTATION; TITLE

17.1 Importation of Equipment. Subcontractor, at its own cost and expense (including Taxes), shall procure and make all arrangements, including the processing of all documentation, necessary to import into the United States all Equipment to be incorporated into the Facility and any other Work necessary to perform the Work. Subcontractor shall comply with United States Department of Commerce Export Administration Regulations regarding the export to foreign countries of U.S. technical data or information or any product based thereon and shall not knowingly ship or otherwise communicate or allow to be shipped or communicated, either directly or indirectly, any U.S. technical data or information or any product based thereon in connection with the Work to any country to which such shipment or communication is prohibited by said regulations, unless prior written authorization is obtained from the Office of Export Administration, United States Department of Commerce either directly or through Contractor.

17.2 Title. Subcontractor warrants good title, free and clear of all liens, claims, charges, security interests, and encumbrances whatsoever (other than those created by Contractor in favor of third parties or that result from Contractor’s failure to pay Taxes for which it is responsible hereunder), to all Work. Title to all Equipment shall pass to Contractor upon the earlier of shipment of such Equipment to the Site or incorporation of such Equipment into the Facility.

17.3 Risk of Loss; Care, Custody, and Control. Notwithstanding the transfer of title, Subcontractor shall have risk of loss, care, custody, and control of all Equipment, all other equipment, hardware and materials delivered to Subcontractor (whether or not forming a permanent part of the completed Work or included in Subcontractor’s scope of supply hereunder) and other Work and exercise due care with respect thereto until the date on which Substantial Completion for such Block occurs, even if Contractor has suspended or terminated, in whole or in part, Subcontractor’s right to proceed hereunder, in whole or in part, at which time Contractor shall take possession and control thereof and risk of loss therefor.

18. DEFAULTS AND REMEDIES

18.1 Subcontractor Events of Default. Subcontractor shall be in default of its obligations pursuant to this Agreement upon

the occurrence of any one or more events of default set forth below (each, a “**Subcontractor Default**”):

18.1.1 Subcontractor becomes insolvent, generally does not pay its debts as they become due, admits in writing its inability to pay its debts, or makes a general assignment for the benefit of creditors, or commences or has commenced against it any case, proceeding or other action seeking reorganization or receivership, or adopts an arrangement with creditors, under any bankruptcy, insolvency, reorganization or similar law of the United States or any state thereof for the relief of creditors or affecting the rights or remedies of creditors generally;

18.1.2 Any material representation or warranty made by Subcontractor herein was materially false or misleading when made, Subcontractor (fails to remedy the same and to make Contractor whole for any consequences thereof within five (5) Business Days after Notice from Contractor with respect thereto;

18.1.3 Subcontractor fails to perform or observe any provision of this Agreement providing for the payment of money to Contractor and such failure continues for five (5) Business Days after Subcontractor has received a Notice from Contractor;

18.1.4 Block Substantial Completion of a Block has not occurred by the first (1st) Business Day after the Guaranteed Block Substantial Completion Date of such Block or Project Substantial Completion has not occurred by the first (1st) Business Day after the Guaranteed Project Substantial Completion Date;

18.1.5 Except as permitted pursuant to Section 19.3.1, Subcontractor Abandons the Work in whole or in part; and/or

18.1.6 Subcontractor fails to perform any material obligation under this Agreement not otherwise addressed in this Section (including any failures under Section 7.4), and such failure continues for five (5) Business Days; provided, however, that if such failure constitutes a delay in the Work Schedule, Contractor, in its sole discretion, may avail itself of its rights under Section 18.2.1 immediately without the lapse of five (5) Business Days.

18.2 Contractor’s Rights and Remedies. In the event of a Subcontractor Default, and subject to Article 28, Contractor shall have the following rights and remedies and may elect to pursue any or all of them, in addition to any other rights and remedies that may be available to Contractor at law or in equity as a result of such Subcontractor Default:

18.2.1 To supplement Subcontractor’s workforce or hire separate contractor(s) to take over and perform all or any portion of the Work as Contractor, in its sole discretion, deems necessary to cure the default or mitigate losses or damages resulting therefrom. Contractor shall be entitled to deduct from the Contract Price all costs incurred by Contractor as a result of pursuing its remedies available under this Section 18.2.1 and, if such costs exceed amounts unpaid to or withheld from

Subcontractor under this Agreement, then Subcontractor shall indemnify Contractor for balance of all such costs;

18.2.2 To assert all rights of assignment (whether in whole or in part) available to Contractor under Section 9.2;

18.2.3 To proceed against any guaranty, performance bond or other security given by or for the benefit of Subcontractor (any guaranty, performance bond or other security given by or for the benefit of Subcontractor shall provide that Notice of a Subcontractor Default entitles Contractor to seek enforcement of all remedies due Contractor from the guarantor or surety thereunder);

18.2.4 To seek equitable relief to cause Subcontractor to take action, or to refrain from taking action pursuant to this Agreement, or to make restitution of amounts improperly received under this Agreement;

18.2.5 To make such payments or perform such obligations as are required to cure any Subcontractor Default and offset the cost of such payment or performance against payments otherwise due to Subcontractor under this Agreement;

18.2.6 To suspend the Work, in whole or in part, by giving Notice of such suspension to Subcontractor;

18.2.7 To take an assignment of any and all subcontracts or purchase orders pursuant to Section 9.2;

18.2.8 To terminate, in whole or in part, Subcontractor’s right to proceed under this Agreement by giving Notice of such termination to Subcontractor; provided, that in the event of a Subcontractor Default pursuant to Sections 18.1.1, Contractor shall be deemed to have given Notice of termination to Subcontractor immediately upon the occurrence of such a Subcontractor Default, and all amounts owing by Subcontractor to Contractor hereunder shall immediately become due and payable. If Contractor terminates, in whole or in part, Subcontractor’s right to proceed under this Agreement in accordance with the provisions hereof, then Contractor shall have the right to have the Work finished whether by enforcing any security given by or for the benefit of Subcontractor for its performance under this Agreement or otherwise or may seek damages as provided in Article 19. Upon termination of its right to proceed, in whole or in part, under this Agreement, Subcontractor shall withdraw from the Site, or affected portion thereof, shall assign, in whole or in part, to Contractor such of Subcontractor’s subcontracts as Contractor may request, and shall deliver and make available to Contractor all Intellectual Property Rights related to the terminated Work necessary to permit Contractor to complete or cause the completion of the Work, or affected portion thereof, and in connection therewith Subcontractor authorizes Contractor and its respective agents to use such information in completing the Work, shall remove such materials, equipment, tools, and instruments used by and any debris or waste materials generated by Subcontractor in the performance of the Work as Contractor may direct, and Contractor may take possession of any or all Deliverables and Site facilities of Subcontractor related to the Work necessary for

completion of the Work, or designated portion thereof, (whether or not such Deliverables and Site facilities are complete); and/or

18.2.9 To pursue the dispute resolution procedures set forth in Article 29 to enforce the provisions of this Agreement.

18.3 Contractor Default. Contractor shall be in default of its obligations pursuant to this Agreement upon the occurrence of any one or more events of default set forth below (each, a “Contractor Default”):

18.3.1 Contractor becomes insolvent, generally does not pay its debts as they become due, admits in writing its inability to pay its debts, or makes a general assignment for the benefit of creditors, or Contractor commences or has commenced against it any case, proceeding or other action seeking reorganization or receivership, or adopts an arrangement with creditors, under any bankruptcy, insolvency, reorganization or similar law of the United States or any state thereof for the relief of creditors or affecting the rights or remedies of creditors generally and such proceeding shall remain undismissed or unstayed for a period of thirty (30) days;

18.3.2 Subject to the provisions of Section 30.9, any material representation or warranty made by Contractor that is expressly contained in the terms of this Agreement was materially false or misleading when made, Contractor fails to remedy such materially false or misleading representation or warranty and to make Subcontractor whole for any consequences thereof within thirty (30) days after Contractor receives a Notice from Subcontractor with respect thereto; or

18.3.3 Contractor fails to perform or observe any provision of this Agreement providing for the payment of money to Subcontractor, except for any disputed amounts, and such failure continues for thirty (30) days after Contractor has received a Notice from Subcontractor; or Contractor fails to perform any material provision of this Agreement not otherwise addressed in this Section, and such failure continues for thirty (30) days.

18.4 Subcontractor’s Remedies. In the event of a Contractor Default and subject to Article 28, Subcontractor shall have the right to terminate its obligation to proceed, in whole or in part, under this Agreement upon providing Notice of such termination to Contractor (in which event Subcontractor shall be compensated in the manner described in Section 19.2).

18.4.1 Subcontractor hereby agrees that the remedies provided in this Section shall be the sole and exclusive remedies available to Subcontractor in the event of a Contractor Default.

18.4.2 Subcontractor’s failure to provide Notice as required hereunder shall constitute a waiver of its right to exercise its remedies as prescribed in this Article.

18.4.3 Subcontractor hereby agrees to pursue the Dispute resolution procedures set forth in Article 29 to enforce the provisions of this Agreement.

19. TERMINATION

19.1 Termination and Damages for Subcontractor Default.

In the event of a Subcontractor Default, Contractor may terminate, in whole or in part, this Agreement by delivery of Notice to Subcontractor. Subject to Article 28, Subcontractor shall be liable to Contractor for all Losses incurred by Contractor as a result of such Subcontractor Default, including (a) the extent that the actual costs of completing the Work exceed those costs that would have been payable to Subcontractor but for such Subcontractor Default, *plus* (b) all Subcontractor liabilities arising prior to termination, in whole or in part, of Subcontractor’s right to proceed under this Agreement, *plus* (c) all Delay Damages arising out of such Subcontractor Default. If it is determined for any reason that there was not a Subcontractor Default, the termination will be deemed to be a termination for convenience pursuant to Section 19.2.

19.2 Payment in the Event of Termination for Convenience or Termination for Contractor Default.

Contractor may, in its sole discretion, terminate, in whole or in part, the Subcontractor’s right to proceed under this Agreement, without cause at any time by giving Notice of such termination to Subcontractor, to be effective upon the receipt of such Notice by Subcontractor or upon such other termination date specified therein. If Contractor terminates, in whole or in part, the Subcontractor’s right to proceed under this Agreement, for any cause other than a Subcontractor Default or pursuant to Section 7.1, or if Subcontractor terminates its obligation to proceed, in whole or in part, under this Agreement due to a Contractor Default, then Contractor shall pay to Subcontractor only an amount equal to the following, in no event to exceed the then-outstanding balance of the Contract Price: (a) Subcontractor’s actual, demonstrable and reasonable direct costs (exclusive of overhead, profit and marginal costs of bonding and insurance required by this Agreement) incurred in performing the Work prior to such termination; *plus* (b) Subcontractor’s reasonable demobilization costs incurred in connection with such termination; *plus* (c) A profit and overhead allowance equal to five percent (5%) of the costs identified in clauses (a) and (b) above; *plus* (d) Subcontractors’ reasonable demonstrable third party cancellation charges in connection with such termination; *less* (e) the amount of all payments previously paid by Contractor hereunder pursuant to Article 6 and Annex 2. Such payment shall be Subcontractor’s sole and exclusive remedy for termination, in whole or in part, of its right or obligation (as the case may be) to proceed under this Agreement pursuant to this Section. In no instance shall any amounts be payable to Subcontractor if Contractor has not issued any Notice to Proceed.

19.3 Suspension by Contractor.

19.3.1 Suspension Without Cause. Contractor may suspend, in whole or in part, performance of the Work, at any time for its convenience, by giving three (3) Business Days’ advance Notice thereof to Subcontractor for the period specified in such Notice. The Contract Price shall be adjusted to reflect any additional increased costs to Subcontractor directly resulting from any such suspension, and the Schedules shall be extended by a period equal to the suspension period, plus a reasonable period for demobilization and remobilization, in each case, as

demonstrated by Subcontractor to Contractor's reasonable satisfaction.

19.3.2 **Suspension for Cause.** Without prejudice to Contractor's other rights and remedies under this Agreement, Contractor may also order Subcontractor to suspend performance, in whole or in part, (a) of that portion of the Work that reasonably appears to Contractor to cause or threaten to cause an imminent danger to life or damage to property; (b) of that portion of the Work to the extent necessary if a Subcontractor Party is performing such Work in violation of Applicable Law; (c) the Work as a whole or in part if Subcontractor fails to maintain any insurance coverages required of it in accordance with Article 20 or (d) the Work in whole or in part in the event of a Subcontractor Default. If the Work is suspended pursuant to this Section 19.3.2, then Subcontractor shall not be entitled to any adjustment to the Work Schedule or any adjustment to the Contract Price, for the associated impact of such suspension. If any such suspension is subsequently determined not to have been properly issued, then such suspension shall be deemed to have been a suspension without cause ordered pursuant to Section 19.3.1.

19.4 **Claims for Payment.** Upon the occurrence of any event under this Article that Subcontractor believes entitles it to compensation of any kind or an adjustment of the Contract Price or Work Schedule, Subcontractor shall provide Contractor with a Notice of the occurrence of such event within five (5) Business Days of when Subcontractor received Notice of, discovered or reasonably should have discovered, whichever comes first, the existence of any such event. Within ten (10) Business Days of providing such Notice in response to a termination or the end of a period of suspension under Section 19.3.1, Subcontractor shall, prepare and submit to Contractor a Change Order request pursuant to Article 15. Failure by Subcontractor to submit the above-described Notices or Change Order request for suspension under Section 19.3.1 within the required time period shall constitute a waiver of Subcontractor's rights to seek any compensation, recovery or adjustment of the Work Schedule or Contract Price arising out of such event(s) or dispute or defend against any associated Delay Damages, Disputes, or damages of any kind asserted by Contractor.

20. INSURANCE

20.1 **General.** Subcontractor shall procure at its own expense and maintain in full force and effect throughout its performance under this Agreement and either during all applicable warranty period(s) or for three (3) years after Final Completion of the Work, whichever is later, with responsible insurance companies authorized to do business in the United States, insurance policies in accordance with the coverage, amounts and provisions specified in Exhibit M. Such insurance companies shall have an A.M. Best Insurance financial strength and financial size rating category of A-VIII or better or shall be of recognized responsibility satisfactory to Contractor. Capitalized terms used in this Article and not otherwise defined in this Agreement shall have the meanings generally ascribed to them in the commercial insurance industry in the United States. If Subcontractor fails to provide or maintain any insurance required of it hereunder, Contractor shall have the right, but not the obligation, to provide or maintain any such insurance, and to invoice Subcontractor

therefore or to deduct the cost thereof from any amounts due and payable to Subcontractor. Subcontractor shall Notify Contractor of any and all incidents giving rise to an insurance claim, and otherwise keep Contractor timely apprised of insurance claim proceedings.

20.2 **Sub-subcontractor Insurance.** Subcontractor shall require each of its Sub-subcontractors performing work at the Site, to obtain, maintain and keep in force during the time during which they are involved in performance of the Work, insurance coverage in accordance with the first three insurance requirements applicable to Subcontractor as set forth in Exhibit M; provided, however, that the limits of any such Sub-subcontractors' Umbrella Excess Liability Insurance policies shall not be less than \$2,000,000.

20.3 **Subcontractor's Waiver; Waiver of Subrogation.** Subcontractor releases, assigns and waives any and all rights of recovery against Contractor, Owner and any of their respective Affiliates, subsidiaries, employees, successors, permitted assigns, insurers and underwriters, because of the existence of deductible clauses in, or inadequacy of limits of, any policies of insurance maintained or required to be maintained by Subcontractor pursuant to this Agreement in the amounts stated herein. Subcontractor shall in all policies of insurance related to the Work maintained by Subcontractor include clauses and provide the requisite written endorsement providing that each underwriter shall release, assign and waive all of Subcontractor's rights of recovery, under subrogation or otherwise, against Contractor, Owner, and each of its or their respective parent companies, Affiliates, subsidiaries, employees, successors, permitted assigns, insurers and underwriters.

20.4 **Subcontractor Certificates.** On or prior to issuance of a Notice to Proceed, and in any event prior to performing any Work at the Site, and upon renewal of any policy required to be maintained hereunder (or of the commencement date for Work to be performed by any Sub-subcontractor), and otherwise from time-to-time at Contractor's request, Subcontractor shall furnish to Contractor Site-specific certificates of insurance (including the requisite written endorsement for additional insured coverage showing that the above required insurance is in full force and effect, the amount of the carrier's liability thereunder, and further providing for at least thirty (30) days (or ten (10) days in the case of cancellation due to non-payment of premiums) prior Notice to Contractor of any default, cancellation, change or non-renewal. It is hereby understood and agreed that the coverages afforded by the insurances required of Subcontractor set forth in this Article shall not be invalidated or affected by any unintentional omissions or errors. Contractor may, at any time, review physical copies of the entire policy/policies of insurance held by Subcontractor (or any of its Sub-subcontractors) in compliance with this Contract.

20.5 **No Limitation.** Subcontractor's failure or the failure of its Sub-subcontractors to comply with the terms of this Article 20, does not in any way preclude the contractual obligations, duties, or responsibilities of Subcontractor, its Sub-subcontractors and their respective insurance companies.

21. INDEMNIFICATION

21.1 Comparative Fault. Where fault is determined to have been joint or contributory, the Parties intend for principles of comparative fault to be followed and each Party shall bear the proportionate cost of any loss, damage, expense and liability attributable to such Party's fault.

21.2 By Subcontractor. Subject to Section 21.1, Subcontractor shall defend, indemnify, and hold harmless, Contractor, its Affiliates, and its or either of their employees, agents, partners, shareholders, officers, directors, members, managers and permitted assigns (each, a "**Contractor Indemnitee**"), from and against the following whether alleged in whole or in part:

21.2.1 All Losses arising from third-party claims, including claims by Sub-subcontractors or Contractor's Separate Subcontractors, for property damage or bodily injury or death to the extent caused by any negligent, willful, reckless, or otherwise tortious act or omission (including strict liability) during the performance of the Work, or from performing or failing to perform any of its obligations under this Agreement, Applicable Laws, or any Subcontractor Permits, or any curative action under any warranty following performance of the Work of any Subcontractor Party, or any of its employees, agents, or representatives;

21.2.2 All Losses that directly arise out of or result from: (a) all claims for payment or compensation for Work performed hereunder, whether or not reduced to a Subcontractor's Lien filed by Subcontractor or any Sub-subcontractors (or other persons performing any portion of the Work), including reasonable attorneys' fees and expenses incurred by any Contractor Indemnitee in discharging any Subcontractor Lien; or (b) employers' liability or workers' compensation claims filed by any employees or agents of any Subcontractor Party; (c) any employment-related claims, charges and/or lawsuits brought by Subcontractor's employees (including Sub-subcontractor's employees), including but not limited to, alleged violations of the California Labor Code, the Fair Labor Standards Act, the California Fair Employment and Housing Act and any other federal, state or local law or ordinance, regardless of whether or not Contractor is alleged to be a joint employer. The defense and indemnity obligations related to any claims, charges and/or lawsuits arising out of or related to allegations that time spent traveling to or from the Site in Contractor or Subcontractor provided transportation ("**Transportation Claims**") is compensable (as addressed in the Scope of Work General Conditions Section 1.2.7) are specifically excluded from the indemnity obligations included in Sections 21.2 - 21.2.7 of the Agreement. For Transportation Claims, the Parties intend for principles of comparative fault to be followed and each Party shall bear the proportionate cost of any loss, damages, expenses and liability attributable to such Party's fault. The Parties further agree that the Subcontractor does not have any obligation to defend, indemnify or hold harmless the Contractor Indemnitees from any Transportation Claims and each will bear their own attorney fees and costs in defending any Transportation Claims." Notwithstanding the foregoing, Transportation Claims shall not include claims based upon, or arising from, time spent traveling between the security gate and Project work areas (or time spent traveling within or between Project work areas). Subcontractor

agrees to indemnify, defend and hold harmless Contractor from any claims, charges and/or lawsuits alleged by or on behalf of Subcontractor's employees or Sub-subcontractors (including Sub-subcontractor's employees) relating to or arising from any allegations that time spent traveling on the Site access road (between the security gate and Project work areas) or within or between Project work areas is compensable and/or was not properly compensated by Subcontractor. In fulfilling Subcontractor's duty to defend Contractor with respect to claims relating to travel time between the security gate and Project work areas or within or between Project work areas, Subcontractor and Contractor agree that, absent any actual conflict of interest, Subcontractor and Contractor may be represented jointly by counsel who shall be mutually agreed upon by both Parties. Absent any conflict of interest, and subject to availability, mutually agreeable counsel shall include representation from the law firm Jackson Lewis.

21.2.3 All fines, penalties, or assessments issued by any Governmental Authority within five (5) years after Project Substantial Completion that arise out of or result from the failure of the Project, as constructed and completed by Subcontractor or any Sub-subcontractor, to be capable of operating in compliance with all Applicable Laws or the conditions or provisions of all Permits, in each case, as in effect as of Project Substantial Completion;

21.2.4 All Losses arising from claims by any Governmental Authority that arise out of or result from the failure of Subcontractor to pay, as and when due, all Taxes (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any Governmental Authority for which Subcontractor is obligated to pay pursuant to the terms of this Agreement; and

21.2.5 All Losses, including claims for property damage or bodily injury or death, whether or not involving damage to the Facility or the Site, that arise out of or result from: (a) the use of Hazardous Materials by Subcontractor or any Sub-subcontractor in connection with the performance of the Work which use includes the storage, transportation, processing or disposal of Hazardous Materials by Subcontractor or any Sub-subcontractor; (b) any Release of Hazardous Material in connection with the performance of the Work by Subcontractor or any Sub-subcontractor (except as provided in Section 21.3.4); or (c) 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 Subcontractor or Sub-subcontractor with respect to Hazardous Materials in connection with the performance of the Work.

21.2.6 Intellectual Property. Subcontractor shall deliver all of its Work free and clear of any infringement or violation of any intellectual property right of any third party. shall defend, indemnify, and hold harmless the Contractor Indemnitees against all Losses arising from any Intellectual Property Claim. If any Contractor Indemnitee provides Notice to Subcontractor of the receipt of any such claim, Subcontractor shall, at its own expense settle or defend any such Intellectual Property Claim and pay all damages and costs, including reasonable attorneys' fees, incurred by or awarded against the Contractor Indemnitee(s) and,

if Owner or Contractor are enjoined from completing the Project or any part thereof, or from the use, operation, or enjoyment of the Project or any part thereof, as a result of a final, non-appealable judgment of a court of competent jurisdiction or as a result of injunctive relief provided by a court of competent jurisdiction, either: (a) procure for Contractor, or reimburse Contractor for procuring, the right to continue using the infringing service, Equipment or other Work; (b) modify the infringing service, Equipment or other Work so that the same becomes non-infringing; or (c) replace the infringing service, Equipment or other Work with non-infringing service, Equipment or other Work, as the case may be; provided, however, that in no case shall Subcontractor take any action which adversely affects Owner's or Contractor's continued use and enjoyment of the applicable service, Equipment, or other Work without the prior written consent of Contractor. In order to avoid any delay that may arise from any allegation of an infringement or violation of an Intellectual Property Right, Contractor is authorized, at its discretion, to obtain a license or permission to use an allegedly infringing Intellectual Property Right and to charge Subcontractor for any such license or permission. Contractor's acceptance of the Deliverables, supplied materials and equipment or other component of the Work shall not be construed to relieve Subcontractor of any obligation hereunder.

21.2.7 No Limitation. Subcontractor's indemnification obligations shall in no way be limited by any limitation on the amount or type of damages, compensation or benefits payable under any applicable workers' compensation law, disability law or other employee benefit law.

21.3 By Contractor. Subject to Section 21.1, Contractor shall defend, indemnify and hold harmless Subcontractor, and its respective employees, agents, partners, Affiliates (other than Sub-subcontractors), shareholders, officers, directors, members, managers, and permitted assigns (each a "**Subcontractor Indemnitee**") from and against the following:

21.3.1 All Losses arising from third-party claims, including claims by Sub-subcontractors or Contractor's Separate Subcontractors, for property damage or bodily injury or death to the extent caused by any negligent, willful, reckless, or otherwise tortious acts or omissions (including strict liability) during the performance of Contractor's obligations under this Agreement or failing to comply with Applicable Laws or any Contractor Permit by Contractor or any of Contractor's Separate Subcontractors, or their respective employees, agents, or representatives (other than a Subcontractor Party);

21.3.2 All Losses arising from claims by any Governmental Authority that arise out of or result from the failure of Contractor to pay, as and when due, all Taxes (together with any and all interest, penalties, additions to Taxes and additional amounts imposed with respect thereto) imposed by any Governmental Authority for which Contractor is obligated to pay pursuant to the terms of this Agreement;

21.3.3 All Losses that arise out of or result from employers' liability or workers' compensation claims filed by any employees or agents of Contractor or any of its Contractor's Separate Subcontractors; and

21.3.4 All Losses, including claims for property damage or personal injury or death that arise out of or result from: (a) the use, presence or existence of Hazardous Materials (including pre-existing contamination); (b) brought onto or generated at the Site or otherwise Released on or before the Effective Date; (c) brought onto the Site or generated by Contractor or Contractor's Separate Subcontractors; or (d) which migrated onto the Site from another location (other than such Hazardous Materials that were previously in the care, custody or control of Subcontractor or any Sub-subcontractor); or (e) the Release or spill by Contractor, any Contractor Separate Subcontractor or their respective Affiliates after Project Substantial Completion of Hazardous Materials otherwise brought onto the Site by Subcontractor or any Sub-subcontractor in accordance with the terms of this Agreement and all Applicable Laws.

21.4 Claim Notice. An Indemnitee shall provide Notice to the indemnifying Party, as soon as practicable after receiving Notice of the commencement of any legal action or of any claims or threatened claims against such Indemnitee in respect of which indemnification may be sought pursuant to the foregoing provisions of this Article or any other provision of this Agreement providing for an indemnity (such Notice, a "**Claim Notice**"). The Indemnitee's failure to timely give such Claim Notice will reduce the liability of the indemnifying Party only by the amount of damages attributable and prejudicial to such failure or tardiness, but shall not otherwise relieve the indemnifying Party from any liability that it may have under this Agreement. An Indemnitee may, by such Claim Notice, require the indemnifying Party to assume and control the defense of the claim that is the subject of such Claim Notice, in which case the indemnifying Party may select counsel after consultation with the Indemnitee, and the indemnifying Party shall pay all expenses of the conduct of such defense. The Indemnitee shall have the right to employ separate counsel in any such proceeding and to participate in (but not control) the defense of such claim, but the fees and expenses of such counsel shall be borne by the Indemnitee unless the indemnifying Party agrees otherwise. If the indemnifying Party fails to assume or diligently prosecute the defense of any claim in accordance with the provisions of this Section, then the Indemnitee shall have the absolute right to control the defense of such claim and the fees and expenses of such defense, including reasonable attorneys' fees of the Indemnitee's counsel shall be borne by the indemnifying Party, provided that the indemnifying Party shall be entitled, at its expense, to participate in (but not control) such defense. Subject to all of the foregoing provisions of this Section: (a) the indemnifying Party shall control the settlement of all claims, in coordination with any insurer as required under the applicable insurance policies in Article 20 as to which it has assumed the defense; provided, however, that: (i) such settlement shall include a dismissal of the claim and an explicit release from the party bringing such claim or other proceedings of all Indemnitees; and (ii) the indemnifying Party shall not conclude any settlement without the prior approval of the Indemnitee, which approval shall not be unreasonably withheld; and (b) except as provided in the preceding sentence concerning the indemnifying Party's failure to assume or to diligently prosecute the defense of any claim, no Indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the indemnifying Party, settle, compromise, consent to the entry of any judgment in or otherwise

seek to terminate any action, claim, suit, investigation or proceeding for which indemnity is afforded hereunder unless such Indemnitee reasonably believes that the matter in question involves potential criminal liability against such Indemnitee. The Indemnitee shall provide reasonable assistance to the indemnifying Party when the indemnifying Party so requests, at the indemnifying Party's expense, in connection with such legal action or claim, including executing any powers-of-attorney or other documents required by the indemnifying Party with regard to the defense or indemnity obligations.

21.5 Failure to Defend. If any third-party claim arises as to which any indemnity provided for in Article 21 applies, and the indemnifying Party fails to assume the defense of such claim within 15 days after the receipt by the indemnifying Party of notification thereof, then the indemnified Party against which the claim is instituted or commenced may, at the indemnifying Party's expense, contest, or (with the prior written consent of the indemnifying Party, not to be unreasonably withheld) settle, such claim; provided, that no such contest need be made, and settlement or full payment of any such claim may be made without the indemnifying party's consent (with the indemnifying Party remaining obligated to indemnify the indemnified Party under Article 21) if, in the written opinion of the indemnified Party's counsel, such claim is meritorious.

21.5.1 All costs and expenses incurred by Contractor or the Contractor's Indemnitee in connection with any such contest, settlement or payment may be deducted from any amounts due to Subcontractor under this Agreement, with all such costs in excess of the amount deducted to be reimbursed by Subcontractor to Contractor or the Contractor's Indemnitee promptly following, but not later than fifteen (15) days following, Contractor's or Contractor's Indemnitee's demand therefor.

21.6 Survival of Indemnity Obligations. Except as specified in this Section, the indemnities set forth herein shall survive the occurrence of Final Completion or the earlier complete termination of Subcontractor's right to proceed under this Agreement for a period expiring ten (10) years following Final Completion or said termination, whichever first occurs. All Claim Notices must be delivered prior to the expiration of such ten (10) year period and the indemnification period in respect of any claims identified therein shall extend through the final, non-appealable resolution of such claims.

22. CONFIDENTIAL INFORMATION

22.1 Confidential Information. For purposes of this Agreement, the term "Confidential Information" means proprietary information concerning the business, operations and assets of Contractor, its respective parent company, subsidiaries and/or affiliates (collectively, and for the sole purpose of this Article, the "Contractor Interests") provided to Subcontractor, including the terms and conditions of this Agreement or any related agreement, information or materials prepared in connection with the performance of the Work under this Agreement, or any related designs, drawings, specifications, techniques, models, data, documentation, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or

marketing techniques and materials, development or marketing timetables, strategies and development plans, business plans, customer, supplier or personnel names, Contractor's pricing or cost information and other information related to customers, suppliers or personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets, and any related subsequent agreement. Confidential Information shall not include (a) information known to Subcontractor prior to obtaining the same from the Contractor Interests; (b) information in the public domain at the time of disclosure by the Contractor Interests; (c) information obtained by Subcontractor from a third party who did not receive the same, directly or indirectly, from the Contractor Interests; or (d) information approved for release by express prior written consent of an authorized officer of the Contractor Interests.

22.2 Use of Confidential Information. Subcontractor hereby agrees that it shall use the Confidential Information solely for the purpose of performing its obligations under this Agreement and not in any way detrimental to the Contractor Interests. Subcontractor agrees to use the same degree of care Subcontractor uses with respect to their own proprietary or confidential information, which in any event shall result in a reasonable standard of care to prevent unauthorized use or disclosure of the Confidential Information. Except as otherwise provided herein, Subcontractor shall keep confidential and not disclose the Confidential Information to any Person. Subcontractor shall cause its directors, officers, employees, agents, representatives, Sub-subcontractors to become familiar with, and abide by, the terms of this Section. Notwithstanding the foregoing, Subcontractor may disclose any of the Confidential Information if, but only to the extent, that, based upon advice of counsel, Subcontractor is required to do so by the disclosure requirements of any Applicable Law. Prior to making or permitting any such disclosure, Subcontractor shall provide Contractor with prompt written notice of any such requirement so that Contractor or the Contractor Interests (with Subcontractor's assistance if requested) may seek a protective order or other appropriate remedy.

22.3 Other Non-disclosure Agreements. During the business relationship between Subcontractor and Contractor or its Affiliates, one or more non-disclosure agreements ("NDAs") may be, or may have been, entered into. In the event of an apparent conflict between or among provision(s) of this Agreement and any NDA, such provisions shall be read in a mutually consistent way, or if no such reading is reasonably possible, the provision(s) that are most protective of Confidential Information shall take precedence over conflicting or less protective provision(s).

22.4 Return of Confidential Information. At any time upon the request of Contractor, Subcontractor shall promptly deliver to Contractor or destroy if so directed by Contractor (with such destruction to be certified by Subcontractor) all documents (and all copies thereof, however stored) furnished to or prepared by Subcontractor that contain Confidential Information and all other documents in Subcontractor possession that contain or that are based on or derived from Confidential Information. Notwithstanding the return or destruction of all or any part of the Confidential Information, the confidentiality provisions set forth

in this Agreement, including all provisions of this Article, shall nevertheless remain in full force and effect until the date that is five (5) years after the date on which Final Completion occurred.

22.5 Non-Solicitation. Neither Subcontractor nor its Affiliates will directly or indirectly, either for itself or on behalf of any other entity, recruit or otherwise solicit or induce any employee, consultant, customer, distributor or supplier of Contractor to terminate its employment or arrangement with Contractor, or establish any relationship for the provision of photovoltaic engineering, procurement or construction services with any known engineering, procurement or construction customers of Contractor or any of its Affiliates. In addition, neither Subcontractor nor its Affiliates shall, either for itself or on behalf of any other entity, bid, negotiate or otherwise engage in discussions regarding a ground mount photovoltaic engineering, procurement or construction project as a contractor, or continue to pursue such bid or negotiation if it has knowledge that Contractor is bidding, negotiating or otherwise involved in such project as an engineering, procurement or construction contractor.

22.6 Non-Disparagement. From the Effective Date until the earlier of three (3) years from Final Completion or termination of this Agreement, Subcontractor will not, and will cause its Affiliates not to, make any statement to any third party that knowingly disparages Contractor, its Affiliates or the Plant.

22.7 Confidential Information Remedy. Subcontractor acknowledges that the Confidential Information is valuable and unique, and that damages would be an inadequate remedy for breach of this Agreement and the obligations of Subcontractor under this Article are specifically enforceable. Accordingly, Subcontractor agrees that in the event of a breach or threatened breach of this Agreement by Subcontractor, Contractor and/or the Contractor Interests, who shall be third-party beneficiaries of this Agreement, shall be entitled to seek an injunction in a court of competent jurisdiction preventing such breach, without the necessity of proving damages or posting any bond and notwithstanding any other dispute resolution provision of this Agreement. Any such relief shall be in addition to, and not in lieu of, monetary damages or any other legal or equitable remedy available to Contractor or the Contractor Interests, and Contractor's damages under this Section shall not be limited by any attribute of its damages, such as they may be incidental or consequential or remote.

23. DRAWINGS AND LICENSES

23.1 Drawing, License. Any work of authorship, drawing, design, diagram or pattern, that Subcontractor may make, develop or create, in whole or in part, in the course of performing the Work, shall be owned and retained by Subcontractor. Subcontractor hereby grants to Contractor and its Affiliates (and Subcontractor shall require its Sub-subcontractors to grant) an irrevocable, nonexclusive royalty-free license (which license is freely transferable to Owner or to any party to which the Facility is sold, collaterally assigned, or otherwise transferred) with a period equal to the life of the Work (including any time period during which the Work is completed by an alternative subcontractor following termination pursuant to Article 19), to use all such works of authorship, drawings, designs, diagrams or

patterns, other proprietary rights and specialized knowledge of Subcontractor which, in each case, form a part of the Work for Contractor's or Owner's use to the extent necessary for the construction, operation, maintenance, repair, or alteration of the Project or any Block or components thereof.

23.2 Deliverables. Subject to Section 23.1, Deliverables accumulated or developed by Subcontractor, its employees or any Sub-subcontractors shall become the property of Contractor without any further consideration to be provided therefor, when prepared or in process, whether or not delivered by Subcontractor. Subcontractor shall deliver the Deliverables to Contractor upon any termination of this Agreement or completion of the Work.

24. ASSIGNMENT

24.1 Assignment to Other Persons. Subcontractor shall not assign or otherwise transfer this Agreement or any rights hereunder (including the right to receive payment) to any third party, whether by operation of law or otherwise, without the prior written consent of Contractor. Subcontractor agrees that Contractor may, at Contractor's sole discretion, assign this Subcontract (including all of Contractor's rights and obligations hereunder) to an assignee. Subcontractor agrees that its rights and obligations as to any assignee under this Agreement shall be identical to its rights and obligations as to Contractor hereunder and that, upon the assignment, Subcontractor's obligations to the assignee shall be the same as if the assignee had been Contractor from the inception of the Agreement.

25. OBLIGATIONS REGARDING APPLICABLE LAW AND HAZARDOUS MATERIALS

25.1 Hazardous Materials. Subcontractor shall prepare and maintain accurate and complete documentation of all Hazardous Materials used by any Subcontractor Party at the Site and of the disposal of any such materials, including transportation documentation and the identity of all Sub-subcontractors providing Hazardous Materials disposal services at the Site. Subcontractor shall promptly comply with all lawful orders and directives of all Governmental Authorities relating to the use, transportation, storage, handling, presence, or release by Subcontractor, any Sub-subcontractor or any Person acting on its or their behalf or under its or their control of any Hazardous Materials brought onto or generated at the Site by Subcontractor or any Sub-subcontractor. Subcontractor shall not, and shall not permit any of its Sub-subcontractors, directly or indirectly to, permit the manufacture, storage, transmission or presence of any Hazardous Materials on the Site, and Subcontractor shall not and shall not permit any of its Sub-subcontractors to release, discharge or otherwise dispose of any Hazardous Materials on the Site, in each case, except in accordance with Applicable Law. Subcontractor shall Notify Contractor of any communication from any Governmental Authority that alleges that Subcontractor is not acting in compliance with Applicable Law or affects any Permit.

25.2 Release. In the event of any Release of a Hazardous Material at the Site by any Subcontractor Party, Subcontractor shall (i) immediately Notify Contractor thereof and take all reasonable steps necessary to stop and contain said Release; (ii)

to the extent that such Release is reportable to a Governmental Authority under Applicable Law, make any report of such Release as required under Applicable Law; and (iii) clean-up such Release as required by any Governmental Authority. Subcontractor shall submit to Contractor's Representative, within twenty-four (24) hours of any Release, a written report, in a form mutually agreed upon by both Parties (but which does not waive attorney client privilege with respect to any such matter), describing in detail any Release of a Hazardous Material which, which report shall include the following information:

25.2.1 Name and address of Subcontractor and any Sub-subcontractor(s) involved, their respective insurance carriers, the names of any and all employees involved and other witnesses to the incident;

25.2.2 Detailed descriptions of any injuries and the extent of such injuries suffered by any individuals, if applicable;

25.2.3 Location, address and a detailed description of any property damage, photographs or videos depicting the damage incurred and name and address of the owner of such property, if applicable;

25.2.4 A detailed description of the Release including the identification of the Hazardous Material, the date and time of the Release, the volume released, and the nature of the environmental condition;

25.2.5 A determination of whether any Subcontractor Party personnel, equipment, tools or materials were involved;

25.2.6 A detailed description of all reports made to any Governmental Authority, and a description of the actions taken to respond to the Release; and

25.2.7 A copy of any and all Notices, determinations of fault or culpability, fines or penalties assessed or imposed by any Governmental Authority in response to the Release.

25.3 Further Information. Subcontractor shall provide the following to Contractor for each Hazardous Material which Subcontractor furnishes to the Site, at any time, for use in fulfilling its obligations under this Agreement a description of: (a) the hazardous properties of the Hazardous Material including current MSDS forms; (b) the protective measures that are necessary for the safe use of each Hazardous Material; and (c) the emergency procedures to be followed in case of a Release of or exposure to each Hazardous Material.

26. NON-PAYMENT CLAIMS

Subcontractor: (a) to the extent permitted by law, shall not directly or indirectly create, incur, assume or cause to be created by it or any Sub-subcontractor, employee, laborer, materialman or other supplier of goods or services any right of retention, mortgage, pledge, assessment, security interest, lease, advance claim, levy, claim, lien, mechanic's lien, materialmen's lien, stop notice, charge or encumbrance or similarly described

right or interest, whether arising under statute, common law, or constitution, and whether legal or equitable, on the Owner, Contractor, funds due under the Prime Contract, funds due under this Agreement, the Work, the Site, the Facility or any part thereof or interest therein (each a "**Subcontractor Lien**"); (b) shall keep the Site, the Work and the Equipment, all other equipment, hardware and materials delivered to Subcontractor (whether or not forming a permanent part of the completed Work or included in Subcontractor's scope of supply hereunder) free of Subcontractor Liens; and (c) shall promptly pay or discharge and discharge of record (including by recording a bond to the extent permitted by and in accordance with Applicable Law) any such Subcontractor Lien or other charges which, if unpaid, might be or become a Subcontractor Lien. If Subcontractor does not satisfy or discharge such Subcontractor Lien within two (2) Business Days after becoming aware of the same, then any Contractor Indemnitee shall have the right, at its option, after Notification to Subcontractor, to cause the release or discharge of such Subcontractor Lien and (a) require Subcontractor to pay resulting Losses within three (3) Business Days or (b) offset against any Retainage or against any other amounts due hereunder to Subcontractor, all costs and expenses incurred by Contractor Indemnitee in causing the release or discharge of such Subcontractor Lien, including administrative costs, actual attorneys' fees, and other expenses. Subcontractor shall have the right to contest any such Subcontractor Lien; provided, however, that Subcontractor first satisfy its obligations hereunder to cause the release or discharge of such Subcontractor Lien within the time period provided above. To the fullest extent permitted under Applicable Law, and notwithstanding the date, time, method, manner or order of grant, attachment or perfection of any Subcontractor Lien(s), Subcontractor agrees and consents that Subcontractor Lien(s) shall be subordinate to security interest(s) held by or on behalf of any Financing Party and that all security interest(s) held by or on behalf of any Financing Party shall be senior in all respects, and prior to, any Subcontractor Lien(s). Subcontractor further agrees to use all commercially available means to ensure that its Sub-subcontractors and laborers agree and consent to subordination in the same manner provided herein, including insertion of similar provisions in all Sub-subcontracts.

27. NOTICES AND COMMUNICATIONS

27.1 Requirements. Any Notice or Notification made pursuant to the terms and conditions of this Agreement shall be in writing and be: (a) delivered personally; (b) sent by certified mail, return receipt requested; or (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (d) only with a Notice to Proceed, sent by electronic mail, with delivery receipt requested:

If to Subcontractor:

CSI Electrical Contractors, Inc.
10623 Fulton Wells Ave.
Santa Fe Springs, CA 90670
Attention: Gene Acosta, Vice President of Energy Solutions
Gene.Acosta@csielectric.com

If to Contractor:

First Solar Electric (California), Inc.
350 West Washington Street
Suite 600
Tempe AZ 85281
Attention: General Counsel EPC

and

First Solar Electric (California), Inc.
350 West Washington Street
Suite 600
Tempe AZ 85281
Attention: Luke Adams, Contractor's Representative

27.2 Representatives; Effective Time. Any Notice or Notification given personally, overnight mail or certified letter shall be deemed to have been received on delivery, any Notice given by express courier service shall be deemed to have been received the next Business Day after the same shall have been delivered to the relevant courier.

27.3 Formal Notice Required. Each party recognizes the business necessity of formal Notice required herein. Each agrees not to assert that notice through some means other than the formal Notice described in this Article is sufficient Notice under the Agreement to avoid the waiver provisions arising from a lack of Notice.

28. LIMITATIONS OF LIABILITY AND REMEDIES

28.1 Limitations on Damages. Except (i) to the extent liquidated damages as expressly set forth in this Agreement or a termination payment made pursuant to Article 19 constitute consequential damages; (ii) to the extent damages claimed by third parties (other than Contractor Indemnitees or Subcontractor Indemnitees) for which Subcontractor or Contractor have a duty to indemnify hereunder are expressly provided are shown to be consequential in nature; (iii) with respect to Subcontractor's indemnification obligations under this Agreement; (iv) to the extent of a breach of Subcontractor's obligations under Article 22 hereof; (v) to the extent of the gross negligence or willful misconduct of Subcontractor, and notwithstanding anything else in this Agreement to the contrary; and (vi) to the extent such claims are covered by either parties' insurance coverage no Party shall be liable to any other party for any loss, damage or other liability otherwise equivalent to or in the nature of any indirect, incidental, consequential, exemplary, punitive or special damages arising from performing or a failure to perform any obligation under this Agreement, whether such liability arises in contract (including claims for costs as a result of Excusable Event and/or

Force Majeure Event), tort (including fault, negligence or strict liability), or otherwise, including for any loss of profits, loss of revenue, loss of productivity, claims for cumulative impact, or loss of use the Plant or the Facility, downtime costs, increased expense of operation or maintenance of the Facility, loss of opportunity or goodwill, cost of purchased or replacement power, Equipment or systems, cost of capital, claims of customers for such damages.

28.2 Limitations on Subcontractor's Liability.

28.2.1 Limitations on Subcontractor's Liability. Except as provided below, Subcontractor's liability to Contractor and/or Contractor Indemnitees under this Agreement, whether arising in contract, tort, warranty, or otherwise, shall in no event exceed one hundred percent (100%) of the final Contract Price (including all adjustments to the original Contract Price by Change Order(s) under Article 15). The foregoing limits shall not apply to: (i) any claim to the extent that such claim is covered by insurance required to be maintained under this Agreement; (ii) amounts paid by Subcontractor to or on behalf of Contractor or Contractor Indemnitee arising out of the negligence, gross negligence, willful misconduct or fraud of Subcontractor's or any Person whom at law Subcontractor is responsible; (iii) amounts paid by Subcontractor to or on behalf of Contractor or Contractor's Indemnitee in respect of any third-party claims for intellectual property infringement or alleged violation, any damage or destruction to property or death or personal injury; (iv) a breach of Subcontractor's obligations under Article 22 hereof; or (v) with respect to Subcontractor's obligation to achieve Block Substantial Completion of each Block and Project Substantial Completion .

28.2.2 Maximum Delay Damages. Subcontractor's aggregate liability to Contractor under this Agreement for all Delay Damages shall in no event exceed twenty-five percent (25%) of the Contract Price (as the same may be adjusted from time to time pursuant to this Agreement).

28.3 Limitation on Contractor's Liability. Contractor's liability to Subcontractor and/or Subcontractor Indemnitees under this Agreement, whether arising in contract, tort, Warranty, or otherwise, shall in no event exceed one hundred percent (100%) of the Contract Price (as the same may be adjusted from time to time). Subcontractor's sole recourse for any damages or liabilities due to Subcontractor by Contractor pursuant to this Agreement shall be without recourse individually or collectively to the assets of Owner, other members or the Affiliates of Contractor, a Financing Party, or their respective officers, directors, employees or agents.

28.4 Releases, Indemnities and Limitations. The releases, indemnities, waivers, subrogation, assumptions of and limitations on liabilities and limitations on remedies expressed in this Agreement, subject to the terms hereof, shall apply even in the event of fault, termination, default, breach of contract, breach of Warranty, negligence, or strict liability of the Party released or indemnified, or whose liability is limited or assumed or against whom right of subrogation are waived and shall extend to such Party's subcontractors and their respective Affiliates, officers,

directors, members, employees, or agents and shall survive termination of this Agreement.

29. DISPUTES

29.1 Governing Law. All disputes concerning the validity, interpretation and application of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to its conflicts of laws provisions that would require the application of the laws of another jurisdiction and without reference to the provisions of the United Nations Convention on the International Sale of Goods (CISG).

29.2 Dispute Resolution. All claims, disputes and other controversies arising out of or relating to this Agreement, or out of any bond or guaranty issued in support of this Agreement, or the breach, termination or validity thereof (a “**Dispute**”) shall be resolved pursuant to the procedures set forth in this Section 29.2. If Subcontractor intends to assert a Dispute, it shall provide Notice to Contractor of such intention (including a description of the grounds therefor) within ten (10) Business Days of when Subcontractor knows or should reasonably have known of the event or circumstance giving rise to such Dispute. In the case of a disputed Change Order, such ten (10) Business Day period shall be deemed to commence from the date Subcontractor knows of the rejection of the Change Order request. Failure by Subcontractor to provide such Notice shall constitute a waiver of Subcontractor’s rights to seek a Change Order, adjustment of the Work Schedule or Contract Price, or any other recovery whatsoever arising out of such event or Change, as well as a waiver of Subcontractor’s right to Dispute or defend against any associated Delay Damages, Disputes, or damages of any kind asserted by Contractor. All Disputes regarding the validity, interpretation and application of the arbitration provisions contained in this Section and the arbitration proceedings contemplated thereby, including issues of arbitrability, shall be governed by the Federal Arbitration Act. The Parties agree that their performance of the duties and obligations under this Agreement necessarily involves interstate commerce.

29.2.1 Referral to Authorized Officers. Any Dispute that cannot be resolved between Contractor’s Representative and Project Manager within five (5) Business Days after receipt of a Notice of such Dispute shall be referred, by Notice signed by either Contractor’s Representative or Project Manager and specifically referencing this Section 29.2.1, to the senior officers of the Parties or other authorized representatives designated by them, each of which shall have the authority to negotiate and fully resolve the Dispute. If a Party does not make such a designation, then such Party’s authorized representative for purposes hereof shall be (i) for Contractor, the Vice President of Project Management and Construction Services Global, EPC, of First Solar, Inc. and (ii) for Subcontractor, its Vice President of Energy Solutions. The authorized representatives shall meet, either in person or by telephonic conference, within ten (10) Business Days of the delivery of the Notice to them.

29.2.2 Non-Binding Mediation. If the Parties cannot reach mutual agreement in accordance with Section 29.2.1, then the Parties shall each engage a mutually agreeable mediator, and, within fifteen (15) Business Days of the

conclusion of the ten (10) day time period for resolution by authorized representatives under Section 29.2.1, the Parties, together with their mediators, shall meet in order to resolve the dispute through non-binding mediation.

29.2.3 Arbitration Procedures. At the sole discretion of Contractor, any Dispute that cannot be resolved in accordance with Sections 29.2.1 and 29.2.2 within fifteen (15) Business Days after commencement of the referenced non-binding mediation shall be settled by final and binding arbitration in accordance with the arbitration rules of the American Arbitration Association (the “**AAA**”), and the following provisions shall apply:

29.2.3.1 The arbitration proceedings shall: (i) take place in Bridgewater, New Jersey; and (ii) be conducted in accordance with Construction Industry Rules (the “**Rules**”) then in effect of the AAA (except to the extent modified by this Article 29).

29.2.3.2 The disputing Party (the “**Claimant**”) shall submit a Demand for Arbitration with the AAA and the other Party (the “**Respondent**”) setting forth a description of the Dispute, the amount sought, if any, and the grounds and documents on which Respondent intends to rely in seeking to have the Dispute determined in its favor (a “**Demand**”); and the Respondent shall, within thirty (30) days of receipt of such Demand, deliver a response (the “**Response**”) setting forth any additional matters related to the Dispute, if any, upon which such responding Party relies in seeking to have the Dispute determined in its favor, including (as applicable) any defenses and counterclaims along with corresponding statements setting forth the grounds and documents on which Respondent intends to rely in seeking to have the Dispute determined in its favor.

29.2.3.3 The arbitration panel shall consist of (i) an arbitrator selected by Contractor, (ii) an arbitrator selected by Subcontractor and (iii) a third arbitrator selected by the individuals selected by Contractor and Subcontractor in clauses (i) and (ii), respectively, who will serve as the chair arbitrator for the panel. Each Party shall appoint an arbitrator in accordance with clauses (i) and (ii) within thirty (30) days after the Response is received by the Claimant. If either Party shall fail to appoint an arbitrator in accordance with clauses (i) and (ii) within the thirty (30) day period, then the AAA shall appoint such arbitrator within fifteen (15) days of being requested to do so by either Party. Each arbitrator shall be appointed as, and shall serve as, a neutral and shall have no ex parte contact with the appointing Party, or the other Party, once the appointment has been announced to the non-appointing Party.

29.2.3.4 At least thirty (30) days prior to the arbitration hearing, the Parties shall each exchange and provide to the arbitration panel the following documents: (a) a written proposal of the amount of money damages or other relief they would offer or demand, as applicable, and that they believe to be appropriate, with respect to any and all Disputes (“**Proposal**”); and (b) a written memorandum outlining the alleged grounds for their respective positions, including a summary of all theories of recovery or defense, an outline of the legal support and a

summary of the evidence that each Party intends to rely upon, or relies upon, in seeking to have the Dispute determined in its favor (“**Memorandum**”). At any time prior to the close of the arbitration hearing, the Parties remain free to exchange revised Proposals of offers or demands, which will supersede all prior Proposals. The Proposal by a Party must encompass all relief: damages, interest, and attorney’s fees; in the absence of a line item for any item of damages or other relieve, the Panel will conclusively conclude that the Party either makes no claim or that any such claim is subsumed in the Party’s Proposal. In rendering the arbitration award, the arbitrators shall select between the Parties’ latest Proposals submitted before the close of the arbitration hearing and choose the Proposal that the arbitrators find more reasonable and appropriate, and the amount of money damages or other relief provided for in that Proposal shall be the recovery granted in the arbitrators’ ultimate award.

29.2.3.5 The Parties agree that the scope of discovery in the arbitration proceedings hereunder shall be determined by the panel subject to the following limitations:

29.2.3.5.1 Each Party shall make available for inspection and copying its entire project file, including all documents (both electronic and hardcopy) that in any manner are related to or arise out of performance of the Work or any of the Parties’ respective rights and obligations under this Agreement. The word “document” is used above in its broadest sense and shall have the full extent of its meaning under the Federal Rules of Civil Procedure and includes all tangible items and things, and all written, electronic (in native format), printed, typed, recorded, transcribed, punched, taped, or graphic matter of every type and description, however and by whomever prepared, produced, reproduced, translated, disseminated, or made, including things, writings, records, correspondence, communications, letters, diaries, diary entries, logs, log books, telegrams, telexes, memoranda, notes, reports, bulletins, summaries, or other records of telephone or personal conversations, minutes or summaries of telephone or personal meetings and conferences, instructions, literature, work assignments, agreements, contracts, interoffice or intraoffice communications, drafts, electronic mail, microfilm, digital images, insurance policies, notebooks, calendars, appointment books, circulars, pamphlets, projections, studies, estimates, charts, lists, tables, computer runs, tabulations, spreadsheets, printouts, notices, books, checks, credit card or other expense vouchers, statements of account, receipts, invoices, requisitions, graphs, bank statements, check register, payrolls, payroll time sheets, time registers, photographs, videos, CD’s, DVD’s, diskettes, disks, photocopies, drafts, data sheets, data compilations, computer drives on which any document is stored, computer data compilations, ESI, statistics, critical path method (CPM) and other schedules, worksheets, articles, speeches or other writings, SEC filings, finance briefing notes, financial briefing recordings, financial briefing transactions, and means the original, copy or any non-identical copy, draft or translated version, regardless of origin or location.

29.2.3.5.2 Each Party shall be entitled to take no more than three (3) fact depositions, except that Contractor shall be entitled to take one (1) additional fact deposition for each additional party to the arbitration proceedings

in addition to Subcontractor or Sub-subcontractor seeking recovery by and through Subcontractor.

29.2.3.5.3 Each party shall be entitled to depose expert witnesses designated by the other Party.

29.2.3.5.4 Unless agreed by the Parties or ordered by the arbitrators for good cause shown, no deposition shall be longer than 8 hours (breaks and time spent reading lengthy documents excluded).

29.2.3.6 The arbitration shall be conducted within eight (8) months following the selection or appointment of the third arbitrator or within such longer period as may be agreed upon by the Parties. Such hearing shall be held on consecutive days to the extent possible, and shall be no more than six (6) days in length, unless the arbitration panel extends such period for good cause shown or within such longer period as may be agreed upon by the Parties.

29.2.3.7 Any decision or award of the applicable arbitration panel shall be bound by all provisions of this Agreement and the applicable arbitration panel shall have no authority or power to enter an award which is in conflict with any of the provisions of this Agreement. The decision or award must be in writing and must contain brief findings of fact on which it is based. Any decision or award of the applicable arbitration panel may be enforced or confirmed in a court of competent jurisdiction.

29.2.3.8 The prevailing Party (the existence and identity of which is to be determined by the panel in its sole discretion) shall be entitled to an additional award of some or all of its actual attorneys’ fees, costs and expenses incurred in prosecuting or defending the Disputes submitted to arbitration. Each Party shall otherwise bear its own attorneys’ fees, costs and expenses. Absent an award by the panel, each Party shall bear the costs of the arbitrators mutually, regardless of which Party may have appointed a particular arbitrator.

29.2.3.9 Any monetary award rendered by an arbitration panel pursuant to this Article 29 shall be due and payable within ten (10) days following such award.

29.2.4 Continuation of Work During Dispute. Pending the final resolution of any Dispute, Subcontractor shall proceed with the performance of the Work and its other duties and obligations under this Agreement without diminution of effort, so long as Contractor shall continue to make undisputed payments in accordance with this Agreement.

29.2.5 Third Party Disputes. In the event that Contractor is required to litigate or arbitrate any Dispute relating to the Project with a third party, including the Owner, Subcontractor agrees to provide to Contractor such reasonable assistance in connection with such Dispute as Contractor may request from time to time, including providing to Contractor such documentary and oral evidence relating to such Dispute as Contractor may reasonably request, and Contractor shall reimburse Subcontractor for the reasonable and duly documented

costs and expenses incurred by Subcontractor in providing such assistance, unless the Subcontractor is the cause, in whole or in part, of the dispute.

29.2.6 If Contractor elects not to submit any Dispute(s) to arbitration, then such Disputes shall be adjudicated in any court of competent jurisdiction located in Somerset County, New Jersey or U.S. District Court of New Jersey. EACH PARTY HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY.

30 MISCELLANEOUS

30.1 Severability. If any provision of this Agreement or the application thereof to any Party is held invalid or unenforceable to any extent, the remainder of this Agreement and the application of that provision to the other Party is not affected thereby and that provision shall be enforced to the greatest extent permitted by law. If such provision of this Agreement is so declared invalid, the Parties shall promptly negotiate in good faith new provisions to eliminate such invalidity and to restore this Agreement as near as possible to its original intent and effect.

30.2 No Oral Modification. This Agreement may be amended or restated only by a written instrument adopted, executed and agreed to by the Parties.

30.3 No Waiver. A Party's waiver of any Subcontractor Default or Contractor Default, as the case may be, breach or failure to enforce any of the terms, covenants, conditions, or other provisions of this Agreement at any time shall not in any way affect, limit, modify or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade notwithstanding. All waivers must be in writing and signed on behalf of Contractor and Subcontractor.

30.4 Review and Approval. Notwithstanding Contractor's review or approval of any items submitted to Contractor for review or approval (including any Deliverable), neither Contractor nor any of its representatives or agents reviewing such items shall have any liability or responsibility for, under, or in connection with such items, nor shall any such approval constitute a waiver of any of Contractor's rights hereunder, and Subcontractor shall remain responsible for the design, quality and performance of the Work. Any inspection comment, review or approval of any Deliverable shall be performed in Contractor's sole discretion.

30.5 Third Party Beneficiaries. The provisions of this Agreement are intended for the sole benefit of Contractor and Subcontractor and there are no third-party beneficiaries hereof, unless the context of a provision otherwise makes it clear that an entity is the beneficiary of the provision.

30.6 Further Assurances. Subcontractor, at the request of the Contractor, will use its best efforts to implement the provisions of this Agreement, and for such purpose Subcontractor will, without further consideration, promptly execute and deliver or cause to be executed and delivered to the Contractor such

assistance (including in connection with any financing involving the Facility), or assignments, consents to collateral assignment, other consents or other instruments in addition to those required by this Agreement, in form and substance satisfactory to the Contractor, as the Contractor may deem necessary or desirable to implement any provision of this Agreement.

30.7 Record Retention. Subcontractor agrees to retain for a period of ten (10) years from the date on which Final Completion occurred all material documents (including ESI) and records relating to its performance of the Work or Subcontractor's warranty obligations herein. In the event of a Dispute, any instance of Subcontractor destroying, losing or otherwise failing to properly retain any document as required hereunder shall be interpreted against Subcontractor and in favor of Contractor.

30.8 Binding on Successors, Etc. Subject to Article 24, this Agreement shall be binding on the Parties hereto and on their respective successors, heirs and assigns.

30.9 Merger Clause; No Reliance. Except for any NDAs and as may otherwise be set forth in any Annex, this Agreement and the attached Exhibits constitute the entire agreement between the Parties with respect to the subject matter hereof and supersedes any other agreements, whether written or oral, that may have been made or entered into between Contractor and Subcontractor with respect to the subject matter hereof. The Parties hereto agree that with respect to the subject matter hereof, they shall not be entitled to rely upon, nor has either relied upon, any prior representations, negotiations, documents, or agreements, whether oral, ESI, or written, that are not expressly contained in this Agreement or any NDAs entered into with respect to this Agreement.

30.10 C-TPAT. Subcontractor shall implement the current U.S. Customs Trade Partnership Against Terrorism ("C-TPAT") security guidelines and shall comply with such guidelines (as may be revised by the U.S. Customs and Border Protection ("CBP")) during the term of this Agreement. The current C-TPAT guidelines may be viewed at www.cbp.gov. Subcontractor acknowledges and understands that CBP may conduct random audits.

30.11 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument.

30.12 Announcements; Publications.

30.12.1 **Prior Approval.** Subcontractor shall not (either directly or indirectly), nor shall Subcontractor permit any of its Affiliates or Sub-subcontractors to, issue or make any public release or announcement with respect to or concerning any matter the subject of, or contemplated by, this Agreement without Contractor's prior written consent; provided, however, that, subject to the provisions of Section 30.12.2, nothing in this Agreement shall prevent Subcontractor from independently making such public disclosure or filing as is required by Applicable Law.

30.12.2 Marketing; Advertising. Except as may be restricted or prohibited by Applicable Law, Contractor and its Affiliates and Owner and its Affiliates shall be permitted to show, by photograph, in any advertising or marketing materials, the Plant under construction or as completed, without first obtaining the prior consent of the Subcontractor. Contractor shall also be permitted to videotape or otherwise record any of the Work, including the installation and/or construction work performed by Subcontractor hereunder for purposes of determining Subcontractor's compliance with its obligations hereunder and verifying Subcontractor's schedule relief claims in accordance with Article 8. Subcontractor shall not (either directly or indirectly), nor shall Subcontractor permit any of its Affiliates or Sub-subcontractors to, photograph, video tape, or otherwise record the Work without Contractor's prior written consent.

30.13 Independent Subcontractor. Subcontractor is an independent contractor, and nothing contained herein shall be construed as constituting any relationship with Contractor other than that of owner and independent contractor. Neither Subcontractor nor any of its employees, Affiliates or Sub-subcontractors is or shall be deemed to be an employee of Contractor.

30.14 Audit. Solely with respect to (a) any claim of Subcontractor related to (i) an authorized Change in Work performed by Subcontractor on a non-lump sum basis or (ii) any claim for additional compensation or Work Schedule relief claimed by Subcontractor; (b) Taxes payable by Contractor that are subject to an inquiry by a Governmental Authority or (c) Subcontractor's compliance with Section 30.10:

30.14.1 Contractor shall have the right, in its sole discretion and at reasonable times to (i) audit all services provided and all charges and costs submitted by Subcontractor related to such claim; and (ii) inspect all of Subcontractor's relevant and non-attorney-client privileged records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, electronic files and any other information relating to such claim, including, to the extent Subcontractor actually maintains the following (and if it does not, it shall so certify in writing), all time sheets, invoices, requisitions, work logs, job cost reports, accounting records, written policies and procedures, sub-consultant files, original estimates, estimating worksheets, correspondence, change order files (including documentation covering negotiated settlements) and any other supporting material, including ESI, necessary to substantiate Subcontractor's performance of services and costs and charges related to such performance ("**Work Documents**"). Contractor's audit and inspection rights shall include the inspection and copying of relevant Work Documents and interviews of personnel employed by any Subcontractor Party. At Contractor's expense, Subcontractor shall provide access for inspection and copying, and make personnel reasonably available for interviews, promptly upon Contractor's request.

30.14.2 Subcontractor shall keep one (1) complete set of records and books of accounts on a recognized cost accounting basis showing all fees incurred and expenditures made in connection with the Agreement. Subcontractor shall maintain such records and books of account (including ESI) for at least ten

(10) years after final payment pursuant to Section 6.5. Should Subcontractor not be able to substantiate costs for which Contractor provided reimbursement, those costs shall conclusively be deemed not to have been incurred by Subcontractor and Contractor shall be reimbursed accordingly. Contractor shall conduct any such audit at its own cost and expense, unless the audit discloses a discrepancy from any individual payment application or requirements of this Agreement in excess of five percent (5%), in which case Subcontractor shall be responsible for reimbursing Contractor for the costs of the audit. In all events, Subcontractor shall reimburse Contractor for overpayments made to Subcontractor and Contractor shall pay Subcontractor for any underpayments discovered in connection with such audit.

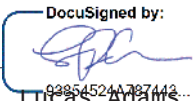
30.15 Foreign Corrupt Practices Act.

30.15.1.1 In performing the services contemplated under this Agreement, Subcontractor shall fully comply with the requirements of the United States Foreign Corrupt Practices Act, as amended. Any violation of law will be grounds for the immediate termination of this Agreement for justifiable cause.

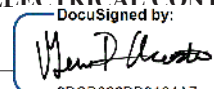
30.15.1.2 Subcontractor warrants that neither it nor its affiliates has made or will make, with respect to the matters provided for hereunder, any offer, payment, promise to pay or authorization of the payment of any money, or any offer, gift, promise to give or authorization of the giving of anything of value, directly or indirectly, to or for the use or benefit of any official or employee of the Government or of any public international organization or to or for the use or benefit of any political party, official, or candidate unless such offer, payment, gift, promise or authorization is authorized by the written laws or regulations of the United States. Subcontractor further warrants that neither it nor its affiliates has made or will make any such offer, payment, gift, promise or authorization to or for the use or benefit of any other person if the party knows, has a firm belief, or is aware that there is a high probability that the other person would use such offer, payment, gift, promise or authorization for any of the purposes described in the preceding sentence. The foregoing Warranties do not apply to any facilitating or expediting payment to secure the performance of routine government action. Routine government action, for purposes of this Section 30.15, shall not include, among other things, government action regarding the terms, award or continuation of the Agreement. Subcontractor shall respond promptly, and in reasonable detail, to any notice from Contractor or its auditors pertaining to the above stated Warranty and representation and shall furnish documentary support for such response upon request from the Contractor.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

FIRST SOLAR ELECTRIC (CALIFORNIA), INC.

By:  _____ Dated: 5/22/2018
Name: 92954524A787442... Lucas Adams
Title: Sr. Manager, Subcontracts

CSI ELECTRICAL CONTRACTORS, INC.

By:  _____ Dated: 5/22/2018
Name: 9BC3828BB2184A7... Gene Acosta
Title: VP Energy solutions
Tax Identification Number: 95-4268169

ANNEX 1 – PROJECT-SPECIFIC TERMS

The Parties hereby acknowledge and agree:

1.1 Labor Agreement Requirements.

1.1.1 Agreements have been or will be entered into, including but not limited to the Operating Engineers, Carpenters, Laborers, IBEW & Ironworkers Union Agreement (collectively, the “**Union Agreements**”), with the Unions which requires that Subcontractor utilize the Unions labor to perform a portion (or all) of the Work under this Agreement, and Subcontractor shall comply with all provisions of the Union Agreements in performing the Work (including its use of any Sub-subcontractors). Subcontractor acknowledges that it has reviewed, is familiar with and understands all provisions of the Union Agreements and Letter of Understanding, and that Subcontractor’s compliance thereof shall not constitute a Change or otherwise form the basis of any adjustment of the Contract Price, Milestones or Omnibus Schedule.

1.1.2 As used in this Annex 2:

“**Operating Engineers, Carpenters, Laborers, IBEW & Ironworkers**” means the Operating Engineers Local 3, Carpenters Local 605, Laborers Local 270, International Brotherhood of Electrical Workers Local Union 234 and Ironworkers Local 155.

“**Project Labor Agreements**” shall mean the agreements, entered into with the Operating Engineers, Carpenters, Laborers, IBEW and Ironworkers, including but not limited to the agreement dated May 2017, which requires that Subcontractor utilize Operating Engineer, Carpenter, Laborer, IBEW and Ironworker labor to perform a portion of the Work under this Agreement, and Subcontractor shall comply with all provisions of the Project Labor Agreements in performing the Work (including its use of any Sub-subcontractors).

“**Letter of Understanding**” shall mean the agreement between IBEW Local 234 and the Monterey Bay California Chapter of the National Electric Contractors Association dated March 16, 2018 which modifies the inside agreement for the period of June 1, 2015 to May 31, 2018.

“**Unions**” means the Operating Engineers, Carpenters, Laborers, IBEW & Ironworkers.

ANNEX 2 – PAYMENT TERMS

“**Monthly Progress Payment**” means the aggregate payment to Subcontractor of all Monthly Progress Payment Values due and owing in accordance with the Omnibus Schedule and this Annex 2.

“**Monthly Progress Payment Value**” means, for each portion of the Contract Price corresponding to an item of Work specified in the Omnibus Schedule, the percentage of such item of Work actually performed by Subcontractor in the preceding calendar month and payable in accordance with Section 6.1. For each item of Work specified in the Omnibus Schedule, the Monthly Progress Payment Value will be equal to (expressed in Dollars): (the percentage of such Work item actually completed in the preceding month for which Subcontractor has not received prior payment) X (the total portion of the Contract Price allocated to such Work item as listed on the Omnibus Schedule) (the quantity of such Work item actually completed in the preceding month for which Subcontractor has not received prior payment—never exceeding the total aggregate quantity listed on the Omnibus Schedule) ÷ (the total aggregate quantity of such Work item as listed on the Omnibus Schedule) X (the total portion of the Contract Price allocated to such Work item as listed on the Omnibus Schedule).

Progress Payments. Subject to the provisions of Article 6 and this Annex 2, Contractor shall make Monthly Progress Payments to Subcontractor (less Retainage until the time of Final Payment) in an amount equal to the Monthly Progress Payment Value; provided, however, Subcontractor’s payments shall be subject to adjustment for withholding under Section 6.6. No payment shall be made for any partially or improperly completed Work that remains subject to Contractor’s review and approval in accordance with Section 11.2.

Payment Requisition for Monthly Progress Payments. On the twentieth (20th) day of each calendar month, or as requested by Contractor in writing, after Subcontractor receives a Notice to Proceed, Subcontractor shall submit a preliminary invoice (“**Preliminary Invoice**”) for Work performed hereunder in the first twenty (20) days of the current calendar month and for the previous months’ calendar days following the twentieth (20th) day of the previous month (“**Billing Cycle**”) for Contractor’s review and approval. Subcontractor shall coordinate Preliminary Invoice review with Contractor’s Site Construction Manager for review and approval. Upon Contractor’s written approval, Subcontractor shall submit a payment requisition (together with any other required payment requisition documentation, “**Payment Requisition**”) to Contractor for the Monthly Progress Payment Amount due for Work performed during the Billing Cycle. Subcontractor shall not submit a Payment Requisition on account for completed Monthly Progress Payments in any Billing Cycle prior to the Billing Cycle in which the Monthly Progress Payments are scheduled to be completed pursuant to the Omnibus Schedule (Exhibit F). Subcontractor specifically agrees that it shall not request in any Payment Requisition the payment of any sum attributable to Work for which Subcontractor has already been paid or which has been rejected by Contractor or as to which Subcontractor does not plan to pay monies owed to a Sub-subcontractor or Supplier. Each Payment Requisition must be submitted by Subcontractor via Contractor’s payment system or via email, if requested by Contractor Representative (or to such other email address as may be provided in writing from time to time from Contractor to Subcontractor). Each Payment Requisition shall reference the purchase order number (as indicated in the Payment Requisition instructions provided by Contractor) relative to the Agreement and describe: (i) the Work performed in the current month; (ii) the corresponding Monthly Progress Payment Amount that is then due; (iii) any other amounts then payable by Contractor to Subcontractor; (iv) the total amount of all prior Payment Requisitions and Monthly Progress Payment Amounts asserted therein, including the identification number and date of each such Payment Requisition; and (v) a summary of all Monthly Progress Payments previously paid by Contractor and the date such payments were received.

ANNEX 3 – JURISDICTION-SPECIFIC TERMS (CALIFORNIA)

“**Excluded Taxes**” has the meaning set forth in Annex 3.

“**BOE**” has the meaning set forth in Annex 3.

“**BOE Regulation 1521**” shall mean sections 1521(a) through 1521(c) and Exhibits A-C of the Sales and Use Tax Regulations of the California Board of Equalization, as amended.

“**County**” shall mean the county in the State where the Site is located.

“**Final Lien Waiver**” means written statements substantially in the form attached hereto as Exhibit E-3 and E-4 and otherwise in accordance with Applicable Law pursuant to which a Person conditionally and unconditionally, respectively, waives and releases all Subcontractor Liens and claims with respect to, or arising out of or in connection with, the Work.

“**Interim Lien Waiver**” means written statements substantially in the form attached hereto as to Exhibit E-1 and E-2 and otherwise in accordance with Applicable Law pursuant to which a Person conditionally and unconditionally, respectively, waives and releases all Subcontractor Liens with respect to, or arising out of or in connection with, the Work other than those that will be satisfied by applicable payment to Subcontractor to which the same relates.

“**Taxes**” means all taxes, assessments, customs, charges, tariffs, imposts, duties, fees, levies and other governmental charges effective or enacted (whether in the United States or elsewhere and including any of the foregoing related to the importation of any items into the United States) as of the Effective Date of this Agreement or thereafter, including income, franchise, capital stock, Property Tax, utility, tangible, withholding, employment, payroll, social security, social contribution, unemployment compensation, disability, transfer, sales, use, fuel, excise, gross receipts, net worth, value-added and all other taxes of any kind and any charges, interest, additions to tax, penalties, or any other amounts imposed by any Governmental Authority, excluding costs of obtaining or acquiring Permits, whether such amounts are normally included in the purchase price of an item or service, or is normally stated separately.

Interim Lien Waivers. With each Payment Requisition, Interim Unconditional Lien Waiver(s) will be required from Subcontractor and each Sub-subcontractor for payments previously made, and Interim Conditional Lien Waivers shall be required from Subcontractor for payments to be made pursuant to such Payment Requisition.

Final Lien Waivers. The Final Lien Waiver(s) provided by Subcontractor and each Sub-subcontractor for payments for payments previously made by Contractor pursuant to this Agreement and for payments to be made pursuant to the final Payment Requisition shall be Final Conditional Lien Waivers. Within five (5) days after receipt of Final Payment, or at Contractor’s election, concurrently with Contractor’s making of the Final Payment, Subcontractor shall provide Final Unconditional Lien Waiver(s) on behalf of Subcontractor and each Sub-subcontractor.

Tax Inclusive Contract Price. The Contract Price includes any and all Taxes (other than California state, local, or district sales Taxes which Subcontractor is required to impose upon Contractor on that portion of the Contract Price that represents “fixtures”, as that term is defined under BOE Regulation 1521, as a separately stated Tax (collectively, “**Excluded Taxes**”)), including any increase of such Taxes that may occur during the term of this Agreement, arising out of, or in connection with, any Subcontractor Party’s performance of the Work or otherwise imposed on a Subcontractor Party. Subcontractor shall, with respect to its employees and individuals performing services under the Agreement, as well as each Sub-subcontractor with respect to such Sub-subcontractor’s employees and service providers, ensure compliance with all Applicable Laws related to reporting and withholding of Taxes. Subcontractor hereby agrees to indemnify and hold harmless Owner, Contractor and its or their respective Affiliates from any Losses incurred on account of any and all Taxes, including any failure by Contractor or Owner to recoup or qualify for a tax credit on account of Subcontractor’s failure to comply with an applicable tax credit system in effect in any jurisdiction affecting the Plant. Zero Dollars (\$0) of the Contract Price represents that part of the Equipment constituting “fixtures” and machinery and equipment in accordance with the BOE Regulation 1521.

Tax Credits. Subcontractor acknowledges and agrees that any Work undertaken by Subcontractor in respect of which any renewable energy, research or development Tax credits or other incentives may be available under any Applicable Law, or any similar credits or incentives may be available under any other Applicable Law, whether in the form of investment tax credits, production tax credits, and any other financial incentives in the form of credits, reductions, or allowances associated therewith that are applicable to a federal, state or local income taxation, sales, taxation or other tax-related obligations, and any reporting or certification rights in respect thereof, is undertaken on behalf of Contractor. Contractor shall be entitled to claim all such credits or incentives in respect of the costs of such Work, and Subcontractor shall not claim any such credits in respect of such Work.

California Sales and Use Tax. Subcontractor shall treat the jobsite at the Site as the place of Subcontractor within the meaning of Title 18, C.C.R. §§ 1806(b) and 1826(b)(1). Subcontractor shall register (in the County) with the California State Board of Equalization (“**BOE**”) and designate the Site as the business location (or sub-location) within the meaning of Title 18, C.C.R. § 1806(b) for reporting all local sales and use Taxes payable that are attributable to this Agreement or, if already registered, register for a sub-permit for the Site jobsite.

Subcontractor shall provide, if applicable, a copy of its seller's permit or sub-permit, showing the Site as the business location (or sub-location), to Contractor within ten (10) days after the Effective Date. Subcontractor shall source and attribute all sales and use Taxes to the County in preparing and filing all California sales and use tax returns, specifically Schedule C of California State Board of Equalization Form 530. Additionally, Subcontractor shall report to Contractor no later than thirty (30) days after the due date for filing such sales/use tax returns during which it has engaged in Work, or otherwise paid any California sales or use Taxes in related to this Agreement, the total amount of sales and use taxes reported on its Combined State and Local Sales and Use Tax Return related to the Plan for that calendar quarter. Subcontractor shall also provide to Contractor a redacted copy of its quarterly return submitted to the California BOE to include the Schedule C. The Schedule C will reflect taxes paid to County under the sub-permit obtained for the Site and will reflect the Site's address in the County and the County's tax code. Subcontractor shall reasonably cooperate in good faith with Contractor and the applicable Governmental Authority of the County regarding the County's receipt of sales and use Taxes attributable to or arising in connection with this Agreement.

EXHIBIT A

SCOPE OF WORK**1.0 GENERAL**

1.1 Definitions - terms not defined below or elsewhere in this Scope of Work have the meanings set forth in the Agreement.

- a) “**AB**” means aggregate base.
- b) “**Access Road(s)**” means the Site access, service and perimeter roads as described in the Design Documents.
- c) “**Array**” means a grouping of modules, inverters and medium voltage transformers that constitute one (1) electric generating unit and contribute alternating current (“AC”) electric power.
- d) “**Compliance Monitor**” means a certified individual designated and supplied by Contractor to monitor Subcontractor’s compliance with the treatment of including, but not limited to, archeological, biological, cultural, dust, erosion, unexploded ordinance, etc. Subcontractor agrees to be bound to any Compliance Monitor’s findings.
- e) “**Contractor’s Site Construction Manager**” is Rick Backus (or designee in writing) unless otherwise notified in writing by Contractor.
- f) “**Design Documents**” mean the documents as referenced in Exhibit A-1.
- g) “**Dust Control Plan**” means the Site specific dust control and/or mitigation plan and/or permit as referenced in Exhibit D and as otherwise required by Applicable Laws.
- h) “**Erosion / Storm Water Control Plan**” means the environmental management plan / storm water pollution prevention plan (“SWPPP”) and the erosion control plan referenced at Exhibit D and Design Documents as referenced in Exhibit A-1.
- i) “**HCB**” means Harness Combiner Box.
- j) “**Laydown Area**” means the area(s) designated by Contractor for receiving and staging of materials.
- k) “**Move-On**” means the area where Contractor’s temporary trailers, parking, and facilities are located.
- l) “**MVAC**” means Medium Voltage AC Collection System.
- m) “**Near-Miss**” – a safety-related incident that did not result in an injury, illness, or property damage.
- n) “**PPE**” means personal protective equipment necessary to safely complete the Work, including but not limited to hard hats, safety glasses, safety-toed shoes, and high-visibility safety vests.
- o) “**PPFO**” means Patch Panel Fiber Optic.
- p) “**Reservoir**” means water holding facility located to be used in conjunction with obligations under the Dust Control Plan, Applicable Laws and/or other dust mitigation activities.
- q) “**Safety Coordinator**” means a certified individual designated and supplied by Subcontractor to monitor Subcontractor’s compliance with safety, as outlined in Section 1.2.2.6 of this SOW and Contractor’s HASP in Exhibit D.

The following terms may be defined or otherwise depicted in the Design Documents (such terms are not intended to be a complete list of terms defined or depicted in the Design Documents):

- a) **AC Feeder**
- b) **Anemometer**
- c) **Cable Tray**
- d) **Concrete CapData Acquisition System or DAS**
- e) **DC Feeder**
- f) **Exosun Tracker**
- g) **Instrumentation Cable**
- h) **Inverter**
- i) **Meteorological Station or Met Station**
- j) **POA Sensor**
- k) **Photovoltaic Combining Switchgear or PVCS**
- l) **Post**
- m) **Power Conversion Station or PCS**
- n) **Reference Modules**
- o) **Sectionalizing Cabinet**
- p) **Security Fence or Permanent Fence**
- q) **Site Communications Center or SCC**
- r) **Supervisory Control and Data Acquisition or SCADA**
- s) **Temperature Sensor**
- t) **Temporary Fence or Move-On Fence**
- u) **Weather Stations**
- v) **Wiring Harness**

A-1

- 1.2 General Conditions** - Subcontractor shall reference the Design Documents in performing Work in accordance with this Scope of Work.
- 1.2.1 Site Management** – Subcontractor shall provide on-Site supervision during the performance of the Work, as required and approved by Contractor’s Representative. Site Management may include, but is not limited to, individuals designated to supervision of construction, document control, engineering, logistics, safety, quality, and project management. A Foreman and/or Superintendent shall be assigned to direct all individual Work crews. Subcontractor shall commence and complete the Work as sequenced and directed by Contractor.
- 1.2.1.1 Reporting** - Subcontractor shall fill out Contractor provided daily construction reports to Contractor’s Construction Manager.
- 1.2.1.2 Project Information Management Systems (“PIMS”)** - Subcontractor shall utilize Contractor’s PIMS system for transmitting and receiving Project related documents and correspondence, including without limitation submittals and RFIs. Those within Subcontractor’s organization who need access to PIMS shall request access by emailing Contractor at PIMAdmin@FIRSTSOLAR.COM. Included in its request, Subcontractor shall provide the first name, last name, email address, company name, and name of the project site for those that need access to PIMS.
- 1.2.2 Safety** – Subcontractor shall maintain an Occupational Safety and Health Administration (“OSHA”) compliant Health and Safety Plan (“HASP”), as required by OSHA regulations that, at a minimum, will meet the requirements of Contractor’s HASP and associated safety plans and procedures as provided in Exhibit D. Subcontractor shall be responsible for execution and management of their HASP.
- 1.2.2.1** Subcontractor is responsible for ensuring on-Site safety of all employees, Sub-subcontractors, agents, guests, invitees, and other workers under its direct or indirect control including of all persons who may gain access to the Site, whether invited or not.
- 1.2.2.2** Subcontractor shall ensure that all employees, agents, guests, invitees, and other workers under its direct or indirect control have appropriate PPE per OSHA regulatory requirements. PPE will not be provided by Contractor.
- 1.2.2.3** In addition, task-specific Job Hazard Analysis (JHA) – also called job safety analysis (JSA) – must be performed by Subcontractor per OSHA regulatory requirements and construction industry standards to identify the dangers of specific tasks in order to reduce the risk of injury to workers.
- 1.2.2.4** Subcontractor shall immediately report all Near-Miss, and health and safety-related incidents and illnesses to Contractor.
- 1.2.2.5** Subcontractor shall clearly delineate active working areas by providing all protective barriers, ropes, flags, delineators, cones, markers, labeling and signage, and other indicators necessary to ensure the safety of all persons who have access to the Site, whether invited or not.
- 1.2.2.6** Subcontractor shall ensure at least one Occupational Safety and Health Administration (“OSHA”) competent person, as defined by 29 CFR 1926.32(f), is assigned to the Project as a Safety Coordinator and is onsite during work activities per Contractor’s HASP requirements. Duties/responsibilities are listed in Contractor’s HASP, and include but are not limited to:
- 1.2.2.6.1** The ability to identify existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.
- 1.2.2.6.2** To serve as subject matter expert in health and safety issues in the field.
- 1.2.2.6.3** Certifications in First Aid, CPR and AED and a detailed understanding of OSHA 1904 and the ability to provide these services as needed.
- 1.2.2.6.4** Have a detailed understanding of OSHA 1926 and 1910 along with NFPA and NESC applicable regulations.
- 1.2.2.6.5** Conducting/participating in appropriate and timely accident/injury/illness investigations, including root-cause analysis, identification of corrective actions, and communicating results to FS Safety Management.
- 1.2.2.6.6** Conducting/participating in work-related injury/illness case management.
- 1.2.2.7** Subcontractor and Sub-subcontractors shall comply with the Valley Fever Management Plan (“VFMP”), as referenced in Exhibit D, including collecting the information required for reporting to the County Health Department, as outlined in the VFMP. Subcontractor’s VFMP data shall be logged daily on the Worker Valley Fever Log template included in Exhibit D, and daily logs shall be provided to Contractor on a monthly basis, for issuance to the County Health Department. The report must be in an electronic format (e.g., Excel) and not in PDF format. Failure to comply with the Valley Fever Management Plan or Applicable Laws, shall result in the following, in addition to any fines issued by any Government Authority related to violations of Applicable Laws:

- **First Incident** – Oral warning
 - **Second Incident** – Written Warning
 - **Third and Subsequent Incidents** – \$500 per day violation, increasing at a rate of \$500 per additional day (i.e., 3rd - \$500; 4th - \$1000; 5th - \$1500 and so on.)
- 1.2.2.8 Subcontractor per OSHA regulatory requirements and construction industry standards to identify the dangers of specific tasks in order to reduce the risk of injury to workers. Each JHA must have the Valley Fever-specific language contained in the VFMP.
- 1.2.2.9 Subcontractor shall retain and consult with an Occupational Medicine Professional (OMP), licensed by either the Medical Board of California or the Osteopathic Board of California to develop a protocol to medically evaluate employees who develop symptoms of Valley Fever. Reporting of symptoms of Valley Fever and diagnosed cases of Valley Fever must occur consistent with County and State requirements; diagnosed cases must also be reported to Contractor.
- 1.2.2.9.1 Each subcontractor should provide a list of occupational health clinics with these OMPs for their workers along with clear written instructions on what to do if a worker has symptoms of Valley Fever.
- 1.2.2.10 Subcontractor shall be responsible for conducting the Site Safety and Environmental Orientation and any additional Subcontractor-required job-task specific training for Subcontractor Party employees. Training shall be given in English and produced by Subcontractor in other languages if required for the Subcontractor's workers to fully comprehend the contents. Subcontractor Party employees and visitors shall not be allowed access to the Site until applicable on-Site orientation requirements in Exhibit D have been satisfied and all forms therein are provided to Contractor.
- 1.2.2.11 Subcontractor shall provide at least one private physical space (e.g., room, trailer with a door) for the purposes of providing basic injury/illness assessment and first aid services to their workers. At a minimum, the room shall be equipped with basic first aid supplies, an AED, and worker cooling materials/equipment (e.g., cooling vests, ice, water, air conditioning, etc.).
- 1.2.3 **Orientation** - Prior to a Subcontractor employee being admitted to Contractor's site, the Subcontractor shall provide the following:
- 1.2.3.1 A written attest on Subcontractor letterhead that on-Site Subcontractor employees (listed by name) have been tested and demonstrated to be non-positive under Contractor's policy as described in Contractor's HASP.
- 1.2.3.2 A written attest, on Subcontractor letterhead, that each of Subcontractor's employees (listed by name and equipment qualification) are trained and qualified to perform the tasks and/or operate the equipment that they will be expected to operate on the Plant Site.
- 1.2.3.3 For all equipment, tasks, or Work requiring formal licensure, a written attest, on Subcontractor letterhead, that applicable Subcontractor's employees have valid and active applicable license(s) shall be furnished.
- 1.2.3.4 As required by this Scope of Work, Subcontractor shall provide Contractor with proof of attendance to the Contractor's Site Safety and Environmental orientation either in-person or via online orientation, including passing of comprehension test(s).
- 1.2.3.5 A completed and signed Badge Acknowledgement Form, as referenced in Exhibit D.
- 1.2.3.6 Upon meeting the badging and Site orientation requirements of this Scope of Work, Contractor shall supply each Subcontractor employee, agent, guest, invitee, worker and other personnel under its direct or indirect control with an access identification badge.
- 1.2.4 **Quality** – Subcontractor shall ensure that the Work is performed in a professional, workmanlike manner, as provided by the Design Documents.
- 1.2.4.1 Subcontractor performance shall comply with Subcontractor quality plan, which is subject to review by Contractor. All Subcontractors' Work found to be nonconforming and/or improperly performed shall be remediated, and/or re-performed at Subcontractor's sole expense and time and may be back-charged for any additional cost to Contractor.
- 1.2.5 **Reporting** - Subcontractor shall supply daily construction reports to Contractor's Construction Manager for the following:
- 1.2.5.1 Construction activity report – includes weather conditions, installation task, manpower, quantity installed and location of activity.

- 1.2.5.2 Plan of the day report – Day’s planned activities and locations used during a meeting with Contractor’s Construction Manager.
- 1.2.5.3 Construction activity completion maps highlighting specific location of completed work per activity.
- 1.2.6 **Logistics – Unloading and Staging** – Subcontractor shall provide all equipment and labor to unload (including equipment to move material within the delivery vehicle) and/or stage materials and equipment as required.
- 1.2.6.1 Bill of Material (“BOM”) – All Contractor and Sub-subcontractor Exosun (“Exosun”) materials, supplied and delivered to the Site are attached as Exhibit A-2. Subcontractor shall provide and deliver to the Site all materials not identified on the BOM, but required to complete the Work. For any materials supplied and received by Contractor, Subcontractor shall request material in writing and sign off on Contractor’s Material Transfer Form prior to receiving materials. All damaged and excess material (“MRB”) shall be returned to the Laydown Area and neatly organized in one specified area approved by Contractor at the end of each Work week.
- 1.2.6.2 Subcontractor shall receive Contractor supplied material, including without limitation material specified in the BOM, upon delivery via Material Transfer Form and directly off-load trucks (which may include up to 0.2% in excess of the materials provided by Contractor which are required to complete the Work) within the Site at locations approved by Contractor.
- 1.2.6.2.1 Equipment Pads
- 1.2.6.2.2 Module Mounting Hardware
- 1.2.6.2.3 Modules
- 1.2.6.2.4 Sectionalizing Cabinets
- 1.2.6.2.5 DAS Rack
- 1.2.6.2.6 PCS
- 1.2.6.2.7 Exosun Tracker and related materials
- 1.2.6.2.8 Medium Voltage AC Cable
- 1.2.6.2.9 DC Cable
- 1.2.6.2.10 Combiner Boxes
- 1.2.6.2.11 Harnesses
- 1.2.6.2.12 PVCS
- 1.2.6.3 Subcontractor shall ensure that material is staged in locations throughout the Site to maximize installation throughput, but not interfere with Contractor’s Separate Subcontractors installation or vehicular traffic on Site. Discrepancies with material received need to be communicated to Contractor upon receipt. Subcontractor shall store material such to preserve and protect integrity of the material.
- 1.2.6.4 Subcontractor shall complete biweekly inventory counts and provide completed Subcontractor Inventory Check Forms to Contractor in accordance with the Subcontractor Inventory Check Process in the Exhibit D Operation Plans. Failure to comply with the Subcontractor Inventory Check Process shall result in the following:
- **First Incident** – Oral warning
 - **Second Incident** – Written Warning
 - **Third and Subsequent Incidents** – \$500 per day, increasing at a rate of \$500 per additional day (i.e., 3rd - \$500; 4th - \$1000; 5th - \$1500 and so on.) until the completed Subcontractor Inventory Check Form is provided.
- 1.2.6.5 All excess BOM material not incorporated into the Work shall be returned to Contractor palletized and secured and all BOM material waste (steel, copper and aluminum) shall be either returned to Contractor or recycled through containers that are provided by Contractor. Subcontractor must notify Contractor at least twenty-four (24) hours prior to containers reaching capacity.
- 1.2.6.5.1 Return process for all scrap wire shall be coordinated with Contractor prior to turnover to Contractor.
- 1.2.6.6 All material that is mismanaged by Subcontractor (i.e. misuse of material, etc.) or lost or stolen on Site while in the possession of Subcontractor shall be the responsibility of the Subcontractor and replaced at no cost to Contractor and without delay to the Project.
- 1.2.6.7 **Quarterly Site Inventory** – Subcontractor shall provide assistance prior to Contractor’s quarterly inventory of BOM process by cleaning up the Site, transporting all damaged and scrap material to Laydown Area, scanning all damaged modules, removing empty module boxes, consolidating partial Module boxes, allowing uninhibited access in and around the Arrays and organizing material such as the ability for Contractor to accurately count the required material. Coordination of the physical inventory count dates and requirements shall be communicated by Contractor’s Site Construction manager.

- 1.2.7 **Transportation** – Subcontractor agrees to participate in Contractor’s voluntary shuttle service to and from the Site for Subcontractor employees, Sub-subcontractors, and all other workers under its direct or indirect control, and shall achieve a shuttle service participation rate of 65% among workers commuting to and from the site during peak travel hours, with an additional 30% of workers commuting to and from the site during peak travel hours traveling by carpool (assuming an average of 2.5 persons per vehicle). Subcontractor shall track worker carpool/shuttle participation on a monthly basis to demonstrate compliance with this Section. Contractor may offer additional incentives, as necessary, to increase shuttle/ carpool participation consistent with the voluntary nature of the shuttle service. In the event that Monterey County imposes different or amended goals, requirements, or restrictions relating to worker transportation to and from the Site, Contractor shall promptly notify Subcontractor, and Subcontractor shall comply with those requirements.

Subcontractor shall be responsible for transportation of Subcontractor employees, Sub-subcontractors, agents, guests, invitees, and all other workers under its direct or indirect control, and all material and equipment on-Site. To the extent possible, Subcontractor’s vehicular traffic shall remain on Site roadways and subject to Site restoration requirements per this Scope of Work and otherwise in accordance with this Agreement apply to deviations taken by Subcontractor or Sub-subcontractors. All Subcontractor vehicular traffic shall comply with Contractor’s HASP. If Subcontractor’s employees or contractors travel to or from the Site or on the Site in Contractor or Subcontractor-provided vehicles, Subcontractor shall compensate employees for such travel as required by law and/or the employees’ applicable collective bargaining agreements, if any.

- 1.2.7.1 Subcontractor acknowledges that any shuttle transportation to the job Site shall be voluntary. If Subcontractor chooses to impose a mandatory requirement that its workers ride Subcontractor (or Contractor) provided vehicles to the jobsite, then Subcontractor agrees that it shall pay all workers for time spent on shuttles (at a rate agreed upon with the Union, if applicable).

1.2.8 **Shuttle Service Lots**

- 1.2.8.1 Contractor has provided the following lots for transportation services, pursuant to Section 1.2.7 of this Scope of Work. Contractor will notify Subcontractor of any additional lots that may become available.

1.2.8.1.1 West Hills Community College, 555 College Avenue, Lemoore, CA

1.2.8.1.2 Blackwell’s Corner, 17191 Hwy 46, Lost Hills, CA (Corner of Hwy 33 & 46)

1.2.8.1.3 Eagle Feather Gas Station, 40103 Hwy 33, Avenal, CA

1.2.8.1.4 Cuesta College, North County Campus, 2800 Buena Vista Drive, Paso Robles, CA (off of Hwy 46 W)

- 1.2.8.2 Subcontractor shall be responsible for any and all damages caused by Subcontractor Party to the shuttle service lots and/or its facilities. All costs and expenses related to such damage shall be borne solely by Subcontractor.

- 1.2.9 **Contractor Loaned Equipment** – Subcontractor shall be solely responsible to sign in and out Contractor loaned equipment daily. Contractor loaned equipment includes, but is not limited to, Tracker joysticks, handheld scanners, jigs, Exosun tracker installation tools, ladders, and tools and excluding Contractor provided post machines. Subcontractor shall return any Contractor loaned equipment that may be leased, borrowed, or otherwise loaned from Contractor in its original working condition, other than normal wear. Subcontractor shall repair, replace, or otherwise be charged for excessive damages to the Contractor loaned equipment. Subcontractor shall be charged 150% of the repair or replacement cost to refurbish or replace Contractor loaned equipment as a result of any blatant damages from Subcontractor. Blatant damages shall include, but are not limited to painting, covering or damaging regulatory or compliance information or instruction, recklessness, negligence, loss, or the use beyond the purpose of the Contractor loaned equipment.

- 1.2.10 **Site Access** – Access identification badges shall be used to enter and exit the Site. Access of personal vehicles to the Site will be limited to ingress to, egress from, and parking in, an employee parking area to be designated by Contractor. Personal vehicles of any kind are prohibited from entering areas of the Site outside Subcontractor designated parking area.

- 1.2.10.1 **Hours of Work** – Subcontractor shall submit planned Workweek schedule to Contractor’s Site Construction Manager for approval. Planned Workweek schedule shall conform to all Site permits and jurisdictional regulations, and are generally restricted to hours between local sunrise and sunset as established by the U.S. Naval Observatory Astronomical Applications Department . Deviations to these hours must be requested in writing to Contractor’s Site Construction Manager for approval, no less than two (2) workdays prior to the requested deviation, or proposed alternative workweek. Upon Contractor’s written approval, Subcontractor agrees to solely maintain compliance with all local, state, and/or federal requirements pertaining to alternative Workweek schedules.

- 1.2.10.2 Subcontractor shall supply Contractor’s Site representative with a list of all newly expected incoming employees, agents, guests, invitees, workers and other personnel under its direct or indirect control to the Site, one (1) workday prior to the arrival to the Site. The list must contain the Subcontractor company name and any lower-

tier company name(s) as well as quantity of personnel, name (if known) and labor classification. Subcontractor shall identify any new Sub-Subcontractor to Contractor, in writing, at least two (2) workdays prior to the Sub-Subcontractors attending Site orientation.

- 1.2.10.3 Upon successful completion of Contractor's required Site specific environmental, health, and safety ("EH&S") orientation, Contractor shall supply each Subcontractor employee, agent, guest, invitee, worker and other personnel under its direct or indirect control with an access identification badge.
- 1.2.10.3.1 Unless otherwise directed by Contractor in writing, Subcontractor shall be responsible for entering all Subcontractor employees, agents, guest, worker, and other personnel information into an online database for purposes of obtaining Site access identification badges for its Subcontractor employees, agents, guest, worker, and other personnel. Failure by Subcontractor to enter said information shall prohibit the issuance of said Site access identification badges and access to the Site. Access to the online database will be provided by Contractor's Separate Subcontractor.
- 1.2.10.3.1.1 Those responsible within Subcontractor's organization for entering and managing badging information ("Badge Administrator") shall request access to the online database by emailing Contractor at EPCSiteBadging@FirstSolar.com. Included in its request for access, Subcontractor shall provide the following information for each Badge Administrator: first name, last name, email address, company name, company address, phone number and name of the project site.
- 1.2.10.3.2 Subcontractor shall ensure that no employees, agents, guests, invitees, workers and other personnel under its direct or indirect control participates in Work activities on the Site without Contractor's required Site specific orientation and access identification badge.
- 1.2.10.3.3 Subcontractor's employees, agents, guests, invitees, workers and other personnel under its direct or indirect control shall display Contractor supplied access identification badge.
- 1.2.10.3.4 Subcontractor shall ensure that any vehicles driven on the Site by Subcontractor's employees, agents, guests, invitees, workers or other personnel under its direct or indirect control, are registered with Contractor prior to entering the Site and display Subcontractor information on such vehicle and vehicle placard.
- 1.2.10.3.5 Subcontractor employees, agents, guests, invitees, workers and other personnel under its direct or indirect control, who have forgotten their Site access identification badge shall either leave and return with their badge or be verified, in person, by Subcontractor's Site representatives before being allowed to enter the Site, and a new access identification badge created. Creation of the replacement badge will be at convenience of Contractor and may not be able to be created immediately.
- 1.2.10.3.6 Subcontractor access identification badges will expire after ninety (90) days of non-use at the Site.
- 1.2.10.3.7 Subcontractor shall return all access identification badges and vehicle placards upon Subcontractor employee, agent, guest, and other worker dismissals/layoffs from the Site within the same day.
- 1.2.10.3.8 All Subcontractor employees, agents, guest, worker, and other personnel terminations must be immediately communicated to Contractor's Site representative for immediate access identification badge deactivation.

1.2.11 Construction Water

- 1.2.11.1 Contractor shall provide water for dust control from a storage facility and for its construction activities. Subcontractor shall be responsible for distributing the water throughout the Site.
- 1.2.11.1.1 Water Storage facility is approximately 5 Miles from the Site, as noted on the Construction Water Map in Exhibit D.
- 1.2.11.2 Subcontractor shall supply and install totalizing meter on all equipment used to extract water and supply Contractor with a daily water usage report per meter in a format approved by Contractor.
- 1.2.11.3 Subcontractor shall not allow water to puddle or runoff.

1.2.12 Dust Control

- 1.2.12.1 Subcontractor is responsible for all fugitive dust emissions with respect to the Work, including compliance with the Dust Control Plan, Applicable Laws in Exhibit D until Guaranteed Final Completion.
- 1.2.12.1.1 If water alone proves insufficient, Contractor shall Contract separate Subcontractor for a dust palliative application for dust mitigation to comply with the Dust Control Plan, Applicable Laws and Operating Design Documents in Exhibit D.

1.2.12.2 Subcontractor compliance with dust mitigation requirements (including the requirements described in the Dust Control Plan, Applicable Laws and Design Documents) will be verified by the Contractor's dust Compliance Monitor. Subcontractor agrees to be bound to the dust Compliance Monitor's findings. Failure to comply with dust mitigation requirements, including the dust Compliance Monitor's instructions, the Dust Control Plan, and Applicable Laws will result in the aforementioned penalties.

- **First Incident** – Oral warning
- **Second Incident** – Written Warning
- **Third and Subsequent Incidents** – \$500 per incident fee, increasing at a rate of \$500 per additional incident (i.e., 3rd - \$500; 4th - \$1000; 5th - \$1500 and so on.)

1.2.13 **Site Compliance and Mitigation** – Subcontractor shall comply with all the mitigation measures and applicable permit requirements. Subcontractor shall be responsible to suspend certain activities within any area based on the Contractor's Compliance Monitor's findings. Subcontractor must comply with the directions of the Compliance Monitor. Where possible Contractor may elect to adjust Contractor's Work schedule to allow Subcontractor's Work to continue outside of the affected area. Failure to comply with the mitigation measures, the directions of the Compliance Monitors, or Applicable Laws, shall result in the following, in addition to any fines issued by any Government Authority related to violations of Applicable Laws:

- **First Incident** – Oral warning
- **Second Incident** – Written Warning
- **Third and Subsequent Incidents** – \$500 per incident fee, increasing at a rate of \$500 per additional incident (i.e., 3rd - \$500; 4th - \$1000; 5th - \$1500 and so on.)

1.2.12.1 **Construction Equipment Compliance** – Subcontractor shall mobilize and maintain all construction equipment.

1.2.13.1.1 Fuel Storage – Subcontractor shall implement mobile refueling at areas designated by the Contractor. No stationary tanks shall be delivered without prior notification and approval. Subcontractor shall provide Contractor five (5) Days written notice to review and/or approve stationary tank requests. Subcontractor shall not assume that stationary tanks will be allowed. If Contractor approves Subcontractor's stationary tank, Subcontractor shall obtain any applicable Permits and pay for all associated costs. Approved tanks delivered shall be hard double-walled and shall include other specifications provided by the Contractor on safety, security, cleanliness, dispensing control and spill control features.

1.2.13.1.2 Equipment leaks and spills – Subcontractor shall immediately report to Contractor any equipment leaks and spills (other than drips) that occur. Cleanup of spills/leaks, accumulation of wastes from the clean-up, and disposal of this waste by the Subcontractor shall be conducted under the direction of the Contractor. Subcontractor must maintain equipment to prevent leaks and drips, or promptly remove the equipment from the Site. Failure to comply with reporting of equipment leaks/spills shall result in the following:

- **First Incident** – Written warning
- **Second and Subsequent Incidents** – \$2,000 per unreported incident per day that spill or leak is not reported.

1.2.13.1.3 Equipment condition – Subcontractor's off road, on-road and any portable internal combustion equipment over 15 horsepower shall be delivered to the site clean of vegetation, soiling, and with no visible oil, grease, fuel staining or active leaks. [Wash tickets will be required for each vehicle and piece of construction equipment to enter the Site, other than Contractor designated parking lots.

- **First Incident** – Written warning
- **Second and Subsequent Incidents** – \$1,000 per piece of equipment per day.

1.2.13.1.4 Hazardous Material Storage - In accordance with applicable law, hazardous materials (including flammable materials) and regulated waste shall be stored in containers or cabinets designed for that purpose. Containers with hazardous materials and regulated waste shall be properly labeled, including information on contents, hazards, date of accumulation, and emergency contact. Empty containers shall also be labeled as empty. Containers shall be covered and secured from wind and wildlife, including proper secondary containment. Accumulation records of regulated waste, transportation, and disposal records shall be retained by the subcontractor and provided to Contractor upon request.

1.2.13.1.5 Construction equipment – Onsite off-road construction equipment over 50 hp shall meet the requirements of the Environmental Protection Agency ("EPA") "tier" standards as detailed in Condition of Approval (COA) # 13 as shown in Exhibit C-3. Documentation of internal combustion engine construction equipment that are over twenty (20) horsepower and to be used on the Site, shall be submitted to Contractor's Site Construction Manager for approval 48 hour priors to arriving on Site. Documentation shall include: type and/or description of equipment, a unique identifier (e.g. serial numbers), make, model, model year and

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engine model year, tier rating, horsepower, California Diesel Off-road Online Reporting System (“DOORS”) and/or California Portable Equipment Registration Program (“PERP”) registration information (when applicable), date of arrival, hour meter and/or odometer reading of the equipment upon arrival. Equipment without documentation or with incorrect documentation may be denied access to the site. While on-Site, Subcontractor shall track equipment usage via hour meter and/or odometer readings in a Microsoft Excel-accessible spreadsheet on a monthly basis. Final date of departure and final hour meter and/or odometer reads must be provided upon departure. Failure to comply will result in the following:

- **First Incident** - Equipment will not be allowed for use on the site until information is received.
- **Second Incident** – \$500 a day per equipment on Site with missing information.
- **Third and Subsequent Incidents** - \$500 a day per equipment on Site with missing information, increasing at a rate of \$500 per additional incident (i.e., 3rd - \$500; 4th - \$1000; 5th - \$1500 and so on.

1.2.13.1.6 Subcontractor and Sub-subcontractor all-terrain vehicles, utility vehicles, and material handling equipment shall be equipped with both seatbelts and rollover protection. All such vehicles shall employ governors where the top speed of said vehicles does not exceed 25 mph.

1.2.13.2 **Storm Water Control Plan** - Compliance with the Storm Water Control Plan and Applicable Laws is mandatory and will be verified by the erosion Compliance Monitor. Subcontractor agrees to be bound by the erosion Compliance Monitor’s findings. Failure to comply with the requirements of the Storm Water Control Plan, Applicable Laws, and/or the erosion Compliance Monitor’s instructions will result in the aforementioned penalties. Subcontractor shall maintain all erosion control measures within Subcontractor’s Work area that are required by all Applicable Laws, the Storm Water Control Plan and/or erosion control plan.

1.2.13.3 **Reserved.**

1.2.13.4 **Noise Mitigation** – Construction activities shall comply with any Site mitigation measures.

1.2.13.5 **Work or Travel Violations of Marked Boundaries** – Boundaries shall establish and mark Work areas limits, buffers or boundaries by fence, rope, flags, cones, staking, etc. These marked boundaries may be set for safety, compliance, or other reasons not known to Subcontractor. Subcontractor shall not move boundary markers unless at the direction of the Contractor. Subcontractor shall not perform Work nor travel beyond boundary markers without written documentation from Contractor. Subcontractor shall immediately notify Contractor when Work or travel occurs beyond markers. Violations to marked boundaries areas shall result in the following:

- **First Incident** – Written warning
- **Second and Subsequent Incidents** – \$1,000 per incident plus \$2.00 per square foot of disturbance.

Failure to immediately notify Contractor of Work or travel violations of marked boundaries shall result in the following:

- **First Incident** – Written warning
- **Second and Subsequent Incidents** – \$2,000 per incident per day that Work or travel outside of marked boundaries is not reported to Contractor plus \$2.00 per square foot of disturbance.

1.2.13.6 **Native Site Conditions** – Subcontractor shall be aware and account for all native site conditions.

1.2.13.6.1 All Subcontractor personnel shall be trained in accordance with the requirements under the Agreement, including Exhibit A and Exhibit D, prior to working on Site.

1.2.13.6.2 All Subcontractor employees, agents, guests, invitees, and other workers under its direct or indirect control shall follow instructions of the biological Compliance Monitor.

1.2.13.6.3 No entry or movement on Site of all employees, agents, guests, invitees, and other workers under its direct or indirect control without approval from the biological Compliance Monitor.

1.2.13.6.4 Subcontractor shall ensure that the wildlife and the burrows/dens/nests of such are not touched by anyone other than the biological Compliance Monitor.

1.2.13.6.5 Subcontractor shall immediately notify the biological Compliance Monitor or safety personnel upon discovery of any protected wildlife.

1.2.13.6.6 Archeological / cultural / paleontological artifacts – At no time shall Subcontractor willfully handle, remove, or destroy any artifacts, including but not limited to, archeological, cultural, or paleontological. If any artifact is thought to be found, Subcontractor shall immediately stop Work and immediately notify Contractor and the appropriate Compliance Monitor.

- 1.2.13.6.7 Dangerous wildlife – Subcontractor shall be trained to be aware of potentially dangerous wildlife in the area of and on the Site.
- 1.2.13.6.8 Protected native species of plants – Subcontractor shall be trained to be aware of the particular species of protected plants.
- 1.2.13.6.9 Protected wildlife – At no time shall any of Subcontractor’s employees, agents, guests, invitees, other workers, etc. under its direct or indirect control purposely approach, handle, scare, touch, etc. any wildlife, protected or not, on-Site. Subcontractor shall follow instructions of the biological Compliance Monitor. The following requirements shall apply in regards to the exposure of the protected wildlife on Site, including but not limited to, San Joaquin Kit Fox, California Tiger Salamander, burrowing owl, Golden Eagles and other raptors, and Vernal Pool Fairy Shrimp.
- 1.2.13.6.9.1 Work shall be scheduled to occur outside of the 1-mile buffer zone of onsite active golden eagle nests during the nesting season between Feb. 1 and September 15, or until the nest has been determined to be in active but the Contractor’s biological staff.
- 1.2.13.6.10 No Work shall be conducted within State or Federal jurisdictional waterways during the winter period as defined by the Project’s permit documents (Oct. 1 – May 30); in addition, no travel through any *unimproved* such waterway is allowed during the winter period (or outside of the winter period) if the waterway is wetted. Additional requirements of the Project’s waterway permits provided in Exhibit D shall also be followed.

1.2.13.7 Biological and Cultural Monitoring

- 1.2.13.7.1 Biological monitors are required to be present in the following situations:
- 1.2.13.7.1.1 **Any time project activities or Work occurs.** The Plant endangered species Permit from California Department of Fish and Wildlife requires an approved “Designated Biologist” to be on-Site during all Project activities and Work, including driving on the access road. The Designated Biologist shall be the first and last person to drive onto the Site each day.
- 1.2.13.7.1.2 **Proposed Ground Disturbance.** Initial ground disturbance (e.g. grading, trenching, stockpiling, etc.) occurring in a new area not previously disturbed requires a pre-activity survey of the habitat, and monitoring of the initial disturbance work. At a minimum, the number of Bio Monitors on-Site is determined the prior day during the Plan of the Day (“POD”) meeting, so plan ahead; the Cal Flats ‘Dig Permit’ process must be followed for any ground disturbing activities. Subcontractor shall contact Contractor’s representative if there is an unplanned activity to see if a monitor is available. The Bio monitoring requirement is for “initial ground disturbance”, so unlike the Cultural Monitors the Bio Monitor does not have to stay for the duration of your excavation Work.
- 1.2.13.7.1.3 **Biological Buffers/ESA.** In certain circumstances Work may be allowed within an Environmentally Sensitive Area (“ESA”) buffer if a Bio Monitor is present. If Subcontractor wishes to Work within a buffer, Subcontractor shall contact a Lead Bio Monitor who can determine if the buffer may be entered, and if so under what circumstances. This includes foot traffic.
- 1.2.13.7.1.4 **Work outside of delineated Work limits.** Any Work proposed outside of delineated Work area limits must be coordinated with Contractor, who will determine if the proposed activity complies with the Permits. There are many locations where ESAs are present just outside of Work area limits that are not separately marked. No Subcontractor Party may remove, relocate or pass through an ESA at any time. Doing so is grounds for immediate removal from the Project. This includes foot traffic.
- 1.2.13.7.1.5 **Backfilling holes/trenches/excavations.** Biologists must inspect all holes, trenches, or other excavations immediately prior to backfill. Subcontractor shall contact a Lead Biological Monitor in advance to coordinate the inspection.
- 1.2.13.7.1.6 **Off-road Driving.** Driving off-road in previously undisturbed ground is permitted without a Biological Monitor under the following circumstances.
- The area is a County-approved open Work zone with roped work boundaries in place (Subcontractor shall reference the daily map).
 - It is not within the Bird Nesting Season that spans February 1 through August 31. It is permissible to drive off-road during non-nesting season September 1 through January 31.
 - The location is not within a Tiger Salamander buffer during the breeding season from October 1 through May 31.
- 1.2.13.7.2 Cultural monitors are required to be present in the following situations:

- 1.2.13.7.2.1 **Earth Moving Activities.** Cultural Monitors must be present and directly monitoring all earth moving activities. This includes trenching, excavating, grubbing and grading, and may include other activities. Because each piece of equipment may require a separate set of cultural monitors, all earth moving activities must be planned in advance and reported on a dig permit.
- 1.2.14 **Temporary Site Facilities** – Subcontractor expressly acknowledges that there are no utilities available for its use on-Site. Subcontractor shall supply all Site utilities and facilities for Subcontractor’s own use, as required to complete the Work.
- 1.2.14.1 **Temporary Site Sanitary** – Subcontractor shall supply an adequate number of temporary above-ground toilet and hand wash facilities in accordance with OSHA guidelines. Subcontractor shall clean and maintain facilities a minimum of three (3) days per week. In the event of a discrepancy with Contractor’s HASP this single line item shall be overridden by this Scope of Work. Maintenance of Site facilities is mandatory and will be verified by Contractor inspection. Failure to comply with maintaining of a particular facility will result in the following:
- **First Incident** – Written warning
 - **Second and each subsequent Incident (with respect to same facility)** - \$500 incident fee per incident.
 - **Third Incident (with respect to same facility)** – At Contractor’s election, Subcontractor shall be relieved of responsibility to maintain the facility identified in the third notification and such responsibility shall be reassigned by Contractor. In the event of such reassignment, Subcontractor will be charged for the costs incurred in the cleanup and maintenance of the non-conforming facility plus fifteen percent (15%) of such cost, commencing on the date of reassignment through completion of Work.
- 1.2.14.2 **Temporary Site Structures** – Subcontractor shall provide all additional facilities as may be necessary to support completion of the Work, including, but not limited to, any personnel trailers, changing areas, shower rooms, lunch rooms, shade tents, ice, and drinking water. All trailers, if installed, shall have the tongues removed, include skirting, and shall be permitted in writing by Contractor. All structures must be securely tied-down and have secure egresses that comply with OSHA requirements.
- 1.2.14.3 **Temporary Site Connectivity and Communications** – Subcontractor shall ensure that it has sufficient on-Site internet and telephony necessary for the performance of the Work.
- 1.2.14.4 **Temporary Electrical** – Subcontractor shall supply and install, for its own use, temporary generators. Subcontractor shall submit generator specifications to Contractor and maintain usage statistics that shall be shared with Contractor at Contractor’s request.
- 1.2.15 **Daily cleanup** – Subcontractor shall be responsible, at its own expense, for daily cleanup of all areas and equipment in which Work is performed. Subcontractor shall maintain cleanliness of Work areas of the Site, and be aware that windy situations may prevail at any time. Compliance with daily cleanup is mandatory and will be verified by Contractor inspection.
- 1.2.15.1 Subcontractor shall ensure that all food and organic waste is placed in sealed trash containers and dumpsters. Seeds, husks, shells, etc. shall not be permitted to remain on the ground.
- 1.2.15.2 Subcontractor shall provide centralized waste facilities (e.g., 40 yard dumpsters), and shall be responsible for off-Site disposal of construction-generated waste materials.
- 1.2.15.3 Subcontractor shall be responsible for daily road cleaning of all exterior roads used to access the Site. Subcontractor shall ensure that no mud or debris remains on the roads for the duration of the Work.
- 1.2.15.3.1 Subcontractor shall be responsible for Highway 41 track out.
- 1.2.15.4 Subcontractor shall supply, maintain, and remove its own concrete washout facilities in accordance with the Storm Water Control Plan’s best management practices for the duration of the Work and dispose of wash water and solids off-Site.
- 1.2.15.5 Failure to comply with daily cleanup and recycling will result in the following:
- **First Incident** – Written warning
 - **Second and Subsequent Incidents** – \$5,000 per day fee until cleanup is completed, and, at Contractor’s election, such responsibility shall be reassigned by Contractor. In the event of such reassignment, Subcontractor will be charged for Contractor’s and all other costs incurred in the cleanup and maintenance plus fifteen percent (15%) of such cost, commencing on the date of reassignment through completion of Work.

EXHIBIT D**OPERATING PLANS**

- California Flats Solar, LLC Site Health & Safety Plan (HASP), rev. 2 including the following:
 - Heat Illness Prevention Program, Revision 2, dated May 1, 2014
 - CAL Flats Solar Project, Emergency Response Plan, rev. 1, dated October 12, 2016
 - Injury & Illness Prevention Program for CA Flats Solar Project, rev. 0 dated February 23, 2016
 - Valley Fever Management Plan, California Flats Solar Project, dated March 1, 2018
 - Worker Valley Fever Log Template
 - California Department of Public Health, Preventing Occupational Valley Fever at California Flats Solar Project, dated July 26, 2017.
 - Orientation Roles, Responsibilities and Requirements, Rev. 2, March 15, 2018
 - Valley Fever Awareness and Prevention Training, dated December 2017
 - Valley Fever Fact Sheet, California Flats Solar Project, including Spanish version.
- Visitor Packet including the following:
 - Visitor Agreement, dated February 1, 2018
 - CA Flats Visitor / Delivery Driver Safety Orientation, Rev. 2, dated March 2018
 - California Flats Solar Project Map, dated January 26, 2018
 - What you need to know about Valley Fever in California, dated May 2014 (English and Spanish versions)
- Training/Meeting Attendance Record sheet, review date February 2018
- Subcontractor Inventory Check Process, Rev. 1.0
- Site Access Badge Acknowledgement Form
- Series 6 Module Pack Handling and Storage, PD-5-801-06, Rev. 1.0
- S6 Container Unloading Test PowerPoint
- Quality Documents, including the following:
 - BoS Subcontractor EPC Quality Management Plan for CA Flats, EPC-1-4-3, Rev. 7.4, dated November 2, 2017
 - Field Non-Conformance and Corrective Action Management, Rev. 2.0, dated September 6, 2015
 - Field Request for Information (RFI) Flow and Management, Rev. A, dated November 19, 2015
 - Request for Information Form
 - Live and Dead Front MV Terminations, SOP-0042, rev. 1.5, dated June 1, 2016, including the following:
 - Live Front MV/HV Terminations Checklist Appendix I
 - Dead Front MV/HV Terminations Checklist Appendix II
 - Subcontractor Damaged Module Procedure, PEC-QC-SOP-0006, dated July 1, 2013
 - Subcontractor's Responsibility for Module Handling, EPC-QC-SOP-0005, dated December 23, 2010
- Exosun, Exotrack HZ FS6 Installation Guide, CA Flats, Version 11, April 27, 2018
- Exosun, California Flats 150, Logistics / Packaging Guide, Rev. 1
- Orientation Roles, Responsibilities and Requirements, Rev. 1, August 30, 2017, including related videos
- S6 Container Unloading Test PowerPoint
- California Flats Solar Project Phase 2, Project Labor Agreement, dated May 2017
- Letter of Understanding, dated March 16, 2018

- Habitat Restoration and Revegetation Management Plan, California Flats Solar Project, prepared by LSA Associates, Inc., dated January 4, 2016
- California Flats Encroachment Permit, 0514 6MC 0563, dated June 10, 2015
- Incidental Take Permit No. 2081-2015-027-04, dated November 11, 2015
- Incidental Take Permit (No. 2081-2015-027-04) Amendment No. 1, dated July 12, 2016
- Incidental Take Permit (No. 2081-2015-027-04) Amendment No. 2, dated December 1, 2016
- Cal Flats Mitigation Measures and Conditional Use Permit PLN120294
- Final Monterey County Board Order and COAs – File ID RES 15-010 No. 14, dated February 10, 2015
- Waterway Work Restrictions
- U.S. Army Corps of Engineers, San Francisco District, Clean Water Act Section 404 Individual Permit No. 2012-00266S, issued to California Flats Solar, LLC, dated December 14, 2015.
- California Regional Water Quality Control Board, Central Coast, Clean Water Act Section 401 Water Quality Certification No. 32715WQ03, issued for California Flats Solar Project, dated January 7, 2016, as amended by First Amended Water Quality Certification Number 32715WQ03, dated December 27, 2016.
- Prefunctional Checklists, including without limitation the following:
 - DC Cable Meggering Testing Guidelines
 - AC Cable Meggering Testing Guidelines
 - PV Open Circuit Voltage Test
 - DC Current Testing Guidelines
 - Ground Point to Point Continuity Resistance
 - Fall of Potential Test
- CA Flats 150 Construction Water Map
- California Department of Fish and Wildlife, Streambed Alteration Agreement (“1600 Permit”), with California Flats Solar, LLC, dated May 25, 2016
- CAL Flats Project, Waterway / Wetland Permits
- California Flats Solar Project, 2016 Golden Eagle Nests, prepared by Althouse and Meade, dated July 18, 2016
- Figure 1, Exhibit A-H, H.T. Harvey & Associates dated November 2015
- California Flats Solar Project, Standard Operating Procedure, Wildlife Escape Ramps, Cover Boards, and Fencing for Excavations, Prepared by Althouse and Meade, dated October 2017.
- PIMS External Users Guide, dated August 29, 2016
- California Flats Solar Project, Standard Operating Procedures, Wildlife Escape Ramps, Cover Boards, and Fencing for Excavations.
- Stormwater Pollution Prevention Plan (SWPPP), Cal Flats Solar South 150, prepared by Wallace Group, dated November 1, 2016
- CA Flats 150 Construction Water Map
- Contractor’s dust plan following this Exhibit
- Communications Fiber Infrastructure Testing Requirements for First Solar Power Plans, Rev. 1.1, dated 3/24/10
- Series 6 Pallet Inspection – Cal Flats Site Inspections, April 25, 2017
- Beta Work
 - Series 6 Pallet Inspection – Cal Flats Site Inspections, dated April 25, 2017
 - Exosun Structure: Material - MM#’s & Qtys needed for BETA
 - CAFL-S200, Overall Block Layout, Rev. 2, dated October 17, 2017

- Exhibit S-SK-Beta 2, dated September 19, 2017
- Exosun, Exotrack HZ FS6 Installation Guide, CA Flats, Version 11, April 27, 2018
- 24 Hour Material Request Form

EXHIBIT C

2/12/2018 11:19 AM

OPERATING ENGINEERS LOCAL UNION NO. 3

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Dispatch**George A Huerta****Affiliate Information**

Affiliate Name:	George A Huerta	SSN:	***-**-1667	Affiliate ID:	00000139996
Hire Code:	1 - Journeyman	List Code:	A-Out		
Register Number:	2500069	I-9 Status:	Non-Expiring		
Email Address:	georgeanthony.huerta@gmail.com	Ethnicity:	Hispanic		
Address:	PO BOX 11	Gender:	Male		
	LATON, CA 93242	Date of birth:	10/6/1954		
Phone 1:	559.455.8084				
Phone 2:					

Dispatch Information

Dispatch Date:	2/12/2018 11:19:43 AM	Work District:	90 - Morgan Hill, CA: Area 1
WO Number:	2018900174	JPC:	90 - Morgan Hill
WO Date:	2/12/2018 11:12:30 AM	Dispatched by:	Desiree Garcia
WO Type:	Off List		

Job Information

Job classification:	5781-Post Driver Or Driller	Contract:	California Compaction Corp.
Wage Rate:	\$36.550	Billing # - CT:	13952-24
Subsistence Pay:		Employer:	California Compaction Corp.
Requirements:		Employer unit:	California Compaction Corp. Main Office
Drug Testing:	Yes	Address:	42851 N Sierra Hwy. Lancaster, California 93534
Additional info:	3 1/2 months, Safety boots, Call Kevin FIRST	Phone:	661.949.9799

Job Site

Work/Job site:		Report to:	Dereck Butler
Requested by:	Kevin	Report date/time:	2/14/2018 7:45 AM
Phone:	661.433.8613	Location:	Cal Flats- Hwy 41 & Hwy 46, Call Kevin First for Directions

Affiliate's signature: _____

Dispatcher's signature: 

6/12/2018 4:07 PM

OPERATING ENGINEERS LOCAL UNION NO. 3

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Dispatch**George A Huerta****Affiliate Information**

Affiliate Name:	George A Huerta	SSN:	***-**-1667	Affiliate ID:	00000139996
Hire Code:	1 - Journeyman	List Code:	A-Out		
Register Number:	2500069	I-9 Status:	Non-Expiring		
Email Address:	georgeanthony.huerta@gmail.com	Ethnicity:	Hispanic		
Address:	PO BOX 11	Gender:	Male		
	LATON, CA 93242	Date of birth:	10/6/1954		
Phone 1:	559.455.8084				
Phone 2:					

Dispatch Information

Dispatch Date:	6/12/2018 4:06:48 PM	Work District:	90 - Morgan Hill, CA: Area 1
WO Number:	2018900777	JPC:	90 - Morgan Hill
WO Date:	6/6/2018 10:09:12 AM	Dispatched by:	Desiree Garcia
WO Type:	Off List		

Job Information

Job classification:	4431-Rotating Extendable Forklift, Lull Hi-Lift or similar	Contract:	MILCO NATIONAL CONSTRUCTORS (CAL FLATS SOLAR PLA)
Wage Rate:	\$37.690	Billing # - CT:	56642-99
Subsistence Pay:		Employer:	Milco National Constructors (PLA Cal Flats Solar)
Requirements:		Employer unit:	Milco National Constructors (PLA Cal Flats Solar) Main Office
Drug Testing:	Yes	Address:	3930 B. Cherry Avenue Long Beach, California 90807
Additional info:	NEEDtobe@1stGate6: 30am4badgeYELLOWbusleaves@ 7amtoget2job	Phone:	562.595.1977

Job Site

Work/Job site:		Report to:	Kenny
Requested by:	Kenny	Report date/time:	6/11/2018 7:00 AM
Phone:	562.755.2177	Location:	Hwy 41&Hwy46 Calflats

Affiliate's signature: _____

Dispatcher's signature: _____

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FAX# 562-685-0211
ER 590

EXHIBIT D

2016- 2020
MASTER AGREEMENT
For NORTHERN CALIFORNIA
Between
OPERATING ENGINEERS LOCAL UNION NO. 3
of the International Union of Operating Engineers, AFL-CIO

And

UNITED CONTRACTORS
ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA, INC.
INDUSTRIAL CONTRACTORS, UMIC, INC.
NORTHERN ALLIANCE OF ENGINEERING CONTRACTORS

2016- 2020
MASTER AGREEMENT
FOR
NORTHERN CALIFORNIA
Between
SIGNATORY ASSOCIATIONS
And
LOCAL UNION NO. 3
of the International Union
of Operating Engineers, AFL-CIO

THIS AGREEMENT, made and entered into this 1st day of July, 2016, by and between the SIGNATORY ASSOCIATIONS ("Employer") and OPERATING ENGINEERS LOCAL UNION NO. 3 of the International Union of Operating Engineers, AFL-CIO ("Union").

01.00.00 EMPLOYEES, CLASSIFICATIONS, MANNING, AND WAGE RATES

01.01.00 On all work covered by this Agreement (Section 02.05.00) when performed, and in all instances in which equipment used in the performance of work covered by this Agreement is operated, regardless of when the work was bid or let, such work shall be performed and such equipment shall be operated by Employees obtained in accordance with Section 04.00.00 and the Job Placement Regulations of this Agreement and they and each of them shall be employed in the classifications and at the wage scales as follows, including such additions as may be made in accordance with Section 20.00.00.

01.01.01 Notwithstanding any provisions of this Section 01.00.00 relating to manning, any piece of equipment involved in excavation for which no Employee is setting line or grade, or performing work which historically has been performed by Assistant to Engineers, an Assistant Engineer shall not be required. If assistance is necessary, such assistance shall be performed by an Assistant to Engineer. In the event a violation is alleged, and a dispute exists which cannot be resolved between the Employer and the Union, any Individual Employer found to be in violation of this Section 01.01.01 by a Board of Adjustment shall forfeit the application of this Section on all said Individual Employer's jobs or projects for the period of time and in the manner prescribed hereunder:

- (1) *First (1st) Violation:* Said Section shall not apply for a period of three (3) consecutive months from the date said Individual Employer is found in violation by said Board of Adjustment and manning all Individual Employer's jobs or projects shall be in accordance with the requirements of Section 01.03.00 Classifications, Manning and Rates;
- (2) *Second (2nd) Violation:* Same application as in (1) above for a period of six (6) consecutive months;
- (3) *Third (3rd) Violation:* Same application as in (1) and (2) above for the duration of the Agreement.

NOTE: This Section shall not apply to any traditional crane work and any manning requirements on crane work shall be in accordance with Section 01.03.01.

01.02.00 *Area Definitions.* Section 24.00.00 provides a description of Areas 1 and 2 based upon Township and Range Lines. The Area 2 wage, as set forth in Section 01.03.00, shall be paid in all areas of Northern California not included in Area 1.

01.02.01 If all compensable time is spent by any Employee in Area 1, he/she shall be paid the Area 1 rate.

01.02.02 If two (2) or more hours of compensable time (straight or overtime) on any shift are spent by an Employee in Area 2, he/she shall be paid the Area 2 rate for the entire day.

01.02.03 The Employees employed by an Individual Employer in a permanent yard or shop or plant and Employees employed by an Individual Employer on residential construction projects (not camps), subdivisions,

buildings of three (3) stories or less including utilities and site work related to these buildings, streets, roadways and utilities which are a part of a residential construction project located within Area 2 shall be paid the Area 1 wage rate.

01.02.04 If all Employees on a job or project are transported by the Employer from a permanent plant, yard or shop located in Area 1 to work in Area 2 and transported back to the same permanent yard or shop in Area 1, all on the same day, on the Employer's time, said Employees shall be paid the Area 1 wage rate.

01.03.00 Classifications, Manning and Rates.

NOTE: The manning of Compressors, Generators, Welding Machines, Pumps or any combination thereof shall be in accordance with Section 07.05.00 of this Agreement.

CLASSIFICATIONS:

**CURRENT STRAIGHT-TIME HOURLY
WAGE RATES —EFFECTIVE DATES**

*Asterisk denotes that the Union may allocate the increases in 2016, 2017, 2018 and 2019 to wages and/or fringe benefits. See Section 01.05.01.

GROUP 1 (4 classifications)

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$42.67			
Area 2	\$44.67			

- 2415 1. Drill Equipment, weight over 200,000 pounds (Assistant to Engineer or Mechanic/Welder required)
- 3491 2. Operator of Helicopter (when used in erection work)
- 3685 3. Hydraulic Excavator 7 cu. yds. and over (Assistant to Engineer required)
- 5951 4. Power Shovels, over 7 cu. yds. (Assistant to Engineer required)

GROUP 2 (7 classifications)

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$41.14			
Area 2	\$43.14			

- 1131 1. Certified Chief of Party (when requested by Individual Employer)
- 3551 2. Highline Cableway
- 3695 3. Hydraulic Excavator 3-1/2 cu. yds. up to 7 cu. yds. (Assistant to Engineer required)
- 0672 4. Licensed Construction Work Boat Operator, On Site**
- 4780 5. Microtunneling Machine
- 5801 6. Power Blade Operator (finish)
- 5921 7. Power Shovels, over 1 cu. yd. and up to and including 7 cu. yds. m.r.c. (Assistant to Engineer required)

**Provided: If the Individual Employer has an existing collective bargaining relationship with another union, or employs a subcontractor who has a collective bargaining relationship with another union, the provisions of this Agreement shall not apply. However, the loading, unloading and related on-site construction work of barges, dredges, trucks or other motorized water equipment shall be performed by employees covered by this Agreement.

GROUP 3 (19 classifications)

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$39.66			
Area 2	\$41.66			
0201	1. Asphalt Milling Machine			
0371	2. Cable Backhoe (Assistant to Engineer required)			
1301	3. Chief of Party			
1381	4. Combination Backhoe and Loader over 3/4 cu. yds.			
1861	5. Continuous Flight Tie Back Machine (Assistant to Engineer or Mechanic/Welder required)			
1905	6. Crane Mounted Continuous Flight Tie Back Machine, Tonnage to apply (Assistant to Engineer or Mechanic/Welder required)			
1915	7. Crane Mounted Drill Attachments, Tonnage to apply (Assistant to Engineer or Mechanic/Welder required)			
2145	8. Dozer, Slope Board			
2427	9. Drill Equipment weight over 100,000 pounds up to and including 200,000 pounds (Assistant to Engineer or Mechanic/Welder required)			
3171	10. Gradall (Assistant to Engineer required)			
3705	11. Hydraulic Excavator up to 3-1/2 cu. yds. (Assistant to Engineer required)			
4211	12. Loader 4 cu. yds. and over			
4384	13 Long Reach Excavator			
5061	14. Multiple Engine Scrapers (when used as push pull)			
5891	15. Power Shovels, up to and including 1 cu. yd. (Assistant to Engineer required)			
6011	16. Pre-Stress Wire Wrapping machine			
7081	17. Side Boom Cat, 572 or larger			
7925	18. Track Loader 4 cu. yds. and over			
8961	19. Wheel Excavator (up to and including 750 cu. yds. per hour) (Assistant to Engineer required)			

GROUP 4 (34 classifications)

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$38.28			
Area 2	\$40.28			
0191	1. Asphalt Plant Engineer/Boxman			
1241	2. Chicago Boom			
1341	3. Combination Backhoe and Loader up to and including 3/4 cu. yds.			
1601	4. Concrete Batch Plants (wet or dry)			
2361	5. Dozer and/or Push Cat			
2428	6. Drill Equipment, weight over 50,000 pounds up to and including 100,000 pounds (Assistant to Engineer or Mechanic/Welder required)			
2751	7. Pull-Type Elevating Loader			
3221	8. Gradesetter, Grade Checker (GPS, mechanical or otherwise)			
3261	9. Grooving and Grinding Machine			

GROUP 4 (continued)

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$38.28			
Area 2	\$40.28			

- 3301 10. Heading Shield Operator
3305 11. Heavy Duty Drilling Equipment, Hughes, LDH, Watson 3000 or similar (Assistant to Engineer or Mechanic/Welder required)
3401 12. Heavy Duty Repairman and/or Welder
4041 13. Lime Spreader
4151 14. Loader under 4 cu. yds.
4391 15. Lubrication and Service Engineer (mobile and grease rack)
4691 16. Mechanical Finishers or Spreader Machine (asphalt, Barber-Greene, Material Transfer Vehicle and similar) (Screedman required)
4771 17. Miller Formless M-9000 Slope Paver or similar (Gradesetter required) (any additional assistance required on this equipment shall be performed by an Assistant to Engineer)
5771 18. Portable Crushing and Screening plants (Assistant to Engineer required)
5821 19. Power Blade Support
6381 20. Roller Operator, Asphalt
6471 21. Rubber-Tired Scraper, self-loading (paddlewheels, etc.)
6481 22. Rubber-Tired Earthmoving Equipment (Scrapers)
7211 23. Slip Form Paver (concrete) (one [1] Operator and two [2] Screedmen required)
7435 24. Small Tractor with Drag
7461 25. Soil Stabilizer (P&H or equal)
7506 26. Spider Plow and Spider Puller (properly manned by two [2] operators)
7841 27. Timber Skidder
8538 28. Tubex Pile Rig (any assistance required shall be an Operating Engineer)
7915 29. Track Loader up to 4 yards
7931 30. Tractor Drawn Scraper
8121 31. Tractor, Compressor Drill Combination (Assistant to Engineer required)
0674 32. Unlicensed Construction Work Boat Operator, On Site**
8881 33. Welder
9051 34. Woods-Mixer (and other similar Pugmill equipment)

**Provided: If the Individual Employer has an existing collective bargaining relationship with another union, or employs a subcontractor who has a collective bargaining relationship with another union, the provisions of this Agreement shall not apply. However, the loading, unloading and related on-site construction work of barges, dredges, trucks or other motorized water equipment shall be performed by employees covered by this Agreement.

GROUP 5 (21 classifications)

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$37.01			
Area 2	\$39.01			

- 1121 1. Cast-in-Place Pipe Laying Machine
1451 2. Combination Slusher and Motor Operator
1611 3. Concrete Conveyor or Concrete Pump, Truck or Equipment mounted
1621 4. Concrete Conveyor, Building site

GROUP 5 (continued)

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$37.01			
Area 2	\$39.01			
1781	5. Concrete Pump or Pumpcrete Guns			
2362	6. Doms Stoneslinger (material conveyor attached to truck)			
2405	7. Drilling Equipment, Watson 2000, Texoma 700 or similar (Assistant to Engineer or Mechanic/Welder required)			
2431	8. Drilling and Boring Machinery, Horizontal (not to apply to waterliners, wagon drills or jackhammers) (Assistant to Engineer or Mechanic/Welder required)			
2471	9. Concrete Mixers/all			
3761	10. Instrumentman			
4571	11. Man and/or Material Hoist			
4631	12. Mechanical Finishers (concrete) (Clary, Johnson, Bidwell Bridge Deck or similar types)			
4641	13. Mechanical Burm, Curb and/or Curb and Gutter Machine, Concrete or Asphalt			
4751	14. Mine or Shaft Hoist			
5741	15. Portable Crushers			
5861	16. Power Jumbo Operator (setting slip-forms, etc., in tunnels)			
6811	17. Screedman (automatic or manual)			
7011	18. Self Propelled Compactor with Dozer			
8055	19. Tractor with boom, D6 or smaller			
8391	20. Trenching Machine, maximum digging capacity over 5 ft. depth (Assistant to Engineer required)			
8831	21. Vermeer T-600B Rock Cutter or similar			

GROUP 6 (31 classifications)

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$35.69			
Area 2	\$37.69			
0161	1. Armor-Coater (or similar)			
0391	2. Ballast Jack Tamper			
0791	3. Boom-Type Backfilling Machine			
0881	4. Asst. Plant Engineer			
0941	5. Bridge and/or Gantry Crane			
1181	6. Chemical Grouting Machine, truck mounted			
1321	7. Chip Spreading Machine Operator			
4970	8. Concrete Barrier Moving Machine (properly manned by two [2] operators)			
1841	9. Concrete Saws (self-propelled unit on streets, highways, airports, and canals)			
2111	10. Deck Engineer			
2415	11. Drilling Equipment Texoma 600, Hughes 200 Series or similar up to and including 30 ft. m.r.c. Any assistance required will be performed by an Employee covered by this Agreement			
2461	12. Drill Doctor			
2429	13. Drill Equipment, weight 25,000 pounds and up to and including 50,000 pounds (Any assistant needed shall be performed by an Employee covered by this Agreement)			
3089	14. Geothermal Drills			
3511	15. Helicopter Radioman			
3711	16. Hydro-Hammer or similar			

GROUP 6 (continued)

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$35.69			
Area 2	\$37.69			

- 4061 17. Line Master
- 4073 18. Skidsteer Loader, Bobcat larger than 743 series or similar (with attachments)
- 4271 19. Locomotive (Assistant to Engineer when required)
- 4431 20. Rotating Extendable Forklift, Lull Hi-Lift or similar
- 5195 21. Assistant to Engineer, Truck Mounted Equipment (Class I Driver's License Required)
- 5531 22. Pavement Breaker, Truck Mounted, with compressor combination (Assistant to Engineer Driver when required)
- 5571 23. Paving Fabric Installation and/or Laying Machine
- 5621 24. Pipe Bending Machine (pipelines only)
- 5681 25. Pipe Wrapping Machine (Tractor propelled and supported)
- 5736 26. Shoulder Backing Machine or similar [with attachments]
- 6791 27. Screedman, (except asphaltic concrete paving)
- 6844 28. Self Loading Chipper
- 7001 29. Self Propelled Pipeline Wrapping Machine
- 7501 30. Soils & Materials Tester
- 7941 31. Tractor

GROUP 7 (29 classifications)

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$34.55			
Area 2	\$36.55			

- 0401 1. Ballast Regulator
- 1091 2. Cury Lift or similar
- 1421 3. Combination Slurry Mixer and/or Cleaner
- 1422 4. Coolant/Slurry Tanker Operator (when hooked to Grooving/Grinding Machine) (Class "A" Tanker endorsement required)
- 2430 5. Drill Equipment, weight from 1,000 pounds to 25,000 pounds (Any assistant needed shall be performed by an Employee covered by this Agreement)
- 2435 6. Drilling Equipment, 20 ft. and under m.r.c.
- 2893 7. Fireman Hot Plant
- 3241 8. Grouting Machine Operator
- 3611 9. Highline Cableway Signalman
- 3941 10. Stationary Belt Loader (Kolman or similar)
- 4031 11. Lift Slab Machine (Vagtborg and similar types)
- 4451 12. Maginnes Internal Full Slab Vibrator
- 4541 13. Material Hoist (1 Drum)
- 4721 14. Mechanical Trench Shield
- 5383 15. Partsman (heavy duty repair shop parts room)
- 5501 16. Pavement Breaker with or without Compressor Combination
- 5651 17. Pipe Cleaning Machine (tractor propelled and supported)
- 5781 18. Post Driver
- 6311 19. Rodman Chainman

GROUP 7 (continued)

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$34.55			
Area 2	\$36.55			

6341 20. Roller (except Asphalt), Chip Seal

6851 21. Self Propelled Automatically Applied Concrete Curing Machine (on streets, highways, airports and canals)

6911 22. Self Propelled Compactor (without dozer)

7123 23. Signalman

7241 24. Slip-Form Pumps (lifting device for concrete forms)

7821 25. Tie Spacer

8371 26. Trenching Machine (maximum digging capacity up to and including 5 ft. depth)

8511 27. Truck Type Loader

8771 28. Water Well Driller

8868 29. Super Sucker Vacuum Truck qualified operator runs all (except on National Pipeline work, they will be paid Group 1 rate)

GROUP 8 (32 classifications)

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$33.41			
Area 2	\$35.41			

0621 1. Bit Sharpener

0681 2. Assistant to Engineer Boiler Tender

0853 3. Box Operator**

0913 4. Brakeman**

1391 5. Combination Mixer and Compressor (shotcrete/gunite)

1481 6. Compressor Operator

2153 7. Deckhand**

2863 8. Fireman**

2991 9. Mast Type Forklift

3131 10. Generators

3243 11. Gunite/Shotcrete Equipment Operator

3373 12. Heavy Duty Repairman Helper**

3701 13. Hydraulic Monitor

3821 14. Ken Seal Machine (or similar)

4901 15. Mixermobile

5161 16. Operating Engineer in lieu of an Assistant to Engineer

5173 17. Assistant to Engineer**

6041 18. Pump Operator

6131 19. Refrigeration Plant

6241 20. Reservoir-Debris Tug (Self-Propelled Floating)

6401 21. Ross Carrier (Construction site)

6451 22. Rotomist Operator

6831 23. Self Propelled Tape Machine

7031 24. Shuttlecar

GROUP 8 (continued)

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$33.41			
Area 2	\$35.41			

7041 25. Self Propelled Power Sweeper Operator (includes Vacuum Sweeper)

7271 26. Slusher Operator

7611 27. Surface Heater

7673 28. Switchman**

7763 29. Tar Pot Fireman**

8541 30. Tugger Hoist, Single Drum

8841 31. Vacuum Cooling Plant

8921 32. Welding Machine (powered other than by electricity)

**Assistant to Engineer classifications

GROUP 8A (5 classifications)

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$31.20			
Area 2	\$33.20			

01601. Articulated Dump Trucks/Off Road Haul Trucks (except when work is assigned to the Teamsters)

2581 2. Elevator Operator

4071 3. Skidsteer Loader, Bobcat 743 series or smaller and similar (without attachments)

4795 4. Mini Excavator under 25 H.P. (Backhoe-Trencher)

8513 5. Tub Grinder Wood Chipper

Special Single Shift and Second Shift Wage Rates

(Refer to Sections 06.04.03 and 06.05.00)

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Group 1				
Area 1	\$47.00			
Area 2	\$49.00			
Group 2				
Area 1	\$45.27			
Area 2	\$47.27			
Group 3				
Area 1	\$43.61			
Area 2	\$45.61			
Group 4				
Area 1	\$42.05			
Area 2	\$44.05			
Group 5				
Area 1	\$40.63			
Area 2	\$42.63			

Group 6	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$39.13			
Area 2	\$41.13			
Group 7				
Area 1	\$37.85			
Area 2	\$39.85			
Group 8				
Area 1	\$36.58			
Area 2	\$38.58			
Group 8A				
Area 1	\$34.07			
Area 2	\$36.07			

01.03.01 All Cranes and Attachments. The straight-time hourly wage rate of Employees on cranes or equipment and attachments (including jib and/or leads) shall be as follows:

**Truck Crane Assistant to Engineer or Assistant to Engineer (as appropriate), are required on all the cranes listed below, except Tower Cranes, Self Propelled Boom Type Hydraulic Lifting Devices and self-contained job-ready Hydraulic Truck Cranes that can travel on the California State highway system with the boom over the front of the truck crane carrier without a boom dolly, trailer or any other type of conveyance to transport any attachment or part of the hydraulic crane, on which, if any assistance is required, it shall be by an Employee covered by this Agreement.

GROUP 1 (3 classifications ±*)

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$44.30			
Area 2	\$46.30			

2000 1. Cranes over 350 tons [Assistant to Engineer required]

2108 2. Derrick over 350 tons

6916 3. Self Propelled Boom Type Lifting Devices over 350 tons

±*The above classifications are all paid seventy-five (\$.75) cents per hour above Group 1-A

GROUP 1-A (5 classifications)

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$43.55			
Area 2	\$45.55			

1335 1. Clamshells and Draglines over 7 cu. yds.

1951 2. Cranes over 100 tons

2105 3. Derrick, over 100 tons

2115 4. Derrick Barge Pedestal mounted over 100 tons

6915 5. Self Propelled Boom Type Lifting Device over 100 tons

GROUP 2-A (6 classifications)

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$41.79			
Area 2	\$43.79			

- 1325 1. Clamshells and Draglines over 1 cu. yd. up to and including 7 cu. yds.
 1981 2. Cranes over 45 tons up to and including 100 tons
 2125 3. Derrick Barge 100 tons and under
 4918 4. Mobile Self-Erecting Tower Crane (Potain) over three (3) stories
 6901 5. Self-Propelled Boom Type Lifting Device over 45 tons
 8721 6. Tower Cranes

GROUP 3-A (4 classifications)

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$40.05			
Area 2	\$42.05			

- 1315 1. Clamshells and Draglines up to and including 1cu. yd.
 1961 2. Cranes 45 tons and under
 4919 3. Mobile Self-Erecting Tower Crane (Potain) three (3) stories and under
 6881 4. Self Propelled Boom Type Lifting Device 45 tons and under

GROUP 4-A (3 Classifications)

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$37.01			
Area 2	\$39.01			

- 0775 1. Boom Truck or dual-purpose A-Frame Truck, Non-Rotating, Over 15 tons
 0776 2. Truck-Mounted Rotating Telescopic Boom Type Lifting Device, Manitex or similar (Boom Truck), under 15 tons.
 7817 3. Truck-Mounted Rotating Telescopic Boom Type Lifting Device, Manitex or Similar (Boom Truck), over 15 tons.

GROUP 5-A (3 Classifications)

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$46.52			
Area 2	\$48.52			

- 2921 1. Foreman and Shifters, (non-working) 7 Employees and over**

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$45.52			
Area 2	\$47.52			

- 2931 2. Foreman (working) under 7 Employees**

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$46.52			
Area 2	\$48.52			

3341 3. Master Mechanic, over 5 Employees**

**At the discretion of the Employer

The straight-time rates of pay for the Truck Crane Assistant to Engineer and Assistant to Engineer classifications are as follows:

5183 - Truck Crane Assistant to Engineer**

Group 1	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$37.33			
Area 2	\$39.33			

Group 1-A	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$36.58			
Area 2	\$38.58			

5183 - Truck Crane Assistant to Engineer**

Group 2-A	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$36.32			
Area 2	\$38.32			

Group 3-A	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$36.08			
Area 2	\$38.08			

5183- Hydraulic**

GROUP 3-A	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$35.69			
Area 2	\$37.69			

5173 - Assistant to Engineer**

Group 1	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$35.04			
Area 2	\$37.04			

GROUP 1-A	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$34.29			
Area 2	\$36.29			

GROUP 2-A	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$34.08			
Area 2	\$36.08			

GROUP 3-A	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$33.80			
Area 2	\$35.80			

All Cranes and Attachments, Special Single Shift and Second Shift Wage Rates

GROUP 1	7/1/16 ±*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$48.73			
Area 2	\$50.73			

±*The above classifications are all paid seventy-five (\$.75) cents per hour above Group 1-A

GROUP 1-A	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$47.98			
Area 2	\$49.98			

GROUP 2-A	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$45.99			
Area 2	\$47.99			

GROUP 3-A	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$44.03			
Area 2	\$46.03			

GROUP 4-A	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$40.63			
Area 2	\$42.63			

GROUP 5-A (3 Classifications)				
	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$51.07			
Area 2	\$53.07			

2921 1. Foreman and Shifters, (non-working) 7 Employees and over**

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$50.07			
Area 2	\$52.07			

2931 2. Foreman (working), under 7 Employees**

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$51.07			
Area 2	\$53.07			

3341 3. Master Mechanic, over 5 Employees**

**At the discretion of the Employer

5183- Truck Crane Assistant to Engineer**

GROUP 1	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$40.90			
Area 2	\$42.90			

GROUP 1-A	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$40.15			
Area 2	\$42.15			

GROUP 2-A	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$39.86			
Area 2	\$41.86			

GROUP 3-A	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$39.59			
Area 2	\$41.59			

5183- Hydraulic**

GROUP 3-A	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$39.13			
Area 2	\$41.13			

5173- Assistant to Engineer**

GROUP 1	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$38.31			
Area 2	\$40.31			

GROUP 1-A	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$37.56			
Area 2	\$39.56			
GROUP 2-A	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$37.33			
Area 2	\$39.33			
GROUP 3-A	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$37.02			
Area 2	\$39.02			

01.03.02 Classifications and Rates for Steel Erectors and Fabricators

NOTE: The manning of Compressors, Generators, Welding Machines, Pumps or any combination thereof shall be in accordance with Section 07.05.00 of this Agreement.

**Truck Crane Assistant to Engineer or Assistant to Engineer (as appropriate), are required on all the cranes listed below, except Tower Cranes, Self Propelled Boom Type Hydraulic Lifting Devices and self-contained job-ready Hydraulic Truck Cranes that can travel on the California State highway system with the boom over the front of the truck crane carrier without a boom dolly, trailer or any other type of conveyance to transport any attachment or part of the hydraulic crane, on which, if any assistance is required, it shall be by an Employee covered by this Agreement.

GROUP A-1 (3 classifications) ±

7/1/16*	6/26/17*	6/25/18*	6/24/19*
\$2.70	\$2.35	\$2.35	\$2.35
\$45.27			

2000 1. Cranes over 350 tons [Assistant to Engineer required]

2108 2. Derrick over 350 tons

6916 3. Self Propelled Boom Type Lifting Devices over 350 tons

±* The above classifications are all paid seventy-five (\$.75) cents per hour above Group 1

GROUP 1 (3 classifications)

7/1/16*	6/26/17*	6/25/18*	6/24/19*
\$2.70	\$2.35	\$2.35	\$2.35
\$44.52			

1951 1. Cranes over 100 tons (Assistant to Engineer required)

2105 2. Derrick over 100 tons

6915 3. Self Propelled Boom Type Lifting Devices over 100 tons

GROUP 2 (4 classifications)

7/1/16*	6/26/17*	6/25/18*	6/24/19*
\$2.70	\$2.35	\$2.35	\$2.35
\$42.75			

1981 1. Cranes over 45 tons up to and including 100 tons

2261 2. Derrick, 100 tons and under

6901 3. Self Propelled Boom Type Lifting Device, over 45 tons

GROUP 2 (continued)

7/1/16*	6/26/17*	6/25/18*	6/24/19*
\$2.70	\$2.35	\$2.35	\$2.35
\$42.75			

8721 4. Tower Crane

GROUP 3 (2 classifications)

7/1/16*	6/26/17*	6/25/18*	6/24/19*
\$2.70	\$2.35	\$2.35	\$2.35
\$41.27			

1961 1. Cranes, 45 tons and under (Assistant to Engineer required)

6881 2. Self Propelled Boom Type Lifting Device, 45 tons and under

GROUP 4 (3 classifications)

7/1/16*	6/26/17*	6/25/18*	6/24/19*
\$2.70	\$2.35	\$2.35	\$2.35
\$39.25			

1241 1. Chicago Boom

2941 2. Forklift, 10 tons and over

3401 3. Heavy Duty Repairman/Welder

GROUP 5 (1 classification)

7/1/16*	6/26/17*	6/25/18*	6/24/19*
\$2.70	\$2.35	\$2.35	\$2.35
\$37.95			

0701 1. Boom Cat

The straight-time rates of pay for the Truck Crane Assistant to Engineer and Assistant to Engineer classifications are as follows:

5183- Truck Crane Assistant to Engineer**

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
GROUP A-1	\$37.95			
GROUP 1	\$37.20			
GROUP 2	\$36.98			
GROUP 3	\$36.71			

5183- Hydraulic**

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
GROUP 3	\$36.32			

5173- Assistant to Engineer**

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
GROUP A-1	\$35.72			
GROUP 1	\$34.97			
GROUP 2	\$34.70			
GROUP 3	\$34.48			

Steel Erectors and Fabricators, Special Single Shift and Second Shift Wage Rates

	7/1/16*±	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
GROUP A-1	\$49.82			
GROUP 1	\$49.07			
GROUP 2	\$47.09			
GROUP 3	\$45.41			
GROUP 4	\$43.15			
GROUP 5	\$41.68			

±* The above classifications are all paid seventy-five (\$.75) cents per hour above Group 1

5183- Truck Crane Assistant to Engineer**

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
GROUP A-1	\$41.59			
GROUP 1	\$40.84			
GROUP 2	\$40.59			
GROUP 3	\$40.29			

5183- Hydraulic**

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
GROUP 3	\$39.86			

5173- Assistant to Engineer**

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
GROUP A-1	\$39.07			
GROUP 1	\$38.32			
GROUP 2	\$38.04			
GROUP 3	\$37.78			

01.03.03 Classifications and Rates for Piledrivers

**Truck Crane Assistant to Engineer or Assistant to Engineer (as appropriate), are required on all the cranes listed below, except Tower Cranes, Self Propelled Boom Type Hydraulic Lifting Devices and self-contained job-ready Hydraulic Truck Cranes that can travel on the California State highway system with the boom over the front of the truck crane carrier without a boom dolly, trailer or any other type of conveyance to transport any attachment or part of the hydraulic crane, on which, if any assistance is required, it shall be by an Employee covered by this Agreement.

GROUP A-1 (3 classifications) ±*

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$44.64			

2000 1.Cranes over 350 tons [Assistant to Engineer required]

2108 2.Derrick over 350 tons

6916 3.Self Propelled Boom Type Lifting Devices over 350 tons

±* The above classifications are all paid seventy-five (\$.75) cents per hour above Group 1

Group 1 (4 classifications)

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35

Area 1 \$43.89

- 2115 1. Derrick Barge Pedestal mounted over 100 tons (or Assistant Operator in lieu of Assistant to Engineer required)
- 5951 2. Clamshells over 7 cu. yds.
- 6915 3. Self Propelled Boom Type Lifting Device over 100 tons
- 8425 4. Truck Crane or Crawler, land or barge mounted over 100 tons (or Assistant Operator in lieu of Assistant to Engineer required)

Group 2 (5 classifications)

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35

Area 1 \$42.07

- 2155 1. Derrick Barge Pedestal mounted 45 tons up to and including 100 tons (or Assistant Operator in lieu of Assistant to Engineer required)
- 3103 2. Fundex F-12 Hydraulic Pile Rig (and similar)
- 5921 3. Clamshells up to and including 7 cu. yds.
- 6901 4. Self Propelled Boom Type Lifting Device over 45 tons
- 8455 5. Truck Crane or Crawler, land or barge mounted, over 45 tons up to and including 100 tons (or Assistant Operator in lieu of Assistant to Engineer required)

Group 3 (4 classifications)

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35

Area 1 \$40.39

- 2135 1. Derrick Barge Pedestal mounted under 45 tons (or Assistant Operator in lieu of Assistant to Engineer required)
- 6881 2. Self Propelled Boom Type Lifting Device 45 tons and under
- 7171 3. Skid/Scow Piledriver, any tonnage (Any assistance required shall be by an Employee covered by this Agreement)
- 8445 4. Truck Crane or Crawler, land or barge mounted 45 tons and under (or Assistant Operator in lieu of Assistant to Engineer required)

Group 4 (3 classifications)

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35

Area 1 \$38.62

- 0221 1. Assistant Operator in lieu of
- 2941 2. Forklift, 10 tons and over
- 3401 3. Heavy Duty Repairman/Welder

Group 5 (0 classifications)

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35

Area 1	\$37.32			
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No current classification (subject to Section 20.00.00)

Group 6 (1 classification)

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35

Area 1	\$35.98			
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2111 1. Deck Engineer

Group 7 (0 classifications)

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35

Area 1	\$34.89			
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No current classification (subject to Section 20.00.00)

Group 8 (2 classifications)

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35

Area 1	\$33.75			
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2153 1. Deckhand

2863 2. Fireman

The straight-time rates of pay for the Truck Crane Assistant to Engineer and Assistant to Engineer classifications are as follows:

5183 - Truck Crane Assistant to Engineer**

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35

GROUP A-1	\$37.66			
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GROUP 1	\$36.91			
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GROUP 2	\$36.66			
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GROUP 3	\$36.37			
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5173 - Assistant to Engineer**

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35

GROUP A-1	\$35.38			
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GROUP 1	\$34.63			
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GROUP 2	\$34.36			
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GROUP 3	\$34.14			
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01.03.04 On Crawler Crane or Derrick Barge Piledriving operations when an Assistant Operator is used in lieu of an Assistant to Engineer, the second Operator can operate Forklifts or Deck Engines in conjunction with Piledriving operations.

01.03.05 When a stationary Truck or stationary Crawler Crane is working in conjunction with another Truck or Crawler Crane driving pile, only one or Assistant Operator is required.

Piledrivers, Special Single Shift and Second Shift Wage Rates

	7/1/16±*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
GROUP A-1	\$49.11			
GROUP 1	\$48.36			
GROUP 2	\$46.31			
GROUP 3	\$44.43			
GROUP 4	\$42.43			
GROUP 5	\$40.97			
GROUP 6	\$39.46			
GROUP 7	\$38.23			
GROUP 8	\$36.96			

±* The above classifications are all paid seventy-five (\$.75) cents per hour above Group 1

5183- Truck Crane Assistant to Engineer**

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
GROUP A-1	\$41.26			
GROUP 1	\$40.51			
GROUP 2	\$40.24			
GROUP 3	\$39.91			

5173 - Assistant to Engineer**

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
GROUP A-1	\$38.69			
GROUP 1	\$37.94			
GROUP 2	\$37.64			
GROUP 3	\$37.40			

01.03.06 Tunnel/Underground Classifications and Wage Rates. The straight-time hourly wage rate of Employees working underground and/or within shafts, stopes and raises shall be as follows:

GROUP 1-A (1 classification) – Underground Rate

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$41.14			
Area 2	\$43.14			

8603 1. Tunnel Bore Machine Operator - 20' diameter or more.

GROUP 1 (7 classifications) – Underground Rate

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$38.67			
Area 2	\$40.67			

3301 1. Heading Shield Operator

3401 2. Heavy Duty Repairman/Welder

GROUP 1 (continued) – Underground Rate

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$38.67			
Area 2	\$40.67			

- 5111 3. Mucking Machine (rubber tired, rail or track type)
6125 4. Raised Bore Operator** (tunnels)
6210 5. Road Header Operator on Tunnels 10 feet diameter or larger
8601 6. Tunnel Mole Bore Operator**
8602 7. Tunnel Boring Machine Operator 10 feet up to 20 feet

GROUP 2 (3 classifications) – Underground Rate

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$37.41			
Area 2	\$39.41			

- 1451 1. Combination Slusher and Motor Operator
1781 2. Concrete Pump or Pumpcrete Guns
5861 3. Power Jumbo Operator

GROUP 3 (2 classifications) – Underground Rate

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$36.08			
Area 2	\$38.08			

- 2461 1. Drill Doctor
4751 2. Mine or Shaft Hoist

GROUP 4 (3 classifications) – Underground Rate

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$34.94			
Area 2	\$36.94			

- 1421 1. Combination Slurry Mixer Cleaner
3241 2. Grouting Machine Operator
4931 3. Motorman

GROUP 5 (7 classifications) – Underground Rate

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$33.80			
Area 2	\$35.80			

- 0621 1. Bit Sharpener
0913 2. Brakeman
1391 3. Combination Mixer and Compressor (Gunitite)
1481 4. Compressor Operator
5173 5. Assistant to Engineer**
6041 6. Pump Operator

7271 7. Slusher Operator

** Classification

GROUP 1 –A (1 classification) – Shafts, Stopes and Raises

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$41.24			
Area 2	\$43.24			

8603 1. Tunnel Bore Machine Operator - 20' diameter or more.

GROUP 1 (7 classifications) – Shafts, Stopes and Raises

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$38.77			
Area 2	\$40.77			

3301 1. Heading Shield Operator

3401 2. Heavy Duty Repairman/Welder

5111 3. Mucking Machine (rubber tired, rail or track type)

6125 4. Raised Bore Operator** (tunnels)

6210 5. Road Header Operator on Tunnels 10 feet diameter or larger

GROUP 1 (7 classifications) – Shafts, Stopes and Raises Continued

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$38.77			
Area 2	\$40.77			

8601 6. Tunnel Mole Bore Operator**

8602 7. Tunnel Boring Machine Operator 10 feet up to 20 feet

**Any assistance in the operation, if needed, shall be by an Employee covered by this Agreement.

GROUP 2 (3 classifications) - Shafts, Stopes and Raises

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$37.51			
Area 2	\$39.51			

1451 1. Combination Slusher and Motor Operator

1781 2. Concrete Pump or Pumpcrete Guns

5861 3. Power Jumbo Operator

GROUP 3 (2 classifications) -Shafts, Stopes and Raises

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$36.18			
Area 2	\$38.18			

2461 1. Drill Doctor

4751 2. Mine or Shaft Hoist

GROUP 4 (3 classifications) -Shafts, Stopes and Raises

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$35.04			
Area 2	\$37.04			

- 1421 1. Combination Slurry Mixer Cleaner
 3241 2. Grouting Machine Operator
 4931 3. Motorman

GROUP 5 (7 classifications) -Shafts, Stopes and Raise

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$33.90			
Area 2	\$35.90			

- 0621 1. Bit Sharpener
 0913 2. Brakeman
 1391 3. Combination Mixer and Compressor (Gunite)
 1481 4. Compressor Operator
 5173 5. Assistant to Engineer**
 6041 6. Pump Operator
 7271 7. Slusher Operator

** Classification

Tunnel/Underground, Special Single Shift and Second Shift Wage Rates**GROUP 1-A (1 classification) – Underground Rate**

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$45.27			
Area 2	\$47.27			

GROUP 1 (7 classifications) – Underground Rate

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$42.48			
Area 2	\$44.48			

GROUP 2 (3 classifications) – Underground Rate

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$41.07			
Area 2	\$43.07			

GROUP 3 (2 classifications) – Underground Rate

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$39.59			
Area 2	\$41.59			

GROUP 4 (3 classifications) – Underground Rate

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$38.29			
Area 2	\$40.29			

GROUP 5 (7 classifications) – Underground Rate

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$37.02			
Area 2	\$39.02			

GROUP 1-A (1 classification) – Shafts, Stopes and Raises

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$45.38			
Area 2	\$47.38			

GROUP 1 (7 classifications) – Shafts, Stopes and Raises

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$42.59			
Area 2	\$44.59			

GROUP 2 (3 classifications) - Shafts, Stopes and Raises

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$41.18			
Area 2	\$43.18			

GROUP 3 (2 classifications) – Shafts, Stopes and Raises

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$39.70			
Area 2	\$41.70			

GROUP 4 (3 classifications) -Shafts, Stopes and Raises

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$38.40			
Area 2	\$40.40			

GROUP 5 (7 classifications) – Shafts, Stopes and Raises

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$37.13			
Area 2	\$39.13			

** Classification

01.03.07 Toxic Waste (HAZMAT). A subcommittee shall be formed to discuss requirements applicable to Employees working on HAZMAT projects and to negotiate working rules and wage rates which recognize the special conditions and problems which exist when working with toxic waste.

01.04.00 FOREMEN — Wage Rates.

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$42.67			
Area 2	\$44.67			

2921 1. Foreman and Shifters, over 7 Employees

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$41.14			
Area 2	\$43.14			

2931 1. Foreman (Working), under 7 Employees

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$42.67			
Area 2	\$44.67			

3341 1. Master Mechanic, over 5 Employees

Foreman, Special Single Shift and Second Shift Wage Rates

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$47.00			
Area 2	\$49.00			

2921 1. Foreman and Shifters, over 7 Employees

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$45.27			
Area 2	\$47.27			

2931 1. Foreman (Working), under 7 Employees

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
Area 1	\$47.00			
Area 2	\$49.00			

3341 1. Master Mechanic, over 5 Employees

01.05.00 Working Suspended. The straight-time hourly wage rate of Employees required to work suspended by ropes or cables or performing work on a Yo-Yo Cat shall be according to the following schedule, and added to the straight-time hourly wage rates set out in 01.00.00, and such increase in the straight-time hourly wage rate shall apply for the full shift and all overtime work.

PER HOUR
\$.60

01.05.01 *To be allocated by the Union; the allocation shall become effective forty-five (45) days after receipt of written notice by the Employer, but in no event earlier than July 1, 2016, June 26, 2017, June 25, 2018 and June 24, 2019.

*Note: Notwithstanding the above increases, increases to other fringe benefits shall also be applicable during the term of this Agreement as defined in Section 12.05.00.

01.06.00 If the Individual Employer maintains, rents, leases or otherwise contracts out or arranges for a camp in Area 2, the Individual Employer agrees that the charge to the Employees covered by this Agreement for suitable room and board, shall not exceed the differential between the Area 1 and Area 2 wage rates for eight (8) straight-time hours, five (5) days a week, Monday through Friday. When Employees work Saturdays and/or Sundays the same provisions which apply Monday through Friday, shall apply to Saturdays and/or Sundays.

01.06.01 If an Individual Employer provides trailer space for a job or project, an appropriate charge for such space shall be negotiated between the Union and the Individual Employer prior to the commencement of said job or project.

01.07.00 Whenever the bid specifications of an Owner awarding the work or an Awarding Agency require the Individual Employer to provide a drug-free workplace, such requirements shall apply to that job or project.

01.08.00 Market/Geographic Area Committee. (Private Work - Not to Exceed \$1,000,000). The parties to this Agreement recognize the constantly changing nature of the industry with respect to certain private market and/or geographic areas and the necessity of Individual Employers maintaining competitive positions in those markets or geographic areas to protect and assure the continued work opportunities of the affected Employees covered by this Agreement. Therefore, and notwithstanding Section 25.03.00, the parties hereby establish a Market/Geographic Area Committee composed of three (3) representatives of the Employer, three (3) representatives of the Union, and three (3) Employee representatives performing work in an affected geographic area. In any particular geographic area, a defined market area committee of three (3) Employees may be established by the Union. The Committee comprising three (3) Union representatives and three (3) Employer representatives in conjunction with the local Employee market committee shall evaluate either market or geographic requests for changes or modifications believed necessary to meet market or geographic area competition and determine if adequate economic justification is present to support such a change or modification. The Employees serving on the Committees shall be selected by the Employees (members) in the market or geographic area on a rotating basis depending on the particular market or geographic area where evaluation of the area, changes and/or modification may be necessary. In the event a market area extends beyond the boundaries of more than one of the Union's Districts, there shall be at least one (1) Employee from each District where the market area exists serving on the Committee with the Employer representatives and Union representatives. The Committees shall review requests for changes in any of the terms and conditions of the Master Agreement which cover an area limited to particular private, market or geographic areas and believed necessary to preserve and protect work opportunities for affected Employees and Individual Employers covered by the Agreement. The Committee, upon an affirmative unit vote, is authorized to approve such changes (including the monetary size of the project to which they may apply) as it determines to be in the best interest of the affected Employees and the parties to this Agreement and may modify the Agreement accordingly; provided, however, if in any particular market area, a determination is made by the Committee that a market area has been substantially lost or rapidly being lost to non-union employers, an addendum, not to exceed \$1,000,000 (unless the Committee agrees otherwise) shall be placed in effect covering that market which shall apply for the duration of the Agreement; it is further provided that in the month of January of each contract year, the Committee shall meet and review each market addendum, and if the Individual Employers have recovered sixty percent (60%) or more of the market, the Committee shall determine if the applicable addendum shall continue to apply, be terminated or otherwise modified. Provided further, any job or project covered by an addendum shall remain covered until job/project completion. The Committee may also consider requests for multi-craft project agreements regardless of dollar amount initiated through the National Heavy and Highway Committee and/or the National Building and Construction Trades Department.

02.00.00 GENERAL PROVISIONS — DEFINITIONS

02.01.00 Employer. The term "Employer" as used herein shall mean the Signatory Associations, (UCON, AGC, NAEC, UMIC, INC., ACE and CEA), and all other Signatory Employers.

02.02.00 Individual Employer. The term "Individual Employer" shall mean only those persons or entities who have authorized the Signatory Associations (Employer) to represent said Individual Employer with respect to collective bargaining with the Union. A list of said Individual Employers has been furnished to the Union at the commencement of negotiations, and the Employer shall furnish the Union with monthly reports of any additions or deletions to the list including contact information of Individual Employers represented by the Employer. In the event the Individual Employer shall terminate association representation, the Signatory Employer Association shall provide the Union notice within thirty [30] days and also inform the Individual Employer, in writing with a copy to the Union, of their ongoing signatory obligation.

02.02.01 Additional Individual Employer. Provided that a person or entity is not then engaged in a currently existing labor dispute with the Union arising out of a failure to comply with the wages, hours, rates of pay or other conditions of employment required by the Union in the territorial jurisdiction of the Union where the dispute exists, such person or entity may become an Individual Employer covered by this Agreement upon authorizing the Employer to represent said person or entity with respect to collective bargaining and labor relations with the Union.

02.02.02 In the event an Individual Employer desires to be represented by another and different Association, he shall give the Union fifteen (15) days' notice in writing of the name of the employer association under a collective bargaining agreement with the Union that will represent the notifying Individual Employer; provided, however, that once an employer association represents an Individual Employer under Section 18.00.00 for a particular grievance, no other Employer association shall represent that Individual Employer for that grievance. Once signatory through any association Master Labor Agreement, an Individual Employer will remain bound to a Master Labor Agreement through the term of the agreement as outlined in Section 25.03.00.

02.02.03 The Employer shall be the sole judge of the qualifications for membership of any person or entity applying for membership therein.

02.03.00 Union. The term "Union" as used herein shall mean OPERATING ENGINEERS LOCAL UNION NO. 3 of the International Union of Operating Engineers, AFL-CIO.

02.04.00 Employee. The term "Employee" as used herein shall mean any person, without regard to race, color, religion, sex, age, national origin, handicap or disability (as provided for in the Americans With Disabilities Act of 1990), and shall include those persons covered by the Vietnam Era Veterans Readjustment Assistance Act of 1972:

- (a) whose work for an Individual Employer in the area covered by this Agreement falls within the recognized jurisdiction of the Union, or
- (b) who operates, monitors and controls, maintains, repairs, modifies, assembles, erects, services each or all of them, power-operated equipment of the type or kind of power-operated equipment used in the performance of work referred to in (a) above, regardless of whether such power-operated equipment is mechanically, electrically or electronically, hydraulically, automatically or remotely controlled, and
- (c) who assists or helps in the operation, maintenance, repairing or assembling, erecting or servicing of such power-operated equipment of the type or kind of equipment used in the performance of work referred to in (a) above, and who qualifies to register in a Job Placement Center, provided that the foregoing shall not apply to superintendents, assistant superintendents, general foremen, foremen, timekeepers, messengers, guards, confidential employees, office help, inspectors, and persons specifically excluded elsewhere in this Agreement.

02.05.00 Unit Work. This Agreement shall cover and apply to all activities of the Individual Employer in the area covered by this Agreement falling within the recognized jurisdiction of the Union, including, but not limited by inference or otherwise, to building construction, demolition, site clearing, geothermal drilling, pipelines, oil or gas refineries (excluding the falling and removal of merchantable timber by the purchaser of merchantable timber), work covered by Section 13.00.00, Steel Fabricators and Erectors, which work and equipment shall be covered by Section 13.00.00, Steel Fabricators and Erectors, and work covered by Section 14.00.00, Piledriving, which work and equipment shall be covered by Section 14.00.00, Piledriving. It shall also apply to all maintenance, modification and repair work and facilities, on-site or off-site, of an Individual Employer in the area covered by this Agreement, except an off-site repair or maintenance facility with respect to which the Individual Employer is in a bona fide collective bargaining relationship with a labor organization covering such Individual Employer's off-site maintenance and repair facility at the time the Individual Employer becomes a party to, or covered by, this Agreement. This Agreement shall also apply to the operation, modification, maintenance, and repair of equipment covered by this Agreement (including the additions under provision for Additional Work or Classifications, Section 20.00.00) established for the production of borrow, rip-rap, rock, sand, gravel, aggregates of all kinds, concrete (excluding cement), asphalt or macadam or other road-surfacing materials (excluding oil) by an Individual Employer or his subcontractor which is to be incorporated into a specific job(s) or project(s) of the Individual Employer so long as such material is actually being produced or delivered to such job or project; such work will be considered on-site.

02.06.00 This Agreement shall cover and apply to all Employees.

02.07.00 Coverage. This Agreement shall cover and apply to Northern California, which term means that portion of the State of California above the northerly boundary of Kern County, the northerly boundary of San Luis Obispo County and the westerly boundaries of Inyo and Mono Counties.

02.08.00 Bargaining Representatives.

02.08.01 The Union hereby recognizes and acknowledges that Employer is the collective bargaining representative of the Individual Employers authorizing the Employer to represent said person or entity with respect to collective bargaining and labor relations with the Union.

02.08.02 This Agreement shall bind each and every Individual Employer as set forth in Section 02.02.00 who has authorized the Employer to represent it with the same force and effect as if the Agreement were entered into by each such Individual Employer. Except as provided in Section 02.02.02, each such Individual Employer shall be and continue to remain bound to this Agreement for and during the term of this Agreement irrespective of whether such Individual Employer shall withdraw its authorization, resign, or be expelled from the Employer prior to the expiration date of this Agreement. However, any Individual Employer who is no longer a member of the Employer shall not be represented by the Employer and shall not be covered by the provisions of Section 18.00.00 (Settlement of Disputes).

02.08.03 The Employer and each Individual Employer covered hereby recognizes and acknowledges OPERATING ENGINEERS LOCAL UNION NO. 3 of the International Union of Operating Engineers, AFL-CIO, as the exclusive collective bargaining representative of all Employees covered by this Agreement. The Employer, on its own behalf and on each Individual Employer's behalf, acknowledges that it and they have collective bargaining relationships with the Union within the meaning of Section 9 of the National Labor Relations Act.

02.08.04 Project Labor Agreements. The Union will notify the Employer before it or its agents engage in negotiations for a project labor agreement with an employer, construction manager, public agency or private owner.

02.08.05 Uniform Notification Provisions. The "NOTICE" requirements of this Agreement shall be satisfied if the following requirements are met:

- a) delivery by Certified Mail, E-mail or FAX to the Employer and/or to the Union;
- b) sent within the specified time limits; and

- c) Proof of Service is provided, when required.

03.00.00 ADMINISTRATIVE PROVISIONS

03.01.00 Pre-Job Conferences. The Individual Employer or an Employer shall notify the Union at least one (1) week prior to the commencement of work by an Employee or Employees covered by this Agreement on all jobs or projects where the estimated or agreed price to be paid to the Individual Employer is \$3,000,000 or more. If the Individual Employer conducts a Pre-Job Conference with any other basic craft for a job or project of less than \$3,000,000, it will notify the Union and the Union may participate in the Pre-Job Conference.

03.01.01 Upon request of the Union, a Pre-Job Conference shall be held. The location shall be at the option of the Employer or Individual Employer. In the event a Pre-Job Conference is not held within two (2) weeks after a written request to the Individual Employer from the Union, Section 18.03.00 shall not be in effect until such Pre-Job Conference is held.

03.01.02 All understandings reached at such Pre-Job Conference shall be reduced to writing in a Pre-Job Conference Report and signed by the Individual Employer or Employer and the Union. Such understandings shall be within the scope and terms of this Agreement. For Keymen, refer to 04.08.02 of the Job Placement Regulations.

03.02.00 Records and Requests. Each Individual Employer shall provide a proper means for registering time, working time and quitting time of its Employees and Owner-Operators. In the event of a specific dispute regarding time, wages or fringe benefit payments of its Employees, or over any matter pertaining to an Owner-Operator, upon written request by the Union, delivered to the Employer and the Individual Employer, the Individual Employer's records relating to said dispute regarding time, wages and fringe benefit payments of its Employees, regardless of classification, or a dispute regarding Owner-Operators, and the Individual Employer's records relating to said dispute shall promptly be accessible to a Business Representative, auditor or other official of the Union during working hours.

03.02.01 In the event the Employer disputes the relevance of the records regarding a specific dispute referred to in 03.02.00 above, said dispute shall be subject to the provisions of Section 18.00.00.

03.02.02 In the event an Individual Employer fails or refuses to confirm an audit appointment within fourteen (14) days following demand or fails or refuses to submit to an audit within thirty (30) days upon demand, the Union shall not be bound by the provisions of Section 18.00.00 and shall be free to withdraw any or all of the Employees of such Individual Employer and such withdrawal shall not be a violation of this Agreement. Provided, however, the Union shall not withdraw Employees for forty-eight (48) hours after written notification to the Employer of the failure to confirm an audit appointment or the failure to submit to an audit whichever the case shall be, and the Individual Employer shall bear the expenses incurred by the auditor for such forty-eight (48) hour delay.

03.02.03 Upon written request of the Union, the Individual Employer shall notify the Union of his intent to perform work on Saturday, Sunday, or a holiday, of the location of job and the number of Employees he intends to employ.

03.03.00 Employee Termination. The Individual Employer shall notify the Job Placement Center on a form supplied by the Job Placement Center of the names of all Employees who have quit or who have been terminated during the week. (Termination shall mean severance of employment and not temporary layoff.) Such form is to be mailed to the Job Placement Center servicing the job or project not later than Monday of the week following the week of such severance of employment. The Union shall notify the Employer in writing each time any Individual Employer fails to make such report. Any Individual Employer failing to make such report three (3) times in one (1) calendar year shall for such failure to report pay one hundred dollars (\$100) into the Operating Engineers and Participating Employers Pre-Apprentice, Apprentice, and Journeyman Affirmative Action Training Fund and one hundred dollars (\$100) for each additional failure. In the event an Employee is terminated, the Individual Employer shall indicate on the discharge slip the reasons for discharge, i.e., reduction in force, not qualified, termination of job, etc.

03.03.01 Employee Transfer. No Employee may be transferred from an Individual Employer's payroll to another Individual Employer's payroll, except in accordance with the Job Placement Regulations.

03.04.00 Conflicting Contracts. Any oral or written agreements between any Employer, any Signatory Association, or any Individual Employer, and an Employee which conflicts, or is inconsistent with this Agreement or any supplemental Agreement hereto, or which disestablishes, or tends to disestablish the relationship of Employer, Individual Employer, and Employee, or which reestablishes an employment relationship other than that of Employee, shall forthwith terminate.

03.04.01 No oral or written agreement which conflicts or is inconsistent with this Agreement, or any supplemental Agreements hereto, shall hereafter be entered into by an Individual Employer.

03.04.02 No Employee shall be asked to sign any form relating to his medical history unless required by law or Governmental regulation. This Section shall continue to be applicable until such time as the parties to this Agreement mutually develop and agree to implement an acceptable program.

03.05.00 General Savings Clause. It is not the intent of either party hereto to violate any laws, rulings, or regulations of any Governmental authority or agency. The parties hereto agree that in the event that any provisions of this Agreement are finally held or determined to be illegal or void as being in contravention of any such laws, rulings, or regulations, nevertheless the remainder of the Agreement shall remain in full force and effect, unless the parts so found to be void are wholly inseparable from the remaining portion of this Agreement. The parties agree that if and when any provisions of this Agreement are finally held or determined to be illegal or void, they will then promptly enter, within thirty (30) days of written notice by either party, into lawful negotiations concerning the substance thereof.

03.06.00 Favorable Legislation. In the event legislation covering hours of labor, overtime or other conditions of employment applicable to any work covered by this Agreement is enacted, then and in that event, effective on the effective date of such legislation, such more favorable provisions shall be added to this Agreement and this Agreement modified to conform herewith, applicable to all work covered by this Agreement bid or let on or after the date such provision is added to this Agreement.

03.06.01 Federal Emergency Energy Conservation Plan. In the event that a compressed workweek measure under the Federal Emergency Energy Conservation Plan or under any other Federal successor plan is adopted during the term of the Agreement which requires a deviation in terms of starting time or length of the regular shift, the parties agree to negotiate a modification of this Agreement.

03.06.02 Favored Nations Clause. The wage rates, working conditions, and hours of employment and other conditions of employment herein provided have been negotiated by the Union with the Employer. The Union will give the Employer a copy of all Agreements it enters into with any Employer which covers on-site work covered by this Agreement which has terms and conditions which are different from this Agreement. An Individual Employer engaging in on-site work of the same type as that covered by such Agreement may, upon written notice to the Union, become a party to such Agreement.

03.06.03 Other Agreements or Conditions More Favorable: Effective July 1, 2010, in the event that the Union, which is signatory hereto, enters into any other Master Construction Labor Agreement covering the forty-six (46) Northern California counties for on-site work covered by this Agreement with other Individual Employers or Employer Associations, which shall have terms or conditions more favorable to such Individual Employers or Employer Associations and the Members thereof than this Agreement, then such more favorable provision(s) shall immediately become part of and apply to this Agreement while the remainder of the Agreement shall remain in full force and effect.

03.06.04 This Section shall only be applicable to the Northern California Master Construction Agreement between the Union and the Employer (Association) and/or Individual Employers. This shall not apply to Project Labor Agreements.

03.07.00 Liability of the Parties. It is mutually understood that neither the Employer, any Individual Employer, nor the Union shall be liable for damages caused by the acts or conduct of any individual or groups of individuals who are acting or conducting themselves in violation of the terms of this Agreement without authority of the respective party,

provided that such action or conduct has not been specifically authorized, participated in, fomented or condoned by the Employer, the Individual Employer or the Union, as the case may be.

03.07.01 In the event of any unauthorized violation of the terms of this Agreement, responsible and authorized representatives of the Union, the Employer, or the Individual Employer, as the case may be, shall promptly take such affirmative action as is within their power to correct and terminate such violation for the purpose of bringing such unauthorized persons into compliance with the terms of this Agreement. Such individuals acting or conducting themselves in violation of the terms of this Agreement shall be subject to discipline, up to and including discharge.

03.07.02 In the event the Union, or the Employer, the Individual Employer, or either of them, as the case may be, after notice of such violation, do not promptly take such affirmative action as is within their power to correct and to terminate such violation, then 03.07.00 shall be of no force and effect.

04.00.00 EMPLOYMENT

04.01.00 Hiring. All hiring shall be subject to and in accordance with the Job Placement Regulations of this Agreement, which are contained in a separate Addendum ("Addendum E"). Any changes to the Job Placement Regulations must be approved and ratified by the bargaining parties.

04.01.01 It shall be the responsibility of the Individual Employer, when ordering Employees or applicants, to give the Union all the pertinent information regarding each Employee's or applicant's employment, which shall include the classification of work and classification number when available under which the Employee or applicant for employment will be dispatched. Any applicant for employment so dispatched who does not possess the qualifications to perform the work for which he is dispatched shall not be eligible for show-up pay.

04.02.00 Union Security. All Employees covered by this Agreement employed at the site of construction, alteration, painting or repair of a building, structure or other work shall be required, as a condition of employment, to apply for, and to become members of, and to maintain membership in, the Union (that is the parent Local Union or the appropriate subdivision of the Union as determined from time to time by the Union by classification) within eight (8) days following the beginning of their employment or the effective date of this clause, whichever is the latter. This clause shall be enforceable to the extent permitted by law.

04.02.01 All Employees covered by this Agreement not employed on the site of construction, alteration, painting or repair of a building, structure or other work shall be required, as a condition of employment, to apply for, and to become members of, and to maintain membership in, the Union (that is the parent Local Union or the appropriate subdivision of the Union as determined from time to time by the Union by classification) within thirty-one (31) days following the beginning of their employment or the effective date of this clause, whichever is the latter. This clause shall be enforceable to the extent permitted by law.

04.02.02 The Union recognizes its obligations and therefore assumes full responsibility to every Employee discharged for failing to comply with the provisions of 04.02.00 and 04.02.01 last above set out, as a result of a written request from the Union to the Individual Employer of the Employee.

04.02.03 Any Employee discharged for failing to comply with the provisions of 04.02.00 and 04.02.01 above, as the case may be, while actively employed shall, before registering in a Job Placement Center for dispatch under this Master Agreement, tender to the Union his initiation or reinstatement fee and current quarterly dues in the form and manner regularly required by the Union, and the Union shall issue a receipt therefore. Upon presentation of such receipt to the Job Placement Center as evidence of such tender, the Employee shall be permitted to register as if he had never been discharged for such non-payment.

04.03.00 Discharge of Employee. No Employee shall be discharged or discriminated against for activity in or representation of the Union. The Union shall be the sole judge of the qualifications of its members.

04.03.01 The Individual Employer shall be the judge of the qualifications of all of his Employees and may on such grounds discharge any of them.

04.03.02 No Employee shall be discharged without "just cause". In the event of discharge without "just cause", the Employee may be reinstated with payment of wages and fringe benefits for time lost. Disputes concerning the existence of "just cause" shall be determined under the grievance procedures provided for in Section 18.00.00. Employees discharged for "just cause" shall be paid only for actual time worked. An Employee who is terminated by an Individual Employer for discrimination based on race, sex or other basis prohibited by employment discrimination laws, including race or sexual harassment, may not register with the Job Placement Center for fifteen (15) days following the date the Employee is terminated for a first offense and may not register with the Job Placement Center for thirty (30) days following the date the Employee is terminated for any subsequent offense. If the Union files a grievance on such an Employee's behalf, the parties shall expedite the grievance/arbitration procedure. The Board of Adjustment shall issue a bench decision in all such discharge cases. If the Union files a grievance, the fifteen (15) day and thirty (30) day restrictions will not begin until the date the grievance procedure is exhausted as provided herein.

The parties may initiate mediation for any dispute concerning the "No Discrimination/No Harassment" provisions of this Agreement. If they do, the grievance procedure will be held in abeyance during the mediation.

04.03.03 No Employee covered hereby may be discharged for refusing to cross a lawful primary picket line established by a Local Union of an International Union affiliated with the Local Building Trades Council that covers the geographical area of the picket line, Building and Construction Trades Department of the AFL-CIO or a Local Union thereof or the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America or a Local Union thereof; provided, however, if the picketing or picket line is disapproved by the Unions affiliated with the Heavy and Highway Committee including the District Council of Ironworkers, International Association of Bridge, Structural and Ornamental Iron Workers and Piledrivers, Bridge Wharf and Dock Builders, the Union shall not recognize it. The Heavy and Highway Committee shall approve or disapprove the picket or picketing within twenty-four (24) hours of notification by the Individual Employer, during which period of the time, the Employees covered by this Agreement shall continue to work. This provision shall not apply to a jurisdictional picket line. However, an Employee of an Individual Employer who refuses to report to the job or project of an Individual Employer and perform his/her work for the Individual Employer when directed to do so by the Union under the provisions of 03.07.01 may be discharged by his Individual Employer. Such discharged Employee may register in any Job Placement Center, but he/she shall be ineligible for dispatch until the sixtieth (60th) day after the date of his/her discharge.

04.04.00 Owner-Operator. Whenever "Owner-Operator" is used in this Section, it means Operating Engineer Equipment Operator-Employee only and does not apply to a Heavy Duty Repairman/Welder or a Lubrication and Service Engineer or equipment (generators, welding machines, fixed drills, lathes, pickup trucks, grease trucks, lube trucks or trucks and trailers) used by them or either of them and necessary or advisable for the performance of any work of a Heavy Duty Repairman/Welder or Lubrication and Service Engineer. With respect to the classifications and equipment above excluded from this Owner-Operator clause, no such equipment shall be used on any job or project if such equipment is owned, rented, or leased by the Employee using such equipment or by a member of his immediate family.

04.04.01 This Section shall only apply to an Owner-Operator who has legal or equitable title to his or her equipment and who personally operates that equipment in the performance of his or her work.

04.04.02 This Section shall not apply to any other form of business entity, partnerships, limited partnerships, corporations, joint ventures, etc.

04.04.03 Any other business entity shall be subject to Section 05.00.00 *APPLICATION TO SUBCONTRACTORS*.

04.04.04 Any Owner-Operator who is a member of the Union in good standing and who possesses a valid contractor's license shall have the option of electing, in writing, not to be placed on the Individual Employer's payroll. If the Owner-

Operator elects not to go on the payroll, the Individual Employer shall pay into the Pensioned Health and Welfare and Affirmative Action Trust Funds at the required contribution rates. The Individual Employer shall notify the Union of the option selected. Each of the Funds agrees to defend the legality of this Subsection in any action to which it is a party. Each of the parties to this Agreement specifically agrees to join in the defense of any action brought by any person or entity claiming that this Subsection is unlawful.

04.04.05 Any Owner-Operator who is not a member in good standing of the Union shall be on the payroll of the Individual Employer with full fringes being paid from the first (1st) day of employment.

04.04.06 The Individual Employer may not circumvent the provisions of this Section by utilizing Section 05.00.00, *APPLICATION TO SUBCONTRACTORS*, to subcontract to operators of individually-owned and manned pieces of equipment. In the event that occurs, the Individual Employer shall be liable for full fringes plus twenty-five percent (25%).

04.04.07 Owner-Operators shall not be subject to the provisions of Sections 04.06.00 through 04.12.00 or be considered an Employee for the purposes of 04.10.24[ii] of the Job Placement Regulations of this Agreement, provided the Job Placement Center servicing the job or project shall be notified of the name, address and Social Security Number of the Owner-Operator within twenty-four (24) hours after the Owner-Operator reports for work regardless of how long he works.

04.04.08 In the event an Individual Employer has failed to notify the Job Placement Center servicing the job or project of the name, address and Social Security Number of the Owner-Operator within twenty-four (24) hours after the Owner-Operator has reported for work to said Individual Employer, and said Individual Employer is subsequently found by audit or otherwise to have violated any of the Owner-Operator provisions of Section 04.00.00 resulting in the failure to pay wages and/or fringes under this Agreement, such Individual Employer's liability under Section 18.04.00 shall be for the payment of an amount equal to the wages, straight time and overtime, and fringe benefits that would have been paid by the Individual Employer but for the violation plus twenty-five percent (25%). Such liability shall be for not more than the sixty (60)-day period prior to written notification by the Union to the Individual Employer and Employer notwithstanding any other provision of said Section 18.04.00. Provided, however, if said Individual Employer can establish from records maintained in the normal course of business that the Job Placement Center has received the required twenty-four (24)-hour notice and is subsequently found to be in violation, the Individual Employer's liability for payment under Section 18.04.00 shall be limited to fringe benefits only for not more than the sixty (60)-day period prior to written notification by the Union to the Individual Employer and the Employer. Of the liquidated damages provided for in this Section, an amount equal to the amount of the fringe benefits, if any, that should have been paid but were not, shall be credited to the Owner-Operator; the balance shall be paid into the Operating Engineers' Pre-Apprentice, Apprentice and Journeyman Affirmative Action Training Fund.

04.04.09 The Individual Employer who utilizes an Owner-Operator shall provide, upon the request of any authorized agent of the Union, copies or original records made reflecting the hours worked, equipment used, and payments made by the Individual Employer to the Owner-Operator and on the Owner-Operator's behalf.

04.04.10 The Individual Employer expressly reserves the right to control the details of the manner, time and means by which the Owner-Operator performs his/her services, as well as the ends to be accomplished, and shall be the sole judge of the capability of the Owner-Operator's equipment to perform the work required to be performed, and may, if the Individual Employer determined that the Owner-Operator's equipment is not capable of performing the work required to be performed, terminate such Owner-Operator's services. Failure to work the day or half-day out as directed shall terminate the Owner-Operator's employment, and he shall be paid only for actual time worked prior to such failure. The Individual Employer shall not pay for time spent by the Owner-Operator in repairing, servicing or maintaining his equipment after termination of employment, or before or after his shift, as the case may be.

04.04.11 Any Owner-Operator who employs Operating Engineers under a subcontract with an Individual Employer signatory to a collective bargaining agreement with the Union shall comply with the terms of Section 05.00.00.

04.04.12 If an Owner-Operator who meets the criteria set forth in 04.04.04 above elects not to go on the payroll of the Individual Employer, the parties agree that the Owner-Operator shall be compensated in an amount equal to the total hourly compensation rate that would have been paid an Employee of the Individual Employer performing similar work plus a reasonable rate for rental of the Owner-Operator's equipment. For the purpose of this provision, the total hourly compensation rate referenced above shall include the applicable wage rate plus the amount that would have been contributed on an Employee's behalf to the Pension Trust Fund, Health and Welfare Trust Fund and Operating Engineers Local Union No. 3 Vacation, Holiday and Sick Pay Trust Fund.

04.04.13 Any Owner-Operator who has elected to go on the payroll of the Individual Employer shall be governed by the terms of this Agreement as written, and each such Owner-Operator must specifically waive any claim of exemption from any provision of said Agreement based upon an assertion of independent contractor status. Any Owner-Operator member who elects to not go on the payroll must waive any claim of Employee status and rights under 29 United States Code 157.

04.04.14 Compensation for the equipment shall be by check for the full amount due, less any agreed advances. A statement of any charges by the Individual Employer shall be issued at the same time.

04.04.15 The Owner-Operator shall provide and have sole responsibility for fuel, oil, grease, tires, tubes, repairs, and any other items necessary to operate his equipment. He/she shall have complete freedom to purchase any such items at any place where efficient service and satisfactory products can be obtained at the most favorable prices.

04.04.16 There shall be no interest or handling charge on earned money advanced prior to the regular payday.

04.04.17 The provisions of this Section have been negotiated and agreed upon by and between the parties for the objects and purposes expressed in 04.04.19. The parties have not undertaken to negotiate for the Owner-Operator-Employees any profit whatsoever for the leasing and rental of the equipment they operate. On the contrary, compensation for the equipment shall be set by agreement between the Individual Employer and the Owner-Operator at a level which will not circumvent or defeat the payment of wages and fringe benefit payments and conditions of any Employee covered by this Agreement.

04.04.18 There shall be no reductions by reason of the signing of this Agreement where the present basis of payment is more favorable to the Owner-Operator than the basis provided for herein.

04.04.19 It is further mutually understood and agreed that the intent of this Section is to assure the payment of wages, subsistence and fringe benefit payments and the observance of the conditions provided in this Agreement, and to prohibit the making and carrying out of any plan, scheme or device to circumvent or defeat the payment of wages, subsistence and fringe benefit payments and the observance of the conditions provided in this Master Agreement.

04.04.20 It is further agreed that the Individual Employer will not devise or put into operation any scheme, whether herein enumerated or not, to defeat the terms of this Section of this Agreement, nor shall any Owner-Operator's arrangement with an Individual Employer be entered into for the purpose of depriving any other Employee of employment. In the event that the Individual Employer has available equipment on the job during the period of the repair of the Owner-Operator's equipment, and for a period not to exceed two (2) shifts and so long as no other Employee is laid off to provide work for such equipment, an Owner-Operator may be assigned to operate equipment not furnished by him, but except under such circumstances the Owner-Operator shall be exclusively assigned to the equipment furnished by him.

04.04.21 Reckoning of time on an Owner-Operator's last day of employment shall be as follows: All time worked during the first (1st) four (4) hours shall be reckoned by the half-shift. All time worked beyond the first four (4) consecutive hours shall be reckoned by the hour.

04.04.22 Notwithstanding any other provision of this Agreement, an Owner-Operator who has worked as an employee (or as an Employee) shall be subject to 04.02.00 after seven (7) days' employment by the Employer and/or

one (1) or more Individual Employers. No Owner-Operator shall have any right to enforce this Agreement by grievance, arbitration or otherwise until he has been placed on the payroll of an Individual Employer as an Employee.

05.00.00 APPLICATION TO SUBCONTRACTORS

05.01.00 The purpose and intent of this Section is to preserve and protect employment opportunities and terms and conditions of employment of all Employees covered by this Agreement to the maximum extent permitted by law.

05.02.00 No on-site work covered by this Agreement which historically has been performed by the Individual Employer, or by the industry if the Individual Employer has no such history, on the site of a job or project shall be performed off the site of a job or project.

05.03.00 Definition of Subcontractor. A Subcontractor is defined as any person (other than an Employee covered by this Agreement or an individual Owner-Operator [unless Owner-Operator is employing Employees]), firm or corporation who agrees orally or in writing, to perform, or who in fact performs for, or on behalf of, an Individual Employer, any part or portion of the work covered by this Agreement as defined in Section 02.05.00.

05.04.00 On-Site Work. With respect to on-site work covered by this Agreement, that is, work done or to be done at the site of the construction, alteration, painting or repair of a building, structure or other work:

05.04.01 The terms and conditions of this Agreement insofar as it affects Employer and the Individual Employer shall apply equally to any Subcontractor of any tier under the control of, or working under oral or written contract with such Individual Employer on any on-site work covered by this Agreement, and said Subcontractor with respect to such on-site work shall be considered the same as an Individual Employer covered hereby.

05.04.02 That if an Individual Employer shall subcontract on-site work as herein defined in Section 02.05.00, such Subcontractor shall state in writing that such Subcontractor agrees to be bound by and comply with the terms and provisions of this Agreement in the performance of his/her subcontract and agrees to execute a subcontracting terms and conditions Agreement as provided in Attachment "A" of this Agreement.

05.04.03 Subsections 05.04.01 and 05.04.02 shall not apply to Subcontractors who perform landscape work, wood fencing, wood retaining walls, slurry seal, striping, hydro seeders, straw blowing, silt fencing and/or hay baling if the Non-Signatory Subcontractor who performs such work submits a bid which is more than twenty percent (20%) lower than a signatory Subcontractor's bid or no Signatory Subcontractor submits a bid. This provision is applicable only if the Individual Employer solicits bids from Signatory Subcontractors.

05.05.00 Regardless of anything in this Agreement to the contrary, no on-site work covered by this Agreement of a Heavy Duty Repairman or a Lubrication or Service Engineer or an Employee who operates or maintains the following equipment — generators or welding machines or uses in the performance of his work fixed drills, lathes, pickup trucks, grease trucks, lube trucks and trailers or any or all of them — will be subcontracted to any person or Individual if such person or individual performs any such work.

05.06.00 The Individual Employer shall provide a list of Subcontractors who will perform unit work under this Agreement as set forth in Section 02.05.00 where the subcontract amount is over \$25,000. Notice at a pre-job conference will satisfy the requirements of this Section. Furthermore, the Individual Employer shall provide written notice prior to the commencement of work by the Subcontractor of any such subcontract entered into subsequent to a pre-job conference with a Subcontractor who will perform unit work under this Agreement as set forth in Section 02.05.00. Any Individual Employer who has given such notice and requires the subcontractor to agree to comply with and observe the provisions of Subsection 05.04.00 hereof with respect to the jobsite work shall not be liable for any delinquency by such Subcontractor in the payment of any wages, fringe benefits or contributions provided herein except as hereinafter provided.

05.06.01 In the event the Union questions compliance by a Subcontractor with the provisions of this Section, the Union shall so notify the Employer, the Individual Employer and Subcontractor in writing, and the Subcontractor shall furnish to the Union within fifteen (15) days, a written itemized record of all pertinent information. Additionally, where itemized payroll records are required for submission to public contractor agencies on behalf of Subcontractors, the Subcontractors shall furnish copies of such submission to the Union upon written request. If the Subcontractor refuses, the Individual Employer shall cause the Subcontractor to supply the information. The provisions of this Section shall not be applicable if the Subcontractor is an Individual Employer signatory to this Agreement.

05.06.02 If any Subcontractor shall become delinquent in the payment or meeting of the obligations set forth in 05.00.00, the Union shall promptly give written notice thereof to the Individual Employer and Subcontractor specifying the nature and amount of such delinquency as nearly as can be ascertained. If such notice is given, the Individual Employer shall withhold the amount claimed to be delinquent out of any sums due and owing by the Individual Employer to such Subcontractor and shall pay and satisfy therefrom the amount of such delinquency by such subcontractor. Any dispute as to the existence or amount of such delinquency shall be settled as provided in Section 18.00.00 hereof and if the Subcontractor is found in violation, the Individual Employer shall be obligated to pay the amount determined to be due, including liquidated damages as described above, out of the money so withheld from the Subcontractor, into the Operating Engineers and Participating Employers Pre-Apprentice, Apprentice, and Journeyman Affirmative Action Training Fund.

05.06.03 The Individual Employer shall not be liable for any such delinquency when in compliance with Section 05.04.02.

05.07.00 Unless a Subcontractor is an Individual Employer signatory to this Agreement, the subcontracting Terms and Conditions Agreement required by 05.04.02 shall not cover any other jobs or projects of the Subcontractor, and the application of the subcontracting Terms and Conditions Agreement to the Subcontractor pursuant to these provisions shall terminate contemporaneously with the termination of such subcontract with the Individual Employer.

05.08.00 In the event bid specifications contain MBE/DBE/WBE/DVBE requirements, upon request, the Union will meet with the Individual Employer with the primary intent of assisting the Individual Employer in fulfilling the legal requirements of said bid specifications.

06.00.00 WORKING RULES

06.01.00 Five consecutive days of eight (8) consecutive hours (exclusive of meal period) for single or first shift Employees, and seven and one-half (7-1/2) consecutive hours (exclusive of meal period) for second shift Employees, and seven (7) consecutive hours (exclusive of meal period) for third shift Employees, Monday through Friday inclusive, shall constitute a week's work.

06.01.01 Four (4) by Ten (10) Workweek. To the extent permitted by law, an Individual Employer, may establish a four (4) by ten (10) hour workweek, Monday through Friday, provided all other crafts employed by the Individual Employer on the job are performing work on the same basis. It is further provided, however, that the normal workweek under this provision shall be Monday through Thursday, unless bid specifications require otherwise, and any modification of said Monday through Thursday workweek is established prior to starting the job or project. In the event that work cannot be performed Monday through Friday because of inclement weather shut down, a holiday or major mechanical breakdown or shortage of materials beyond the control of the Individual Employer, Friday or Saturday may be scheduled as a workday and Employees paid at the applicable straight-time rate. Overtime shall be paid as provided in this Agreement except that overtime shall be paid for all work performed over ten (10) hours or before a shift begins. The overtime provisions of this Agreement applicable to Saturdays, Sundays and holidays shall apply to this Section. On shift work, i.e.; a two (2)-shift operation, the provisions of this Agreement applicable to shift work shall apply consistent with the ten (10)-hour day.

Plants and Shops. To the extent permitted by law, a four (4) by ten (10) hour workweek may apply to plants or shops, Monday through Friday upon mutual agreement of a majority of Employees at each plant or shop, the Individual Employer and the Union.

The workweek may commence on Monday and Tuesday unless otherwise agreed to by the Employees, the Individual Employer and the Union. Any four (4) by ten (10) hour workweek established shall be four (4) consecutive days.

06.01.02 Monday through Saturday. To the extent permitted by law, Saturday work may be performed at straight-time rates in the event of time lost during the workweek due to one or more of the following conditions: inclement weather, major mechanical breakdown or shortage of materials beyond the control of the Individual Employer, provided the total straight-time hours worked by any Employee in any one (1) week including Saturday make-up work, shall not exceed forty (40) hours. Saturday make-up work shall be performed on a voluntary basis only, and no Employee shall be discharged or otherwise disciplined for his/her refusal to perform such work.

06.01.03 The above Section shall not apply when working in conjunction with and/or in support of another craft employed by the Individual Employer and receiving overtime for Saturday work. Where such other craft is receiving overtime, the Employees covered by this Agreement shall be compensated on the same basis.

06.02.00 Not less than one-half (1/2) of a shift or a full shift from May 1st through October 31st and not less than one-half (1/2) of a shift, three-quarters (3/4) of a shift or a full shift from November 1st through April 30th at the applicable rate shall be paid for the work performed on any one (1) shift subject to Section 06.22.00 of this Section. However, on the first (1st) day of employment; on jobs of less than one (1) day's duration; on the last day of the job; and on any day that the work on a job or project is suspended on account of weather conditions, by written order of the Contracting Authority, or by any Governmental agency having the authority to suspend the work, by the unavailability of fuel, power or water, and on days on which there is a major mechanical breakdown (i.e., Employees directly affected by such breakdown), not less than four (4) hours at the applicable rate shall be paid for work performed and any time thereafter shall be reckoned by the hour.

06.03.00 Reckoning of Time. Straight-time hours of employment shall be reckoned by the half (1/2) shift and the full shift from May 1st through October 31st and by the half (1/2) shift, three-quarters (3/4) shift and the full shift from November 1st through April 30th except as otherwise provided in Section 06.02.00 above. Overtime hours of employment before and after a shift shall be reckoned by the hour and half-hour at the applicable overtime rate. Overtime on Saturdays, Sundays or holidays shall be reckoned as provided in Section 06.22.00. If an Employee quits work on his/her own, he/she shall be paid only for actual time worked.

06.03.01 Provided, however, in cases of emergency, Employees called out to work "the second half of the shift" during the normal straight-time hours shall receive not less than four (4) hours at the applicable overtime rate.

06.03.02 Employees who work on a chip seal job shall be paid not less than four (4) hours at the applicable rate. Work performed in excess of four (4) hours up to a full shift shall be reckoned by the hour.

06.04.00 On a single shift, eight (8) consecutive hours or ten (10) consecutive hours (exclusive of meal period) shall constitute a shift's work; the regular starting times of the single shift shall be between 5:00 a.m. and 10:00 a.m. An earlier or later starting time may be established by agreement between the Union and the Individual Employer. The Individual Employer may, by mutual agreement with the Union, stagger individual crews starting times at the Employee's regular rate of pay within the regular established starting times of this Section. There shall be no more than two (2) staggered start times on any Project and no more than one (1) hour between the staggered start times. The Individual Employer shall not engage in any scheme, device or subterfuge to circumvent Sections 06.04.01 and/or 06.14.01, including, but not limited to changing Employees from one piece of equipment to another, or from one assignment to another, moving equipment and/or Employees from one work site to another, or using a different piece of equipment to perform the work.

06.04.01 The Heavy Duty Repairman and/or Welder performing a particular heavy duty repair assignment shall be given the first choice to perform the assignment before or after the shift.

06.04.02 *Paving, Soil Stabilization or Pipelaying Crews only.* The regular starting times of the single shift shall be between 5:00 a.m. and 10:00 a.m.

06.04.03 *Special Single Shift.* When the Individual Employer produces evidence in writing to the Union of a bona fide job requirement for a public agency or a public utility which certifies that some or all of the work can only be done other than during the normal shift hours, and notifies the Union during the pre-job conference or by FAX, E-MAIL, or certified mail at least three (3) days before the start of such special shift (except in the case of emergency), the Individual Employer may initiate such special shift of eight (8) consecutive hours (not in conjunction with any other shift) (exclusive of meal period), Monday through Friday.

Such shift shall be in accordance with the provisions of Section 06.02.00.

1. Provided, however, if, by direction of the Contracting Authority, the bid specifications require it, or congestive traffic conditions on Fridays are such that working conditions would be unsafe for Employees, or counter-productive to the performance of work, the special single shift may commence on Sunday with double (2) time to be paid from 8:00 p.m. Saturday up to and including 8:00 p.m. Sunday and the applicable straight-time rate paid from 8:00 p.m. Sunday until completion of the eight(8)-hour special single shift. If Sunday is the first day of the workweek as provided herein, all hours worked between 8:00 p.m. Friday and 8:00 p.m. Saturday shall be paid at time and one-half (1-1/2).
2. Flexible starting times shall be permitted for crews on a special single shift whenever an Operating Engineer Foreman is employed on the special single shift.

06.04.04 Employee's straight-time rate shall be the applicable wage rate set forth in 01.03.00, 01.03.01, 01.03.02, 01.03.03, 01.03.06 and 01.04.00 for Special Single Shift work.

06.04.05 For the purposes of this Section Saturday shall begin at the close of the regularly established shift on Friday.

06.04.06 *Special Service and Maintenance Shift.* Upon written notice to the Union, an Individual Employer may initiate a special service and maintenance shift (not to include heavy duty repair) other than during the normal shift hours. The Employees' straight-time wage rate for all work on such special service and maintenance shift shall be the applicable wage rate set forth in Group 4 of this Agreement. For the purpose of this Section, changing filters and belts and making minor adjustments are not considered to be heavy duty repair.

Once an Individual Employer has established a starting time for a special service and maintenance shift, it shall not be changed except by mutual consent of the Union and the Individual Employer.

06.05.00 When two (2) shifts are employed for five (5) or more consecutive days (or less if by mutual written agreement), eight (8) consecutive hours (exclusive of meal period) shall constitute a shift's work for the first shift, for which eight (8) hours shall be paid; and eight (8) consecutive hours (exclusive of meal period) shall constitute a shift's work for the second (2) shift, for which eight (8) hours shall be paid, at the Second Shift Wage Rates set forth in Section 01.03.00. Such shifts shall run consecutively. The straight-time hours for the second shift shall commence not later than three (3) hours after the end of work (either straight time or regularly scheduled overtime) on the first shift. On two-shift operations, the first shift shall have regular starting time not earlier than 6:00 a.m., and not later than 8:00 a.m. Once such two-shift operation and starting time have been established, they shall not be terminated other than on a Friday (except upon completion of the job), provided that the starting times may be changed by mutual consent. Shift hours and the applicable straight-time or overtime rate shall be paid whenever shifts are worked under the above conditions including Saturdays, Sundays and holidays.

NOTE: A wage rate by Group is established for second (2nd) shift. Second Shift Wage Rates for Groups 1–8A, Steel Erection and Piledriving are set forth in Sections 01.03.00, 01.03.01, 01.03.02, 01.03.06 and 01.04.00 and will be paid on the basis of eight (8) hours' work for eight (8) hours' pay.

06.06.00 When three (3) shifts are employed for five (5) or more consecutive days (or less if by mutual written agreement), the first shift of the day shall work eight (8) consecutive hours (exclusive of meal period), for which eight (8) hours shall be paid. The second shift shall work seven and one-half (7-1/2) consecutive hours (exclusive of meal period) for which eight (8) hours shall be paid, and the third shift shall work seven (7) consecutive hours (exclusive of meal period) for which eight (8) hours shall be paid. Such shifts shall run consecutively. The straight-time hours for the third shift shall commence not earlier than the end of work and not later than one (1) hour after the end of work (either straight time or regularly scheduled overtime) on the second shift. On three-shift operations, the first shift of the day and of the workweek shall start at 8:00 a.m. Monday, and such workweek shall end with the closing of the third or graveyard shift Friday or at 8:00 a.m. Saturday, whichever is earlier, and 8:00 a.m. Monday shall be compensated for at the applicable overtime rate.

Once established, shift rate shall apply on all work thereafter, including Saturdays, Sundays and holidays. Once such three-shift operations have been established they shall not be terminated other than on a Friday (except upon completion of the job).

06.07.00 On a single- and two-shift operation, Saturday shall be the twenty-four-hour period commencing at 12:00 midnight Friday or at the close of the regularly scheduled second shift, whichever is later. On a three-shift operation, Saturday shall run from the close of Friday's third or graveyard shift to 8:00 a.m. Sunday.

06.07.01 On a single- and two-shift operation, Sunday shall be the twenty-four-hour period commencing at 12:00 midnight Saturday or at the close of the regularly scheduled second shift, whichever is later. On a three-shift operation, Sunday shall run from 8:00 a.m. Sunday to 8:00 a.m. Monday.

06.07.02 The straight-time starting time for Employees on each shift shall be the same for all Employees employed on that shift.

06.08.00 On "multiple-shift operations" (a two[2]- and/or three[3]- shift job), in addition to the two and/or three shifts, a single shift of eight (8) consecutive hours (exclusive of meal period) may be established, provided it is for five (5) or more consecutive days and has its own Operating Engineer Foreman where required, or if a Foreman is not required, is under separate supervision and further provided that on a two- or three-shift job such single shift is not related to and is not in conjunction with the work on the two- or three-shift operation. The regular starting time of such single shift shall be between 6:00 a.m. and 8:00 a.m.; provided, however, once such starting time has been established on a job or project, it shall not be changed except by mutual consent of the Union and the Individual Employer.

06.09.00 In the case of a multiple-shift operation, in no event shall the number of Employees on a second (2nd) or third (3rd) shift exceed the number of Employees on the first (1st) shift by more than fifty percent (50%). The foregoing may be modified by mutual agreement of the Union and an Individual Employer.

06.10.00 On multiple-shift operations, no shift shall work more than ten (10) hours, except in the event of an on-the-job emergency.

06.11.00 No single-shift Employee shall relieve a multiple-shift Employee, and no multiple-shift Employee shall relieve a single-shift Employee.

06.12.00 In the case of a multiple-shift operation, the Individual Employer will endeavor to fairly distribute overtime work on Saturdays, Sundays or holidays.

06.13.00 For the purposes of establishing shift operations, the Employees of the Individual Employer and the Employees of any Subcontractor or other Individual Employer shall be considered separately.