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 5 OF 6

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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,

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.

Case No. 5:18-cv-06761-BLF
CLASS ACTION

Declaration of Mark Garcia in Support of Opposition to Motion for Partial Summary Judgment

Date: April 8, 2021
Time: 9:00 a.m.
Crtrm: 3

I, Mark Garcia, declare:

1. I have personal knowledge of the following facts.

2. I was employed at the California Flats Solar Project ("Solar Site") by Sachs Electric Company for Phase 1 as a CW 5 starting June of 2017 until March of 2018. I was then hired by CSI for Phase 2 as a CW 6 for about 10 months.

NEW HIRE ORIENTATION AND WORKER MEETINGS

3. I was told by CSI management that all workers were required to attend a new hire orientation that was conducted by personnel from CSI. I attended one of those orientations.

4. At the Solar Site, there were also many other worker meetings that included safety meetings, monthly all-hands meetings, and other meetings. These meetings were conducted by a combination of personnel from CSI and other contractors.

5. At these meetings, the other workers and I were told about the Solar Site rules including the rules of the Access Road and the rules of the mandatory security entrance and exit process at the Phase 2 Security Gate.

6. At these meetings, the workers and I were told that we were required to follow all the rules of the Solar Site. While I worked on the Solar Site, I always tried to follow the rules and I observed other workers following the rules.

7. The CSI management people who conducted the worker meetings throughout the project included CSI executives, safety people, general foreman, and superintendents.

THE SOLAR SITE AND SECURITY GATE

8. The Solar Site consisted of a large area of land surrounded by a fence with a Security Gate. During Phase 1, the Security Gate was located near the intersection of Turkey Flats Road and Highway 41. During the time that I worked for CSI on Phase 2 of the project, the Phase 2 Security Gate had been moved from the previous Phase 1 location and was about a 10 to 15-minute drive from the parking lots. Prior to the creation of the Phase 2 Security Gate, the Phase 1 Security Gate was about a 30-minute drive. Sometimes the drives from the parking lots to the Phase 1 and Phase 2 Security Gates were even longer.

9. I was told by CSI management (including my foreman Daniel Jimenez), for Phase 2 that the first place the other CSI workers and I were required to be at the beginning of the day in order to work was the Phase 2 Security Gate to line up and go through the mandatory entrance security process and drive on the Access Road to the parking lots.

10. I was told by CSI management during my orientation that the Phase 2 Security Gate was the only entrance to the Solar Site that we could use to work on the Solar Site. After we passed through the Phase 2 Security Gate, we then traveled along a long, rough, private road to get to the parking lots where we parked our vehicles.

11. This mandatory entrance and exit security process at the Phase 2 Security Gate included waiting in line for up to 20 minutes because the Security Gate configuration and the security process caused a bottlenecked, long line of worker vehicles attempting to enter and exit the Solar Site each day depending on your place in line or the time that you arrived. The wait to exit the Solar Site through the Phase 2 Security Gate normally took longer because virtually all of the workers on the Solar Site were attempting to leave at the same time. This created a long line and a lot of waiting time.

12. From the time that the other CSI workers and I entered through the Phase 2 Security Gate at the beginning of the day through the time that we left the Solar Site through the Phase 2 Security Gate at the end of the day, we were subject to a broad range of job Solar Site rules and restrictions and were monitored for our compliance with such rules and restrictions. During this time, the other CSI workers and I could not effectively use this time for our own purposes.

13. I was not paid for the time it took me to wait in the long line of vehicles and pass through the security process at the Phase 2 Security Gate to enter and exit the Solar Site each day.

THE MANDATORY SECURITY ENTRANCE AND EXIT PROCESS

14. To work at the Solar Site, the first place the other CSI workers and I were required to be at the beginning of the day was the Phase 2 Security Gate to line up and go through the mandatory entrance security process and drive on the Access Road to the parking lots of the Solar Site. The

worker security badges that were part of the mandatory security entrance and exit process contained the picture and name of the worker and the company name on them.

15. At my new hire orientation and at CSI meetings, I was told by CSI management and my foreman Daniel Jimenez that we workers could not go beyond the Phase 2 Security Gate where the security process occurred without our security badges and without being scanned in or scanned out through the mandatory security process. I was told that if a worker forgot or lost his or her security badge, the worker could not enter the Solar Site without special permission.

16. At my new hire orientation and at CSI meetings, I was told by CSI management that once we entered the Solar Site through the Phase 2 Security Gate where the security process occurred, we always had to have our badges so at the end of the day we could be scanned out through the mandatory security exit process.

17. At the Phase 2 Security Gate where the security process occurred, there was normally one and sometimes two security guards who conducted the mandatory security entrance process for us workers and our vehicles. Almost all the time, there was only one lane of traffic being processed by the security guard to enter or exit the Solar Site.

18. To conduct the mandatory entrance and exit security process, the security guard or guards would stop each vehicle to check for security badges of the passengers or check for other information if the vehicle was a vendor vehicle. They required buses to stop, so if you got stuck behind a bus, it would take you much longer to get through the security process.

19. For both entering and exiting the Solar Site, when there were two security guards inspecting and scanning in security badges, the security guards would each stand on a side of the vehicle to inspect and scan in security badges.

20. For both entering and exiting the Solar Site, the security guards required each vehicle to stop at the Phase 2 Security Gate where the security process occurred so that each passenger could be checked. The passengers in the vehicles would roll down their windows and hand the security badges to the security guard for inspection and scanning. The number of security badges in each vehicle was required to match the number of passengers in each vehicle. The security guards

would then scan each worker's security badge in each vehicle before letting them pass through the Phase 2 Security Gate.

21. At the Phase 2 Security Gate, there was always a long line of vehicles waiting to enter. The mandatory security entrance process was conducted one vehicle at a time using the same procedure. In the morning, there were worker vehicles and buses waiting in line to go through the Phase 2 Security Gate.

22. For both entering and exiting the Solar Site, sometimes the drivers would present all of the badges to the security guard at once. Other times they did not, and the security guards would go to each window of the vehicle where the passengers were sitting and inspect and scan their security badges. Each security badge was inspected and scanned individually by the security guards.

23. For both entering and exiting the Solar Site through the Security Gate where the security process occurred, if passengers in a vehicle did not have security badges, the security guards would pull the vehicle out of line, would make the vehicle park on the side of the road, and would require any passengers who did not have their scan-in badges to go into the guard shack to be cleared to enter or exit the Solar Site.

24. Once any passengers who did not have security badges were cleared to pass through the Security Gate and received a visitor's badge, the vehicle was allowed to get back in line and proceed on the Access Road. Sometimes, they would call your foreman before giving a visitors' badge and letting you go back inside the Solar Site.

25. The same kind of long line of vehicles also occurred on the way out of the Phase 2 Security Gate (where the security process occurred) at the end of the day. This mandatory exit security process included waiting in line, which could take up to anywhere between 10 to 20 minutes or more because of the Security Gate's bottlenecked configuration and long line of the workers attempting to leave the Solar Site at the end of the day and the inspection and scanning of employees' badges by the security guards. My time in line depended on where my place in line was and other factors – for example, if there were cattle in the middle of the road. We workers

were told by CSI management that we could not force the cattle off the road and had to wait for the cattle to pass.

26. I was told by CSI management at my orientation that as part of the security entrance and exit process, the security guards had the right to look inside and search any worker vehicle at any time. There was also a sign on the Solar Site that said any vehicle on their property is subject to search and seizure. We were told that we were subject to being searched if the security guards thought a worker might be stealing tools or supplies.

27. I have seen the security guards search a vehicle during the security process at the guard shack.

28. During the time that I was waiting in the lines to go through the security process to exit the Solar Site and going through all the steps of the security process to exit the Solar Site, I believed that I was, and actually was, restricted by, confined by, and under the control of CSI. During these periods of time, I was confined to the Solar Site and to the vehicle in which I was riding and could not run errands outside of the Solar Site, could not go somewhere to get something to eat, and could not do other things that I could normally do if I were not restricted by, confined by or controlled by the long lines and security process to exit the Solar Site.

RULES ABOUT NOT BEING ON THE SOLAR SITE BEFORE SUNRISE AND UNTIL THE BIOLOGISTS CLEARED THE SOLAR SITE

29. We were told the time at which the Solar Site was scheduled to open and were periodically updated about any changes to the scheduled opening times. We were told that we were not allowed to enter the Solar Site until the sun had come up and the biologists had cleared the Solar Site to be opened and had added barricades if endangered species were near the roadway or wait for the water trucks to wet the roadway for dust control. We would then proceed to the Phase 2 Security Gate where the security and badging process took place.

THE ACCESS ROAD

30. I was told by CSI management that they wanted all workers to drive vehicles on the Access Road. There was no possible way to walk or ride a bicycle from the Phase 2 Security Gate to the parking lots in the morning and get to work on time or to get from the parking lots to the Security

Gate on time at the end of the day because workers were restricted as to when we were allowed to be on the Solar Site.

31. Solar Site management also monitored us while we were driving on the Access Road. I remember seeing CSI personnel on the Access Road who were monitoring the behavior of workers while they were driving on the road. I also observed speed monitors alongside the road, especially near kitfox dens, and environmentalist patrolling the road.

32. I was told by CSI personnel at my orientation that from the time that we workers went through the Phase 2 Security Gate in the morning until we went out of them at the end of the workday, we were subject to all the Solar Site's rules, including the rules relating to the Access Road, and could be suspended or terminated for violating them and that all workers were being watched carefully while we were on the Solar Site and the Access Road

33. I was also told about specific "rules of the road" that applied to the Access Road. These rules were in addition to signs that were posted before and after we went through the mandatory security entrance process and went through the Phase 2 Security Gate. As problems would arise, the foreman would reiterate certain rules the morning after. For example, if someone was caught speeding, the speeding would be reiterated in the morning meeting the day after.

34. At my new hire orientation, we were told by CSI management that we were subject to having our bodies, personal property and vehicle searched by CSI and other Solar Site management at any time while inside the Phase 2 Security Gate or on the Access Road. We were also told that we were subject to drug and alcohol testing at any time while inside the Security Gates or on the Access Road.

35. From the time that I entered the Phase 2 Security Gate in the morning until I exited the Security Gates at the end of the day, I believed that I was, and was, under the control of CSI because of the job Solar Site rules that we were subject to, because of how much CSI warned us about them and how the rules were being enforced.

36. There were many rules that we were told by CSI and Solar Site management that we had to follow, including those discussed below.

INSTRUCTION SIGNS

37. There were signs along the Turkey Flats road and around the Security Gates displaying a number of instructions. At my new hire orientation and at worker meetings, we were told by CSI management that we had to obey the instructions on the signs of the Solar Site. I recall that these instructions, among other things, included things like:

- be prepared to wear PPE (Personal Protective Equipment) beyond this point;
- 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; and
- no firearms.

38. At my new hire orientation and at worker meetings, we were told by CSI 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 Phase 2 Security Gate in the morning until the time that we left the Security Gate at the end of the day.

RULES ABOUT SPEEDING ON THE ACCESS ROAD

39. I recall that there were speed limits signs with speed limits between 5 and 15 miles per hour posted on the Access Road. At my new hire orientation and at worker meetings, we were told by CSI management that they were monitoring our activities and the speeds of vehicles on the Access Road. We were told that there were speed radar machines installed along the Access Road. At least one of these radar machines was located on the Access Road 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. We were told that if we violated the speed limits or "rules of the road" or other job Solar Site rules, we could be suspended or terminated.

40. At times on the 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.

RULES ABOUT PASSING ON THE ROAD

41. During our drive on the 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 CSI management that we were not allowed to go above the speed limit or 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 ACCESS ROAD

42. The Access Road was a long, rough dirt road that was very difficult to drive on and very hard on vehicles. Along the Access Road, there were several steel cattle grids that we were required to drive over. Cattle grazed along the Access Road and would frequently be very near or on the road and they interfered with the ability of vehicles to travel on the road.

43. At the new hire orientation and at worker meetings, we were told by CSI management that we were not allowed to disturb the cattle or local wildlife in any way while we were driving on the Access Road. We were told that if we saw animals on or near the road, we had to let them do whatever they needed to do and that we were not allowed to do anything to try to get them to move off the road, such as honk our car horns. We were told that we had to slow down or stop our vehicle and just stay in our vehicles and wait for them to go away from the road. We were told that we mainly had to be careful about cattle and kit foxes, but there were also other animals that we were supposed to watch out for. The presence of animals on or around the road frequently slowed down the drive on the Access Road. Often, the environmentalist would post signs for kit fox zones on the road and a require traffic to slow down to 5 miles per hour in the zones.

44. At the new hire orientation and at worker meetings, we were told by CSI management that we were not supposed to honk our horns when we were driving on the Access Road because our horns could disturb the local wildlife and the cattle. We were also told that we could not play loud music that could be heard outside our vehicle while we were on the Access Road because the noise from the music could also disturb the local wildlife and the cattle. We were told that we were not supposed to touch or feed anything to the local wildlife or cattle on the Solar Site or along the Access Road.

RULES ABOUT CREATING DUST ON THE ACCESS ROAD

45. At the new hire orientation and at worker meetings, we were told by CSI management there were dust control rules related to the Solar Site that required the workers not to create too much dust. We were told that we could not drive on the Access Road in a way that created dust and that we needed to drive slowly if dust was being created. We were told that if we were creating dust, we were driving too fast. We were told that the Solar Site had water trucks that would spray water on the Access Road to prevent too much dust from being created by the vehicle that were driving on it. Because of this watering, the Access Road was sometimes muddy and slippery. When it was muddy and slippery, it was even slower and more difficult to drive on the Access Road. Even if the zone was a 15-mph section, if we were creating dust, we had to drive at 5 mph.

RULES ABOUT SMOKING

46. We were told that we were not allowed to smoke either inside or outside of our vehicles while we were driving on the Solar Site or Access Road or inside or outside of our vehicles in the parking lots. We were told that we could only smoke in designated smoking areas.

RULES ABOUT STAYING ON THE ACCESS ROAD

47. At my new hire orientation, we were told by CSI management that, once we were released to drive on the Access Road in the morning and at the end of the day, we had to drive directly on the Access Road to our assigned parking lot in the morning and from our assigned parking lot back to Turkey Flats Road at the end of the day and that we were to stay only on the Access

Road. We were told that although there were other intersecting roads along the Access Road, we were not permitted to go onto any of those roads.

RULES ABOUT STOPPING ON THE ACCESS ROAD

48. At my new hire orientation and in worker meetings, we were told by CSI management that we must strictly follow the "rules of the road" and keep the flow of traffic constantly moving on the Access Road. We were told that except for emergencies, we were not allowed to stop on the Access Road at any places that we were not specifically designated to stop at.

49. At my new hire orientation and at worker meetings, we were told by CSI management that if we had to get out of our vehicles for any reason, we were not allowed to go outside of the boundary fences, stakes and ribbons that ran about 15 feet or so along the sides of the Access Road. We were told that if we had to get out of our vehicles along the Access Road for any reason, we could not disturb the environment, such as trampling or disturbing any plants. We were told there were certain environmental areas that we were not supposed to stop at for any reason.

WORKERS WERE CONTROLLED BY CSI WHILE ON THE ACCESS ROAD

50. After I went through the mandatory security entrance process and while driving on the Access Road, I believed that I was, and actually was, restricted by, confined by, and under the control of CSI. During these periods of time, I was confined to Solar Site and to the vehicle in which I was riding and could not run errands outside of the Solar Site, could not go somewhere outside of the Solar Site to get something to eat, and could not do other things that I could normally do outside the Solar Site while on the Access Road.

51. I was not paid for the drive time on the Access Road or the time I spent waiting in line to go through and going through the Phase 2 Security Gate security process.

THE MANDATORY SECURITY EXIT PROCESS

52. I was told at the orientation that at the end of each workday after our work stop time, it was CSI's policy that to exit the Solar Site, all workers had to drive to the Phase 2 Security Gate (where the security process occurred) on the Access Road and wait for their turn to go through the exit security process at the Phase 2 Security Gate. We were told that when we were traveling

from the parking lots to the Phase 2 Security Gate at the end of the day, we could not pass other vehicles and had to wait in line for our turn to go through the exit security process, vehicle-by-vehicle at the Phase 2 Security Gate. We were told that when a vehicle got to the front of the line at the Phase 2 Security Gate at the end of the day, the vehicle was required to stop at the Phase 2 Security Gate (where the security process occurred) and wait until a security guard conducted the exit security process. We were told that we were required to roll down our windows and present our security identification badges for review and scanning by a security guard. We were told that all drivers and passengers in a vehicle had to do the same thing. We were told that we workers were not allowed to leave the Solar Site until we completed the exit security process at the Phase 2 Security Gate and the security guards allowed us to leave the Solar Site.

53. I was told at the Solar Site Orientation and in meetings that if a worker did not have his or her security identification badge at the time that he or she wanted to exit the Solar Site through the Phase 2 Security Gate (where the security process occurred), the worker could not exit the Solar Site and had to pull out of line and go into the security guard shack at the Security Gate to be released before being allowed to leave.

54. As I was going through the exit security process, I could see security guards looking inside my vehicle and other vehicles through the windows. When I was riding with other people and when I saw other vehicles with more than one person, I saw the security guards looking into the vehicles to see how many people were in the vehicles and confirming that the identification badges matched the people in the vehicles.

55. At the end of the day, the line waiting to get out of the Solar Site at the Phase 2 Security Gate was even longer than the line to get into the Solar Site at the Security Gate at the beginning of the day. This is because at the end of the day, hundreds of Solar Site workers would be leaving at around the same time. The work stopping time for virtually all of the CSI workers was the same and we were required to be off the Solar Site by a certain time. I observed and estimate that there were many more than 50 vehicles leaving the Solar Site around the same time each workday. Because of the number of vehicles leaving at once and because of the configuration of the Phase

2 Security Gate, the time it took me to wait in line and go through the exit security process to leave the Solar Site could be up to 20 minutes depending on where my vehicle was in line to exit. Waiting in line to go through the exit security process occurred every day I worked there.

56. I estimate that it could take up to a minute or so per vehicle, depending on the number of passengers, to go through the security exit process after we finished waiting in the long line. If a van full of people were being scanned in, then the process could take several more minutes for that vehicle alone.

57. At the Solar Site orientation and in meetings, I was told that it was CSI's policy that any workers who arrived at the Phase 2 Security Gate and attempted to exit the Solar Site through the exit security process too early at the end of the workday could be disciplined or terminated. I was also told this by fellow co-workers who worked for CSI as well.

58. While I worked for CSI, I was told by other co-workers that certain workers did in fact arrive at the Phase 2 Security Gate at the end of the workday and attempted to exit the Security Gate too early and were terminated.

59. During the time that I was waiting in line to exit the Phase 2 Security Gate(where the security process occurred) and while I was going through the exit security process, I felt that I was, and was, under CSI's control because I was confined to and could not leave the Solar Site until I went through the exit security process, I was required to follow policies, processes and rules required by CSI to exit the Solar Site through the Phase 2 Security Gate, and because I was restricted as to what I could and could not do while I waited in line for and went through the exit security process and could not use the time effectively for my own purposes. For example, while I was waiting in line and confined to the Solar Site and going through the exit security process, there was nothing that I could do other than wait in the vehicle in which I was riding to complete the process. For example, I could not do any of the following things: a) I could not pass any vehicles ahead of me, b) I could not leave the Solar Site, c) I could not run any personal errands, d) I could not leave to get something to eat, e) I could not perform any personal activities outside

of my vehicle, f) I could not move my vehicle until the security guards had let vehicles ahead of me, vehicle-by-vehicle, exit the Solar Site.

MEAL BREAK LOCATION RULES

60. I was told by CSI management and my foreman at worker meetings that CSI workers were required to stay on the job during the entire workday from the beginning of the workday to the end of the workday. I was told that workers were required to stay at our daily Installation Sites during our meal periods. We were told that we workers were required to eat our lunches at our daily Installation Solar Sites. I followed those instructions during meal periods and observed other CSI workers follow those instructions during meal periods.

61. I was never paid for the time that I was on meal breaks.

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

Dated: March 18, 2021

_____

Mark Garcia

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Attorneys for Plaintiff George Huerta

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.

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.

Case No. 5:18-cv-06761-BLF
CLASS ACTION

JOINT STIPULATION FOR ORDER MODIFYING MARCH 12, 2021 CLASS CERTIFICATION ORDER TO CONFORM TO THE AGREEMENT AT THE CLASS CERTIFICATION HEARING

The parties stipulate and request that the Court enter and an Order modifying the Court's Class Certification Order of March 12, 2021 to conform to the agreement reached at the class certification

hearing, pursuant to which the proposed classes and issues were modified in part to make it clear that the relevant Security Gate location was the location where the badging occurred. During the hearing, counsel and the Court agreed to this modification.

> THE COURT: THAT'S WHY I'M TROUBLED BY YOUR -- THAT'S WHY I'M TROUBLED THOUGH.
>
> WHEN YOU SAY -- MAYBE I MISUNDERSTOOD THIS, AND THAT WOULD BE HELPFUL TO ME. WHEN YOU SAY THE PHASE 1 SECURITY GATE, ARE YOU ONLY TALKING ABOUT IT WHEN IT WAS A BADGING STATION?
>
> MR. DION-KINDEM: YES.
>
> THE COURT: SO WHEN THE BADGING MOVED UP TO THE PHASE 2 GATE, THEN THAT TIME PERIOD IS NOT COVERED BY THIS CLASS?
>
> MR. DION-KINDEM: IT IS COVERED BY THE CLASS BECAUSE IT'S LESS THAN THE OTHER ONE.
>
> SO WHERE THE BADGING OCCURRED IS WHERE THEY HAD TO REPORT AND WHERE THEY WERE UNDER CONTROL AND WHERE THE SECURITY TIME OCCURRED.
>
> THE COURT: I GUESS I JUST REALLY WANT TO -- I'M JUST TALKING ABOUT, I GUESS IT WOULD BE NUMBER ONE FOR SECURITY TIME AND NUMBER TWO FOR TRAVEL TIME.
>
> IT SEEMS TO ME THAT ONCE PHASE 1 GATE WAS NO LONGER A BADGING STATION, THAT THE FACT THAT THERE IS A GATE IS IRRELEVANT, NOTHING IS GOING ON, THEIR EMPLOYEES JUST DRIVE THROUGH IT. THAT'S WHY I'M WONDERING, WHY DO YOU CLAIM THAT THAT IS COMPENSABLE TIME IF THERE'S NO BADGING GOING ON THERE?
>
> MR. DION-KINDEM: WELL, UNDER OUR SECURITY CLAIM, WE WOULDN'T BE CLAIMING THAT. UNDER OUR 5A CLAIM, WE WOULD SAY THEY HAD TO REPORT AT THE BADGING STATION, SO IT WOULDN'T APPLY.
>
> AND WHAT WE ARE SAYING IS, IS THAT WHEN IT WAS OCCURRING, WHEN THE BADGING WAS OCCURRING AT THE SECURITY ONE GATE, THAT WAS COMPENSABLE. WHEN IT CHANGED TO THE SECURITY TWO GATE LOCATION, IT'S COMPENSABLE FROM THAT LOCATION.
>
> THE COURT: AND THANK YOU FOR THAT.
>
> THAT'S NOT THE WAY YOU DRAFTED THIS, AND I JUST -- IT REALLY CONFUSED ME, AND SO I NEED YOU TO REDRAFT THIS. BECAUSE YOU'RE TALKING ABOUT BADGING GATE. AND THAT WOULD ACTUALLY BE -- THEN WE COULD HAVE -- I WOULDN'T CARE WHETHER IT WAS PHASE 1 OR PHASE 2, THERE WAS ONLY ONE BADGING GATE AT A TIME.
>
> MR. DION-KINDEM: OKAY.

> ***WELL, IF THAT'S THE ONLY THING THAT CONCERNS YOU, WE CAN STIPULATE ON THE RECORD RIGHT NOW THAT IT'S ONLY THE BADGING GATE. THE TIME WE ARE SEEKING IS THE BADGING GATE TIME, WHETHER IT WAS AT PHASE 1, AT THE PHASE 1 BADGING GATE, WHEN IT WAS AT PHASE 2, THE PHASE 2 BADGING GATE***.
>
> SO I DON'T KNOW THAT THERE'S A REASON TO -- IF WE CAN STIPULATE ON THE RECORD THAT THAT'S WHAT WE ARE TALKING ABOUT, I DON'T KNOW WHY YOU NEED BRIEFING ON THE WHOLE ISSUE. BUT IF THAT'S WHAT YOU WANT, I GUESS WE CAN DO IT.
>
> THE COURT: SO MR. DION-KINDEM, I REALLY WORK HARD NOT TO CHANGE YOUR CASE SO THAT IT'S NOT THE CASE YOU WANT TO TRY, SO YOU WERE VERY CLEAR, PHASE 1 SECURITY GATE, AND THAT IS A PLACE THAT NEVER MOVED. BUT I WAS UNCLEAR ON WHERE THE BADGING TOOK PLACE.
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> SO CLASS 1, YOU TALK ABOUT THE MANDATORY ENTRANCE AND EXIT SECURITY PROCESS. SO THAT'S FINE BECAUSE THAT ACTUALLY WOULD INCLUDE WHEREVER IT WAS. IT WAS CLASSES 2 AND 3, THAT YOU SPECIFIED THE PHASE 1 SECURITY GATE.
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> ***SO IF I SUBSTITUTED, IF I WERE TO DELETE, IT SAYS TRAVEL TIME -- TIME TRAVELLING FROM THE PHASE 1 SECURITY GATE AND CHANGE THAT TO, THE BADGING GATE, FOR BOTH CLASSES 2 AND 3, THAT'S THE CASE YOU WANT TO TRY***?
>
> MR. DION-KINDEM: ***YES***.
>
> THE COURT: OKAY. OKAY. I DON'T WANT TO LOP OFF DAMAGES THAT YOU WANT THE CHANCE TO PROVE.
>
> MR. DION-KINDEM: NO, THAT'S FINE.
>
> THE COURT: OKAY. ALL RIGHT. (CLASS CERTIFICATION, 19:3-21:15.)

Defense counsel agreed to this change:

> MR. CHAMMAS: YEAH, WITH THAT CONCEPT, ALTHOUGH I WOULD LIKE TO REVISIT -- ON THE CERTIFICATION QUESTIONS, I JUST HAD A CLARIFICATION. JUST ON THE CLASS 3, IT SOUNDED LIKE THE CLASS WOULD BE CHANGED, OR AT LEAST IT WOULD BE CLEAR THAT IT'S FOR THE BADGING DATE?
>
> ***THE COURT: YES. I'M GOING TO CHANGE BOTH 2 AND 3 TO SAY "BADGING GATE," THAT'S WHAT MR. DION-KINDEM INDICATED HE INTENDED***.
>
> MR. CHAMMAS: OKAY.
>
> THE COURT: OKAY. SO THAT'S EASY. (Transcript of Class Certification Hearing, 36:23-37:7; attached as Exhibit 1 hereto (emphasis added).)

The parties therefore request that the Court modify the Class Certification Order as follows:

1. The table of issues on pages 19 and 20 be modified as follows:

Certified Class Questions	Amended Certified Class Questions
Whether Security Time constituted "hours worked" under California law.	Whether Security Time constituted "hours worked" under California law.
Whether travel time between the Phase 1 Security Gate and the parking lots constituted "hours worked" under California law.	Whether travel time between the Security Gate ***where the badging process occurred*** and the parking lots constituted "hours worked" under California law.
Whether travel time after the Phase 1 Security Gate was time for which class members were entitled to be paid pursuant to Wage Order No. 16 ¶ 5(A).	Whether travel time after the Security Gate ***where the badging process occurred*** was time for which class members were entitled to be paid pursuant to Wage Order No. 16 ¶ 5(A).
Whether meal periods constituted "hours worked" under California law.	Whether meal periods constituted "hours worked" under California law.
Whether CSI is liable for penalties under Section 203.	Whether CSI is liable for penalties under Section 203.
Whether CSI violated its obligations under Section 226(a).	Whether CSI violated its obligations under Section 226(a).
Whether CSI had a unform policy of requiring employees to report to the Phase 1 Security Gate.	Whether CSI had a uniform policy of requiring employees to report to the Security Gate ***where the badging occurred***.
Whether CSI had a uniform policy preventing class members from leaving their daily work sites during their meal periods.	Whether CSI had a uniform policy preventing class members from leaving their daily work sites during their meal periods.

2. Paragraph 2 of the Order be modified as follows:

Pursuant to Rule 23(c)(1)(B),

a. The Unpaid Wages Class (Security Time) is defined as "all non-exempt persons who were employees of or worked for CSI Electrical Contractors, Inc. on the construction of the California Flats Solar Project at any time within the period from July 30, 2014 through the date of class certification who were not paid for all time waiting for and going through the mandatory entrance and exit security process."

b. The Unpaid Wages Class (Controlled Travel Time) is defined as "all non-exempt persons who were employees of or worked for CSI Electrical Contractors, Inc. on the construction of the California Flats Solar Project at any time within the period from July 30, 2014 through the date of class certification who were not paid for all time traveling from the

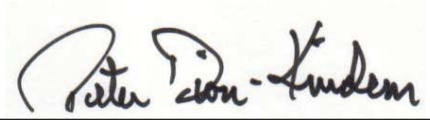
Security Gate of the Site ***where the badging occurred*** to when they began to be paid and from when they stopped being paid to when they arrived back at the Security Gate ***where the badging occurred***."

c. The Unpaid Wages Class (Paragraph 5(A) Travel Time) is defined as "all non-exempt persons who were employees of or worked for CSI Electrical Contractors, Inc. on the construction of the California Flats Solar Project at any time within the period from July 30, 2014 through the date of class certification who were not paid for all time traveling from the Security Gate of the Site ***where the badging occurred*** to when they began to be paid and from when they stopped being paid to when they arrived back at the Security Gate where the badging occurred."

3. Paragraph 3 of the Order be modified as follows:

> 3. The class issues are (1) whether Security Time constituted "hours worked" under California law; (2) whether travel time between the Security Gate ***where the badging occurred*** and the parking lots constituted "hours worked" under California law; (3) whether travel time after the Security Gate ***where the badging occurred*** was time for which class members were entitled to be paid pursuant to Wage Order No. 16 ¶ 5(A); (4) whether meal periods constituted "hours worked" under California law; (5) whether CSI is liable for penalties under Section 203; (6) whether CSI violated its obligations under Section 226(a); (7) whether CSI had a uniform policy of requiring employees to report to the Security Gate ***where the badging occurred***; and (8) whether CSI had a uniform policy preventing class members from leaving their daily work sites during their meal periods.

Dated: March 18, 2021 THE DION-KINDEM LAW FIRM

BY: 

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PETER R. DION-KINDEM
Attorney for Plaintiff George Huerta

Dated: March 18, 2021 FORD & HARRISON LLP

BY: /S DANIEL B. CHAMMAS
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Attorneys for Plaintiff George Huerta

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.

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.

Case No. 5:18-cv-06761-BLF
CLASS ACTION

~~[Proposed]~~ Order Modifying Class Certification Order

The Court, having considered the parties' Stipulation and having reviewed the relevant portions of the transcript of the class certification hearing on January 21, 2021, modifies its Class Certification Order as follows:

1. The table of issues on pages 19 and 20 is modified as follows:

Certified Class Questions	Amended Certified Class Questions
Whether Security Time constituted "hours worked" under California law.	Whether Security Time constituted "hours worked" under California law.
Whether travel time between the Phase 1 Security Gate and the parking lots constituted "hours worked" under California law.	Whether travel time between the Security Gate ***where the badging process occurred*** and the parking lots constituted "hours worked" under California law.
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Whether CSI had a uniform policy preventing class members from leaving their daily work sites during their meal periods.	Whether CSI had a uniform policy preventing class members from leaving their daily work sites during their meal periods.

2. Paragraph 2 of the Order is modified as follows:

Pursuant to Rule 23(c)(1)(B),

a. The Unpaid Wages Class (Security Time) is defined as "all non-exempt persons who were employees of or worked for CSI Electrical Contractors, Inc. on the construction of the California Flats Solar Project at any time within the period from July 30, 2014 through the date of class certification who were not paid for all time waiting for and going through the mandatory entrance and exit security process."

b. The Unpaid Wages Class (Controlled Travel Time) is defined as "all non-exempt persons who were employees of or worked for CSI Electrical Contractors, Inc. on the construction

of the California Flats Solar Project at any time within the period from July 30, 2014 through the date of class certification who were not paid for all time traveling from the Security Gate of the Site ***where the badging occurred*** to when they began to be paid and from when they stopped being paid to when they arrived back at the Security Gate ***where the badging occurred***."

c. The Unpaid Wages Class (Paragraph 5(A) Travel Time) is defined as "all non-exempt persons who were employees of or worked for CSI Electrical Contractors, Inc. on the construction of the California Flats Solar Project at any time within the period from July 30, 2014 through the date of class certification who were not paid for all time traveling from the Security Gate of the Site ***where the badging occurred*** to when they began to be paid and from when they stopped being paid to when they arrived back at the Security Gate where the badging occurred."

3. Paragraph 3 of the Order is modified as follows:

3. The class issues are (1) whether Security Time constituted "hours worked" under California law; (2) whether travel time between the Security Gate ***where the badging occurred*** and the parking lots constituted "hours worked" under California law; (3) whether travel time after the Security Gate ***where the badging occurred*** was time for which class members were entitled to be paid pursuant to Wage Order No. 16 ¶ 5(A); (4) whether meal periods constituted "hours worked" under California law; (5) whether CSI is liable for penalties under Section 203; (6) whether CSI violated its obligations under Section 226(a); (7) whether CSI had a uniform policy of requiring employees to report to the Security Gate ***where the badging occurred***; and (8) whether CSI had a uniform policy preventing class members from leaving their daily work sites during their meal periods.

Dated: March 18, 2021

BETH LABSON FREEMAN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

GEORGE HUERTA,

Plaintiff,

v.

CSI ELECTRICAL CONTRACTORS, INC., et al.,

Defendants.

Case No. 18-cv-06761-BLF

ORDER EXTENDING TIME TO FILE NOTICE PLAN

On March 12, 2021, the Court ordered the parties to "meet and confer concerning the manner, form and content of notice to be provided to the absent class members, and to submit a proposal concerning the same to the Court in writing no later than April 12, 2021." ECF 119. Per the parties' stipulation, ECF 123, the Court EXTENDS this deadline to no later than 30 days after the Court files its order on partial summary judgment.

IT IS SO ORDERED.

Dated: March 18, 2021

BETH LABSON FREEMAN
United States District Judge

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Attorneys for Plaintiff George Huerta

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.

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.

Case No. 5:18-cv-06761-BLF
CLASS ACTION

JOINT STIPULATION FOR ORDER MODIFYING MARCH 12, 2021 CLASS CERTIFICATION ORDER TO CONFORM TO THE AGREEMENT AT THE CLASS CERTIFICATION HEARING

The parties stipulate and request that the Court enter and an Order modifying the Court's Class Certification Order of March 12, 2021 to conform to the agreement reached at the class certification

hearing, pursuant to which the proposed classes and issues were modified in part to make it clear that the relevant Security Gate location was the location where the badging occurred. During the hearing, counsel and the Court agreed to this modification.

> THE COURT: THAT'S WHY I'M TROUBLED BY YOUR -- THAT'S WHY I'M TROUBLED THOUGH.
>
> WHEN YOU SAY -- MAYBE I MISUNDERSTOOD THIS, AND THAT WOULD BE HELPFUL TO ME. WHEN YOU SAY THE PHASE 1 SECURITY GATE, ARE YOU ONLY TALKING ABOUT IT WHEN IT WAS A BADGING STATION?
>
> MR. DION-KINDEM: YES.
>
> THE COURT: SO WHEN THE BADGING MOVED UP TO THE PHASE 2 GATE, THEN THAT TIME PERIOD IS NOT COVERED BY THIS CLASS?
>
> MR. DION-KINDEM: IT IS COVERED BY THE CLASS BECAUSE IT'S LESS THAN THE OTHER ONE.
>
> SO WHERE THE BADGING OCCURRED IS WHERE THEY HAD TO REPORT AND WHERE THEY WERE UNDER CONTROL AND WHERE THE SECURITY TIME OCCURRED.
>
> THE COURT: I GUESS I JUST REALLY WANT TO -- I'M JUST TALKING ABOUT, I GUESS IT WOULD BE NUMBER ONE FOR SECURITY TIME AND NUMBER TWO FOR TRAVEL TIME.
>
> IT SEEMS TO ME THAT ONCE PHASE 1 GATE WAS NO LONGER A BADGING STATION, THAT THE FACT THAT THERE IS A GATE IS IRRELEVANT, NOTHING IS GOING ON, THEIR EMPLOYEES JUST DRIVE THROUGH IT. THAT'S WHY I'M WONDERING, WHY DO YOU CLAIM THAT THAT IS COMPENSABLE TIME IF THERE'S NO BADGING GOING ON THERE?
>
> MR. DION-KINDEM: WELL, UNDER OUR SECURITY CLAIM, WE WOULDN'T BE CLAIMING THAT. UNDER OUR 5A CLAIM, WE WOULD SAY THEY HAD TO REPORT AT THE BADGING STATION, SO IT WOULDN'T APPLY.
>
> AND WHAT WE ARE SAYING IS, IS THAT WHEN IT WAS OCCURRING, WHEN THE BADGING WAS OCCURRING AT THE SECURITY ONE GATE, THAT WAS COMPENSABLE. WHEN IT CHANGED TO THE SECURITY TWO GATE LOCATION, IT'S COMPENSABLE FROM THAT LOCATION.
>
> THE COURT: AND THANK YOU FOR THAT.
>
> THAT'S NOT THE WAY YOU DRAFTED THIS, AND I JUST -- IT REALLY CONFUSED ME, AND SO I NEED YOU TO REDRAFT THIS. BECAUSE YOU'RE TALKING ABOUT BADGING GATE. AND THAT WOULD ACTUALLY BE -- THEN WE COULD HAVE -- I WOULDN'T CARE WHETHER IT WAS PHASE 1 OR PHASE 2, THERE WAS ONLY ONE BADGING GATE AT A TIME.
>
> MR. DION-KINDEM: OKAY.

> ***WELL, IF THAT'S THE ONLY THING THAT CONCERNS YOU, WE CAN STIPULATE ON THE RECORD RIGHT NOW THAT IT'S ONLY THE BADGING GATE. THE TIME WE ARE SEEKING IS THE BADGING GATE TIME, WHETHER IT WAS AT PHASE 1, AT THE PHASE 1 BADGING GATE, WHEN IT WAS AT PHASE 2, THE PHASE 2 BADGING GATE***.
>
> SO I DON'T KNOW THAT THERE'S A REASON TO -- IF WE CAN STIPULATE ON THE RECORD THAT THAT'S WHAT WE ARE TALKING ABOUT, I DON'T KNOW WHY YOU NEED BRIEFING ON THE WHOLE ISSUE. BUT IF THAT'S WHAT YOU WANT, I GUESS WE CAN DO IT.
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> THE COURT: SO MR. DION-KINDEM, I REALLY WORK HARD NOT TO CHANGE YOUR CASE SO THAT IT'S NOT THE CASE YOU WANT TO TRY, SO YOU WERE VERY CLEAR, PHASE 1 SECURITY GATE, AND THAT IS A PLACE THAT NEVER MOVED. BUT I WAS UNCLEAR ON WHERE THE BADGING TOOK PLACE.
>
> SO CLASS 1, YOU TALK ABOUT THE MANDATORY ENTRANCE AND EXIT SECURITY PROCESS. SO THAT'S FINE BECAUSE THAT ACTUALLY WOULD INCLUDE WHEREVER IT WAS. IT WAS CLASSES 2 AND 3, THAT YOU SPECIFIED THE PHASE 1 SECURITY GATE.
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> ***SO IF I SUBSTITUTED, IF I WERE TO DELETE, IT SAYS TRAVEL TIME -- TIME TRAVELLING FROM THE PHASE 1 SECURITY GATE AND CHANGE THAT TO, THE BADGING GATE, FOR BOTH CLASSES 2 AND 3, THAT'S THE CASE YOU WANT TO TRY***?
>
> MR. DION-KINDEM: ***YES***.
>
> THE COURT: OKAY. OKAY. I DON'T WANT TO LOP OFF DAMAGES THAT YOU WANT THE CHANCE TO PROVE.
>
> MR. DION-KINDEM: NO, THAT'S FINE.
>
> THE COURT: OKAY. ALL RIGHT. (CLASS CERTIFICATION, 19:3-21:15.)

Defense counsel agreed to this change:

> MR. CHAMMAS: YEAH, WITH THAT CONCEPT, ALTHOUGH I WOULD LIKE TO REVISIT -- ON THE CERTIFICATION QUESTIONS, I JUST HAD A CLARIFICATION. JUST ON THE CLASS 3, IT SOUNDED LIKE THE CLASS WOULD BE CHANGED, OR AT LEAST IT WOULD BE CLEAR THAT IT'S FOR THE BADGING DATE?
>
> ***THE COURT: YES. I'M GOING TO CHANGE BOTH 2 AND 3 TO SAY "BADGING GATE," THAT'S WHAT MR. DION-KINDEM INDICATED HE INTENDED***.
>
> MR. CHAMMAS: OKAY.
>
> THE COURT: OKAY. SO THAT'S EASY. (Transcript of Class Certification Hearing, 36:23-37:7; attached as Exhibit 1 hereto (emphasis added).)

The parties therefore request that the Court modify the Class Certification Order as follows:

1. The table of issues on pages 19 and 20 be modified as follows:

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Whether CSI had a uniform policy preventing class members from leaving their daily work sites during their meal periods.	Whether CSI had a uniform policy preventing class members from leaving their daily work sites during their meal periods.

2. Paragraph 2 of the Order be modified as follows:

Pursuant to Rule 23(c)(1)(B),

a. The Unpaid Wages Class (Security Time) is defined as "all non-exempt persons who were employees of or worked for CSI Electrical Contractors, Inc. on the construction of the California Flats Solar Project at any time within the period from July 30, 2014 through the date of class certification who were not paid for all time waiting for and going through the mandatory entrance and exit security process."

b. The Unpaid Wages Class (Controlled Travel Time) is defined as "all non-exempt persons who were employees of or worked for CSI Electrical Contractors, Inc. on the construction of the California Flats Solar Project at any time within the period from July 30, 2014 through the date of class certification who were not paid for all time traveling from the

Security Gate of the Site ***where the badging occurred*** to when they began to be paid and from when they stopped being paid to when they arrived back at the Security Gate ***where the badging occurred***."

c. The Unpaid Wages Class (Paragraph 5(A) Travel Time) is defined as "all non-exempt persons who were employees of or worked for CSI Electrical Contractors, Inc. on the construction of the California Flats Solar Project at any time within the period from July 30, 2014 through the date of class certification who were not paid for all time traveling from the Security Gate of the Site ***where the badging occurred*** to when they began to be paid and from when they stopped being paid to when they arrived back at the Security Gate where the badging occurred."

3. Paragraph 3 of the Order be modified as follows:

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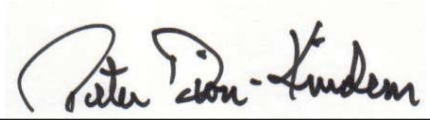
Dated: March 18, 2021 THE DION-KINDEM LAW FIRM

BY: 

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PETER R. DION-KINDEM
Attorney for Plaintiff George Huerta

Dated: March 18, 2021 FORD & HARRISON LLP

BY: /S DANIEL B. CHAMMAS
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Attorneys for Plaintiff George Huerta

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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Defendants.

Case No. 5:18-cv-06761-BLF
CLASS ACTION

[Proposed] Order Modifying Class Certification Order

The Court, having considered the parties' Stipulation and having reviewed the relevant portions of the transcript of the class certification hearing on January 21, 2021, modifies its Class Certification Order as follows:

1. The table of issues on pages 19 and 20 is modified as follows:

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Dated: _____

_____
BETH LABSON FREEMAN
UNITED STATES DISTRICT JUDGE

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Attorneys for Plaintiff George Huerta

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.

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.

Case No. 5:18-cv-06761-BLF
CLASS ACTION

Joint Stipulation re Meet and Confer Timing re Class Notice Preparation

[Proposed] Order

The parties request the Court modify its Class Certification Order to provide that the parties are to meet and confer and submit a proposed Notice within 30 days after the Court rules on Defendant's

motion for partial summary judgment, which is set to be heard on April 9, 2021. The resolution of this motion may affect the substance of the Notice.

Dated: March 17, 2021 THE DION-KINDEM LAW FIRM

BY: /S PETER R. DION-KINDEM
PETER R. DION-KINDEM, P.C.
PETER R. DION-KINDEM
Attorney for Plaintiff George Huerta

Dated: March 17, 2021 FORD & HARRISON LLP

BY: /S DANIEL B. CHAMMAS
DANIEL B. CHAMMAS
Attorney for Defendant
CSI Electrical Contractors, Inc.

Order

Based on the parties' Stipulation and good cause appearing, IT IS SO ORDERED.

Dated: _____

_____
BETH LABSON FREEMAN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

GEORGE HUERTA,
Plaintiff,
v.

CSI ELECTRICAL CONTRACTORS, INC., et al.,
Defendants.

Case No. 18-cv-06761-BLF

ORDER GRANTING MOTION FOR CLASS CERTIFICATION

[Re: ECF 84]

Before the Court is yet another wage and hour class and PAGA action arising out of the California Flats Solar Project. In this iteration, Plaintiff George Huerta and the proposed class members bring suit against non-settling Defendant CSI Electrical Contractors, Inc. ("CSI"). Huerta seeks to bring the following five class claims: (1) failure to pay wages for hours worked under Cal. Labor Code § 1197; (2) wage statement and record-keeping violations under Cal. Labor Code § 226; (3) failure to pay waiting time wages under Cal. Labor Code § 203; (4) violation of Cal. Labor Code § 2802; and (5) violation of California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq*. Huerta separately brings a claim for the recovery of civil penalties under the California Private Attorney General Act ("PAGA"), Cal. Labor Code § 2698, et seq. *See* First Am. Compl. ("FAC"), ECF 101 at 1, 7-17.

Presently before the Court is Plaintiff's Motion for Class Certification. Mot., ECF 84. Huerta seeks to certify six California classes (four classes and two subclasses) under Rule 23(b)(3). *Id*. at 20-21. The Court held a hearing on this motion on January 21, 2021. For the reasons stated below, the Court GRANTS Plaintiff's motion for class certification.

I. BACKGROUND

A. California Solar Flats Project

Huerta alleges that CSI acted as an employer, co-employer, or joint-employer of Huerta and the proposed class members during their work on the California Flats Solar Project, which involved the construction and development of photovoltaic power. FAC ¶¶ 8, 11-12. Relevant here, Huerta alleges that CSI violated California labor laws because he and other class members "were subject to wrongfully unpaid off-the-clock work time before their scheduled start times and after their scheduled stop times but were only paid for the time between their scheduled start and stop times." *Id*. ¶ 30. According to Huerta, the scheduled start time reflected either the time at which employees were expected to be at company meetings at the parking lot or the time at which employees were expected to be at their work site for the day. *Id*. ¶ 33. The FAC does not identify a stop time, but the Motion indicates that stop time, at the latest, was the time at which employees reached the parking lots at the end of the day. Mot. at 9-10. Huerta further alleges that CSI violated California labor laws by failing to pay putative class members during meal periods. *Id*. ¶¶ 37-38.

During phase one of the Project, Huerta alleges that CSI required employees to arrive at the Solar Project Security Gate Entrance. FAC ¶ 30. The Security Gate Entrance was about a quarter mile away from the intersection of Highway 46 and the road. *Id*. CSI allegedly required employees to "wait in vehicle lines for . . . biologists to approve the road for travel, then wait in a vehicle line to have their badges swiped ('badge in') by a person or persons employed or controlled by Defendants." *Id*. CSI then required employees to travel approximately ten miles "along a route designated by and regulated by Defendants, at speed limits and subject to job site rules designated by Defendants, using non-public roads to reach parking lots and or job sites by specific times designated by Defendants." *Id*. Drive time between the Security Gate Entrance and the parking lots amounted to about 40 minutes. *Id*. ¶ 31. During phase two of the Project, Huerta alleges that CSI created a new badging station ("Phase Two Security Gate") closer to the parking

lots. *Id*. During this phase, employees badged in at the new badging station—not the Security Gate Entrance. *Id*. All other restrictions on employee activity remained. *Id*.

According to Huerta, once employees reached the parking lots,

> [they] were required to wait in lines to sign in on approximately four sign-in sheets in the lot. Because of the large number of workers, class members could have to wait 10 to 15 minutes to get through these lines. Once they signed the sheet, class members were generally required to locate their crews and either attend company meetings or take company transport to the specific locations where they were to work that day.

FAC ¶ 32. The place where employees met in the morning was referred to as the "Laydown Yard." *See* Opp., ECF 97 at 4. Travel time between the parking lot and the work sites could "take up to 20 minutes." FAC ¶ 32. Employees were not compensated for waiting time at the parking lot or travel time between the parking lot and the work sites. *Id*. ¶ 33.

Huerta also alleges that CSI required the putative class members to stay at their job sites during the entire workday, to include during meal periods. *Id*. ¶¶ 37-38. CSI "did not make the buggies available to Plaintiff or class members to take them to the parking lot during their meal periods." *Id*. ¶ 37. Employees were generally subject to the same restrictions at the end of the workday.

CSI delineates a putative class member's day into ten segments:

> (1) travel from the Project Entrance to the Badging Gate, (2) travel from the Badging Gate to the Parking Lot, (3) the Laydown Yard Meeting, (4) travel from Laydown Yard to the Primary Work Area, (5) work at the Primary Work Area, (6) meal period, (7) travel from the Primary Work Area to the Laydown Yard, (8) Laydown Yard Release, (9) travel from the Parking Lot to the Badging Gate, and (10) travel from the Badging Gate to the Project Entrance.

Opp. at 5.

B. Named Plaintiff

Huerta alleges that he was employed at the California Flats Solar Project by California Compaction Corporation and Milco National Constructors, Inc. as a post pounder and forklift

operator between February and June 2018. Huerta Decl., ECF 82-5 ¶ 2. He alleges that CSI personnel supervised him during his daily work activities. *Id*. Huerta states that CSI told him and other workers during new hire orientation and worker meetings that if they did not follow Project rules, they would be disciplined, suspended, or fired. *Id*. ¶¶ 3-6.

Huerta alleges that CSI required California Flats Solar Project employees to report to the Security Gate Entrance each day. Huerta Decl. ¶¶ 7-10. He also alleges that he was required to badge in and out of work each day at the Security Gate Entrance or the Phase Two Security Gate. *Id*. ¶¶ 10, 16-32, 33-37. This "mandatory entrance and exit security process" took 5-20 minutes. *Id*. ¶ 12. The drive between the Security Gate Entrance and the parking lots was about 30-35 minutes. *Id*. ¶ 14. During this drive, Huerta was "subject to a broad range of job site rules and restrictions and [was] monitored for . . . compliance with such rules and restrictions." *Id*. ¶ 15; *see also id*. ¶¶ 49-52 (explaining that CSI did not permit employees to walk or bike on the access road to the parking lots), 54-57 (listing road rules).

Huerta contends that when he finally reached the parking lot, he was required to walk over to the Laydown Yard to wait for and ride a buggy to his work site. Huerta Decl. ¶ 38. The buggy ride typically lasted ten minutes. *Id*. ¶ 40. At the end of the day, CSI required workers, to include Huerta, to stop work ten minutes before the scheduled stop time. *Id*. ¶ 43. Huerta then gathered his things, rode a buggy to the Laydown Yard, turned in his paperwork and tools at a CSI trailer, and headed to the parking lot. *Id*. ¶ 44. Huerta alleges that this process amounted to far more than ten minutes; indeed, he contends that it took him about ten to fifteen minutes just to reach the CSI trailer. *Id*. ¶ 46. Huerta then drove out of the parking lot, down the access road, and waited in line at the relevant security checkpoint to badge out for the day. *Id*. ¶ 47.

With respect to meal breaks, Huerta states that he was "told by CSI management at worker meetings that we workers were required to stay on the job site during the entire workday from the beginning of the workday to the end of the workday." Huerta Decl. ¶ 58. Similarly, he states that

he was told by "CSI management at CSI worker meetings and by other CSI management people" that he was required to eat lunch at his daily installation site and that the buggies could not be used to go back to the parking lot during lunch. *Id*. ¶¶ 59-60.

C. Proffered Evidence

In support of his Motion for Class Certification, Huerta offers the Court eight additional declarations from CSI employees and putative class members. *See* ECF 82-5-13. These declarations largely mimic Huerta's declaration as detailed above. In opposition, CSI offers timesheet records and analysis. *See* ECF 97-2. According to CSI, these records illustrate that (1) CSI properly compensated putative class members for time between the morning Laydown Yard meeting and when employees reached the relevant badging gate at the end of the day and (2) CSI did not require class members to report to the project entrance before the opening of the Security Gate Entrance. *See* Opp. at 7-15. CSI also offers the declarations of eighteen CSI employees and putative class members. *See* ECF 97-4-21. The declarations generally contradict the declarations proffered by Huerta. *See, e.g.*, ECF 97-4 ¶ 3 ("CSI's employees were not told that they had to arrive at the Project Entrance before it opened, when it opened, or at any time . . . When I approached and passed the Project Entrance in the morning, there rarely was a line or cars or a bottleneck of cars . . . "), ¶ 7 ("We stopped working at the Primary Work Area well before End Time. We were always given enough time to clean up, drive the buggy back to the Laydown Yard, and leave in our vehicles so that we arrived at the Badge-in Gate at End Time or well before End Time.").

D. Proposed Class Definitions

Huerta seeks to certify six classes under 23(a) and 23(b)(3):

i. Unpaid Wages Class (Security Time):

> All non-exempt persons who were employees of or worked for CSI Electrical Contractors, Inc. on the construction of the California Flats Solar Project at any time within the period from July 30, 2014 through

the date of class certification who were not paid for all time waiting for and going through the mandatory entrance and exit security process.

ii. Unpaid Wages Class (Controlled Travel Time):

All non-exempt persons who were employees of or worked for CSI Electrical Contractors, Inc. on the construction of the California Flats Solar Project at any time within the period from July 30, 2014 through the date of class certification who were not paid for all time traveling from the Phase 1 Security Gate of the Site to when they began to be paid and from when they stopped being paid to when they arrived back at the Phase 1 Security Gate.

iii. Unpaid Wages Class (Paragraph 5(A) Travel Time):

All non-exempt persons who were employees of or worked for CSI Electrical Contractors, Inc. on the construction of the California Flats Solar Project at any time within the period from July 30, 2014 through the date of class certification who were not paid for all time traveling from the Phase 1 Security Gate of the Site to when they began to be paid and from when they stopped being paid to when they arrived back at the Phase 1 Security Gate.

iv. Unpaid Wages Class (Meal Period Time):

All non-exempt persons who were employees of or worked for CSI Electrical Contractors, Inc. on the construction of the California Flats Solar Project at any time within the period from July 30, 2014 through the date of class certification who were not paid for all the time of their meal periods.

v. Termination Pay Subclass:

All member of Class 1, 2, 3 or 4 whose employment with CSI Electrical Contractors, Inc. terminated within the period beginning July 30, 2015 to the date of class certification.

vi. Wage Statement Subclass:

All member of Class 1, 2, 3, or 4 whose received wage statements from CSI Electrical Contractors, Inc. during the period beginning July 30, 2017 to the date of class certification.

Mot. at 20-21.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 23 governs class actions. "Before certifying a class, the trial court must conduct a rigorous analysis to determine whether the party seeking certification has met the prerequisites of Rule 23." *Mazza v. Am. Honda Motor Co., Inc.*, 666 F.3d 581, 588 (9th Cir. 2012) (internal quotation marks omitted). The burden is on the party seeking certification to show, by a preponderance of the evidence, that the prerequisites have been met. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349–50 (2011).

Certification under Rule 23 is a two-step process. The party seeking certification must first satisfy the four threshold requirements of Rule 23(a)—numerosity, commonality, typicality, and adequacy. Specifically, Rule 23(a) requires a showing that

> (1) the class is so numerous that joinder of all members is impracticable;
>
> (2) there are questions of law or fact common to the class;
>
> (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
>
> (4) the representative parties will fairly and adequately protect the interests of the class.

The party seeking certification must then establish that one of the three grounds for certification applies under Rule 23(b). Huerta invokes Rule 23(b)(3), which provides that a class action may be maintained where

> the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:
>
> (A) the class members' interests in individually controlling the prosecution or defense of separate actions;
>
> (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
>
> (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

A Rule 23(b)(3) class is appropriate "whenever the actual interests of the parties can be served best by settling their differences in a single action." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022 (9th Cir. 1998) (internal quotation marks omitted). "When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis." *Id.* (citation and internal quotation marks omitted); *accord Mazza*, 666 F.3d at 589.

In considering a motion for class certification, the substantive allegations of the complaint are accepted as true, but "the court need not accept conclusory or generic allegations regarding the suitability of the litigation for resolution through a class action." *Hanni v. Am. Airlines, Inc.*, No. 08-cv-00732, 2010 WL 289297, at *8 (N.D. Cal. Jan. 15, 2010); *see also Jordan v. Paul Fin., LLC*, 285 F.R.D. 435, 447 (N.D. Cal. 2012) ("[Courts] need not blindly rely on conclusory allegations which parrot Rule 23 requirements." (citation and internal quotation marks omitted)). Accordingly, "the court may consider supplemental evidentiary submissions of the parties." *Hanni*, 2010 WL 289297, at *8 (citations omitted); *see also Blackie v. Barrack*, 524 F.2d 891, 901 n.17 (9th Cir. 1975).

"A court's class-certification analysis . . . may entail some overlap with the merits of the plaintiff's underlying claim." *Amgen Inc. v. Connecticut Ret. Plans & Tr. Funds*, 568 U.S. 455, 465–66 (2013) (citation and internal quotation marks omitted). However, "Rule 23 grants courts no license to engage in free-ranging merits inquiries at the certification stage." *Id.* at 466. "Merits questions may be considered to the extent—but only to the extent—that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied." *Id.*

III. DISCUSSION

The parties have submitted evidence in support of their respective positions. The Court has reviewed all of this evidence in detail. At the outset, the Court highlights a glaring problem with Plaintiff's showing. Plaintiff improperly raises new arguments about predominance—the linchpin of this motion—in the reply brief. Plaintiff dedicated a scant page to the topic in its opening brief. The Court does not look kindly on this behavior. Plaintiff's counsel has appeared before the Court numerous times and is sophisticated enough to be aware this is not appropriate. Nonetheless, in the interest of judicial efficiency, and because Defendant does not contest certification of the majority of the classes, the Court opts to fully reach the merits of the motion and reply brief. In the future, the Court will not be so forgiving, and Plaintiff's counsel is cautioned to keep this guidance in mind.

For the reasons discussed below, the Court is persuaded that it is appropriate to certify the four classes and two subclasses under Rule 23(b)(3) for each of the five causes of action.

A. Plaintiff Has Met the Rule 23(a) Requirements

A named plaintiff bears the burden of demonstrating that the class meets the following four requirements of Rule 23(a): (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. *See Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir.), *amended by*, 273 F.3d 1266 (9th Cir. 2001) (citing *Doninger v. Pac. Nw. Bell, Inc.*, 564 F.2d 1304, 1309 (9th Cir. 1977)).

1. Numerosity

Rule 23(a)(1) requires that the size of the proposed class be "so numerous that joinder of all the class members is impracticable." Impracticability is not impossibility, and instead refers only to the "difficulty or inconvenience of joining all members of the class." *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913–14 (9th Cir. 1964) (citation and internal quotation

marks omitted). While there is no set number cut-off, the number of individuals who will satisfy the requirements for membership in the proposed classes in this case easily satisfies the numerosity requirement. *See Litty v. Merrill Lynch & Co.*, No. cv 14-0425 PA, 2015 WL 4698475, at *3 (C.D. Cal. Apr. 27, 2015) ("[N]umerosity is presumed where the plaintiff class contains forty or more members."); *Welling v. Alexy*, 155 F.R.D. 654, 656 (N.D. Cal. 1994) (noting that courts have certified classes as small as 14 and have often certified classes with 50 to 60 members).

The Court concludes there is sufficient numerosity. Huerta alleges that there are approximately 450 class members who worked as CSI employees at the California Flats Solar during the class period. Mot. at 21-22. Joinder of each of these affected individuals would be impracticable. CSI does not dispute that this requirement is satisfied.

2. Commonality

The commonality requirement of Rule 23(a)(2) is met where "the class members' claims 'depend upon a common contention' such that 'determination of its truth or falsity will resolve an issue that is central to the validity of each [claim] with one stroke.'" *Mazza*, 666 F.3d at 588 (internal citation omitted) (quoting *Dukes*, 564 U.S. at 350). Thus, a plaintiff seeking to certify a class must "demonstrate 'the capacity of classwide proceedings to generate common answers' to common questions of law or fact that are 'apt to drive the resolution of the litigation.'" *Id.* (quoting *Dukes*, 564 U.S. at 350). "[C]ommonality only requires a single significant question of law or fact." *Id.* at 589 (citing *Dukes*, 564 U.S. at 358). "The commonality preconditions of Rule 23(a)(2) are less rigorous than the companion requirements of Rule 23(b)(3)." *Hanlon*, 150 F.3d at 1019. "The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." *Id.*

Huerta alleges that common issues to the class include:

- Whether all the Security Time constituted "hours worked" under California law.

- Whether the Travel time between the Phase 1 Security Gate and the parking lots constituted "hours worked" under California law.
- Whether the travel time after the Phase 1 Security Gate was time for which class members were entitled to be paid pursuant to Wage Order No. 16, paragraph 5(A).
- Whether the time of the class members' meal periods constituted "hours worked" under California law.
- Whether CSI is liable for penalties under Section 203.
- Whether CSI violated its obligations under Section 226(a).
- Whether CSI had a policy of requiring employees to report to the Phase 1 Security Gate.
- Whether CSI had a policy preventing class members from leaving their daily work sites during their meal periods.

Mot. at 22-23; Reply, ECF 105 at 2-3 (clarifying common questions).

The Court finds that Huerta has satisfied the commonality requirement. Huerta's claims satisfy the low threshold of Rule 23(a)(2). Huerta has identified common factual questions, such as whether CSI had a common policy requiring putative class members to report to the Phase 1 Security Gate and common legal questions, such as CSI's obligations under California Labor Code §§ 201–03, 226, 1197, and 2802 and the UCL. These commonalities are sufficient to satisfy Rule 23(a)(2). CSI largely objects to the presence of commonality in the context of the Rule 23(b)(3) predominance inquiry. *See* Opp. at 7-23. The Court will further discuss these common questions and CSI' objections when it analyzes whether common questions predominate.

3. Typicality

Rule 23(a)(3) requires that "the [legal] claims or defenses of the representative parties [be] typical of the claims or defenses of the class." Typicality is satisfied "when each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendants' liability." *Rodriguez v. Hayes*, 591 F.3d 1105, 1122 (9th Cir. 2010) (citations omitted). "The test of typicality is whether other members have the same or

similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1030 (9th Cir. 2012) (internal quotation marks and citation omitted). "Under the rule's permissive standards, representative claims are 'typical' if they are reasonably co-extensive with those of absent class members." *Hanlon*, 150 F.3d at 1020. Class certification is inappropriate where a putative class representative is subject to unique defenses which threaten to become the focus of the litigation. *See Hanon v. Dataprods. Corp.*, 976 F.2d 497, 509 (9th Cir. 1992).

Huerta has demonstrated that his claims are representative of the claims of the class. Huerta alleges that because of CSI's uniform security time, travel time, and meal period policies, he was not paid fair wages under California law. *See* Mot. at 22-23; Huerta Decl. at ¶¶ 10 ("I was told by CSI management, by the security office and other management that the other CSI workers and I were required to report to the Phase 1 Security Gate to enter the Site and the Phase 2 Security Gate each morning to scan in after the Phase 2 Security Gate was created."), 18 ("I was told by CSI management that we workers could not go beyond the Security Gate where we scanned in and out without our security badges and without being scanned in through the mandatory security check-in process."), 58 ("I was also told by CSI management at worker meetings that we workers were required to stay on the job site during the entire workday from the beginning of the workday to the end of the workday."). So too for the putative class members. If the putative class members were to proceed in an action parallel to this action, they would advance legal and remedial theories similar, if not identical, to those advanced by Huerta.

4. Adequacy

Rule 23(a)(4) requires that the class representatives "fairly and adequately protect the interests of the class." "Determining whether the representative parties adequately represent a

class involves two inquiries: (1) whether the named plaintiff and his or her counsel have any conflicts of interest with other class members and (2) whether the named plaintiff and his or her counsel will act vigorously on behalf of the class." *Calvert v. Red Robin Int'l, Inc.*, No. C 11–03026, 2012 WL 1668980, at *2 (N.D. Cal. May 11, 2012) (citing *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978)). These inquiries are guided by the principle that "a class representative sues, not for himself alone, but as representative of a class comprising all who are similarly situated. The interests of all in the redress of the wrongs are taken into his hands, dependent upon his diligence, wisdom and integrity." *Id.* (quoting *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 549 (1949)).

Huerta contends that there are no conflicts of interests within the proposed class. Mot. at 23-24. He also contends that he is prepared to take necessary steps to fairly and adequately represent the classes, to include assisting counsel in the litigation. *See id.*; *see also* Huerta Decl. at ¶¶ 22-24. Finally, Huerta argues that he has retained competent and experience counsel who have successfully prosecuted class actions in the past and have done extensive research regarding the instant claims. *Id.*; *see* Dion-Kindem Declaration, ECF 82-2 ¶¶ 2-12; Blanchard Declaration, ECF 82-3 ¶¶ 2-10. The Court is satisfied that neither Huerta nor Huerta's counsel has any conflicts of interest and that each will act vigorously on behalf of the class. CSI does not object to class certification on this ground.

B. Plaintiff Has Met the Rule 23(b)(3) Requirements

"[T]he presence of commonality alone [under 23(a)(2)] is not sufficient to fulfill Rule 23(b)(3)." *Hanlon*, 150 F.3d at 1022. Rather, "[t]o qualify for certification under [Rule 23(b)(3)], a class must satisfy two conditions in addition to the Rule 23(a) prerequisites: common questions must 'predominate over any questions affecting only individual members,' and class resolution must be 'superior to other available methods for the fair and efficient adjudication of the

controversy.'" *Id*. (quoting Fed. R. Civ. P. 23(b)(3)). In the instant case, Huerta seeks to certify four Rule 23(b)(3) classes and two Rule 23(b)(3) subclasses.

1. Predominance

"'The Rule 23(b)(3) predominance inquiry' is meant to 'tes[t] whether proposed classes are sufficiently cohesive to warrant adjudication by representation.'" *Dukes*, 564 U.S. at 376 (alteration in original) (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997)). The predominance test of Rule 23(b)(3) is "far more demanding" than the commonality test under Rule 23(a)(2). *Amchem*, 521 U.S. at 624. Though common issues need not be "dispositive of the litigation," *In re Lorazepam & Clorazepate Antitrust Litig*., 202 F.R.D. 12, 29 (D.D.C. 2001), they must "present a significant aspect of the case [that] can be resolved for all members of the class in a single adjudication" so as to justify "handling the dispute on a representative rather than an individual basis." *Hanlon*, 150 F.3d at 1022. Courts must thus separate the issues subject to "generalized proof" from those subject to "individualized proof" to determine whether Huerta has satisfied the predominance requirement. *See In re Dynamic Random Access Memory (DRAM) Antitrust Litig*., No. M 02-1486, 2006 WL 1530166, at *6 (N.D. Cal. June 5, 2006) ("Predominance requires that the common issues be both numerically and qualitatively substantial in relation to the issues peculiar to individual class members." (internal quotation omitted)). Whether the predominance requirement is satisfied in a particular case "turns on close scrutiny of 'the relationship between the common and individual issues.'" *In re Wells Fargo Home Mortg. Overtime Pay Litig*., 571 F.3d 953, 958 (9th Cir. 2009) (quoting *Hanlon*, 150 F.3d at 1022).

The predominance requirement is the biggest hurdle for Huerta to meet in his quest for certification of the Unpaid Wages Class (Security Time), Unpaid Wages Class (Controlled Travel Time), Unpaid Wages Class (Paragraph 5(A) Travel Time), and Unpaid Wages Class (Meal Period Time). As detailed in the proposed class descriptions, these classes encompass employees who were not paid for all time while (1) waiting for and going through the mandatory entrance and

exit security process; (2) traveling from the Phase 1 Security Gate of the Site to when they began to be paid (i.e., start time) and from when they stopped being paid (i.e., stop time) to when they arrived back at the Phase 1 Security Gate; and (3) during meal periods.

CSI does not contest class certification of the Unpaid Wages Class (Security Time) and Unpaid Wages Class (Controlled Travel Time) in its opposition brief. *See* Opp. at 7. At the motion hearing, CSI represented that it also does not contest certification of the Unpaid Wages Class (Meal Period Time). ECF 104. Nonetheless, the Court will consider whether Huerta has met the predominance requirement as to each of the four classes.

Huerta argues that CSI implemented common policies that led to the underpayment of workers in each class. *See generally* Reply. CSI contends that there is no evidence an entire putative class was subject to common policies or practices and, even if Huerta could establish a common policy or practice, individual issues will nonetheless dominate a class-wide trial. Opp. at 6-23. Huerta responds that CSI's argument improperly goes to the merits of his claims at the class certification stage. Reply at 2. In his reply brief and on the record at the motion hearing, Huerta stressed that individual issues will not predominate because his theory focuses on the existence of a *uniform* policy. ECF 104; Reply at 2-4 ("conflicting evidence goes to one simple determination -- ***what was the policy?***" (emphasis in original)).

"Claims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment." *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1033 (2012). This includes "policy-to-violate-the-policy" theories of liability, where a defendant's official policy is facially compliant with the relevant labor law, but the defendant implements unofficial policies undermining this compliance. *Campbell v. Vitran Express Inc*., 2015 WL 7176110, at *4, *6 (C.D. Cal. 2015) (citing *Jimenez v. Allstate Ins. Co*., 765 F.3d 1161, 1166 (9th Cir.2014) ("Proving at

trial whether such informal or unofficial policies existed will drive the resolution of [the overtime issue].")).

Class certification is not always appropriate where a plaintiff alleges an unofficial policy to violate wage-and-hour laws, however. *Flores v. CVS Pharmacy, Inc*., 2010 WL 3656807, at *5 (C.D. Cal. Sept. 7, 2010), *aff'd sub nom. Flores v. Supervalu, Inc*., 509 F. App'x 593 (9th Cir. 2013) (rejecting unofficial policy theory that the demeanor of some supervisors implicitly compelled employees to forego breaks because the alleged common issues were "contingent on a number of human factors and individual idiosyncracies" and have "little to do with an overarching policy" that dictated how individuals were to take their breaks"); *see also In re Wells Fargo Home Mortg. Overtime Pay Litig*., 571 F.3d 953, 959 (9th Cir.2009) (holding that class certification may be denied when "a fact-intensive inquiry into each potential plaintiff's employment situation" is required) (internal quotation marks omitted). The distinguishing factor in this determination "appears to be the amount of evidence presented to support the existence of an unofficial policy. In other words, common issues predominate in those cases where the plaintiff proffers sufficient evidence to demonstrate that an unofficial policy exists and applies uniformly to all class members." *Campbell*, 2015 WL 7176110, at *7.

Huerta has presented sufficient evidence to demonstrate that a CSI policy exists as to security time, travel time, and meal periods and that this policy applies uniformly to all class members. Huerta has presented declarations from nine putative class members, to include himself *See* ECF 82-5-13. The declarations generally state that CSI management told employees at new hire orientation and worker meetings that they were required to follow numerous job site rules. These rules included reporting to the Security Gate Entrance at start time, following mandatory security exit and entrance procedures, not entering the Security Gate Entrance before biologist approval, following road rules during the drive to and from the parking lot, riding buggies between the parking lot and the work sites, and remaining at work sites during meal periods. *See generally*

id. The declarations further state that workers were not paid for meal periods or time between the Security Gate Entrance and the parking lots.

The Court is not persuaded by CSI's argument that class certification is improper because the Huerta declarations are substantially outweighed by CSI's evidence. Opp. at 7. That CSI's policies had disparate implications for different employees does not defeat a finding of predominance. *Bradley v. Networkers Internat., LLC*, 211 Cal.App.4th 1129, 1143 (2012) ("common issues predominated even if the policy did not affect each employee in the same way and damages would need to be proved individually").

This Court considered a practically identical class certification motion in *Durham v. Sachs Electric Company, Inc*., No. 18-cv-4506-BLF. There, the Court certified multiple wage and hours classes arising out of the California Flats Solar Project. *See Durham*, Order Granting In Part And Denying In Part Motion To Certify Class, ECF 80. Although in *Durham*, as here, there was conflicting evidence about the existence of a common policy, the Court found the predominance requirement was satisfied:

> It does not follow that because Sachs has presented more declarations than Durham, individual issues will predominate the class action. The disagreement between the Sachs and Durham declarations is straightforward—either Sachs management uniformly required its employees to ride the buggies to their worksites before start time or it did not. Any individual inquiries, such a whether a certain crew foreman did not mandate this policy, do not threaten to overwhelm the common class questions.

Id. at 18. The Court's decision to certify the classes turned on Plaintiff's representation that his theory was predicated on Defendant's *uniform* policies, and the Court narrowed the class questions accordingly. *Id*. at 17.

Just as in *Durham*, the divergence in CSI and Huerta's evidence is straightforward—either CSI management uniformly required its employees to follow security time, travel time, and meal period policies or it did not. Any individual inquiries, such as whether a certain crew foreman did

not mandate this policy, do not threaten to overwhelm the common class questions. Consider *Chavez v. AmeriGas Propane, Inc*., 2015 WL 12859721, at *34 (C.D. Cal. 2015), a case forwarded by CSI in support of its argument. In *Chavez*, the defendant argued that "the fact intensive inquiry required to determine whether or not on-call time was compensable indicates that individual issues predominate" and forwarded declarations of the putative class members that "show[ed] that whether time is compensable varies by district, by individual, and by time of year." 2015 WL 12859721, at *34. But there, the plaintiff challenged a five-prong "on call" time policy that provided that on call employees: (1) must not leave the district's general operating area; (2) must inform their manager where they can reached during on-call hours; (3) must be available to respond to every call that comes in while they are on duty; (4) may not consume any intoxicating substance while on on-call duty; and (5) will be disciplined if they do not respond to the call." *Id*. The Court concluded that it could not certify the class given "the variety of individual on-call experiences." *Id*. at *35; *see also Castillo v. Bank of Am., NA*, 980 F.3d 723, 732 (9th Cir. 2020) (no predominance where plaintiff was unable to "provide a common method of proof to establish [defendant's] classwide liability"). Although there is conflicting evidence before the Court about putative class members' experiences, the evidence does not describe a "variety" of experiences among employees about the application of a multi-prong, fact-intensive policy. While there may be some individual inquiries the Court has to resolve, they do not overwhelm the straightforward common questions.

Similarly, in *Dudley v. Brookdale Senior Living*, "Plaintiffs' theory of liability [was] that Defendants had a written policy that allowed for meal breaks but did not specify that they should be taken at the end of the fourth hour or that employees were entitled to a premium hour." 2015 WL 12426082, at *8 (C.D. Cal. 21015). The Court concluded that this policy did not facially violate California law and thus "to establish liability, Plaintiffs would have to show that Defendants' failure to provide these specifications led to employees missing meal breaks – an

inherently individualized inquiry." *Id*. Unlike in *Dudley*, where there was "no [] specific directive" regarding meal breaks, Huerta alleges that CSI management had *uniform* policies regarding security time, travel time, and meal periods. *Id*. at *9. Resolving this inquiry requires common proof—namely what directives were given by CSI management—and does not require individualized inquiry as to each class member.

Huerta "need only show that there is a common contention capable of class wide resolution—not that there is a common contention that 'will be answered, on the merits, in favor of the class.'" *Alcantar v. Hobart Service*, 800 F.3d 1047, 1053 (9th Cir. 2015) (quoting *Amgen Inc. v. Connecticut Ret. Plans & Tr. Funds*, 568 U.S. 455, 459 (2013)). At this stage of the litigation, the Court declines to weigh the evidence in favor of CSI and deny class certification. *See Jaimez v. Daiohs USA, Inc*., 181 Cal. App. 4th 1286, 1300 (2010) ("[Defendant] submitted 25 declarations to support its contention that [plaintiff's] claims actually 'require extensive factual inquiry into each RSR's practices and daily activities.['] The trial court [improperly] focused on the merits of the declarations, evaluating the contradictions in the parties' responses to the company's uniform policies and practices, not the policies and practices themselves.").

Finally, the Court notes that the proposed class questions do not reflect Huerta's uniform policy theory. *See* Mot. at 24; Reply, ECF 105 at 2-3 (clarifying common questions). Accordingly, the Court amends the class questions as follows:

Original class questions	Amended class questions
Whether Security Time constituted "hours worked" under California law.	Whether Security Time constituted "hours worked" under California law.
Whether travel time between the Phase 1 Security Gate and the parking lots constituted "hours worked" under California law.	Whether travel time between the Phase 1 Security Gate and the parking lots constituted "hours worked" under California law.
Whether travel time after the Phase 1 Security Gate was time for which class	Whether travel time after the Phase 1 Security Gate was time for which class

members were entitled to be paid pursuant to Wage Order No. 16 ¶ 5(A).	members were entitled to be paid pursuant to Wage Order No. 16 ¶ 5(A).
Whether meal periods constituted "hours worked" under California law.	Whether meal periods constituted "hours worked" under California law.
Whether CSI is liable for penalties under Section 203.	Whether CSI is liable for penalties under Section 203.
Whether CSI violated its obligations under Section 226(a).	Whether CSI violated its obligations under Section 226(a).
Whether CSI had a policy of requiring employees to report to the Phase 1 Security Gate.	Whether CSI had a uniform policy of requiring employees to report to the Phase 1 Security Gate.
Whether CSI had a policy preventing class members from leaving their daily work sites during their meal periods.	Whether CSI had a uniform policy preventing class members from leaving their daily work sites during their meal periods.

Tailoring the class questions in this manner serves to focus this suit on a theory of liability that this Court can resolve for all class members, namely whether CSI had a uniform policy that failed to compensate the putative class members for security time, travel time, and meal periods.

2. Superiority

To satisfy Rule 23(b)(3), Huerta also must demonstrate that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Rule 23 lists the following factors that Courts should consider in making this determination:

> (A) the class members' interests in individually controlling the prosecution or defense of separate actions;
>
> (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
>
> (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
>
> (D) the likely difficulties in managing a class action.

Huerta argues that class litigation is the superior means of litigating the claims asserted because the factors favor certification. Mot. at 25. Huerta contends that the potential class members would not be incentivized to pursue an individual action because "putative class members are hourly employees with relatively modest individual claims and limited resources." *Id*. He also notes that because the class "claims are based on common policies and practices, [they] can be most efficiently litigated on a class-wide basis." *Id*. Finally, Huerta argues that the class action "is manageable and well-suited for class certification where Defendants' own timekeeping and payroll records, including dates of employment and rates of pay, can be used to show the violations and measure damages." *Id*. CSI does not object to the motion on this basis.

The Court agrees with Huerta and finds a class action here would be the superior method of adjudication. The alternative to class action would likely mean an abandonment of claims by most class members since the amount of individual recovery is relatively small. Cf. *Mazza*, 254 F.R.D. at 628 (finding superiority when damages were $4,000). As such, the Court finds the superiority requirement met.

C. Appointment of Lead Counsel

Federal Rule of Civil Procedure 23(g)(2) states that: "When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Rule 23(g)(1) and (4). Rule 23(g)(1) requires the court to consider:

> (i) the work counsel has done in identifying or investigating potential claims in the action;
>
> (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
>
> (iii) counsel's knowledge of the applicable law; and
>
> (iv) the resources that counsel will commit to representing the class.

In addition, the court "may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class." Rule 23(g)(4) states that the duty of class counsel is to fairly and adequately represent the interests of the class.

Plaintiffs have retained highly capable counsel with extensive experience in prosecuting wage and hour class actions. *See* Dion-Kindem Decl. ¶¶ 1–12; Blanchard Decl. ¶¶ 1–10. Accordingly, and without any opposition, the Court finds that the Dion-Kindem Law Firm and the Blanchard Law Group, APC are adequate under Rule 23(g)(1) and (4).

IV. ORDER

For the foregoing reasons, **IT IS HEREBY ORDERED** that:

1. Plaintiff's Motion for Class Certification is GRANTED as to the Unpaid Wages Class (Security Time), Unpaid Wages Class (Controlled Travel Time), Unpaid Wages Class (Paragraph 5(A) Travel Time), Unpaid Wages Class (Meal Period Time), Termination Pay Subclass, and Wage Statement Subclass. The action is certified for the Rule 23(b)(3) Class and Subclasses as to wage and hour claims brought pursuant to the Cal. Labor Code and the UCL.

2. Pursuant to Rule 23(c)(1)(B),

   a. The Unpaid Wages Class (Security Time) is defined as "all non-exempt persons who were employees of or worked for CSI Electrical Contractors, Inc. on the construction of the California Flats Solar Project at any time within the period from July 30, 2014 through the date of class certification who were not paid for all time waiting for and going through the mandatory entrance and exit security process."

   b. The Unpaid Wages Class (Controlled Travel Time) is defined as "all non-exempt persons who were employees of or worked for CSI Electrical

Contractors, Inc. on the construction of the California Flats Solar Project at any time within the period from July 30, 2014 through the date of class certification who were not paid for all time traveling from the Phase 1 Security Gate of the Site to when they began to be paid and from when they stopped being paid to when they arrived back at the Phase 1 Security Gate."

c. The Unpaid Wages Class (Paragraph 5(A) Travel Time) is defined as "all non-exempt persons who were employees of or worked for CSI Electrical Contractors, Inc. on the construction of the California Flats Solar Project at any time within the period from July 30, 2014 through the date of class certification who were not paid for all time traveling from the Phase 1 Security Gate of the Site to when they began to be paid and from when they stopped being paid to when they arrived back at the Phase 1 Security Gate."

d. The Unpaid Wages Class (Meal Period Time) is defined as "all non-exempt persons who were employees of or worked for CSI Electrical Contractors, Inc. on the construction of the California Flats Solar Project at any time within the period from July 30, 2014 through the date of class certification who were not paid for all the time of their meal periods."

e. The Termination Pay Subclass is defined as "all member of Class 1, 2, 3 or 4 whose employment with CSI Electrical Contractors, Inc. terminated within the period beginning July 30, 2015 to the date of class certification."

f. The Wage Statement Subclass is defined as "all member of Class 1, 2, 3, or 4 whose received wage statements from CSI Electrical Contractors, Inc. during the period beginning July 30, 2017 to the date of class certification."

3. The class issues are (1) whether Security Time constituted "hours worked" under California law; (2) whether travel time between the Phase 1 Security Gate

and the parking lots constituted "hours worked" under California law; (3) whether travel time after the Phase 1 Security Gate was time for which class members were entitled to be paid pursuant to Wage Order No. 16 ¶ 5(A); (4) whether meal periods constituted "hours worked" under California law; (5) whether CSI is liable for penalties under Section 203; (6) whether CSI violated its obligations under Section 226(a); (7) whether CSI had a uniform policy of requiring employees to report to the Phase 1 Security Gate; and (8) whether CSI had a uniform policy preventing class members from leaving their daily work sites during their meal periods.

4. The Court appoints George Huerta as the class representative.

5. Pursuant to Rule 23(g), the Court appoints the Dion-Kindem Law Firm and the Blanchard Law Group, APC as co-class counsel.

6. Counsel are directed to meet and confer concerning the manner, form and content of notice to be provided to the absent class members, and to submit a proposal concerning the same to the Court in writing no later than April 12, 2021.

Dated: March 12, 2021

BETH LABSON FREEMAN
United States District Judge

United States District Court
Northern District of California

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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,

Plaintiff,

v.

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.

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

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

Date: April 8, 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

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on April 8, 2021, at 9:00 a.m., or as soon thereafter as the matter may be heard, in the Courtroom of the Honorable Beth Labson Freeman, located at 280 South First Street, San Jose, California 95113, Defendant CSI Electrical Contractors, Inc. ("CSI") will and does hereby move the Court for an order granting partial summary judgment in favor of CSI and against Plaintiff George Huerta ("Plaintiff") under rule 56(d) of the Federal Rules of Civil Procedure on the grounds that there is no dispute as to any material fact as to the following issues:

1. The requirement that Plaintiff enter the Project from its single entrance does not obligate CSI to begin compensating Plaintiff after he entered the Project.
2. The requirement that Plaintiff enter the Project from its single entrance does not rise to a level of control sufficient to require compensation.
3. The requirement that Plaintiff enter the Project from its single entrance does not obligate CSI to compensate Plaintiff for reporting to work under Paragraph 5(A) of Wage Order 16.
4. The requirement that Plaintiff "badge in" at a guard shack each morning does not obligate CSI to begin compensating Plaintiff after he passed through security.
5. The requirement that Plaintiff "badge in" at a guard shack each morning does not obligate CSI to compensate Plaintiff for the time spent waiting in line to badge in.
6. The requirement that Plaintiff "badge in" at a guard shack each morning does not obligate CSI to compensate Plaintiff for reporting to work under Paragraph 5(A) of Wage Order 16.
7. The requirement that Plaintiff "badge in" at a guard shack each morning does not rise to a level of control sufficient to require compensation.
8. The requirement that Plaintiff drive from the Project entrance to the parking lot does not rise to a level of control sufficient to require compensation.
9. The requirement that Plaintiff drive from the parking lot to the Project entrance does not rise to a level of control sufficient to require compensation.

10. The requirement that Plaintiff "badge out" at a guard shack at the end of the day does not obligate CSI to compensate Plaintiff for the time spent waiting in line to badge out.

11. The requirement that Plaintiff "badge out" at a guard shack at the end of each day does not rise to a level of control sufficient to require compensation.

12. Plaintiff's claim based on "hours worked" during his meal period fails because Plaintiff worked under a qualifying collective bargaining agreement.

13. CSI is entitled to summary judgment in its favor and against Plaintiff as to the Second, Third, Fourth, Fifth, and Sixth Causes of Action to the extent that they are derivative of the claims for hours worked that are adjudicated in CSI's favor in this motion.

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

Date: March 4, 2021

FORD & HARRISON LLP

By: */s/ Daniel B. Chammas*
Daniel B. Chammas
Min K. Kim
Attorneys for Defendant,
CSI ELECTRIC COMPANY

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I. INTRODUCTION

Plaintiff George Huerta has been attempting to prop up and perpetuate claims that have been recently and resoundingly struck down as a matter of law by both this Court and the Ninth Circuit. Huerta's claims largely mirror the claims of two fellow employees on the same construction project he worked on that are currently being or were formerly litigated in two related cases, *Griffin v. Sachs Electric et al.*, Case No. 17-cv-03778-BLF ("*Griffin* Action") and *Durham v. Sachs Electric et al.*, Case No. 18-cv-04506-BLF ("*Durham* Action"). Huerta asserts several claims identical to those in both the *Griffin* Action and the *Durham* Action that have already been ruled to fail as a matter of law.

In the *Griffin* Action, the primary claim was that employees were required to drive from a security gate at the entrance of the project, after having their badges scanned at the gate, several miles to a parking lot while required to observe several rules of the road ("Drive Time Claims"). This Court granted Sachs summary judgment on the Drive Time Claims, and the Ninth Circuit unanimously affirmed the ruling. Undaunted, Huerta charges on, asserting identical Drive Time Claims in this action.

In the *Durham* Action, the plaintiff brought an additional claim for unpaid wages due as a result of allegedly not being relieved of all duty during meal breaks he admittedly received ("Hours Worked During Meal Period Claim"). This Court dismissed the Hours Worked During Meal Period Claim on the grounds that California law does not permit employees to assert meal period claims or derivative meal period claims where they worked under a collective bargaining agreement ("CBA"). Despite working under a similar CBA, Huerta, undeterred, moves forward, asserting an identical Hours Worked During Meal Period Claim.

This motion for summary judgment asks this Court to apply its recent holdings in the *Griffin* Action (affirmed by the Ninth Circuit) and the *Durham* Action to award CSI summary judgment for Huerta's identical Drive Time Claims and Hours Worked During Meal Period Claim. There are no material disputes of fact and Huerta cannot carry these beleaguered claims any further.

/ / /

II. STATEMENT OF UNDISPUTED FACTS

First Solar Electric, Inc. is the owner of the California Flats Solar Facility located in San Miguel, California and retained CSI to perform procurement, installation, construction, and testing services on Phase 2 of the Project. (Declaration of Amy Arnold ("Arnold Decl."), ¶ 3.) 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 about 528 workers through June 19, 2019. (*Id.*) CSI also required its subcontractor, Defendant Milco National Constructors ("Milco") to assign a few dozen of its workers to assist CSI in its work, and paid Milco on a time and material basis for such work. (*Id.*) Huerta worked on the Project, first as an employee of Defendant California Compaction, and then for Milco (Huerta Depo., 31:1-10; 119:17-121:23.)[1] While Huerta worked for Milco, he was assigned to assist CSI in its work. (*Id.*, 131:2-7.)

A. Huerta Drove A Vehicle From The Entrance Of The Project Directly To A Parking Lot

When he worked for Milco/CSI, in order to access the Project, Huerta needed to pass a guard shack, which was at the perimeter of the Project ("Project Entrance"). (Arnold Decl., ¶ 3.) The Project Entrance opened each morning after a biologist cleared the road a little before sunrise. "[A]t the beginning of the day before the sun would come up, [the biologist] would come and clear the road for animal activity [to] [m]ake sure it's safe access for [workers] to enter the project." (Backus Depo., 36:14-22.) After the biologist cleared the road, Huerta could pass the Project Entrance **without stopping** and travel down the road ("Access Road"), where the speed limit was generally 20 miles per hour after sunrise, but only 10 miles per hour if it was before sunrise. (*Id.*, at 36:23-25; 37:20-24.)

After traveling for 5.9 miles on the Access Road, Plaintiff was required to stop at a guard shack and present a badge for an attendant to scan ("Badging Gate"). (Arnold Decl., ¶ 4.) Plaintiff did not have to leave his vehicle and never even turned his badge over to the attendant. (*Id.*) Instead, Huerta at all times kept his badge on his person, only presenting it to be scanned. (*Id.*) At the Badging Gate, two lanes formed so that two lines of cars could be processed simultaneously

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

by several attendants. (*Id.*) After passing the Badging Gate, Huerta continued traveling down the Access Road until he reached a parking lot ("Parking Lot"). (*Id.*)

B. The Rules of the Project

Because of the location of the Project, the California Department of Fish and Wildlife ("CDFW") required a permit before work on the Project could begin. (Arnold Decl., ¶ 5, Ex. A.) The CDFW imposed rules that had to be followed on the Project because of the presence of two endangered species: the San Joaquin Kit Fox and the California Tiger Salamander. (*Id.*) Under the California Endangered Species Act, an Incidental Take Permit ("ITP") needed to be issued because of the effect on the endangered species that the Project was expected to have. (*Id.*)

The ITP required a biologist to monitor work on the Project to "help minimize and fully mitigate or avoid the incidental take of Covered Species, minimizing disturbance of Covered Species' habitat." (Arnold Decl., ¶ 6; ITP, § 6.2.) The ITP further required "an education program for all persons employed or otherwise working in the Project Area before performing any work," which "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." (*Id.*, § 6.4.)

The ITP required the Project to "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." (Arnold Decl., ¶ 7; ITP, § 6.12.) The ITP also strictly set out the boundaries of the Project and the visitors' access to the Project: "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." (*Id.*, § 6.13.) The ITP also required the restriction of "shall restrict Project-related vehicle traffic to established roads, staging, and parking areas," and "**that vehicle speeds do not exceed 20 miles per hour to avoid Covered Species on or traversing the**

roads." (*Id.* [emphasis added].) At times, small portions of the Drive posted speed limits of 5 miles per hour because of the presence of "kit fox" zones. (Arnold Decl., ¶ 8.)

In CSI's contract with the General Contractor, it was required to observe all of these rules and make sure its employees did as well. (Arnold Decl., ¶ 9, Ex. B [CSI's Subcontract].) CSI agreed that it will "ensure that the wildlife and the burrows/dens/nests of such are not touched by anyone other than the biological Compliance Monitor." (*Id.*, Ex. B at Exhibit A, §1.2.13.6.4.) Further, CSI agreed that "[i]n certain circumstances Work may be allowed within an Environmentally Sensitive Area ("ESA") buffer if a Bio Monitor is present. If [CSI] wishes to Work within a buffer, [CSI] shall contact a Lead Bio Monitor who can determine if the buffer may be entered, and if so under what circumstances." (*Id.*, § 1.2.13.7.1.3.) CSI Class Members were "not allowed access to the [Project] until Site orientation requirements in Exhibit D have been satisfied and all forms therein [were] provided to Contractor." (*Id.*, §1.2.2.10; Exhibit D.)

C. Huerta Was Provided A 30-Minute Lunch Each Day In Accordance With Two Collective Bargaining Agreements That Governed His Employment

Huerta was "a member of the Operating Engineers Local 3" and was "dispatched" to the Project by that union. (Huerta Depo., 22:11-15; Arnold Decl., ¶ 10, Exh. C.) *See also* Huerta Depo., 27:24-28:21 (Union "called and they said it was another solar project. It was in the same area of the first phase. I knew the first phase, and I accepted the order"); *id.*, 120:14-20 ("Q And so -- and so did you want to move on to Milco? [W]as there an opportunity that you were made aware of at Milco? No. I just -- I just inquired about it. Q Because were some people from your union assigned to work at Milco -- work for Milco? A That's correct."); *id.*, 121:12-20 ("Q This is your union.· Did you do this on the phone with your union, make the request, e-mail, or did you call, or did you show up in person when you were trying to get this opportunity at Milco? A For that -- for that work area, that -- that job, the dispatch came out of Santa Clara. They told me that they would send the dispatch to Fresno and that I could pick up the dispatch there in Fresno.")

Huerta's employment on the Project was governed by two collective bargaining agreements: the Operating Engineers Local Union No. 3 ("Operating Engineers Master Agreement") and the Project Labor Agreement specific to the Project ("Cal Flats PLA").

(Arnold Decl., ¶ 11.) Pursuant to the CBAs, Huerta received premium pay for all overtime hours worked (*id.,* Exh. D; Operating Engineers Master Agreement, § 6.01.01), and earned a regular hourly rate of at least $22.97 per hour (*id.,* Exh. D at Addendum D, § 03.01.00). Huerta also received one 30-minute unpaid meal break during his shift. (*Id.*, Exh. E, Cal Flats PLA, §7.1; Huerta Depo., 64:11-68:8.)

III. THE *GRIFFIN* ACTION DEFINITIVELY AND RESOLUTELY FORECLOSES SEVERAL OF HUERTA'S CLAIMS FOR UNPAID WAGES BASED ON THE TIME HE TRAVELED IN HIS PERSONAL VEHICLE FROM THE SECURITY GATE TO THE PARKING LOT

The Ninth Circuit and this Court squarely rejected the legal theory of liability underpinning the three unpaid wage claims in the First Amended Complaint ("FAC") for time spent traveling in Huerta's personal vehicle before and after work: (1) Paragraph 5(A) claim, (2) Security Time Claim, and (3) Controlled Travel Time Claim. As a result, these claims for unpaid wages for this time are subject to summary judgment.

A. "Paragraph 5(A) Claim"

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

This Court rejected in the *Griffin* case any claim that the requirement that employees enter the same project from its single entrance obligates an employer to compensate them for reporting to work under Paragraph 5(A) of Wage Order 16. This Court held that "[t]he Security Gate was not 'the first location where Plaintiff's presence was required' under Wage Order 16 ¶ 5(A)." *Griffin*, 390 F. Supp. 3d at 1096. The Court held that "Plaintiff's brief stop at the guard shack to enable scanning of his badge was not a 'location where the employee's presence is required'

within the meaning of Wage Order 16 ¶ 5(A)." *Id.*, 1096-97. The Court reasoned that "simply [holding] up [a] badge[] for scanning by the person(s) manning the guard shack…is no different than that of any employee who enters a work campus or premises that requires scanning an employee badge to gain access." *Id.*, at 1097. "Plaintiff drove his own vehicle, did not exit his vehicle, and simply presented his badge for scanning. It is simply illogical that merely scanning a badge to gain access triggers the right to compensation under Wage Order 16. If so, a massive swath of squarely non-compensable walking or commute time from the first 'badge' checkpoint of a given work location would be covered by paragraph 5(A)." *Id.* This Court concluded that "**as a matter of law**, Plaintiff's pass through the 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 ¶ 5(A)." *Id.* (emphasis added). On appeal, the Ninth Circuit unanimously affirmed this ruling. *See Griffin v. Sachs Elec. Co.*, 2020 U.S. App. LEXIS 38840, *3-4 (9th Cir. Dec. 11, 2020) ("the security gate was not the first location where employees' presence is required under the meaning of paragraph 5(a) of Wage Order 16-2001").

Therefore, any claim in this case that CSI was required under Paragraph 5(A) to compensate Huerta merely because he was required to access a security gate and badge in on the exact same Project as in *Griffin* does not state a claim for relief. This issue should be summarily adjudicated in CSI's favor.

B. "Security Time Claim"

Huerta testified that, after entering the Project, he was required to present his badge at a gate for security to scan. (*See* Huerta Depo., 74:22-75:9) ("Q Okay. So you -- you held it up and they scanned it; correct? A That's correct. Q They didn't take it from you; they just scanned it while you're holding it? A That's correct.") Huerta also claims that he did the same thing on the way out of the Project. (*Id.*, 115:22-24.) Any claim in this case that CSI was required to compensate Huerta merely because he was required to badge in or out at the security gate was expressly rejected by this Court in the *Griffin* Action.

In *Griffin*, "Plaintiff argue[d] that 'workers were [] under Sachs's control' at the beginning and end of the workday because they were required to badge-in and badge-out at the Security

Gate." *Griffin*, 390 F. Supp. 3d at 1090. Griffin further argued that "'time spent going through security screening constitute[s] hours worked under California law.'" *Id.* (quoting Griffin's brief). This Court contrasted a "bag check" procedure, noting that "personnel at the Security Gate did not screen employees or their belongings in such a manner. Instead, workers traveling by car presented their badges at the guard shack to gain entry through the Security Gate." *Id.*, at 1091. This Court reasoned that "[w]hether driving or riding, workers were not required to exit the car, but simply held up their badges for scanning by the person(s) staffing the guard shack." *Id.* "This process is analogous to scanning or flashing an employee badge to enter a compound or campus, and unlike the airport-like screening in *Cervantez* that applied to all employees. Accordingly, Plaintiff's time spent badging-in and badging-out at the Security Gate does not equate to control." *Id.*

The Ninth Circuit agreed: "Griffin was not under Sachs's control while waiting in line for guards to badge him in or out at the security gate. Griffin relies on [*Frlekin*], in arguing that employees must be compensated any time they wait for and undergo 'mandatory security processes.' *Frlekin* made clear that an employer's level of control over its employees is the 'determinative factor' in assessing whether compensation is required, but that case involved mandatory searches of employees' bags and other belongings. Here, although the line of vehicles waiting to pass through the security gate could be long, all Sachs's employees had to do was flash their badges to a guard, which is significantly less invasive than the exit searches at issue in *Frlekin*. Griffin's Security Time is thus not compensable." *Griffin*, 2020 U.S. App. LEXIS 38840, *2-3.

Any claim for unpaid wages because Heuerta had to wait to badge in or out is baseless. Griffin's identical claim was held by this Court to be barred as a matter of law. *See Griffin*, 390 F. Supp. 3d at 1091 ("Plaintiff further argues the security setup required him at times 'to sit in [his] vehicle[] in a line outside the Security Gate [] for approximately 10 to 20 minutes or more waiting for the sun to come up and for the Security Gate [] to be opened' and that '[t]he same kind of line and wait would almost always happen . . . at the end of the day.'…The Court finds that Plaintiff's wait time of approximately 10 to 20 minutes to get through the Security Gate due to congestion at

the beginning and end of the day does not amount to control. It is undisputed that Plaintiff and his fellow workers underwent no special screening or security check upon entry or exit. Thus, Plaintiff's 'wait time' is equivalent to a normal bottleneck entering/exiting parking lots on an employer's premises around the time shifts begin/end and not an employer-controlled body screening.").

Huerta cannot escape these holdings. Any claims by Huerta for unpaid wages based on the same badging in and out process as in *Griffin* on the exact same project are also not compensable as a matter of law.

C. "Controlled Travel Time"

The FAC alleges that Huerta "and other class members were then required to travel approximately 10 or more miles along a route designated by and regulated by Defendants at speed limits and subject to job site rules designated by Defendants, using non-public roads to reach parking lots and or job sites by specific times designated by Defendants." (FAC, at ¶ 30.) Plaintiff alleges that, during this drive, he was "under Defendants' control and were restricted by Defendants' rules, processes, procedures and supervision." (*Id.*, at ¶ 26.) The FAC alleges that "Plaintiff and class members were not able to use this travel time effectively for their own purposes." (*Id.*)

In the *Griffin* case, this Court held that the Project rules "are standard prohibitions common to many work campuses or premises that reasonably foreclose activities that may be illegal or unsafe in that setting." *Griffin*, 390 F. Supp. 3d at 1092. The Court reasoned that "these general workplace rules do not equate to control within the meaning of 'hours worked' because they simply reflect standard workplace requirements not directed to 'determining when, where, and how plaintiffs must travel.'" *Id.* The Ninth Circuit agreed. *See Griffin*, 2020 U.S. App. LEXIS 38840, *2-3 ("Nor was Griffin under Sachs's control while he drove the access road to the parking lots. His argument to the contrary rests on the various rules he had to follow while on the property where he worked. Griffin's drive on the access road more closely resembles a continuation of his commute, however, which is 'not typically compensable under California labor law.' *Alcantar v. Hobart Serv.*, 800 F.3d 1047, 1054 (9th Cir. 2015). The rules governing the drive were not

particularly burdensome and reflected the nature of the property—a remote, private ranch containing cattle, as well as endangered species and their habitat.").

Huerta's claims regarding the drive on the Project between the security gate and the parking lot do not state a claim for relief. This Court and the Ninth Circuit have held that the exact same drive on the same project with the same factual allegations is not compensable as a matter of law. Huerta's claims to recover compensation because of the alleged control for the exact same time are baseless and should be subject to summary judgment.

IV. THE *DURHAM* ACTION ABSOLUTELY AND UNEQUIVOCALLY DISPOSES OF HUERTA'S CLAIM THAT HE SHOULD BE PAID WAGES FOR NOT BEING RELIEVED OF ALL DUTY DURING HIS MEAL PERIODS BECAUSE HE WORKED UNDER A QUALIFYING CBA

In *Durham v. Sachs Elec. Co.*, 2020 U.S. Dist. LEXIS 242080 (N.D. Cal. Dec. 23, 2020), this Court held that claims by union members working under a qualifying CBA for unpaid wages allegedly owed because of a "controlled" meal period are barred as a matter of law. This Court dismissed identical claims involving meal periods provided on the same Project with the same alleged rules: employees could not leave their work areas during meals. This Court should reach the same conclusion here.

A. This Court's Ruling In *Durham* Is Dispositive Of Huerta's Identical Claim Here

Just a few months ago, this Court held that the identical claim advanced by Huerta is barred as a matter of law. In *Durham*, the plaintiff brought "a claim for 'failure to pay wages for hours worked,' citing Cal. Labor Code §§ 1194 & 1197. FAC §§ 21-37. This claim is based, among other things, on the fact that '[w]orkers were **never paid for the time that they were on meal breaks** or when their meal breaks or rest breaks were interrupted by work-related duties.'" *Id.*, *10 (Court's emphasis). This Court held that "[u]pon careful review of the parties' arguments, the Court concludes that the express statutory exemption for CBA-covered employees who bargain for the terms of their meal periods extends to a derivative claim like this one." *Id.*, *13-14. "The Court GRANTS Sachs' motion for judgment on the pleadings… Accordingly, the Court DISMISSES Durham's claims to the extent they are predicated on meal period violations." *Id.*, *17-18.

B. Plaintiff's Claim For Unpaid Wages For Not Being Relieved Of All Duty During A Meal Period Fails Under The Express Terms Of Wage Order 16

"The IWC's wage orders are to be accorded the same dignity as statutes. They are 'presumptively valid' legislative regulations of the employment relationship (*Martinez v. Combs, supra,* 49 Cal. 4th at p. 65), regulations that must be given 'independent effect' separate and apart from any statutory enactments (*id.* at p. 68). To the extent a wage order and a statute overlap, we will seek to **harmonize** them, as we would with any two statutes." *Brinker Restaurant Corp. v. Superior Court,* 53 Cal. 4th 1004, 1027 (2012) (emphasis added).

Wage Order 16 applies to the construction industry. Cal. Code Regs., tit. 8, § 11160. Section 10(A) of Wage Order 16 provides that "[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes..." *Id.,* subd. 10(A). Section 10(D) of the wage order provides that **"[u]nless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked."** *Id.,* subd. 10(D) (emphasis added).

Subdivision (E) of the same wage order provides that "[s]ubsections (A), (B), and **(D)** of Section 10, Meal Periods, shall not apply to any employee covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employees, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage." *Id.,* subd. 10(E). In other words, the requirement that an employee must be paid during a lunch break unless he or she is relieved of all duty **does not apply** to construction workers covered by a qualifying collective bargaining agreement.

The Project PLA Agreement and the Operating Engineers Master Agreement qualify under Wage Order 16 as collective bargaining agreements that (1) expressly provide for the wages, hours of work, and working conditions of employees (Arnold Decl., Exhs. D-E), (2) provide for premium pay for all overtime hours worked (*id.,* Exh. D; Operating Engineers Master Agreement, § 6.01.01), and (3) provide a regular hourly rate of pay for employees of at least 30 percent more than the state minimum wage rate (*id.,* Exh. D at Addendum D, § 03.01.00) (all

wage rates more than $22.97 per hour).

Here, Plaintiff is advancing a claim that is precisely what the wage order exempts from liability. Plaintiff demands that his meal break should be compensated because he was not relieved of all duty, but Wage Order 16 expressly states that the ordinary rule that meal periods are "counted as time worked" if employees are not "relieved of all duty during [their] 30 minute meal period[s]" does "not apply to any employee covered by a [qualifying] collective bargaining agreement." Accordingly, under Wage Order 16, Plaintiff's claim that his meal period be "counted as time worked" because he was not relieved of all duty is barred.[2]

C. Section 512 Further Codifies The CBA Exemption For Unpaid Wage Claims For Not Being Relieved Of All Duty During A Meal Period

Like Wage Order 16, section 512 of the California Labor Code also exempts employers in the construction industry from having to pay an employee for time worked because he is not relieved of all duty during a meal period. Section 512(a) provides that "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes." Cal. Labor Code §512(a). Subdivision (a), however, does not apply to an "employee employed in a construction occupation" who is "covered by a valid collective bargaining agreement [that] expressly provides for the wages, hours of work, and working conditions of employees, and expressly provides for meal periods for those employees, final and binding arbitration of disputes concerning application of its meal period provisions, premium wage rates for all overtime hours worked, and a regular hourly rate of pay of not less than 30 percent more than the state minimum wage rate." *Id.,* § 512(e), (f).

Section 512(a), therefore, does not apply to Plaintiff because he was covered by a collective bargaining agreement that (1) expressly provides for the wages, hours of work, and

[2] Although *Bearden v. U.S. Borax, Inc.,* 138 Cal. App. 4th 429, 436 (2006), held that the CBA exemption in Wage Order 16 was invalid on the grounds that the state agency "exceeded its authority in creating a meal period exemption not codified in section 512," *Bearden's* holding was several years before section 512 was amended to expressly add a nearly identical exemption for workers in the construction industry. As a result, the CBA Meal Period Exemption in Wage Order 16 is consistent with section 512 and is valid, and *Bearden's* holding has been superseded by the 2011 amendments to section 512. (*See* Dock No. 90; Request for Judicial Notice, Exh. C; S. Rules Comm. AB 569, Third Reading.)

working conditions of employees (Arnold Decl., Exhs. D-E), (2) expressly provides for meal periods for those employees *(id.,* Exh. D; Operating Engineers Master Agreement, Sections 6.19.00; Exh. E; Project PLA Agreement, Section 7.1), (3) expressly provides for final and binding arbitration of disputes concerning application of its meal period provisions *(id.,* Exh. D; Operating Engineers Master Agreement, Section 6.19.05; Exh. E; Project PLA Agreement, Article 8), (4) expressly provides for premium wage rates for all overtime hours worked *(id.,* Exh. D; Operating Engineers Master Agreement, § 6.01.01), and (5) expressly provides for a regular hourly rate of pay of not less than 30 percent more than the state minimum wage rate (*id.,* Exh. D at Addendum D, § 03.01.00) (all wage rates more than $22.97 per hour).

Plaintiff does not dispute that section 512(a) is inapplicable to him. Plaintiff argues that the CBA Meal Period Exemption prevents him only from recovering the additional hour of premium pay recoverable for not being afforded a meal break, but the time spent "working" during a meal break—*i.e.*, the time spent when he was not relieved of all duty—is still recoverable, notwithstanding the CBA Meal Period Exemption. Plaintiff's argument, however, is without any support, is contrary to the legislative history, runs counter to general canons of statutory interpretation, and is against case-law.

D. Plaintiff's Argument That The CBA Meal Period Exemption Preempts Only A Claim For An Extra Hour Of Premium Pay Is Flawed

Plaintiff's anticipated argument is that the CBA Meal Period Exemption prevents him from collecting only the additional hour of premium pay owed and not the wages owed for not being relieved of all duty during a meal period. This distinction, however, between the hour of premium pay and the time worked during the meal period is contrived. Under section 512, if an employer does not relieve an employee of all duty during a meal period, there are two consequences, neither of which is listed in section 512.

First, failure to comply with section 512 entitles an employee to an additional hour of premium pay under section 226.7 of the Labor Code. *See Adams v. Michaels Stores, Inc.,* 2013 U.S. Dist. LEXIS 202734, *13 (C.D. Cal. Mar. 4, 2013) ("Labor Code section 226.7(b)... 'provides' for an hour of premium pay for any required meal or rest period 'an employer fails to

provide'"). Second, if an employer fails to provide a meal period pursuant to section 512, the employer owes wages for the time worked in the meal period. *See Bono Enterprises, Inc. v. Bradshaw,* 32 Cal. App. 4th 968, 979 (1995) (employees who were required to remain on the work premises during their lunch hour had to be compensated for that time under the definition of "hours worked"), disapproved of on other grounds in *Tidewater Marine Western, Inc. v. Bradshaw,* 14 Cal. 4th 557, 574 (1996).

The CBA Meal Period Exemption, as explained above, means that union employees working under qualifying CBAs are excluded entirely from section 512(a)—the source of the right to the one-hour of premium pay **and** unpaid wages for not being relieved of all duty during a meal period. There is no reasonable basis to interpret the CBA Meal Period Exemption as allowing a union worker to sue for one remedy but not the other. It is not as if the one hour of premium pay is in section 512 itself, which may have suggested that this remedy is part of the exemption. Both remedies for an employer violating section 512 by not relieving an employee of all duty during a meal period require reference to other Labor Code sections. The one hour of premium pay, therefore, is on no different statutory footing and is no more off limits than are the allegedly unpaid wages for not being relieved of all duty. Plaintiff cannot cite a single case holding otherwise.

E. Unions And Employers Are Permitted To Define What An Off-Duty Meal Period Is Irrespective Of California Law

Critical to Plaintiff's argument that he should be able to recover for unpaid wages while he was on a lunch break is that this Court should use California law in order to determine whether the break was an on-duty or off-duty meal period. According to Plaintiff, unless he was relieved of all duty during a meal period under California law, he must be paid for the time he was on break. Section 512, however, cedes to unions in the construction industry the right to bargain with employers over what qualifies as an off-duty meal period, not based on California law, but based on the terms of the CBA. A union employee working under a qualifying CBA cannot bring a claim that he was not relieved of all duty during a meal period under California law and is owed wages for that time.

In *Vranish v. Exxon Mobil Corp.,* 223 Cal. App. 4th 103 (2014), the court considered an almost identical CBA exemption from overtime laws. Under section 510(a) of the Labor Code, the court noted, "[e]ight hours of labor constitutes a day's work." *Id.,* at 109 (quoting Cal. Labor Code § 510(a)). Section 514, however, provides that "'Section[] 510...do[es] not apply to an employee covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employees, and if the agreement provides premium wage rates **for all overtime hours worked** and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage.'" *Id.* (quoting Cal. Labor Code § 514) (emphasis added).

In *Vranish,* the CBA provided overtime "for hours worked over 40 hours in a workweek or over 12 hours in a workday. The CBA provides that overtime is not paid for hours worked between eight and 12 in a workday." *Id.,* at 107. As the court framed the problem, the "issue in this appeal is whether the phrase 'all overtime hours worked' in section 514 means 'overtime' as defined in section 510, subdivision (a); said otherwise, was Exxon required to pay plaintiffs 'overtime,' as that word is defined in section 510, subdivision (a), or was it only required to pay a premium for 'overtime' worked as that word is defined in the CBA?" *Id.*

The court held that "the CBA provides for premium wages," and "[n]othing in section 514 requires Exxon to look to the definition of 'overtime' as that word is defined in section 510, subdivision (a)." *Id.,* at 110. The court reasoned that "[w]hen there is a valid collective bargaining agreement, [e]mployees and employers are free to bargain over not only the **rate** of overtime pay, but also **when** overtime pay will begin. Moreover, employees and employers are free to bargain over not only the timing of when overtime pay begins **within a particular day,** but also the timing **within a given week.** The Legislature did not pick and choose which pieces of subparagraph (a) will apply or not apply. Instead, the Legislature made a categorical statement that 'the requirements of this section,' meaning this section **as a whole,** do not apply to employees with valid collective bargaining agreements." *Id.* (emphasis in original).

The reasoning of *Vranish* has been applied by courts to the CBA Meal Period Exemption. In *Araquistain v. Pacific Gas & Electric Co.,* 229 Cal. 4th 227, 233 (2014), the plaintiff argued

that the CBA's "provision that [certain] employees 'shall be permitted to eat their meals during work hours and shall not be allowed additional time therefore at Company expense' does not "expressly provide[] for meal periods." "According to plaintiffs, the Agreement provides for 'meals' but not 'meal periods'; a 'meal period,' they argue, is 'a period of time—i.e., with a beginning and an end[] — when an employee is not required to work.'" *Id.*

"The question before [the court], then, is whether we must construe the term 'meal periods' in section 512, subdivision (e)(2) in the same way as the term is used in section 512, subdivision (a); that is, whether the meal periods included in a collective bargaining agreement that meets the requirements of subdivision (e)(2)—and that thereby establishes an exception to subdivision (a)—must have the same characteristics as the meal periods required by subdivision (a)." *Id.,* at 234. The court held initially that "a collectively bargained meal period that complies with subdivision (e)(2) need not necessarily be a full 30 minutes, begin before the end of the fifth hour of work, or **even be completely free of all employer control."** *Id.* (emphasis added). The plaintiffs argued however, that "the 'irreducible core meaning' of a meal period is the same in both contexts—'a discrete amount of time when an employee is relieved of work duties.'" *Id.*

The court rejected the plaintiffs' argument. The court held that the statute "provides an exception to the ordinary rule that an employer must provide meal periods of a specified time after a specified amount of work; that is, it provides that where a collective bargaining agreement meets certain requirements, subdivision (a) 'do[es] not apply.'" *Id.,* at 236. "It would make no sense to conclude that subdivision (a)'s requirements apply to an employee who is explicitly exempted from them. Rather, Assembly Bill 569 authorizes collectively bargained agreements that provide alternate meal period arrangements." *Id.*

The court cited "[the] legislative history [as proof] that the bill was intended to **increase meal period flexibility** in certain industries, and that the bill would also address, to some degree, the **problem of forced monitoring** of employee meal periods." *Id.,* at 237 (emphasis added). "The history also indicates that the Legislature was aware of the distinction between on-duty and off-duty meal periods, and chose not to specify that the 'meal periods' mentioned in section 512, subdivision (e) must be off-duty meal periods." *Id.* The court concluded that "[t]o the limited

extent this history illuminates the issue before us, it provides some support for our conclusion that alternate meal period arrangements, including meal periods that might take place while an employee is on duty, are permissible where the other requirements of section 512, subdivision (e) are met." *Id.*

The court therefore held that "a collective bargaining agreement providing that employees 'shall be permitted to eat their meals during work hours' expressly provide[s] for meal periods for those employees." *Id.* (§ 512, subd. (e)(2).) "The parties to the Agreement expressly made alternate arrangements to allow covered employees time to eat their meals. This conclusion comports with the clear intent of the Legislature to afford additional flexibility with regard to the terms of employment of employees in certain occupations, so long as their interests are protected through a collective bargaining agreement." *Id.,* at 237-38. The court concluded that "when employees, 'represented by a labor union, 'have sought and received alternative wage protections through the collective bargaining process," [citing *Vranish*], they are free to bargain over the terms of their meal period, including whether the meal period will be of a specified length and whether employees will be relieved of all duty during that time." *Id.,* at 238.

Importantly, the court held that "employees who are unable to eat their meals during work hours [still have] a remedy." *Id.,* at 238, n.7. "[T]he collective bargaining agreement provides that employees whose workdays are eight consecutive hours 'shall be permitted to eat their meals during work hours," and "[i]f these employees find they are unable to eat their meals during work hours, they may seek redress through the five-step grievance procedure set forth in the agreement." *Id.*

In *Perez v. Leprino Foods Co.,* 2018 U.S. Dist. LEXIS 47698, *11 (E.D. Cal. Mar. 22, 2018), the district court interpreted *Araquistain* similarly, holding that the court "expand[ed] on *Vranish* to explain that labor unions are also free to set the terms of meal periods, including the length and **whether employees are relieved of duty in a manner that provides lesser protection than the California Labor Code would in other circumstances."** (Emphasis added.)

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Accordingly, the law is settled that a CBA may define a meal period differently than California defines the same term under section 512. The case of *Brinker Restaurant Corp. v. Superior Court,* 53 Cal. 4th 1004 (2012), defined what an off-duty meal period is under section 512(a)—the employee must be relieved of all duty or the break must be paid as time worked, and the hour of premium pay is owed as well. The right to a duty free meal period, in fact, is inherent in section 512, and *Brinker* sets forth its requirements.

"Under Wage Order No. 5 and Labor Code section 512, subdivision (a), an employer must relieve the employee of all duty for the designated period, but need not ensure that the employee does no work." *Brinker,* 53 Cal. 4th at 1034. "The IWC's wage orders have long made a meal period's duty-free nature its **defining characteristic."** *Id.,* at 1035 (emphasis added). "Section 512's mandate that employers 'provid[e]' 30-minute meal breaks can be read as shorthand for the requirement contemplated in subdivision 11 of most of the IWC's wage orders: Employers must afford employees uninterrupted half-hour periods in which they are relieved of any duty or employer control and are free to come and go as they please." *Id.,* at 1037. "[U]nder what is now section 512, subdivision (a), as under Wage Order No. 5, an employer's obligation when providing a meal period is to relieve its employee of all duty for an uninterrupted 30-minute period." *Id.*

Section 512(a), therefore, requires that California employers (1) provide a meal period to their employees, (2) before they work for 5 hours, (3) at least 30 minutes, and (4) while they are relieved of all duty **under California law.** Employers of construction workers covered by certain collective bargaining agreements are exempt from these requirements and are permitted to fill that void with their own duty-free meal period governed not by California law, but by the CBA itself.

As noted by *Perez v. Leprino Foods Co.,* 2018 U.S. Dist. LEXIS 47698, *11, "labor unions [are] free to set the terms of meal periods, including...whether employees are relieved of duty in a manner that provides lesser protection than the California Labor Code." In other words, an employer and a union are permitted to negotiate exactly what it means to be relieved of duty during a meal period, and that the parties can agree that a meal period that does not relieve union members of all duty under California law may still be unpaid.

Federal law provides an example of how parties to a CBA can agree what it means to relieve a union member of all duty during a meal break so that it is unpaid, but still fall short of the California standard. Under the FLSA, "[w]hether a meal period must be counted as time worked is evaluated under the **'predominant benefit test'** which examines whether the meal time is spent primarily for the employer's benefit." *Nelson v. Waste Mgmt. of Alameda County, Inc.*, 2000 U.S. Dist. LEXIS 11286, *9-10 (N.D. Cal. Jun. 16, 2000) (emphasis added). "The predominant benefit tests asks 'whether the [employee] is primarily engaged in work-related duties during meal periods." *Babcock v. Butler Cnty.*, 806 F.3d 153, 156 (3d Cir. 2015). *See Henson v. Pulaski County Sheriff Dep't,* 6 F.3d 531, 536-37 (8th Cir. 1993) (meal period properly uncompensated under the FLSA even though some employees are "required to monitor their radios and to respond in the case of an emergency" and other employees "must remain on the premises of the jail facility during their thirty-minute meal breaks," and "must respond to any emergency calls that are issued over the jail's intercom," which "interrupt[] approximately twenty percent of their breaks").

Clearly, the meal period in *Henson* would be compensated under California law because employees are still on call during their meal period and are required to stay on the premises. *See Frlekin v. Apple Inc.*, 8 Cal. 5th 1038, 1053 (2020) ("workers who were required to remain on the premises during their lunch break were entitled to compensation because they were subject to the employer's control"). The CBA Meal Period Exemption, however, permits a union and an employer to agree that they are not following section 512(a) and *Brinker's* holding that employees must be relieved of all duty and completely free from control. The parties to a CBA, rather, may incorporate and follow a different body of law, such as the "predominant benefit" test under federal law for meal periods, and that is the standard used to see if an "off duty" meal period was provided to an employee.

The case of *Cleveland v. Groceryworks.com, LLC*, 200 F. Supp. 3d 924 (N.D. Cal. 2016), discusses a meal period that would be compensable under section 512, but could be agreed by a union to be unpaid under a CBA. In *Cleveland,* the plaintiff alleged that "on-the-road lunches required him to monitor his truck's refrigeration levels and stay near his truck," meaning that "he

was denied a meal break because he was not relieved of all duty." *Id.,* at 948. The Plaintiff testified that "the refrigeration only works while the truck is running. If it is hot outside and if I have items in the truck that need to stay cold, I cannot leave the truck for 30 minutes . . . ." *Id.,* at 949. Based on this showing, the court denied summary judgment to the employer because the plaintiff had raised a triable issue of fact that he was "not relieved of all duty during these on the road meal periods, which would entitle him to compensation." *Id.,* at 950.

In *Cleveland,* the CBA Meal Period Exemption was not an issue as it does not appear that a collective bargaining agreement was involved. However, the fact pattern is precisely the type of situation that a union and employer could agree is an off duty meal period. Even though the allegation that the plaintiff was required to "stay near his truck" to "monitor his truck's refrigeration levels" may have been a controlled meal period under section 512, a CBA, operating outside of section 512, could designate that as an unpaid meal period. This would mean that union members would not be entitled to either the one hour of premium pay under section 226.7, or unpaid wages for working time during this meal period for each such meal period.

Accordingly, Plaintiff's claim here for unpaid wages during his meal period is barred under section 512. The definition of a meal period is left up to the parties under subdivisions (e) and (f) of section 512, including whether it is an on duty of an off duty meal period. The definition of an "off duty" meal period under section 512(a)—that the employee must be completely free from control—does not govern the CBA here. The parties to the CBA, rather, could negotiate the features and level of control permitted during the off duty meal period. A plaintiff is not permitted to claim that he was "controlled" under California law during that meal period and sue for unpaid wages under state law. Otherwise, the CBA Meal Period Exemption is toothless, as CBAs are still required to follow *Brinker* and relieve employees of all duty during meal periods unless they pay for all meal periods as time worked.

F. Courts Find Derivative Claims Barred Where There Is A Statutory CBA Exemption

Courts have not allowed union employees to evade the CBA Meal Period Exemption by raising derivative claims based on a failure to provide a duty free meal period. In *Pyara v. Sysco*

Corp., 2016 U.S. Dist. LEXIS 94892, *2 (E.D. Cal. Jul. 19, 2016), the plaintiff "was employed by Defendants as a non-exempt industrial truck driver" and was subject to a CBA. The plaintiff alleged that the defendants engaged in "wage theft/time shaving" "based on Defendants' alleged practice of clocking out Pyara for meal and rest periods even when he remained working. Pyara's second cause of action for failure to pay overtime is based on Defendants' alleged failure to provide meal and rest periods and therefore not correctly classifying certain hours as overtime work." *Id.*, at *2-3. "Pyara's third cause of action for failure to provide meal periods is based on Defendants' alleged policy of requiring Pyara to work through meal periods." *Id.*, at *3.

After finding that both of Pyara's claims for missed meal periods and unpaid overtime was subject to the relevant CBA exemption, the court turned to the "time shaving" claim, acknowledging that "California employees who do not receive their full wages owed may bring an action to recover the unpaid balance." *Id., at* *15. The court found, however, that the time shaving claim based on working through meal periods and failing to pay overtime also failed, holding that "to the extent this cause of action rests upon violations of overtime or meal periods, the motion for judgment on the pleadings is granted because those claims are statutorily barred." *Id.*, at *17. *See also Durham v. Sachs Elec. Co.*, 2020 U.S. Dist. LEXIS 242080, *17 (N.D. Cal. Dec. 23, 2020) ("Durham, like Pyara, is barred from bringing a § 1194 claim due to the CBA exemption enshrined in § 512(e).").

As discussed above, the CBA Meal Period Exemption is substantively identical to the CBA exemption for overtime. *See* Cal. Labor Code § 514. Courts interpreting section 514 have also dismissed Labor Code claims that are derivative of the overtime claims. In *Chavez v. Smurfit Kappa N. Am. LLC,* 2018 U.S. Dist. LEXIS 232653, *3 (C.D. Cal. Oct. 17, 2018), the plaintiff "allege[d] that Defendant engaged in a pattern and practice of wage abuse against its hourly-paid employees within the State of California, which included failing to pay the employees for all regular and/or overtime wages earned." The plaintiff brought claims for "unpaid overtime" and "unpaid minimum wages." *Id.* After finding that the plaintiff's overtime claim was barred by the CBA overtime exemption under section 514, the court also dismissed "the unpaid minimum wages claim [because it] can only arise out of Defendant's failure to pay overtime wages." *Id.*, at

*11. The court reasoned that "[b]ecause the unpaid overtime claim is barred, the unpaid minimum wages claim necessarily fails." *Id.*

See also Vasquez v. Packaging Corp. of Am., 2019 U.S. Dist. LEXIS 167855, *1041 (C.D. Cal. Jun. 7, 2019) (after finding overtime claim barred by CBA exemption, court holds that "[m]any of the remaining causes of action are derivative of Plaintiff's overtime claim. For example, Plaintiff asserts that Defendant failed to provide accurate wage statements (Fifth Cause of Action) because it failed to include the correct overtime rate. *See Compl.* ¶ 82. Plaintiff also claims that he is entitled to waiting time penalties (Sixth Cause of Action) because Defendant did not properly tender overtime wages. *See id.* ¶ 90...As such, the Court finds that those claims are likewise preempted by the LMRA, to the extent that they are derivative of Plaintiff's overtime claim.").

Plaintiff's unpaid wage claim is derivative of the underlying section 512 claim. The core violation alleged is a failure to provide a duty-free meal period. As in *Pyara* and *Chavez*, a plaintiff cannot evade the relevant CBA exemption by bringing a claim for unpaid wages based on not being relieved of all duty during a meal period or not being paid overtime. In *Pyara* specifically, the court, relying on the CBA Meal Period Exemption, rejected a minimum wage claim to the extent it was based on wages owed during a meal period. The same result should occur here.

G. The CBA Shows That The Parties Bargained About What It Means To Provide An Off-Duty Meal Period Under The Agreement

The Cal Flats PLA provides that "[t]he standard work day shall consist of eight (8) hours of work between 6:00 a.m. and 5:30 p.m. with one-half hour designated as an **unpaid** period for lunch." (Arnold Decl., Exh. E; Cal Flats PLA, §7.1 (emphasis added).) Critically, the Operating Engineers Master Agreement contains the following provision:

> If the Individual Employer requires the Employee to perform any work included in Section 02.04.00 of this Agreement through his/her scheduled meal period, the Employee shall be paid at the applicable overtime rate for such meal period and shall be afforded an opportunity to eat on the Individual Employer's time.

(*Id.*, Exh. D; Operating Engineers Master Agreement, § 06.19.01.) This is precisely the type of meal period provision that a union can negotiate on behalf of its members that defines what it means to be a working lunch and a duty-free lunch. This provision expressly addresses exactly the situation claimed here—according to the CBA, a union member who is required "to perform any work" during "his/her scheduled meal period" is paid overtime during the meal, and then receives another "opportunity to eat on the Individual Employer's time." The parties to the CBA negotiated this provision, and decided on what it means to "to perform any work" during "his/her scheduled meal period." A meal period on the Project, for example, that requires employees to eat lunch at their worksite would, under Plaintiff's theory, engender liability for this lunch period, as the employees were restricted in their movement on the Project.

The CBA Meal Period Exemption would be upended under such an interpretation, as the parties' ability to vary from California's strict rules of no control during a meal period become meaningless. **All meals would have to be paid meals unless CBAs mimic state guidelines.** This interpretation deprives the parties of the statutory flexibility provided to the construction industry to shape the contours of meal periods for its employees. Plaintiff's idea here to import California law to determine what it means to work during meal periods intrudes upon the CBA's province to define what an off-duty meal period is and to relieve employees of duty during meal periods as agreed to by the parties.

V. CONCLUSION

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

Date: March 4, 2021

FORD & HARRISON LLP

By: */s/ Daniel B. Chammas*
Daniel B. Chammas
Min K. Kim
Attorneys for Defendant,
CSI ELECTRIC COMPANY

PROOF OF SERVICE

I, Esperansa Reinold, 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 **March 4, 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 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 **March 4, 2021**, at Los Angeles, California.

Esperansa Reinold

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Attorneys for Defendant,
CSI Electrical Contractors, Inc.

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,

v.

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.

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

DECLARATION OF AMY ARNOLD IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

Date: April 8, 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").

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

6. The ITP required a biologist to monitor work on the Project to "help minimize and fully mitigate or avoid the incidental take of Covered Species, minimizing disturbance of Covered Species' habitat." (*See*, Exhibit A attached, ITP, § 6.2.) The ITP further required "an education program for all persons employed or otherwise working in the Project Area before performing any work," which "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." (*Id.*, § 6.4.)

7. The ITP required the Project to "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." (*Id.*, § 6.12.) The ITP also strictly set out the boundaries of the Project and the visitors' access to the Project: "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." (*Id.*, § 6.13.) The ITP also required the restriction of "shall restrict Project-related vehicle traffic to established roads, staging, and parking areas," and "that vehicle speeds do not exceed 20 miles per hour to avoid Covered Species on or traversing the roads." (*Id.* [emphasis added].)

8. Moreover, at times, small portions of the 12-mile drive to the Project posted speed limits of 5 miles per hour because of the presence of "kit fox" zones.

9. In CSI's contract with First Solar Electric, Inc., it was required to observe all of

these rules and make sure its CSI Class Members did as well. A true and correct copy of the construction subcontract by and between First Solar Electric, Inc. and CSI Electrical Contractors, Inc. is attached as **Exhibit B.** CSI agreed that it will "ensure that the wildlife and the burrows/dens/nests of such are not touched by anyone other than the biological Compliance Monitor." (*Id.*, Exhibit A, §1.2.13.6.4.) Further, CSI agreed that "[i]n certain circumstances Work may be allowed within an Environmentally Sensitive Area ("ESA") buffer if a Bio Monitor is present. If [CSI] wishes to Work within a buffer, [CSI] shall contact a Lead Bio Monitor who can determine if the buffer may be entered, and if so under what circumstances." (*Id.*, § 1.2.13.7.1.3.) CSI Class Members were "not allowed access to the [Project] until Site orientation requirements in Exhibit D have been satisfied and all forms therein [were] provided to Contractor." (*Id.*, §1.2.2.10; Exhibit D.)

10. George Huerta was a member of the Operating Engineers Local 3 and was dispatched to the Project by that union. A true and correct copy of the Operating Engineers Local 3 Dispatch Form assigning Huerta to the Project is attached as **Exhibit C.**

11. George Huerta's employment on the Project was governed by two collective bargaining agreements: the Operating Engineers Local Union No. 3 of the International Union of Operating Engineers, AFL-CIO's collective bargaining agreement ("Operating Engineers Master Agreement") and the Project Labor Agreement specific to the Project ("Cal Flats PLA") (collectively, "CBAs").

12. A true and correct copy of the Operating Engineers Master Agreement is attached as **Exhibit D.**

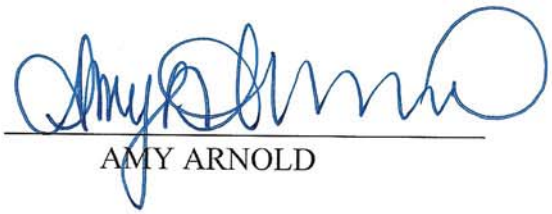
13. A true and correct copy of the Cal Flats PLA is attached as **Exhibit E.**

14. Pursuant to the CBAs, George Huerta received premium pay for all overtime hours worked (*See*, Exhibit D attached, Operating Engineers Master Agreement, § 6.01.01), and earned a regular hourly rate of at least $22.97 per hour (*id.,* Addendum D, § 03.01.00). George Huerta also received one 30-minute unpaid meal break during his shift. (*See*, Exhibit E attached, Cal Flats PLA, §7.1.)

///

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

PROOF OF SERVICE

I, Esperansa Reinold, 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 **March 4, 2021**, I served a copy of the following document(s) described below on the interested parties in this action, as follows:

DECLARATION OF AMY ARNOLD

☐ **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 OVERNIGHT MAIL:** By placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.

☐ **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 **March 4, 2021**, at Los Angeles, California.

Esperansa Reinold

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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 take[1] 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.

[1] Pursuant 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"].)

[2] "The 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.

- 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.

- 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.

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 (*Vulpes macrotis mutica)* (SJKF)	Threatened[3]
2. California tiger salamander (*Ambystoma californiense)* (CTS)	Threatened[4]

These species and only these species are the "Covered Species" for the purposes of this ITP.

[3]See Cal. Code Regs. tit. 14 § 670.5, subd. (b)(6)(E).
[4]See 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

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:

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

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 Biologists(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.

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.

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,

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

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. CNDDB Observations. The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDB) 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.

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

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.

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

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 miles[5] 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

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.

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

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

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**;

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

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

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

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.

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.

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,

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

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:

(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;

(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

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 Contractors' 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 [redacted], 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) 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 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.

DocuSigned by:

By: _____ Dated: _____

93854524A787443...

Name:

Title:

CSI ELECTRICAL CONTRACTORS, INC.

DocuSigned by:

By: _____ Dated: _____

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Name:

Title: □□ □□□□□y □□□□□□□□□

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**

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 ~~all~~ 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 Monterrey 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 actives 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

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 tided-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 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

OPERATING ENGINEERS LOCAL UNION NO. 3

Dispatch

George A Huerta

Affiliate Information

Affiliate Name:	George A Huerta	SSN:	[redacted] Affiliate ID: 00000139996
Hire Code:	1 - Journeyman	List Code:	A-Out
Register Number:	2500069	I-9 Status:	Non-Expiring
Email Address:	[redacted]	Ethnicity:	Hispanic
Address:	PO BOX 11	Gender:	Male
		Date of birth:	[redacted]
	LATON, CA 93242		
Phone 1:	[redacted]		
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		
Phone:	661.433.8613	Report date/time:	2/14/2018 7:45 AM
		Location:	Cal Flats- Hwy 41 & Hwy 46, Call Kevin First for Directions

Affiliate's signature: _____ Dispatcher's signature: _____

OPERATING ENGINEERS LOCAL UNION NO. 3

Dispatch

George A Huerta

Affiliate Information

Affiliate Name:	George A Huerta	SSN:	[redacted] Affiliate ID: 00000139996
Hire Code:	1 - Journeyman	List Code:	A-Out
Register Number:	2500069	I-9 Status:	Non-Expiring
Email Address:	[redacted]	Ethnicity:	Hispanic
Address:	PO BOX 11	Gender:	Male
		Date of birth:	[redacted]
	LATON, CA 93242		
Phone 1:	[redacted]		
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		
Phone:	562.755.2177	Report date/time:	6/11/2018 7:00 AM
		Location:	Hwy 41&Hwy46 Calflats

Affiliate's signature: _____ Dispatcher's signature: _____

FAX# 562-685-[illegible]

EXHIBIT D

accordance with Section 07.05.00 of this Agreement.

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*Asterisk denotes that the Union may allocate the increases in 2016, 2017, 2018 and 2019 to wages and/or fringe

$42.67
$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)

$41.14
$43.14

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)

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.

$39.66
$41.66

0371 2. Cable Backhoe (Assistant to Engineer required)

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 Mechan-

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

3171 10. Gradall (Assistant to Engineer required)
3705 11. Hydraulic Excavator up to 3-1/2 cu. yds. (Assistant to Engineer required)

4384 13 Long Reach Excavator

5891 15. Power Shovels, up to and including 1 cu. yd. (Assistant to Engineer required)

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)

$38.28
$40.28

0191 1. Asphalt Plant Engineer/Boxman

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

2751 7. Pull-Type Elevating Loader
3221 8. Gradesetter, Grade Checker (GPS, mechanical or otherwise)
3261 9. Grooving and Grinding Machine

$38.28
$40.28

3301 10. Heading Shield Operator
3305 11. Heavy Duty Drilling Equipment, Hughes, LDH, Watson 3000 or similar (Assistant to Engineer or Mechan-

3401 12. Heavy Duty Repairman and/or Welder

4391 15. Lubrication and Service Engineer (mobile and grease rack)
4691 16. Mechanical Finishers or Spreader Machine (asphalt, Barber-Greene, Material Transfer Vehicle and

4771 17. Miller Formless M-9000 Slope Paver or similar (Gradesetter required) (any additional assistance required

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)

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.

$37.01
$39.01

$37.01
$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

2431 8. Drilling and Boring Machinery, Horizontal (not to apply to waterliners, wagon drills or jackhammers)

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)

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

$35.69
$37.69

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

2461 12. Drill Doctor
2429 13. Drill Equipment, weight 25,000 pounds and up to and including 50,000 pounds (Any assistant needed

3089 14. Geothermal Drills
3511 15. Helicopter Radioman
3711 16. Hydro-Hammer or similar

$35.69
$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

5571 23. Paving Fabric Installation and/or Laying Machine

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

$34.55
$36.55

1091 2. Cary Lift or similar

2430 5. Drill Equipment, weight from 1,000 pounds to25, 000 pounds (Any assistant needed shall be performed

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)

5651 17. Pipe Cleaning Machine (tractor propelled and supported)
5781 18. Post Driver
6311 19. Rodman Chainman

$34.55
$36.55

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

$33.41
$35.41

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

3373 12. Heavy Duty Repairman Helper**
3701 13. Hydraulic Monitor
3821 14. Ken Seal Machine (or similar)
4901 15. Mixermobile

5173 17. Assistant to Engineer**
6041 18. Pump Operator
6131 19. Refrigeration Plant
6241 20. Reservoir-Debris Tug (Self-Propelled Floating)

6831 23. Self Propelled Tape Machine
7031 24. Shuttlecar

$33.41
$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)

$31.20
$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

$47.00
$49.00

$45.27
$47.27

$43.61
$45.61

$42.05
$44.05

$40.63
$42.63

$39.13
$41.13

$37.85
$39.85

$36.58
$38.58

$34.07
$36.07

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

$44.30
$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

$43.55
$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

$41.79
$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

$40.05
$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

$37.01
$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

7817 3. Truck-Mounted Rotating Telescopic Boom Type Lifting Device, Manitex or Similar (Boom

$46.52
$48.52

2921 1. Foreman and Shifters, (non-working) 7 Employees and over**

$45.52
$47.52

2931 2. Foreman (working) under 7 Employees**

$46.52
$48.52

$37.33
$39.33

$36.58
$38.58

$36.32
$38.32

$36.08
$38.08

$35.69
$37.69

$35.04
$37.04

$34.29
$36.29

$34.08
$36.08

$33.80
$35.80

$48.73
$50.73

±*The above classifications are all paid seventy-five ($.75) cents per hour above Group 1-A

$47.98
$49.98

$45.99
$47.99

$44.03
$46.03

$40.63
$42.63

$51.07
$53.07

2921 1. Foreman and Shifters, (non-working) 7 Employees and over**

$50.07
$52.07

2931 2. Foreman (working), under 7 Employees**

$51.07
$53.07

$40.90
$42.90

$40.15
$42.15

$39.86
$41.86

$39.59
$41.59

$39.13
$41.13

$38.31
$40.31

$37.56
$39.56

$37.33
$39.33

$37.02
$39.02

accordance with Section 07.05.00 of this Agreement.

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

$45.27
2000 1 .Cranes over 350 tons [Assistant to Engineer required]
2108 2. Derrick over 350 tons
6916 3. Self Propelled Boom Type Lifting Devices over 350 tons
±* The above classifications are all paid seventy-five ($.75) cents per hour above Group 1

$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

$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

$42.75
8721 4. Tower Crane

$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

$39.25

2941 2. Forklift, 10 tons and over
3401 3. Heavy Duty Repairman/Welder

$37.95
0701 1. Boom Cat

$37.95
$37.20
$36.98
$36.71

$36.32

$35.72
$34.97
$34.70
$34.48

$49.82
$49.07
$47.09
$45.41
$43.15
$41.68

±* The above classifications are all paid seventy-five ($.75) cents per hour above Group 1

$41.59
$40.84
$40.59
$40.29

$39.86

$39.07
$38.32
$38.04
$37.78

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

$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

$43.89

2115 1. Derrick Barge Pedestal mounted over 100 tons (or Assistant Operator in lieu of Assistant to Engineer

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

$42.07

2155 1. Derrick Barge Pedestal mounted 45 tons up to and including 100 tons (or Assistant Operator in lieu of

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

$40.39

2135 1. Derrick Barge Pedestal mounted under 45 tons (or Assistant Operator in lieu of Assistant to Engineer

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

8445 4. Truck Crane or Crawler, land or barge mounted 45 tons and under (or Assistant Operator in lieu of

$38.62

2941 2. Forklift, 10 tons and over
3401 3. Heavy Duty Repairman/Welder

$37.32

$35.98

2111 1. Deck Engineer

$34.89

$33.75

2153 1. Deckhand
2863 2. Fireman

$37.66
$36.91
$36.66
$36.37

$35.38
$34.63
$34.36
$34.14

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

$49.11
$48.36
$46.31
$44.43
$42.43
$40.97
$39.46
$38.23
$36.96

±* The above classifications are all paid seventy-five ($.75) cents per hour above Group 1

$41.26
$40.51
$40.24
$39.91

$38.69
$37.94
$37.64
$37.40

$41.14
$43.14

8603 1. Tunnel Bore Machine Operator - 20´ diameter or more.

$38.67
$40.67

3301 1. Heading Shield Operator
3401 2. Heavy Duty Repairman/Welder

$38.67
$40.67

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

$37.41
$39.41

1781 2. Concrete Pump or Pumpcrete Guns
5861 3. Power Jumbo Operator

$36.08
$38.08

2461 1. Drill Doctor
4751 2. Mine or Shaft Hoist

$34.94
$36.94

4931 3. Motorman

$33.80
$35.80

0913 2. Brakeman
1391 3. Combination Mixer and Compressor (Gunite)
1481 4. Compressor Operator
5173 5. Assistant to Engineer**

7271 7. Slusher Operator

$41.24
$43.24

8603 1. Tunnel Bore Machine Operator - 20´ diameter or more.

$38.77
$40.77

3301 1. Heading Shield Operator
3401 2. Heavy Duty Repairman/Welder

6210 5. Road Header Operator on Tunnels 10 feet diameter or larger

$38.77
$40.77

8601 6. Tunnel Mole Bore Operator**
8602 7. Tunnel Boring Machine Operator 10 feet up to 20 feet

$37.51
$39.51

1781 2. Concrete Pump or Pumpcrete Guns
5861 3. Power Jumbo Operator

$36.18
$38.18

2461 1. Drill Doctor
4751 2. Mine or Shaft Hoist

$35.04
$37.04

4931 3. Motorman

$33.90
$35.90

0913 2. Brakeman
1391 3. Combination Mixer and Compressor (Gunite)
1481 4. Compressor Operator
5173 5. Assistant to Engineer**

7271 7. Slusher Operator

$45.27
$47.27

$42.48
$44.48

$41.07
$43.07

$39.59
$41.59

$38.29
$40.29

$37.02
$39.02

$45.38
$47.38

$42.59
$44.59

$41.18
$43.18

$39.70
$41.70

$38.40
$40.40

$37.13
$39.13

working on HAZMAT projects and to negotiate working rules and wage rates which recognize the special conditions and

—

$42.67
$44.67
2921 1. Foreman and Shifters, over 7 Employees

$41.14
$43.14
2931 1. Foreman (Working), under 7 Employees

$42.67
$44.67

$47.00
$49.00
2921 1. Foreman and Shifters, over 7 Employees

$45.27
$47.27
2931 1. Foreman (Working), under 7 Employees

$47.00
$49.00

PER HOUR
$.60

written notice by the Employer, but in no event earlier than July 1, 2016, June 26, 2017, June 25, 2018 and June 24, 2019.

board, shall not exceed the differential between the Area 1 and Area 2 wage rates for eight (8) straight-time hours, five

Agreement recognize the constantly changing nature of the industry with respect to certain private market and/or

of more than one of the Union's Districts, there shall be at least one (1) Employee from each District where the market

affirmative unit vote, is authorized to approve such changes (including the monetary size of the project to which they

addendum, not to exceed $1,000,000 (unless the Committee agrees otherwise) shall be placed in effect covering that

recovered sixty percent (60%) or more of the market, the Committee shall determine if the applicable addendum shall

agreements regardless of dollar amount initiated through the National Heavy and Highway Committee and/or the National Building and Construction Trades Department.

authorized the Signatory Associations (Employer) to represent said Individual Employer with respect to collective

within thirty [30] days and also inform the Individual Employer, in writing with a copy to the Union, of their ongoing

entity may become an Individual Employer covered by this Agreement upon authorizing the Employer to represent said

employer association represents an Individual Employer under Section 18.00.00 for a particular grievance, no other

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

covered by this Agreement falling within the recognized jurisdiction of the Union, including, but not limited by inference

organization covering such Individual Employer's off-site maintenance and repair facility at the time the Individual Em-

the State of California above the northerly boundary of Kern County, the northerly boundary of San Luis Obispo County

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

authorized the Employer to represent it with the same force and effect as if the Agreement were entered into by each

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).

The Employer and each Individual Employer covered hereby recognizes and acknowledges OPERATING

within the meaning of Section 9 of the National Labor Relations Act.

a) delivery by Certified Mail, E-mail or FAX to the Employer and/or to the Union;

03.01.00 Pre-Job Conferences

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

request to the Individual Employer from the Union, Section 18.03.00 shall not be in effect until such Pre-Job Conference

and terms of this Agreement. For Keymen, refer to 04.08.02 of the Job Placement Regulations.

03.02.00 above, said dispute shall be subject to the provisions of Section 18.00.00.

be bound by the provisions of Section 18.00.00 and shall be free to withdraw any or all of the Employees of such Indi-

withdraw Employees for forty-eight (48) hours after written notification to the Employer of the failure to confirm an

bear the expenses incurred by the auditor for such forty-eight (48) hour delay.

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

provided that such action or conduct has not been specifically authorized, participated in, fomented or condoned by the

In the event of any unauthorized violation of the terms of this Agreement, responsible and authorized unauthorized persons into compliance with the terms of this Agreement. Such individuals acting or conducting terminate such violation, then 03.07.00 shall be of no force and effect.

subdivision of the Union as determined from time to time by the Union by classification) within eight (8) days following

The Union recognizes its obligations and therefore assumes full responsibility to every Employee discharged

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 dis-

The parties may initiate mediation for any dispute concerning the "No Discrimination/No Harassment" provisions of this

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

This provision shall not apply to a jurisdictional picket line. However, an Employee of an Individual Employer who refuses

directed to do so by the Union under the provisions of 03.07.01 may be discharged by his Individual Employer. Such

04.04.00 Owner-Operator.

Equipment Operator-Employee only and does not apply to a Heavy Duty Repairman/Welder or a Lubrication and Service

Heavy Duty Repairman/Welder or Lubrication and Service Engineer. With respect to the classifications and equipment

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

The Individual Employer may not circumvent the provisions of this Section by utilizing Section 05.00.00,

(25%).

considered an Employee for the purposes of 04.10.24[ii] of the Job Placement Regulations of this Agreement, provided

wages and/or fringes under this Agreement, such Individual Employer's liability under Section 18.04.00 shall be for the by the Individual Employer but for the violation plus twenty-five percent (25%). Such liability shall be for not more than withstanding any other provision of said Section 18.04.00. Provided, however, if said Individual Employer can establish

under Section 18.04.00 shall be limited to fringe benefits only for not more than the sixty (60)-day period prior to written

04.04.09 The Individual Employer who utilizes an Owner-Operator shall provide, upon the request of any authorized

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.

member who elects to not go on the payroll must waive any claim of Employee status and rights under 29 United States Code 157.

any other items necessary to operate his equipment. He/she shall have complete freedom to purchase any such items

objects and purposes expressed in 04.04.19. The parties have not undertaken to negotiate for the Owner-Operator-

04.04.19

employee (or as an Employee) shall be subject to 04.02.00 after seven (7) days' employment by the Employer and/or

this Agreement or an individual Owner-Operator [unless Owner-Operator is employing Employees]), firm or corporation

Non-Signatory Subcontractor who performs such work submits a bid which is more than twenty percent (20%) lower

Heavy Duty Repairman or a Lubrication or Service Engineer or an Employee who operates or maintains the following

Agreement as set forth in Section 02.05.00 where the subcontract amount is over $25,000. Notice at a pre-job

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

dispute as to the existence or amount of such delinquency shall be settled as provided in Section 18.00.00 hereof and if

In the event bid specifications contain MBE/DBE/WBE/DVBE requirements, upon request, the Union will

06.00.00 WORKING RULES

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

Four (4) by Ten (10) Workweek

rate shall be paid for the work performed on any one (1) shift subject to Section 06.22.00 of this Section. However, on

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

Individual Employer may, by mutual agreement with the Union, stagger individual crews starting times at the Employee's

The Heavy Duty Repairman and/or Welder performing a particular heavy duty repair assignment shall be

Paving, Soil Stabilization or Pipelaying Crews only.

than during the normal shift hours, and notifies the Union during the pre-job conference or by FAX, E-MAIL, or certified

Employer may initiate such special shift of eight (8) consecutive hours (not in conjunction with any other shift) (exclusive

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

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

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.

on the basis of eight (8) hours' work for eight (8) hours' pay.

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

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

Saturday shall run from the close of Friday's third or graveyard shift to 8:00 a.m. Sunday.

Sunday shall run from 8:00 a.m. Sunday to 8:00 a.m. Monday.

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

single shift shall be between 6:00 a.m. and 8:00 a.m.; provided, however, once such starting time has been established

06.09.00

third (3rd) shift exceed the number of Employees on the first (1st) shift by more than fifty percent (50%). The foregoing

06.14.00 No Employee shall work more than one (1) shift at straight time in any consecutive twenty-four (24) hours. No arrangement of shifts shall be permitted that prevents any Employee from securing eight (8) consecutive hours of rest in any consecutive twenty-four (24) hours. Such twenty-four (24) hours shall be computed from the start of the Employee's assigned shift.

06.14.01 Where there is equipment to be operated on a single-shift operation before the single shift begins or after it ends, or on a Saturday, a Sunday or a holiday, the Operating Engineer who regularly operates the particular piece of equipment shall be given first choice to perform the work, for not to exceed twelve (12) hours except in an emergency, and if an Assistant to Engineer is required, the Assistant to Engineer who is regularly assigned to the particular piece of equipment shall be given first choice to perform the work.

06.15.00 Where in any locality existing traffic conditions, weather conditions or power availability render it desirable to start the day shift at an earlier or later hour, such starting time may be set by mutual written agreement of the Individual Employer and the Union. Such different starting time may not be terminated except on a Friday or upon completion of the job.

06.16.00 If a breakdown occurs on equipment operated by Employees covered by this Agreement, it shall be in the discretion of the Individual Employer whether the Operator and his Assistant to Engineer or other Employees shall make the repairs including routine maintenance.

06.17.00 The recognized established practice regarding the starting and warming up of equipment by Employees under this Agreement shall not be changed.

06.18.00 No Employee shall be required to work alone during the hours of darkness when performing maintenance work on equipment. This provision shall not apply to Employees servicing and/or starting equipment one (1) hour prior to the start of a shift.

06.19.00 ***Meal Period.*** There shall be a regularly scheduled meal period. The meal period shall be one-half (1/2) hour and shall be scheduled to begin not more than one-half (1/2) hour before and completed not later than one (1) hour after the mid-point of the regularly scheduled hours of work for each Employee's shift. The meal period for Mechanics, Service and Lubricating Engineers, may be scheduled to permit work at the applicable straight-time rate during the regularly scheduled meal period

06.19.01 If the Individual Employer requires the Employee to perform any work included in Section 02.04.00 of this Agreement through his/her scheduled meal period, the Employee shall be paid at the applicable overtime rate for such meal period and shall be afforded an opportunity to eat on the Individual Employer's time.

06.19.02 ***Second (2nd) Meal Period.*** No Employee shall be required to work continuously for more than ten (10) hours per workday without the Individual Employer providing the Employee with an uninterrupted second (2nd) thirty (30) minute meal period.

06.19.03 However, if an Employee works over ten (10) hours, the Individual Employer and Employee may mutually agree to waive the Employee's entitled second (2nd) meal period so long as the first meal period was taken and the Employee works not more than a total of twelve (12) hours.

06.19.04 Should any provision of California State Labor Code Section 512 be amended during the term of this Agreement, the parties agree to meet to address those changes in accordance with Section 03.05.00 (General Savings Clause) of this Agreement.

06.19.05 All disputes concerning meals and/or rest periods are subject to the Grievance Procedures provided for in Section 18.00.00 and must be brought to the attention of the Employer, in writing, by the Union or Employee within

fifteen (15) business days of the alleged violation. Decisions resolving disputes arising out of the Grievance Procedures

Show-Up Time

Employer in accordance with the provisions of the Job Placement Regulations of this Agreement, Section 04.10.39.

The holidays referred to in this Agreement are as follows: New Year's Day (January 1), President's Day (3rd Monday in February), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (1st Monday in September), Thanksgiving Day (4th Thursday in November), the day after Thanksgiving Day (4th Friday in November), and Christmas Day (December 25). Holidays falling on Sunday shall be observed on the following Monday. Martin Luther King Day shall become a recognized holiday when and if the five basic crafts adopt it as a holiday.

Overtime Areas 1 and 2 (all forty-six [46] Counties).

on Saturdays. Double (2) the straight-time hourly rate shall be paid for all work on Sundays and holidays.

work tide work, the minimum pay for such work shall be eight (8) hours at straight time as provided herein including

covering Construction operations, Employees are authorized and shall be permitted to take a total of ten (10) minutes

There shall be no formal organized rest periods during working hours and as far as practicable the break will

If an Individual Employer fails to authorize and permit an Employee to take daily rest periods as provided

Section 18.00.00 and must be brought to the attention of the Employer, in writing, by the Union or Employee within fifteen (15) business days of the alleged violation. Decisions resolving disputes arising out of the Grievance Procedures

heat conditions in order to prevent heat illness in accordance with CAL OSHA requirements and Individual Employer

18.00.00 and must be brought to the attention of the Employer, in writing, by the Union or Employee within fifteen (15) business days of the alleged violation. Decisions resolving disputes arising out of the Grievance Procedures shall be final

07.00.00. In addition to the manning provisions therein contained, when an Engineer requires assistance in addition to

Engineer, Deckhand or Registered Apprentice). (Refer to Section 07.10.00.)

Only an Employee covered by this Agreement shall start and warm up equipment and the recognized

Asphalt Plant Crew

piece of equipment the Employee leaves is not operated except by an Employee covered by this Agreement. However,

Apprentice. (Refer to Section 07.10.00.)

Whenever a person starts, stops or operates pumps over 750 GPM (except automatic electric pumps), compressors over 210 CFM (except automatic electric compressors), welding machines, or generators over 150 KW, he

size, including automatic electric pumps and automatic electric compressors, shall be performed by an Employee

Generator/Welder House: one (1) Engineer required.

On compressor houses, manifold compressors or large single unit compressors (750 CFM or

On any job or project where an Employee is utilized to operate a Forklift (Group 8), or an Individual Employer employs a Heavy Duty Repairman, such Employee(s) may be utilized in lieu of one of the Employees otherwise required by Sections 07.05.00, 07.05.01 Generators and 07.05.02 Compressors. This Section 07.06.00 shall not apply to the required manning on Compressor Houses.

vertical and horizontal controls as must be established in connection with site preparation work before actual

When an Individual Employer, at his/her discretion, wishes to utilize Employees covered by this Agreement

07.09.00 Journeyman Training.

07.09.01

may be allowed to train eighty (80) additional hours on the approval of the Joint Apprenticeship Committee.

(3) Dispatch by a Job Placement Center to employment under a Collective Bargaining Agreement with the Union.

07.09.02

07.09.03

07.09.04
fifty [350] hours for a contributing Employer during the current or previous year, pass a substance abuse test, cannot

07.09.05
Affirmative Action Training Fund Trustees are specifically authorized to modify 07.09.00 through 07.09.04.

modified in 07.10.01 through and including 07.10.13.

— 55%
— 60%
— 65%
— 70%
— 85%

The Apprentice wage rate to be calculated at 55% of the Group 4 wage rate shall apply to the eight hundred eighty [880]

twenty [320] hours of orientation training at a designated training center in the following: Apprenticeship orientation,

Eight hundred eighty (880)) hours of the 1

— 60% of Chainman-Rodman
— 70% of Chainman-Rodman
— 80% of Chainman-Rodman
— 90% of Chainman-Rodman
— 100% of the wage rate applicable to the classification covering the type of work being performed.
— 100% of the wage rate applicable to the classification covering the type of work being performed.
7th Period— 100% of the wage rate applicable to the classification covering the type of work being performed.
8th Period— 100% of the wage rate applicable to the classification covering the type of work being performed.

Fifth Period Apprentice and shall be paid the appropriate percentage as set forth in Section 07.10.12."

PRIVATE WORK: A qualified Individual Employer shall employ one (1) Apprentice when at least nine (9) Journeymen are regularly employed. Individual Employers may utilize a one to one (1:1) Apprentice to Journeyman ratio up to a maximum of four [4] Apprentices. After nine [9] Journeymen, Individual Employer may employ one [1] Apprentice for each additional two [2] Journeymen Employees hired. The following exempt

7. Journeymen not performing covered work (i.e. training, supplemental related training, Estimators, Exempt Code 7)
8. Owner-Operators

PUBLIC WORKS
apprenticeship manning requirements as provided by the Division of Apprenticeship Standards.

Employer to a penalty of four hundred dollars ($400) per work day (from the date written notice was received) for each day of non-compliance, up to a maximum of ten (10) days. Penalties shall be paid to the Operating Engineers' Affirmative

The parties recognize that some Individual Employers may not be

Deviations from these apprentice manning provisions

7)

matters shall be subject to Section 18.00.00 "Grievance Procedure." The provisions of this paragraph shall apply to all

supervision of a Journeyman. The utilization of Registered Apprentices to operate equipment or perform work shall be

07.10.09

for work in an Assistant to Engineer classification, a Registered Apprentice shall be dispatched in lieu thereof. However,

Assistant to Engineer rate, whichever is greater; provided, however, a Registered Apprentice being utilized as an

The Apprentice manning requirements set forth in 07.10.04 are not mandatory when they apply to

apprentice's fourth period, shall receive apprentice manning credit for all of the Employee's work for the Individual

An Individual Employer shall receive apprentice manning credit for each hour of an apprentice's

the six (6) months immediately following the apprentice's SRT increment.

Employer's apprentice manning obligations under the applicable provisions of this Agreement.

08.00.00 SUPPLEMENTARY WORKING CONDITIONS

The Individual Employer shall provide on each jobsite a secure place where his Heavy Duty Repairman may keep his tools. If all or any part of a Heavy Duty Repairman's kit of working tools is lost by reason of the failure of

secure place designated by the Individual Employer, the Individual Employer shall reimburse such Heavy Duty Repairman for any such loss from a minimum of one hundred dollars ($100.00) to a maximum of twenty-five thousand dollars ($25,000.00). In order to obtain the benefits of this paragraph, a Heavy Duty Repairman must provide the Individual

Heavy Duty Repairman acquires additional tools.

Heavy Duty Repairmen shall furnish their own hand tools, but special tools shall be furnished by the

requiring over three-quarter-inch (3/4") drive, box-end wrenches over 1" and open-end wrenches over 1". Heavy Duty

09.00.00 SERVICING OTHER CRAFTS

09.01.00

09.02.00

09.03.00

time for any period of time between 8:00 a.m. and 4:30 p.m., Monday through Friday, they shall be compensated on

09.04.00

When an Individual Employer employs more than one (1) Heavy Duty Repairman and less than five (5) Heavy Duty Repairmen on any shift, and if a Heavy Duty Master Mechanic or Heavy Duty Repairman Foreman is not employed on such shift, then in lieu of such supervision one (1) Heavy Duty Repairman shall be a working

($.50) per hour.

Habitual violations of this Section will subject the Individual Employer to penalties as may be determined by

11.00.00 SUBSISTENCE AND TRAVEL, RENTED EQUIPMENT

Effective June 16, 1998— $20.00

twenty-five cents ($.25) per mile and the Individual Employer shall also pay bridge, ferry or toll fares involved; provided

Agreement. Each Individual Employer is bound by all the terms and conditions of each Trust Fund's Trust Agreement

Funds, to confirm the Individual Employer's reporting compliance, and the Individual Employer must submit such

defined as 10% of the proper contributions for the period tested

the Operating Engineers' Health and Welfare Trust Fund for Northern California according to the following schedule:

$11.24 per hour – Effective 7/1/16

$.* per hour – Effective 6/26/17

$.* per hour – Effective 6/25/18

$.* per hour – Effective 6/24/19

Two cents ($.02) per hour of the Health and Welfare contribution shall be paid to Addiction Recovery Program, Inc. ("ARP"). This payment shall be in addition to money the Health and Welfare Fund currently provides ARP.

If a National Health Act or State Health Care Act is enacted, the parties shall meet to eliminate any duplicate benefits and duplicate cost to the Individual Employer. If the Individual Employer's total benefit cost for providing Health

of the hourly Operating Engineers' Health & Welfare Fund contribution rate, as determined by the Board of Trustees, to the Operating Engineers' Pension Trust Fund for purposes of funding any liabilities.

Pensioned Operating Engineers' Health and Welfare Trust Fund according to the following schedule:

$2.39 per hour – Effective 7/1/16

$.* per hour – Effective 6/26/17

$.* per hour – Effective 6/25/18

$.* per hour – Effective 6/24/19

$10.78 per hour – Effective 6/29/15

$10.78 per hour – Effective 7/1/16

$.* per hour – Effective 6/26/17

$.* per hour – Effective 6/25/18

$.* per hour – Effective 6/24/19

Pension Protection Act of 2006 and the Union will select an option (Schedule) in the Pension's Rehabilitation Plan or

*2016, 2017, 2018 and 2019 Pending annual review by the Plan's Actuaries & Trustees

$9.18 per hour – Effective 6/29/15

$9.18 per hour – Effective 7/1/16

$.* per hour – Effective 6/26/17

$.* per hour – Effective 6/25/18

$.* per hour – Effective 6/24/19

*2016, 2017, 2018 and 2019 Pending annual review by the Plan's Actuaries & Trustees

a) When the Pension Plan first becomes one hundred and twenty percent (120%) or more funded(as determined by the Plan's actuary using such actuarial assumptions and methods for valuation of both Plan assets and liabilities which in the aggregate represent the actuary's best estimate of the Plan's funded status,) the parties agree that non-benefit contribution amounts allocated under the Pension Plan's Funding Improvement Plan or Rehabilitation monies in excess of the seven dollars ($7.00) per hour Journeyman rate and the five dollars and forty cents ($5.40) per hour Apprentice rate and referred to herein as "excess monies") shall be reallocated to the Annuity Fund as

(b) In the event that the Pension Plan subsequently becomes less than one hundred twenty percent (120%)

approved by the Pension Plan's Board of Trustees, until such time as the Pension Plan again becomes one hundred twenty per cent (120%) or more funded, in which case the provisions of subparagraph (a) shall be applied again.

$.77 per hour – Effective 7/1/16

$.* per hour – Effective 6/26/17

$.* per hour – Effective 6/25/18

$.* per hour – Effective 6/24/19

In addition to the above, the Individual Employer shall pay one dollar ($1.00) per hour for each hour worked or paid

Operating Engineers' Vacation, Holiday and Sick Pay Trust Fund according to the following schedule:

$4.51 per hour – Effective 7/1/16

$2.85 per hour [Vacation Pay] – Effective 6/29/15

$.50 cents per hour [Sick Pay] – Effective 7/1/16

$1.11 per hour [Supplemental Dues] – Effective 7/1/16

$.05 cents per hour [Administrative Fee, this amount is not taxable to the Employees] – Effective 7/1/16

$.* per hour – Effective 6/26/17

$.* per hour – Effective 6/25/18

$* per hour – Effective 6/24/19

Each Individual Employer covered by this Agreement shall pay into the Operating Engineers' Vacation, Holiday and Sick Pay Trust Fund for Apprentices according to the following schedule:

$4.01 - per hour – Effective 7/1/16

$2.35 per hour [Vacation Pay] – Effective 7/1/16

$.50 cents per hour [Sick Pay] – Effective 7/1/16

$1.11 per hour [Supplemental Dues] – Effective 7/1/16

$.05 cents per hour [Administrative Fee, this amount is not taxable to the Employees] – Effective 7/1/16

$.* per hour – Effective 6/26/17

$.* per hour – Effective 6/25/18

$.* per hour – Effective 6/24/19

Effective July 1, 2016, the Union grants Individual Employers a waiver under the Healthy Workplaces, Healthy

Union No. 3 Vacation, Holiday and Sick Pay Trust Fund a one-time additional contribution of fifty cents [$.50] per hour

Any disputes concerning the validity of the waiver granted under the Healthy Families Act of 2014 are subject to Section 18.00.00 Grievance Procedure. If the California legislature amends the Healthy Workplaces, Healthy Families Act of

Code Section 12W), Oakland (Municipal Code Section 592 et.seq.), Emeryville (Municipal Code Title 5, Chapter 37). In

computing overtime, either under the Fair Labor Standards Act, the Walsh-Healy Act or any other law, and no vacation

All taxes due from each Employee including taxes due by reason of payments for Vacation, Holiday and Sick Pay shall be deducted by each Employee's Individual Employer from each Employee's regular wages and such total tax deductions together with the amount payable for Vacation, Holiday and Sick Pay shall be separately noted on the Employee's paycheck.

The Employees may voluntarily authorize in writing that a portion of said payments be made to

$ .40 per hour – Effective 7/1/16
$.* per hour – Effective 6/26/17
$.* per hour – Effective 6/25/18
$.* per hour – Effective 6/24/19

$.10 per hour - Effective July 1, 2013 *

$.04 per hour - Effective July 1, 2013

$.09 per hour -Effective July 1, 2013

$.07 per hour - Effective July 1, 2013

$.09 per hour - Effective July 1, 2013

$.10 per hour - Effective July 1, 2013

$.10 per hour – Effective April 1, 2015*

*Individual Employers who are Members of the Association shall make the payments set forth in Section 12.08.00 of this Agreement, including Section 18.00.00, for the industry.

12.09.00 Industry Stabilization Fund

Stabilization Fund according to the following schedule:

$.06 per hour - Effective June 29, 1998

12.09.01 Such monies shall be utilized to enhance the enforcement of prevailing wage laws through The Foundation

Job Placement Center and Market Area Committee Administration Market Preservation Fund.

$.11 per hour - Effective June 24, 2002

Business Development Trust Fund(s) according to the following schedule:

California Alliance for Jobs –$.07 per hour Effective July 1, 2013

California Alliance for Jobs – $.05 per hour Effective July 1, 2013
Construction Industry Force Account Committee – $.02 per hour Effective July 1, 2013

California Alliance for Jobs – $.07 per hour Effective April 1, 2015

California Alliance for Jobs – $.07 per hour Effective July 1, 2013
Construction Industry Force Account Committee – $.02 per hour Effective July 1, 2013

California Alliance for Jobs – $.10 per hour Effective July 1, 2013
Construction Industry Force Account Committee – $.02 per hour Effective July 1, 2013

California Alliance for Jobs – $.06 per hour Effective July 1, 2013
Construction Industry Force Account Committee – $.01 per hour Effective July 1, 2013

Business Development Fund - $.06 per hour Effective July 1, 2010

Such monies shall be utilized to maintain and increase signatory contractors' market share and to develop

Heavy & Highway Committee Only those contributing Associations shall participate on the Heavy and Highway Committee. The Individual Employer shall contribute to the Heavy and Highway Committee according to the

$.01 per hour - Effective January 1, 2001

$.01 per hour - Effective January 1, 2001

$.01 per hour - Effective July 1, 2010

$.01 per hour - Effective January 1, 2001

$.01 per hour - Effective January 1, 2001

authorization, provided by the Union, or Union's designee, as required by law, the amount designated by the Union shall be deducted from the Vacation, Holiday and Sick Pay of each Employee and remitted directly to the Union. The amount

of the Supplemental Dues transmittal shall be specified on a statement sent to the Employees. Such remittance shall be made to the Union monthly. Supplemental Dues are specifically part of the uniform monthly dues of each Employee,

to make such payment directly to the Union on a monthly basis if the dues authorization provided for herein is not

into the Operating Engineers Local Union No. 3 Vacation, Holiday and Sick Pay Trust Fund an administration fee for the remittance of Supplemental Dues to the Union.

only, which shall not be associated with or be a basis of funding for the Pension or Health and Welfare Plans.

and that this Plan will be funded out of the Union membership's designated wage allocation as determined by the Union. It is the intent of the parties that the maximum total funding for this plan shall not exceed fifteen cents ($.15) per year

time as the pension fund reaches a ninety percent (90%) funded level, which has been verified by the Pension Fund

the essence. The parties recognize and acknowledge that the regular and prompt payment of amounts due to the Trust

necessary to oversee the collection process by the Board of Trustees, Executive Director, and others. The Trust Funds are also delayed or prevented from processing claims by employees for benefits under the plan. The Trust Funds' collection expenses, and inability to pay benefits constitute damages arising from an Individual Employer's default in

to the Funds for each Individual Employer's default. Therefore, the amount of liquidated damages to the Trust Funds resulting from any Individual Employer's default, over and above attorneys' fees, audit fees and interest for delinquent contributions, shall be 10% of the unpaid contributions as of the delinquent date. However, if a lawsuit to collect

increased to an amount equal to the greater of 20% of the unpaid contributions, or interest on the amount of the unpaid

rate of 10% per year simple interest beginning on the delinquent date. The Boards of Trustees of the Trust Funds may

the rate of ten percent (10%) per annum until paid.

the same Individual Employer, make special rules applicable to the due date of said Individual Employer's contributions

12.00.00 and/or the Trust Fund Documents.

lesser sum as the Delinquency Committee deems appropriate.

(e) The foregoing rules shall not actually be applied to any Individual Employer until the Delinquency Committee has

The Delinquency Committee may then, upon its own motion or upon the Individual Employer's request, waive any of the above rules, in whole or in part, for reasonable cause. If the Delinquency Committee has been so advised and has

12.13.08 California Law. The parties recognize and agree:

(a) that the references to fringe benefits in Sections 7071.5 and 7071.11 of the California Business and Professions Code

notice pay the delinquent amount in full or make other suitable arrangements acceptable to the Delinquency Committee

The Fund Manager shall notify the Employer of any such arrangements which may be made by the Delinquency

Individual Employer and any other labor organization, then the Union may respect such withdrawal, and for the period

12.14.03 Withdrawn Employees.

13.00.00 STEEL FABRICATING AND ERECTING WORK

Manning under this Section 13.00.00 shall be as provided in Section 07.00.00, "MANNING," except tank erection work

(2) International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths and Helpers,

in 02.07.00 of this Agreement and the classifications set forth in this Section and any new classifications added under 13.00.00 in the State of Hawaii, such work shall be covered by this Section.

Blacksmiths and Helpers; or with the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting

(1) During the Employee's first (1st) calendar week of employment.

(2) During the week the work covered by this Agreement is completed. A break in such work of five (5) or more days

The starting time of the first shift on two-shift operations shall be between 5:00 a.m. and 8:00 a.m. at the

When there is a single welding machine on the job and no Hoisting Engineer is employed, no Engineer shall

and a Hoisting Engineer is employed, such Engineer shall receive one (1) hour additional at the applicable overtime rate

13.05.09

one-half (1-1/2) for the first two (2) hours over eight (8) up to and including ten (10) hours, Monday through Friday, and time and one-half (1-1/2) for the first eight (8) hours on Saturdays (except where the Operating Engineer is servicing a craft receiving double [2] time, then the Operating Engineer shall receive double [2] time). Double (2) time shall be paid for all hours over ten (10) Monday through Friday, and over eight (8) hours on Saturdays, Sundays and holidays shall be

for any period of time between 8:00 a.m. and 4:30 p.m., Monday through Friday, they shall be compensated on the

compensated at the rate of twenty dollars ($20.00) per each workday as subsistence pay (in addition to their regular

13.06.09

Employees working in conjunction with a crew (a crew shall consist of four [4] workers of whom one [1]

(a) During the Employee's first (1st) calendar week of employment
(b) During the week the job is completed

Employees working with piledriving crews and Employees working as Heavy Duty Repairmen working on

The starting time of the first shift on two-shift operations shall be between 5:00 a.m. and 8:00 a.m., Standard

work shall be eight (8) hours at regular straight- time. In computing time to be paid for under this provision, each hour worked before 8:00 a.m. or after 4:30 p.m. shall be considered as being two (2) straight-time hours and each one-half (1/2) hour shall be considered as being one (1) straight-time hour; each hour worked between 8:00 a.m. and 4:30 p.m.

ACE, and all other Signatory Employers and the Piledrivers, Divers, Carpenters, Bridge, Wharf and Dock Builders, Local

15.00.00 SPECIAL WORKING RULES AND CONDITIONS FOR WORKING UNDERGROUND

half (7-1/2) consecutive hours, exclusive of meal period, shall constitute a shift's work for which eight (8) hours shall be

from the horizontal; should the inclination of grade from the horizontal

up to 75 from the vertical, and whose depth is greater than 15 feet and its largest horizontal dimension. For the

Subject to the provisions of Apprentice Manning beginning at Section 07.10.00, all

personal belongings in an amount up to one hundred fifty dollars ($150.00) in the event the change house is destroyed

Minimum Crews It is understood that there are various types and sizes of moles and mining machines which may necessitate increasing or decreasing the crew size, in which event the Individual Employer and the Union shall agree at the Pre-Job Conference upon the crew size to perform the operation and repair of said equipment. If the Individual Employer and the Union are unable to agree upon the crew size, the matter shall be referred for resolution in accordance with the provisions of Section 18.00.00 of this Agreement.

to the Division of Industrial Safety.

safety and productivity enhancement point of view as well as recognizing the individual rights and wellbeing of each

working; therefore, the Union and the Individual Employer undertake to promote in every way possible the realization

17.00.00 JOB STEWARDS

Number of Job Stewards

to serve as Job Steward. Where the size of the project makes it appropriate, the Union may appoint additional Job

perform, during working hours, the duties set forth in 17.05.00. The Union agrees that such duties shall be performed as

Infraction of either of the two (2) rules set forth in 17.06.00 shall be cause for immediate dismissal

17.09.00

17.09.01

17.09.02

provision or provisions of Sections 12.00.00, 19.00.00, or 20.00.00 of this Agreement is subject to the provisions of this Section 18.00.00.

In the event that a complaint or dispute arises on a job, it shall be first reported to the authorized Union

If said complaint or dispute is not satisfactorily adjusted by the authorized Union Representative and the

No complaint, dispute, or grievance, shall be recognized unless called to the

In the event the grievance involves the issue of a subcontractor's alleged violation and where the

shall serve as an alternate Impartial Arbitrator, if available: 1) Mark Joseph Divelbiss,

fourteen (14) calendar days of the Board of Adjustment hearing, the other and elect to utilize an attorney for

18.02.09 The Impartial Arbitrator will be selected pursuant to the provisions of Section 18.02.06 and 18.02.07. The scheduling of the Arbitration hearing shall not exceed ninety (90) calendar days, or unless mutually agreed upon by the

alternate as provided in Section 18.02.06 and 18.02.07 shall be selected as provided therein. The matter shall then

Decisions of the Board of Adjustment or Impartial Arbitrator shall be within the scope and terms of this

Agreement, which is subject to arbitration under the provisions of 18.00.00 and Job Placement Regulations 04.10.43, of this Agreement, the Employer and Individual Employer agree that they and each of them will not authorize any lockout, slowdown or stoppage of work and the Union will not authorize any strike, slowdown or stoppage of work.

The foregoing no-strike, no-lockout provision of 18.03.01 shall apply and shall only be of force and effect with respect to or concerning a dispute, complaint or grievance subject to arbitration under the provisions of 18.00.00

subject to arbitration under the provisions of 18.00.00, 19.00.00 and Job Placement Regulations 04.10.43 of this Agreement, the Union is hereby specifically authorized to withdraw any or all of the Employees of such Individual

during which he has been so withdrawn or refused to perform any work, provided, however, nothing in 18.03.00 shall

manning provision of Section 07.00.00 or any hiring provision of Section 04.00.00, including the Job Placement Regulations, the Union shall not exercise its rights to withdraw Employees under Section 18.03.03 for seventy-two (72)

procedures set out in 18.02.00. In the event the Individual Employer mans the equipment as requested by the Union or

accordance with the decision of the Board of Adjustment, the Union shall not be bound by Section 18.03.04 with respect

Regardless of any provision of Section 18.00.00 to the contrary, the right of withdrawal will not be exercised

Section 07.00.00 or the hiring provisions of Section 04.00.00 of this Agreement shall pay into the Operating Engineers Pensioned Health and Welfare Trust Fund an amount not to exceed 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%) of

in Section 18.03.04.

be settled in accordance with the provisions set forth in 18.02.00 and work shall continue in accordance with the provisions of Section 18.03.01.

Union shall have the right to withdraw Employees in accordance with 18.03.02 and 18.03.03 until such payment is made.

19.00.00 JURISDICTIONAL DISPUTES

19.01.00

International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America with respect to juris-

set forth in the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry or its successor acceptable

to the Building and Construction Trades Department of the AFL-CIO and the International Union of Operating Engineers.

authorized to proceed to enforce the decision by any lawful means in which case the work shall proceed as originally

Plan, provided such Plan for the Settlement of Jurisdictional Disputes is subscribed to by the disputing parties. Such

20.00.00 ADDITIONAL WORK OR CLASSIFICATIONS

When the Individual Employer employs nine (9) or more Journeymen/Apprentice Operating Engineers on

right to determine the number of Heavy Duty Repairman Foremen or Master Mechanics (Heavy Duty), with the following

When the Individual Employer is employing five (5) or more Heavy Duty Repairmen, he/she shall employ a Heavy Duty Repairman Foreman or Master Mechanic (Heavy Duty) to supervise them.

When five (5) or more Heavy Duty Repairmen are performing work on an overtime basis, the Heavy Duty Repairman Foreman or Master Mechanic (Heavy Duty) who is in charge of the preceding straight-time work shall be

No Heavy Duty Repairman Foreman or Master Mechanic (Heavy Duty) shall work with the tools, except

a regular Heavy Duty Repairman is absent, the Heavy Duty Repairman Foreman or Master Mechanic (Heavy Duty) may

Heavy Duty Repairman Foremen, and Master Mechanics (Heavy Duty) in the same manner as applied to all Employees

When the Individual Employer uses Foremen and Master Mechanics (Heavy Duty), they

22.00.00 SPECIAL PROVISIONS COVERING SUPERVISORY PERSONNEL ABOVE THE RANK OFFOREMAN

in the Operating Engineers' Health and Welfare Trust Fund for Northern California, Pensioned Operating Engineers' Health and Welfare Fund and Pension Trust Fund for Operating Engineers by paying into the above Trusts set forth in the Master Agreement monthly on the basis of 168 hours per month in accordance with the schedules set forth in the

Agreement. An Individual Employer may elect not to make payments to the Health and Welfare Trust on behalf of such source. If an Individual Employer does not make payments to the Health and Welfare Trust Fund on such an Employee's

1. Commencing in the Pacific Ocean on the extension of the Southerly line of Township 19S, of the Mount Diablo

2. Thence Easterly along the Southerly line of Township 19S, to the Northwest corner of Township 20S, Range 6E,

4. Thence Easterly to the Northwest corner of Township 21S, Range 7E,
5. Thence Southerly to the Southwest corner of Township 21S, Range 7E,
6. Thence Easterly to the Northwest corner of Township 22S, Range 9E,
7. Thence Southerly to the Southwest corner of Township 22S, Range 9E,
8. Thence Easterly to the Northwest corner of Township 23S, Range 10E,
9. Thence Southerly to the Southwest corner of Township 24S, Range 10E,

12. Thence Westerly to the Southeast corner of Township 19S, Range 29E,
13. Thence Northerly to the Northeast corner of Township 17S, Range 29E,
14. Thence Westerly to the Southeast corner of Township 16S, Range 28E,
15. Thence Northerly to the Northeast corner of Township 13S, Range 28E,
16. Thence Westerly to the Southeast corner of Township 12S, Range 27E,
17. Thence Northerly to the Northeast corner of Township 12S, Range 27E,
18. Thence Westerly to the Southeast corner of Township 11S, Range 26E,
19. Thence Northerly to the Northeast corner of Township 11S, Range 26E,

21. Thence Northerly to the Northeast corner of Township 9S, Range 25E,
22. Thence Westerly to the Southeast corner of Township 8S, Range 24E,
23. Thence Northerly to the Northeast corner of Township 8S, Range 24E,
24. Thence Westerly to the Southeast corner of Township 7S, Range 23E,

27. Thence Northerly to the Northeast corner of Township 5S, Range 20E,
28. Thence Westerly to the Southeast corner of Township 4S, Range 19E,
29. Thence Northerly to the Northeast corner of Township 1S, Range 19E,
30. Thence Westerly to the Southeast corner of Township 1N, Range 18E,
31. Thence Northerly to the Northeast corner of Township 3N, Range 18E,
32. Thence Westerly to the Southeast corner of Township 4N, Range 17E,
33. Thence Northerly to the Northeast corner of Township 4N, Range 17E,

37. Thence Northerly to the Northeast corner of Township 10N, Range 14E,
38. Thence Easterly along the Southern line of Township 11N, to the California/Nevada State Border,
39. Thence Northerly along the California/Nevada State Border to the Northerly line of Township 17N,
40. Thence Westerly to the Southeast corner of Township 18N, Range 10E,

42. Thence Westerly to the Southeast corner of Township 21N, Range 9E,
43. Thence Northerly to the Northeast corner of Township 21N, Range 9E,
44. Thence Westerly to the Southeast corner of Township 22N, Range 8E,
45. Thence Northerly to the Northeast corner of Township 22N, Range 8E,
46. Thence Westerly to the Northwest corner of Township 22N, Range 8E,
47. Thence Northerly to the Southwest corner of Township 27N, Range 8E,
48. Thence Easterly to the Southeast corner of Township 27N, Range 8E,
49. Thence Northerly to the Northeast corner of Township 28N, Range 8E,
50. Thence Westerly to the Southeast corner of Township 29N, Range 6E,

56. Thence Westerly to the Southeast corner of Township 37N, Range 1W,
57. Thence Northerly to the Northeast corner of Township 38N, Range 1W,
58. Thence Westerly to the Southeast corner of Township 39N, Range 2W,
59. Thence Northerly to the Northeast corner of Township 40N, Range 2W,

64. Thence Westerly along the California/Oregon State Border to the Westerly Boundary of Township Range 8W,
65. Thence Southerly to the Southwest corner of Township 43N, Range 8W,
66. Thence Easterly to the Southeast corner of Township 43N, Range 8W,
67. Thence Southerly to the Southwest corner of Township 42N, Range 7W,
68. Thence Easterly to the Southeast corner of Township 42N, Range 7W,
69. Thence Southerly to the Southwest corner of Township 41N, Range 6W,
70. Thence Easterly to the Northwest corner of Township 40N, Range 5W,
71. Thence Southerly to the Southwest corner of Township 38N, Range 5W,
72. Thence Westerly to the Northwest corner of Township 37N, Range 6W,
73. Thence Southerly to the Southwest corner of Township 35N, Range 6W,
74. Thence Westerly to the Northwest corner of Township 34N, Range 10W,
75. Thence Southerly to the Southwest corner of Township 31N, Range 10W,
76. Thence Easterly to the Northwest corner of Township 30N, Range 9W,
77. Thence Southerly to the Southwest corner of Township 30N, Range 9W,
78. Thence Easterly to the Northwest corner of Township 29N, Range 8W,
79. Thence Southerly to the Southwest corner of Township 23N, Range 8W,
80. Thence Easterly to the Northwest corner of Township 22N, Range 6W,
81. Thence Southerly to the Southwest corner of Township 16N, Range 6W,
82. Thence Westerly to the Southeast corner of Township 16N, Range 9W,

83. Thence Northerly to the Northeast corner of Township 16N, Range 9W,
84. Thence Westerly to the Southeast corner of Township 17N, Range 12W,
85. Thence Northerly to the Northeast corner of Township 18N, Range 12W,
86. Thence Westerly to the Northwest corner of Township 18N, Range 15W,
87. Thence Southerly to the Southwest corner of Township 14N, Range 15W,
88. Thence Easterly to the Northwest corner of Township 13N, Range 14W,
89. Thence Southerly to the Southwest corner of Township 13N, Range 14W,
90. Thence Easterly to the Northwest corner of Township 12N, Range 13W,
91. Thence Southerly to the Southwest corner of Township 12N, Range 13W,
92. Thence Easterly to the Northwest corner to Township 11N, Range 12W,
93. Thence Southerly into the Pacific Ocean, and,
94. Commencing in the Pacific Ocean on the extension of the Humboldt Base Line,
95. Thence Easterly to the Northwest corner of Township 1S, Range 2E,
96. Thence Southerly to the Southwest corner of Township 2S, Range 2E,
97. Thence Easterly to the Northwest corner of Township 3S, Range 3E,
98. Thence Southerly to the Southwest corner of Township 5S, Range 3E,
99. Thence Easterly to the Southeast corner of Township 5S, Range 4E,

104. Thence Northerly to the Northeast corner of Township 7N, Range 5E,
105. Thence Westerly to the Southeast corner to Township 8N, Range 3E,
106. Thence Northerly to the Northeast corner of Township 9N, Range 3E,
107. Thence Westerly to the Southeast corner of Township 10N, Range 1E,
108. Thence Northerly to the Northeast corner of Township 13N, Range 1E,
109. Thence Westerly into the Pacific Ocean,excluding that portion of Northern California contained within the

110. Commencing at the Southwest corner of Township 12N, Range 11E, of the Mount Diablo Base and Meridian,

117. Thence Westerly to the Northwest corner of Township 16N, Range 12E,
118. Thence Southerly to the Southwest corner of Township 16N, Range 12E,
119. Thence Westerly to the Northwest corner of Township 15N, Range 11E,

may be determined through Section 18.00.00, Grievance Procedure, shall be of any force or effect unless and until

25.01.00Employer's Membership

rized it to make this contract for and on their behalf as parties hereto.

effect through June 30, 2020, and if the written notice provided by Section 8(d) of the National Labor Relations Act

giving to the other the written notice provided by Section 8(d) of the Act in which event this Agreement shall

their respective representatives duly authorized to do so this _____ day of _____, 2016.

ENGINEERING CONTRACTORS [NAEC]

_____ _____

_____ _____
James K. Sullivan

_____ _____

_____ _____
Steve Ingersoll

_____ _____
Justin Diston

_____ _____
Dave Harrison

ATTACHMENT "A"

, made and entered into this _____day of _____ 20___, by and between _____ ("Subcontractor") and OPERATING ENGINEERS LOCAL UNION NO. 3

_____ ("SIGNATORYEMPLOYER") on the _____ (Project) located at _____ (Project Address).

Operating Engineers, AFL-CIO and THE SIGNATORY ASSOCIATIONS, and any successor agreements thereto which

This Agreement shall terminate upon notice to the Union of the completion of the Subcontractors' work at the

The undersigned representative has been authorized to bind the Subcontractor to this Agreement, this day _____ of _____ 20___.

AUTHORIZED BY:

Signature: _____ Print Name: _____

Print Title: _____ CA License #:_____

Subcontractor Name: _____

Address: _____ City/Zip: _____

Phone: _____ Fax: _____ Email: _____

Billing Account#_____ Commence Billing: _____

ADDENDUM "A"

not covered by this Addendum, they are "Heavy" work.

$41.25
$43.25

$39.80
$41.80

$38.40
$40.40

$37.07
$39.07

$35.86
$37.86

$34.59
$36.59

$33.50
$35.50

$32.42
$34.42

$30.30
$32.30

Foreman and Shifters, Over 7 Employees

$41.25
$43.25

Foreman (Working), Under 7 Employees

$39.80
$41.80

Master Mechanic, Over 5 Employees

$41.25
$43.25

$45.40
$47.40

$43.76
$45.76

$42.20
$44.20

$40.68
$42.68

$39.33
$41.33

$37.89
$39.89

$36.68
$38.68

$35.47
$37.47

$33.08
$35.08

Foreman and Shifters, Over 7 Employees
$45.40
$47.40
Foreman (Working), Under 7 Employees
$43.76
$45.76
Master Mechanic, Over 5 Employees
$45.40
$47.40

$42.85
$44.85

$42.10
$44.10

$40.41
$42.41

$38.77
$40.77

$35.86
$37.86

$45.04
$47.04
2921 1. Foreman and Shifters, (non-working) 7 Employees and over**
$44.04
$46.04

2931 2. Foreman (working), under 7 Employees **

$45.04

$47.04

5183 Truck Crane Assistant to Engineer**

$35.44

$37.44

$35.20

$37.20

$34.96

$36.96

$34.59

$36.59

$33.27

$35.27

$33.05

$35.05

$32.80

$34.80

$47.11
$49.11

$46.36
$48.36

$44.45
$46.45

$42.59
$44.59

$39.33
$41.33

$47.41
$49.41

2921 1. Foreman and Shifters, (non-working) 7 Employees and over**

$46.41
$48.41

2931 2. Foreman (working), under 7 Employees**

$47.41
$49.41

5183 Truck Crane Assistant to Engineer**

$39.62
$41.62

$38.87
$40.87

$38.60
$40.60

$38.33
$40.33

$37.89
$39.89

$37.16
$39.16

$36.41
$38.41

$36.17
$38.17

$35.89
$37.89

$43.79
$43.04
$41.33
$39.94
$38.01
$36.76

The straight-time rates of pay for the Truck Crane Assistant to Engineer and Assistant to Engineer classifications

5183 Truck Crane Assistant to Engineer**

$36.80
$36.05
$35.83
$35.58

$35.20

$34.66
$33.91
$33.66
$33.43

$48.16
$47.41

$45.49
$43.91
$41.76
$40.34

5183 Truck Crane Assistant to Engineer**

$40.30
$39.55
$39.29
$39.01

$38.60

$37.88
$37.13
$36.86
$36.58

Classifications and Rates for Piledrivers (Same Manning as Master Agreement)

$43.16
$42.41
$40.70
$39.09
$37.39
$36.14
$34.89
$33.83
$32.75

The straight-time rates of pay for the Truck Crane Assistant to Engineer and Assistant to Engineer classifications

5183 Truck Crane Assistant to Engineer**

$36.51
$35.76
$35.53
$35.26

$34.34
$33.59
$33.34
$33.11

Piledrivers, Special Single Shift and Second Shift Wage Rates

$47.45
$46.70
$44.76
$42.97
$41.04
$39.65
$38.23
$37.04
$35.84

5183 Truck Crane Assistant to Engineer**

$39.97
$39.22
$38.97
$38.66

$37.53
$36.78
$36.50
$36.23

Alpine; Amador; Butte; Calaveras; Colusa; Del Norte; El Dorado; Fresno; Glenn; Humboldt; Kings; Lake; Lassen;

Benito; San Joaquin; Santa Cruz; Shasta; Sierra; Siskiyou; Stanislaus; Sonoma; Sutter; Tehama; Trinity; Tulare;

Master Agreement for the entire project is less than $3,000,000.00. The Individual Employer shall not engage in or enter into any scheme, plan or device with the Contracting Authority or Developer to job split or split contracts with the intent of pricing a specific job or project under $3,000,000.00. The Individual Employer shall provide the Union with documentation to establish that the value of a job is under $3,000,000.00.

for all hours worked if the Employee works at the highest rate for at least one half of the Employee's straight- time hours worked that day. If the Employee works at the highest rate for less than one half of the Employee's straight-

So long as the Individual Employer properly mans a job, it may make full utilization of Employees

The regular work day shall be eight (8) consecutive hours or ten (10) consecutive hours (exclusive of a meal period) which shall constitute a regular shift's work. The regular starting time of a single shift shall be

ADDENDUM "B"
RETIREE WORK PROVISIONS

Recognizing that retired Employees may from time to time wish to return to work on a temporary basis, the

(2) Does not replace any Employee currently on the payroll of the Individual Employer.

(4) There is less than fifteen percent (15%) registered on the out-of-work list in their Job Placement Center

into the Operating Engineers' Pensioned Health and Welfare Trust Fund according to the following schedule:

Effective July 1, 2016 – The sum of all hourly contribution rates set forth in Section 12.00.00 which are in effect on July 1, 2016, less the amount paid to the Vacation, Holiday and Sick Pay and the Supplemental Dues.

Effective June 26, 2017 – The sum of all hourly contribution rates set forth in Section 12.00.00 which are in effect on June 26, 2017, less the amount paid to the Sick, Vacation and Holiday Pay and the Supplemental Dues.

Effective June 25, 2018 – The sum of all hourly contribution rates set forth in Section 12.00.00 which are in effect on June 25, 2018, less the amount paid to the Vacation, Holiday and Sick Pay and the Supplemental Dues.

Effective on June 24, 2019–The sum of all hourly contribution rates set forth in Section 12.00.00 which are in effect on June 24, 2019, less the amount paid to the Vacation, Holiday and Sick Pay and the Supplemental Dues.

VACATION, HOLIDAY AND SICK PAY

pay into the Operating Engineers Vacation, Holiday and Sick Pay according to the following schedule:

Effective July 1, 2016 – the amount provided for in Section 12.06.00

Effective July 1, 2016– the amount provided for in Section 12.12.00

ADDENDUM "C"

JOINT LABOR MANAGEMENT

An Individual Employer which is regulated by the United States Department of Transportation ("DOT") Code of Federal Regulation CFR 382 and 49 may elect not to implement the testing provisions of this Policy for its Employees who are not regulated by DOT.

must be delivered in person, by certified mail or by FAX before it implements the Policy. A DOT regulated

Policy for its Employees who are not subject to DOT regulations. The notice shall be delivered to the Union at

Alameda, CA94502
(FAX: [510] 748-7401)

D. An Individual Employer who implements this Policy shall provide written notice of this Policy to all Employees

for Employees. The Employer, Individual Employer and the Union recognize the valuable resource we have in our Employees and recognize that the state of an Employee's health affects attitude, effort, and job performance. The parties recognize that substance abuse is a behavioral, medical and social problem that

treatment to those Employees who recognize they have a substance abuse problem and voluntarily seek

1. Treatment for substance abuse and chemical dependency is provided under the Health and Welfare Plan,

signing a return-to-work agreement as provided for in Section XI.

conformance with the DOT regulations. The program shall include educating Employees and

whether this Policy has been violated. Disclosure of test results to any other person, agency, or organization is prohibited unless written authorization is obtained from the Employee. The results of a positive drug test shall not

established by the Substance Abuse and Mental Health Services Administration ("SAMHSA"), any successor agency,

testing. All such agencies shall be collectively referred to as "SAMHSA."

_____ All SAMHSA standards for Chain of Custody will be adhered to. A specimen for which the SAMHSA standards are not complied with shall not be considered for any purpose under this Policy.

_____ All laboratories which perform tests under this Policy shall be SAMHSA certified.

_____ All SAMHSA standards for testing standards and protocols shall be followed. All specimens which are determined to be positive by the SAMHSA approved screening test shall be subject to a SAMHSA certified confirmatory test (gas chromatography/mass spectrometry).

_____ The laboratory shall save a sufficient portion of each specimen in a manner approved by SAMHSA so

MRO so long as that laboratory is SAMHSA certified and has been or is approved by the parties and the Employee requests the second test within seventy-two (72) hours of notice of a positive result. If the second test is negative,

_____ SAMHSA standards for cut-off levels will be complied with when applicable. The cut-off levels for both the screening and confirmatory tests shall be per Federal standards as determined by the U. S. Department of Health and Human Services ("DHHS").Only tests which are positive pursuant to the SAMHSA standards shall be

_____

_____

release form, a copy of which is attached hereto (Form "A"). The consent and release form will only authorize (1)

The Employee may be disciplined if he/she refuses to sign the authorization if the Individual Employer has advised

the Board of Adjustment or Arbitrator determines the Individual Employer was not authorized by this Policy to direct

A specimen may be tested for alcohol, cannabinoids (THC), barbiturates, opiates, specimen shall not be tested for anything else. If DOT revises its list of substances for which it requires Individual not identify the substance(s) for which the Employee tested positive unless specifically required to do so by DOT

A. TIME OF DISPATCH TESTING

results unless the Employee has been dispatched to a DOT regulated assignment and the Individual Employer does not have any work for the Employee to perform which is not subject to the DOT regulations or if it has

speech or odor. The indicators shall be recognized and accepted symptoms of intoxication or impairment

C. ACCIDENT TESTING

D. UNANNOUNCED RANDOM TESTING

Employer may establish two random testing pools; one for DOT regulated Employees and one for all others.

(30) days' notice to the Union and Employees prior to implementing a random drug testing program.

E. DOT REGULATED EMPLOYEES

covered by the DOT drug and alcohol testing regulations to submit to testing as required by those regulations.

discipline an Employee who tests positive as defined by the Regulations subject to Section XI, REHABILITATION/DISCIPLINE, of the Policy. ARP shall be the Substance Abuse Professional for all Employees.

are subject to DOT regulations who have a positive "pre-employment" test (as defined by the DOT regulations) which is not subject to the DOT regulations pending the test result. Employees who are tested under the DOT

F. OWNER/AWARDING AGENCY REQUIREMENTS

G. QUICK TESTS

dispatch screening only. Testing procedures for the oral test (including the oral screen – OSR device) and the urine test shall be conducted in a manner consistent with the product manufacturer's specifications; in an effort to produce the most consistent and accurate results possible. Dispatched members who fail this saliva

upon documented declining job performance or other observations prior to testing under Section VII and/or

IX. EMPLOYEE VOLUNTARY SELF-HELP PROGRAM

an Employee Voluntary Self-Help Program. Any such Employee shall be referred to ARP. Employees who seek

received from an Employee for any purpose or under any circumstances, unless specifically authorized in writing by

X. PROHIBITEDACTIVITIES/DISCIPLINE

thereof as defined in Section VI while on the Individual Employer's property or jobsite and/or while working for the

XI. REHABILITATION/DISCIPLINE

The Individual Employer may discipline an Employee who violates any provision of Section X. Such Employee is

The Individual Employer is not required to refer to ARP any Employee who violates any provision of Section X which

The Individual Employer may not discipline any Employee who violates any other provisions of Section X until such

for cause or random test shall not be eligible for the reemployment provisions of this Section XI.

XII. NON-DISCRIMINATION

XIII. COST OF PROGRAM

Evaluation and treatment for substance abuse and chemical addiction are provided for through the Health and

referral and treatment beyond that which is incorporated into its Health and Welfare contribution rate. ARP is funded through the Health and Welfare Trust to provide its current level of service which includes performing

XIV. GRIEVANCE PROCEDURE

XV. SAVINGS CLAUSE

FORM "A"

I, _____, have been directed by my employer, _____, to submit to a drug/alcohol screen

Cannabinoids (THC), Opiates, Phencyclidine, Barbiturates, Methaqualone and Alcohol. I consent to the following:

In addition to Time of Dispatch testing, if I am directly or indirectly involved in a work-related accident

by the United States Department of Transportation Code of Federal Regulations CFR 382 and 49 and my

_____

_____ _____
(Employee Name [Please Print]) (Date)

_____ _____
(Witness Name [Please Print]) (Date)

FORM "B"

Employee Involved: _____

Date of Incident: _____ Time of Incident: _____

Location of Incident: _____

Employee's Job Assignment/Position: _____

Employee Notified of His/Her Right to Union Representation: ☁ ☁

Date Notified: _____Time Notified: _____

Witness to Incident: _____

Witness' Observation: _____

_____

_____

_____E

mployee's Explanation: _____

_____

_____

_____

_____

Employee's Signature: _____Date: _____

Witness' Signature: _____ Date: _____

Employer's Signature: _____ Date: _____

Title: _____

Action Taken: _____

_____

Date/Time Action Taken: _____

ADDENDUM "D"

(Entry Level Operator)

is made and entered into this _____ day of _____, 2016, by and between Signatory

. The first seven hundred fifty (750) hours worked shall be considered the

The Employer may only hire Entry Level Operators when there is less than fifteen percent (15%)

of the Job Placement Regulations until he/she has completed three thousand [3000] hours as an Entry Level

fill the position within forty-eight [48] hours. The Employer shall refer to the Job Placement Center any Employee whom it hires from a source other than the Job Placement Center. It shall do so within forty-eight (48) hours of the

Job Classifications -Straight-time hourly

2687 —First 750 hours	60%	$22.97			
		$24.97			
2688 —Second 750 hours	70%	$26.80			
		$28.80			
2689 —Third 750 hours	80%	$30.62			
		$32.62			
2697 —Fourth 750 hours	90%	$34.45			
		$36.45			

Job Classifications -Special Single and Second Shift

2687 —First 750 hours	60%	$25.23			
		$27.23			
2688 —Second 750 hours	70%	$29.44			
		$31.44			
2689 —Third 750 hours	80%	$33.64			
		$35.64			
2697 —Fourth 750 hours	90%	$37.85			
		$39.85			

notice by the Employer, but in no event earlier than July 1, 2016, June 26, 2017, June 25, 2018 and June 24, 2019.

percent (100%) of the current prevailing wage rate for the work being performed.

When the Entry Level Operator has completed three thousand [3000] hours worked, he/she shall be

hundred percent (100%) of the applicable wage and fringe benefits for a Journeyman Operator.

When working in a District where a Private Work Agreement

The Employer shall pay into the Operating Engineers' Health and Welfare Trust

$11.24 per hour - Effective July 1, 2016
*- Effective June 26, 2017
*- Effective June 25, 2018
*- Effective June 24, 2019

Health and Welfare Trust Fund according to the following schedule:

$2.26 per hour – Effective July 1, 2016

$7.91 per hour – Effective June 29, 2015

$7.91- per hour – Effective 7/1/16
$.* per hour – Effective 6/26/17
$.* per hour – Effective 6/25/18
$.* per hour – Effective 6/24/19

the Pension Protection Act of 2006 and the Union will select an option (Schedule) in the Pension's Rehabilitation

*2016, 2017, 2018 and 2019 Pending annual review by the Plan's Actuaries & Trustees

$.77 per hour – Effective 7/1/16
$.* per hour – Effective 6/26/17
$.* per hour – Effective 6/25/18
$.* per hour – Effective 6/24/19

the Operating Engineers Local Union No. 3Vacation, Holiday and Sick Pay Trust Fund according to the following

$2.81 per hour – Effective 7/1/16

$1.65 per hour [Vacation Pay] – Effective 7/1/16

$.50 cents per hour [Sick Pay] – Effective 7/1/16

$1.11 per hour [Supplemental Dues] – Effective 7/1/16

$.05 cents per hour [Vacation Trust Administrative Fee] – Effective 7/1/16

$.* per hour – Effective 6/26/17

$.* per hour – Effective 6/25/18

$.* per hour – Effective 6/24/19

Effective July 1, 2016, the Union grants Individual Employers a waiver under the Healthy Workplaces, Healthy

Local Union No. 3 Vacation, Holiday and Sick Pay Trust Fund a one-time additional contribution of fifty cents [$.50]

Any disputes concerning the validity of the waiver granted under the Healthy Families Act of 2014 are subject to Section 18.00.00 Grievance Procedure. If the California legislature amends the Healthy Workplaces, Healthy

(Administrative Code Section 12W), Oakland (Municipal Code Section 592 et.seq.), Emeryville (Municipal Code Title 5, Chapter 37). In addition, to the fullest extent permitted by law, this waiver shall apply to any other Federal, State,

purpose of computing overtime, either under the Fair Labor Standards Act, the Walsh-Healy Act or any other law,

Vacation, Holiday and Sick Pay shall be deducted by each Employee's Individual Employer from each Employee's regular wages and such total tax deductions together with the amount payable for Vacation, Holiday and Sick Pay shall be separately noted on the Employee's paycheck.

written authorization, provided by the Union or Union's designee, as required by law, the amount designated by the Union shall be deducted from the Vacation, Holiday and Sick Pay of each Employee and remitted directly to the Union. The amount of the Supplemental Dues transmittal shall be specified on a statement sent to the Employees. Such remittance shall be made to the Union monthly. Supplemental Dues are specifically part of the uniform

dues authorization provided for herein is not executed, under such terms and conditions as from time to time may be prescribed by the Union. The Union shall pay the Operating Engineers Local union no. 3 Vacation. Holiday and Sick Pay Trust Fund an administration fee for the remittance of Supplemental Dues to the Union.

1620 South Loop Road, Alameda, CA94502 ..... 510/748-7400

828 Mahler Road, Suite B, Burlingame, CA94010 ..... 650/652-7969

2540 N. Watney Way, Fairfield, CA94533 ..... 707/429-5008

ROHNERT PARK
6225 State Farm Dr., #100, Rohnert Park 94928..... 707/585-2487

OAKLAND
1620 South Loop Road, Alameda, CA94502 ..... 510/748-7446

STOCKTON
1916 North Broadway, Stockton, CA95205..... 209/943-2332

EUREKA
1213 Fifth Street Eureka, CA 95501 ..... 707/443-7328

4856 N. Cedar, Fresno, CA 93726..... 559/229-4083

468 Century Park Drive, Yuba City, CA95991 ..... 530/743-7321

20308 Engineers Lane, Redding, CA96002 ..... 530/222-6093

3920 Lennane Drive, Sacramento, CA 95834 ..... 916/993-2055

SAN JOSE
325 Digital Drive, Morgan Hill, CA95037 ..... 408/465-8260

1290 Corporate Blvd., Reno, Nevada 89502 ..... 775/857-4440

ELKO
1094 Lamoille Hwy., Elko, Nevada 89801..... 775/753-8761

SALTLAKECITY
1958 W.N.Temple, Salt Lake City, Utah84116..... 801/596-2677

1075 Opakapaka Street, Kapolei, HI 96707 ..... 808/845-7871

50 Waianuenue, Hilo, HI96720..... 808/935-8709

95 Lono Avenue, Ste. #104, Kahului, HI96732 ..... 808/871-1193

EXHIBIT E

PROJECT LABOR AGREEMENT

FOR THE

CALIFORNIA FLATS SOLAR PROJECT

MONTEREY COUNTY, CALIFORNIA

ARTICLE 1
INITIAL PROVISIONS

1.1 This Project Labor Agreement ("Agreement") is entered into by McCarthy Building Companies, Inc. ("Primary Employer"), Operating Engineers Local 3, Carpenters Local 605, Pile Drivers Local 34, Millwrights Local 102, Laborers Local 270, IBEW Local 234, and Ironworkers Local 155 who have executed this Agreement (the "Unions").

1.2 The California Flats Solar Facility Project (the "Project") is an approximately 280 MW photovoltaic solar power plant located in Monterey County, California. The Project is owned by CA Flats Solar 130, LLC and CA Flats Solar 150, LLC ("Owner"). It is understood and agreed by and between the Parties to this Agreement that the final plans for the Project may be subject to modifications and approval by those public agencies possessing lawful approval authority over the Project and that this Agreement applies to the Project as it is finally approved by such entities and agencies and only to the Project.

1.3 Primary Employer is an employer primarily engaged in the construction industry and has the authority to enter into this agreement.

1.4 As provided below, other than Primary Employer, all construction managers, contractors, subcontractors or other persons or entities assigning, awarding or subcontracting Covered Work (as defined in Article 2 below), or performing Covered Work, will be subject to this Agreement by executing Attachment A, the Agreement to be Bound (all of whom, including the Primary Employer, are individually and collectively referred to as "Employer" or "Employers").

1.5 The Unions are labor organizations whose members are construction industry employees. The Unions are party to multi-employer collective bargaining agreements ("Master Agreement") applicable to employers working within the geographic jurisdiction. Primary Employer is a signatory to the Carpenters and Laborers Master Agreements only.

1.6 A large labor pool represented by the Unions will be required to execute the Covered Work involved in the Project. Employers wish and it is the purpose of this Agreement to ensure that a sufficient supply of skilled craft workers are available at the Project, that all construction work performed by the members of the Unions on this Project shall proceed continuously, without interruption, in a safe and efficient manner, economically with due consideration for the protection of labor standards, wages and working conditions. In furtherance of these purposes and to secure optimum productivity, harmonious relations between the parties and

the orderly performance of the work, the parties to this Agreement agree to establish adequate and fair wage levels and working conditions.

1.7 In the interest of the future of the construction industry in the local area, of which the Unions are a vital part, and to maintain the most efficient and competitive posture possible, the Unions pledge to work and cooperate with the Primary Employer, Employers and with other construction employers engaged on the Project to produce the most efficient utilization of labor and equipment in accordance with this Agreement. In particular, the Unions shall make all efforts to first source local labor to the Project and shall cooperate with each Employer's efforts to comply with all applicable laws and regulations related to such local hiring requirements.

1.8 The parties recognize the importance of solar power in assuring that California is provided with adequate supplies of renewable energy for economic growth, the creation of job opportunities and for a greater degree of energy independence. By entering into this Agreement, the parties recognize the unique nature of a solar photovoltaic power plant and that the terms and conditions covered by this Agreement are therefore unique. Accordingly, the parties have in good faith arrived at the special conditions contained in this Agreement, and the parties agree to work together jointly to support the Project and make it successful.

ARTICLE 2
SCOPE OF AGREEMENT

2.1 This Agreement covers all on-site construction, alteration, demolition or repair of buildings, structures, and other works which are part of the Project. All work covered by this Agreement is referred to as "Covered Work." As of the execution of this agreement there is no work planned to be performed in temporary yards or at adjacent facilities; in the event that Primary Employer determines it is necessary to use a temporary yard or adjacent facility this Agreement shall govern that work.

2.2 The following are specifically excluded from the definition of Covered Work:

2.2.1 Any work performed on or near the Project site by federal, state, county, city or other governmental bodies and/or agencies or their contractors or work performed by utilities or their contractors;

2.2.2 Work performed by supervisors not covered by a collective bargaining agreement, technical or non-manual employees including but not limited to executives, office and clerical personnel, drafters, staff engineers, technical advisors, vendor quality control representatives, logistic and materials support, timekeepers, messengers,

or any other employees above the classification of general foreman who perform administrative/clerical functions; and

2.2.3 Operations and maintenance work.

2.3 Fabrication provisions in local and/or national agreements shall not apply. Any manufactured items produced in a manufacturing facility for the supply of products to the Project is not Covered Work and shall not be considered subcontracting under Article 3 below. However, any offsite assembly of components (other than manufacturing products at a manufacturing facility) for the Project is Covered Work and shall be performed onsite.

ARTICLE 3
SUBCONTRACTING

3.1 Primary Employer and each other Employer agree that they will contract for the assignment, awarding or subcontracting of Covered Work, or authorize another party to assign, award or subcontract Covered Work, only to a person, firm, corporation or other entity that, at the time the contract or subcontract is executed, has become a party to this Agreement by executing Attachment A, the Agreement to be Bound.

3.2 Primary Employer is a signatory to the Carpenters and Laborers Master Agreements only. Primary Employer intends to self-perform those portions of the Carpenters and Laborers Covered Work identified on Attachment B. Nothing herein is intended to bind Primary Employer to any other Master Agreements than those the Primary Employer is already a signatory to so long as Primary Employer self-performs only work assigned to the Carpenters or Laborers as provided in Attachment B.

3.3 Primary Employer and each other Employer agree that they will subcontract Covered Work only to a person, firm, corporation or other entity who is or becomes a party to this Agreement, who is primarily a C-10 electrical contractor (for IBEW Covered Work only), and who is or becomes signatory to the applicable Master Agreement pertaining to the scope of work identified in Attachment B for that particular Employer, or, in the case of a national contractor, a national agreement with the applicable Union. Before being authorized to perform any Covered Work, Employers (other than Primary Employer) shall become a party to this Agreement by signing Attachment A, the Agreement to be Bound and the applicable Master Agreement. Every Employer shall notify the Union in writing within five business days after it has subcontracted work, and shall at the same time provide to the Union a copy of the executed Attachment A,

Agreement to be Bound.

3.4 Nothing in this Agreement shall in any manner whatsoever limit the rights of the Primary Employer and every other Employer, to subcontract Covered Work or to select its contractors or subcontractors; provided, however, that all Employers, at all tiers, assigning, awarding, contracting or performing, or authorizing another to assign, award, contract or perform Covered Work shall be required to comply with the provisions of this Agreement. Primary Employer and every other Employer shall notify each of its contractors and subcontractors of the provisions of this Agreement and require as a condition precedent to the assigning, awarding or subcontracting of any Covered Work or allowing any subcontracted Covered Work to be performed, that all such contractors and subcontractors at all tiers become signatory to this Agreement, and the applicable Master Agreement or national agreement as provided in Section 3.2 above. Any Employer that fails to obtain the signature of its lower tier contractors or subcontractors shall be liable for any failure of that lower tier contractor or subcontractor to comply with the provisions of this Agreement, including any contributions to any trust funds that the lower tier contractor or subcontractor fails to make. Each Employer shall provide a copy of their signature and their subcontractors' signature to the Agreement to Be Bound to the applicable union.

ARTICLE 4
WAGES AND BENEFITS

4.1 All employees performing Covered Work and covered by this Agreement (including foremen and general foremen if they are covered by the Master Agreement) shall be classified and paid wages and benefits, and contributions made on their behalf to multi-employer trust funds, all in accordance with the applicable Union's Master Agreement in effect at the time of the execution of the Agreement to be Bound and any subsequently negotiated Master Agreement, however Employers shall not be liable for any retroactive increase in compensation (wages or benefits of any kind) unless otherwise agreed to within the new Master Agreement.

4.2 Employees performing Covered Work in the IBEW CW classification shall receive wages and benefits as specified in Attachment C.

ARTICLE 5
UNION RECOGNITION AND REFERRAL

5.1 The Employers recognize the Unions signatory to this Agreement which have craft jurisdiction over such Employer's scope of work on the Project as the sole and exclusive collective bargaining agent for their construction craft employees performing Covered Work for the Project, and further recognize the traditional and customary craft jurisdiction of the Unions.

5.2 All employees performing Covered Work shall be or shall become and then remain members in good standing of the applicable Union as a condition of employment on or before the eighth (8th) day of employment, or the eighth (8th) day following the execution of this Agreement, whichever is later.

5.3 The Unions shall be the source of all craft employees for Covered Work for the Project. Employers agree to be bound by the hiring practices of the Unions as set forth in each applicable Master Agreement, including hiring of apprentices, and to utilize its registration facilities and referral systems.

5.4 The Unions shall exert their utmost efforts, including requesting assistance from other local unions, to recruit a sufficient number of skilled craftsmen to fulfill the manpower requirements of the Employers. In the event the referral facilities maintained by the Union does not refer the employees as requested by an Employer within a forty-eight (48) hour period after such requisition is made by an Employer (Saturdays, Sundays and holidays excepted), the Employer may employ applicants from any source, but shall arrange for a dispatch to be issued for those applicants from the Union within forty-eight (48) hours of the commencement of employment, and the dispatch shall upon request be issued by the Union to the employee. Employer will notify the Union of such gate-hires.

5.5 If specified in the applicable Master Agreement, each Union shall have the right to designate a working journeyperson as a working steward. The steward shall be a qualified employee performing the work of that craft and shall not exercise any supervisory functions. The steward shall be concerned with the employees of the steward's Employer and not with the employees of any other Employer. A steward shall be allowed sufficient time to perform his/her duties.

ARTICLE 6
WORK STOPPAGES AND LOCKOUTS

6.1 During the term of this Agreement, there shall be no strikes, sympathy strikes, picketing, work stoppages, slow downs, handbilling where the handbilling relates to the Project or to the Owner, Primary Employer, or other Employer working or providing work on the Project, or interference with the work or other disruptive activity of any kind at the Project site for any reason by the Unions, their agents, representatives, or by any employee, and there shall be no lockout by any Employer. Failure of either a Union or an employee to cross any picket line established at the Employer's project site is a violation of this Article.

6.2 The Unions shall not sanction, aid, abet, encourage, condone or participate in or continue any work stoppage, delay, strike, picketing or any other disruptive activity at the Project site and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activities which violate this Article. Any employee who participates in or encourages any activities which interfere with the normal operation of the Project or which violate this Article, shall be subject to disciplinary action, including discharge, and, if justifiably discharged for the above reasons, shall not be eligible for rehire or further work on the Project.

6.3 A Union shall not be liable for acts of employees that it does not represent. With respect to employees the Union does represent, the principal officer or officers of the Union will immediately instruct, and order and use the best efforts of his office to cause such employees to cease any violations of this Article. A Union complying with this obligation shall not be liable for any unauthorized acts of the employees it represents. The failure of the Employer to exercise its right in any instance shall not be deemed a waiver of its right in any other instance.

6.4 The Unions agree that if any union or any other persons, whether parties to this Agreement or otherwise, engage in any picketing or work stoppages, the signatory Unions shall consider such work stoppage or picketing to be illegal and refuse to honor such picket line or work stoppage.

6.5 In the event of any work stoppage, strike, sympathy strike, picketing, handbilling or interference with the work or any other disruptive activity at the Project site in violation of this Article, the Primary Employer may suspend all or any portion of the Project work affected by such activity at the Primary Employer's discretion and without penalty.