

## RESOLUTION NO. 2019-\_\_\_\_\_

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PARLIER  
AUTHORIZING FAMAND INC, dba INDOOR ENVIRONMENTAL  
SERVICES A SITELOGIQ COMPANY AND THE CITY  
ADMINISTRATOR, TO COMPLETE AND SUBMIT ALL NECESSARY  
DOCUMENTS AND AN APPLICATION FOR A CALIFORNIA ENERGY  
COMMISSION ECAA LOAN AND FINDING THE ACTIVITY FUNDED BY  
SUCH LOAN TO BE EXEMPT FROM THE CALIFORNIA  
ENVIRONMENTAL QUALITY ACT**

WHEREAS, the California Energy Commission provides loans to schools, hospitals, local governments, special districts, and public care institutions to finance energy efficiency improvements;

NOW THEREFORE, BE IT RESOLVED, that City Council of the City of Parlier authorizes Famand, Inc. dba Indoor Environmental Services, a SiteLogIQ Company to apply for energy efficiency loan from the California Energy Commission to implement energy efficiency measures.

BE IT ALSO RESOLVED, that in compliance with the California Environmental Quality Act (CEQA), City of Parlier finds that the activity proposed to be funded by the loan is a project that is categorically exempt under 15301 and 15304 because the solar sites proposed are part of an existing facility and/ or minor alterations to land.

BE IT ALSO RESOLVED, that if recommended for funding by the California Energy Commission, the City Council of the City of Parlier authorizes the City Administrator to accept a loan of up to \$1,231,387.00 and to execute all documents necessary or required to obtain such loan.

BE IT ALSO RESOLVED, that the amount of the loan will be paid in full, plus interest, under the terms and conditions of the Loan Agreement, Promissory Note and Tax Certificate of the California Energy Commission.

BE IT FURTHER RESOLVED, that City Administrator, Sonia Hall is hereby authorized and empowered to execute in the name of City of Parlier all necessary documents to implement and carry out the purpose of this resolution, and to undertake all actions necessary to complete the energy efficiency projects.

Passed, Approved and Adopted this 6<sup>th</sup> day of December, 2019.

AYES	COUNCILMEMBERS
NOES	COUNCILMEMBERS
ABSTAIN	COUNCILMEMBERS
ABSENT	COUNCILMEMBERS

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Alma Beltran, Mayor

ATTEST

---

Bertha Augustine, City Clerk

**RESOLUTION NO. 2019-\_\_\_\_\_**

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**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PARLIER  
APPROVING AND AUTHORIZING EXECUTION OF AN OPERATIONS  
AND MAINTENANCE AGREEMENT AND FACILITY SOLUTION AGREEMENT  
FOR INSTALLATION, OPERATION AND MAINTENANCE OF SOLAR  
FACILITIES AND OTHER ENERGY CONSERVATION IMPROVMENTS**

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**WHEREAS**, the City issued and published a Notice of Public Hearing on a resolution adopting certain findings and approving an energy service contract for energy related improvements to City facilities with Famand Inc (dba Indoor Environmental Services, a SitelogIQ Company) scheduling that hearing for 6:30 p.m. in the City Council Chambers of the City of Parlier to consider this resolution approving an energy services contract with Famand Inc for the implementation of certain energy-related improvements to City facilities in accordance with the provisions of Government Code §§4217.10 through 4217.18; and

**WHEREAS**, the energy services contract, consisting of a Facility Solutions Agreement and Operations & Maintenance Agreement with Famand Inc have been negotiated by and between the City and Famand Inc and the improvements to be installed, operated and maintained under those agreements consist of solar facilities and energy efficient appliances including HVAC units in City-owned facilities, all as more particularly identified in the Facility Solutions Agreement and Operations & Maintenance Agreement; and

**WHEREAS**, by separate resolution the City has authorized Famand Inc to apply for a loan for the purchase and installation of the energy conservation improvements as permitted by the aforementioned provisions of the Government Code; and

**WHEREAS**, the Facility Solutions and Operation & Maintenance Agreements are energy service contracts within the meaning of Government Code §4217.11(e) and (f); the City is a "public agency" within the meaning of Government Code §4217.11 (f); and the anticipated cost to the City for thermal or electrical energy or conservation services provided for by the contracts will be less than the anticipated marginal cost to the City of thermal, electrical or other energy that would have been consumed by the City in the absence of this purchase within the meaning of Government Code §4217.12; and the City has evaluated and received proposals from persons including Famand Inc and is authorized to award the contract on the basis of the experience of the contractor, the type of technology employed by the contractor, the cost to the City and other relevant considerations; and

**WHEREAS**, Famand Inc and the City have negotiated final versions of the Facility Solutions Agreement and Operations & Maintenance Agreement and the City

wishes to exercise its authority to enter into these agreements for the purpose of reducing energy costs and to increase in energy efficiency.

NOW, THEREFORE, be it resolved as follows:

1. The foregoing recitals are true and correct and are incorporated by this reference.

2. The City Council has reviewed and approves the Facility Solutions Agreement and Operations & Maintenance Agreement with Famand Inc and finds and determines that entering into these contracts and applying for a low interest loan from the California Energy Commission, pursuant to a separate resolution will result in cost savings to the City and increase overall energy efficiency while decreasing the expense of that energy.

3. The City Council approves, and the Mayor is authorized to execute the Facility Solutions Agreement and the Operations & Maintenance Agreement, copies of which are on file with the City Clerk.

\*\*\*\*\*

The foregoing Resolution was duly approved this \_\_\_\_ day of \_\_\_\_\_, 2019 by the following vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

\_\_\_\_\_  
Alma Beltran, Mayor, City of Parlier

ATTEST:

\_\_\_\_\_  
Bertha Augustine, City Clerk, City of Parlier



## **OPERATIONS & MAINTENANCE AGREEMENT**

by and between

City of Parlier

1100 East Parlier Avenue

Parlier, CA 93648

and

Famand, Inc

(dba Indoor Environmental Services, a SitelogIQ Company)

1512 Silica Avenue

Sacramento, California 95815

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## **EXHIBITS**

Exhibit A	Definitions
Exhibit B	System Services
Exhibit C	Insurance
Exhibit D	Permits
Exhibit E	Annual Energy Production Evaluation
Exhibit F	Rates for Additional Services
Exhibit G	Energy Reporting and Educational Services

## OPERATION AND MAINTENANCE AGREEMENT

This Operation and Maintenance Agreement ("Agreement") is entered into as of \_\_\_\_\_, between the City of Parlier, a City organized and existing under the laws of the State of California ("City") and Famand Inc, a California corporation doing business as Indoor Environmental Services, a SitelogIQ Company ("Operator").

### RECITALS

WHEREAS, Owner intends to construct, install, and commission a small-scale photovoltaic solar electric facilities (individually called System, together called "Systems").

WHEREAS, the Systems will be constructed at various client sites (individually called Site, together called Sites).

WHEREAS, the Systems and Sites are as follows:

System	Site
126.54 kW DC	CITY HALL / COMMUNITY CENTER 1100 E. PARLIER AVE., PARLIER, CA
11.84 kW DC	PUBLIC WORKS BLDG 780 TULARE STREET, PARLIER, CA
29.60 kW DC	POLICE DEPARTMENT 8770 S. MENDOCINO AVE., PARLIER, CA
8.88 kW DC	SENIOR CENTER 690 S. NEWMARK AVE., PARLIER, CA
17.76 kW DC	ACADEMY OF EXCELLENCE 8000 S. MENDOCINO AVE., PARLIER, CA

WHEREAS, Famand, Inc., a California corporation ("Installer") and Owner have entered into a Facility Solutions Agreement ("FSA") pursuant to which Installer has agreed to design, construct and deliver the Systems on behalf of Owner; and

WHEREAS, Operator, in its capacity as operator hereunder, has agreed to operate and maintain the Systems under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### AGREEMENT

#### 1. DEFINITIONS

Unless otherwise required by the context in which any term appears: (a) capitalized terms used in this Agreement shall have the respective meanings set forth in Exhibit A; (b) the singular shall



include the plural and vice versa; (c) the word "including" shall mean "including, without limitation", (d) references to "Sections" and "Exhibits" shall be to sections and exhibits hereof; (e) the words "herein", "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection hereof; and (f) references to this Agreement shall include a reference to all Exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time.

## 2. SERVICES

### 2.1. System Services

- (a) Throughout the Term of this Agreement, Operator shall provide System Services as set forth in Exhibit B for the Systems.
- (b) Operator shall perform an Annual Energy Production Evaluation for each System.
- (c) System Services shall be performed in accordance with Industry Standards and Applicable Law for photovoltaic solar projects in California.
- (d) All periodic maintenance and inspection services shall be performed at regular intervals as described in Exhibit B
- (e) All maintenance and inspection services shall be performed by qualified technical personnel in accordance with the operation and maintenance manuals.
- (f) Operator personnel and agents will check-in at offices during business hours prior to beginning Work.
- (g) Repair of damaged/vandalized Systems shall be performed by Operator, as directed by Owner, at the rates specified in Exhibit F.
- (h) Any other Owner requested services not defined in this Agreement shall be billed at the rates specified in Exhibit F on a time and materials basis.

### 2.2. Annual Reports and Meeting

Throughout the Term, Operator shall furnish to Owner the annual maintenance/inspection report ("Annual Report") covering all Systems for the twelve-month period ending on December 31 of each calendar year. The first reporting period of the Term shall begin upon Final Completion (as set forth in the FSA) and extend through December 31. The Annual Report shall be submitted within two (2) months from the period ending. The Annual Report shall include the following:

- a. Summary of operations;
- b. Weather and energy production data;

- c. Calculation of Cumulative Annual Energy Production;
- d. System performance data;
- e. Reports of any environmental disturbances (e.g. chemical spills);
- f. Safety/accident reports;
- g. Summary of Additional Services, if any;
- h. Maintenance and inspection logs; and
- i. Proposal of actions required to be taken by Operator, if any.

2.3. Warranty

- (a) Subject to the limitations set forth in this Section 2.3, commencing on the Final Completion Date, and for a period of ten (10) years, Operator warrants that the System will be free from defects in materials and workmanship under normal operating conditions and shall conform to the final System design provided by the Operator under the FSA. If the System has a defect that causes it to fail to conform to any of the foregoing Warranties, Operator will, at its option, either repair or replace the portion of the System that is defective at no cost to the Owner.

Subject to the limitations set forth in this Section 2.3, commencing on the Final Completion Date for each system, Operator shall provide a ten (10) year warranty to protect against defects and undue degradation of electrical generation output of the Solar Plant ("Operator Warranty") in compliance with the California Public Utility Code 387.5(d)(4). Operator Warranty shall include the following:

- (i) Ten (10) year warranty to protect Owner against more than 15% degradation of electrical generation output that may occur as a result of faulty installation.
- (ii) Ten (10) year warranty to provide for no-cost repair or replacement of a defect not otherwise covered by Manufacturer Warranties provided such defect causes more than fifteen percent (15%) degradation of electrical generation output<sup>[A1]</sup>.

If the System has a defect that causes it to fail to conform to any of the foregoing Warranties, Operator will, at its option, either repair or replace the portion of the Solar Plant that is defective at no cost to the Owner.

- (b) This Warranty shall not cover any defects to the extent such defect is caused by any of the following:
  - (i) Alterations or repairs made to the System by anyone except for Operator or Operator's Subcontractors without Operator's prior written approval;



- (ii) Failure of the System to perform caused by legislative, administrative, or executive regulation, order or requisition of the government, local utility or public utilities commission, or any state, provincial or municipal government or official;
- (iii) Operation and Maintenance of the System by anyone except for Operator or Operator's Subcontractors beyond the scope contemplated in its operating manuals or technical specifications;
- (iv) Damage to the System not caused directly or indirectly by Operator or its Subcontractors under any agreement between Operator and Owner;
- (v) Damage or property loss to the System caused by third parties including, but not limited to, vandalism and theft.
- (vi) Manufacture defects or Return merchandise authorization (RMA) of equipment.
- (vii) Force Majeure Events; and
- (viii) A change in usage of the Site, which may affect building or site permits and related requirements, without the written approval of Operator, or a change in ownership of building or property and the new owner has not signed an assumption agreement of the terms and conditions herein.

Corrections, repairs, or replacement covering the equipment, materials, and labor as a result of the defects above shall be billed at the rates specified in Exhibit F, on a time and materials basis

- (c) The Operator Warranty assumes that all Manufacturer Warranties have been assigned to the Owner under the FSA. Operator's obligations under the Operator Warranty do not apply to defects in materials or equipment covered by Manufacturer Warranty. Operator makes no representation or warranty, and Owner shall seek no recourse from Operator, regarding the warranties of the manufacturers.
- (d) To the extent that Equipment Warranties cover replacement and/or repair of any System equipment during the Term, it shall be Operator's responsibility under this Agreement to use commercially reasonable efforts to submit, process and pursue, at Operator's sole cost and expense, warranty coverage; provided, however, that, because warranty claims may need to be submitted in the name of Owner, Owner shall provide such full and complete cooperation as Operator may reasonably require in connection with such submission, processing and pursuit of warranty coverage.



- (e) Operator agrees to act as agent on behalf of Owner for purposes of Section 2.3(d). If, in the event the equipment manufacturer denies responsibility for warranty service and Operator is instructed by Owner to pursue action against the equipment manufacturer, whether through litigation or otherwise, Owner shall reimburse Operator for any of the costs, expenses, or repairs incurred by Operator in this context, even if such attempt to recover from the equipment manufacturer fails, provided that such failure is not the result of errors or omissions by Operator. Such costs shall be reimbursed by Owner to Operator within thirty (30) days of receipt of invoice.
- (f) This Warranty shall expire ten (10) years (one hundred twenty (120) months) after Final Completion Date for each System.
- (g) Except as expressly provided herein or in the Agreement, Operator expressly disclaims any and all warranties of any kind, express, implied or statutory, including without limitation any implied warranties of merchantability and/or fitness for a particular purpose.

#### 2.4. Insurance

Without limiting any of the obligations or liabilities of either of the Parties, each of the Parties [A2] shall at all times throughout the Term of this Agreement and any renewal thereof, carry and maintain, or cause to be carried and maintained, at its own expense, such insurances coverage in Exhibit C.

#### 2.5. General Obligations of Owner

Owner shall ensure that Operator and its authorized agents, employees or Subcontractors shall have reasonable access to the Site in order to provide scheduled or unscheduled maintenance activities, maintenance of the grounds, emergency services, or to conduct other System Services, in all cases, to the extent that such activities and/or services are within the scope of this Agreement and are provided in accordance with the terms of this Agreement. Except in the case of an emergency, Operator shall give 48 hours prior written notice to the appropriate client site administrator, whose name and contact information shall be provided to Operator, before any entry onto the Site by Operator's employees, agents or contractors.

#### 2.6. Permits

- (a) Subject to Section 2.6(c), Operator shall be responsible, at its sole cost and expense, for procuring, obtaining, maintaining and complying with all Operator Acquired Permits (Exhibit D) required to perform System Services under this Agreement;
- (b) Subject to Section 2.6(c), Owner shall be responsible for procuring, obtaining, maintaining and complying with all Owner Acquired Permits (Exhibit D) applicable as of the date hereof. If any new Owner Acquired

Permits shall become required for the operation of the System due to a change in the Applicable Law after the date of this Agreement, Owner shall obtain such permits in a timely manner and at its sole cost and expense, except where such additional Owner Acquired Permits arise as a result of any omission, neglect or default of Operator, in which case Operator shall reimburse Owner for any costs or losses arising as a result of or in connection with procuring, obtaining, maintaining and complying with such Owner Acquired Permits.

- (c) To the extent that a Party is required to obtain any Applicable Permits, the other Party agrees to cooperate with and assist that Party in obtaining the same and the Party which is required to obtain such Applicable Permits shall reimburse the other Party for its reasonable costs in providing such assistance. Notwithstanding anything in this Agreement to the contrary, Operator shall be required to comply with Applicable Law as in effect on the date of this Agreement at no additional charge to Owner. Following the date of this Agreement, any costs incurred by Operator in performing its obligations hereunder resulting from changes in Applicable Permit conditions or requirements, or changes in Applicable Law, shall be borne by Owner except to the extent it does not involve an increase in the scope of System Services.

#### 2.7. Telephone & Data Communication

Operator shall directly pay any utility or other third party service provider invoices as become due as may be required for Operator's remote access to telephone and/or data communications service available at the Site to the extent necessary for the performance by Operator of System Services under this Agreement.

#### 2.8. Storage

To the extent Operator has established space on the Site and to the extent that any such use is permitted under Applicable Law, Operator may use such space for storing parts and supplies necessary for the performance of System Services. At Operator's option and upon the written approval of Owner, additional storage sheds may be installed at the Site at Operator's expense. Operator must seek and obtain building permits and other local permits and approvals required in connection therewith (which shall be designated as Operator Acquired Permits) and Owner shall reasonably cooperate in obtaining such permits and approvals. Operator shall maintain any space utilized in accordance with this Agreement as if it were part of System Services and shall be required (at its own cost), if requested by Owner, to remove any storage sheds installed at the Site at the end of the Term.

#### 2.9. Duty to Cooperate

Owner shall cooperate with Operator in taking all actions reasonably requested by Operator (i) to ensure that parties with whom Owner has agreements or relationships that are essential to System Services are available and able to perform as contemplated in this Agreement. Owner shall be



directly responsible for all utility costs (water, communication, electricity) of the System except to the extent that such costs arise as a result of the omission, neglect or default of Operator.

3. TERM

3.1. Term

- (a) The term of this Agreement ("Term") includes the period during which System Services are to be provided for the Systems and shall commence when the first System has achieved Final Completion (as defined in the FSA); and expire (i) one hundred twenty (120) months after the last System has achieved Final Completion.
- (b) The Term shall be subject to the provisions of Section 3.2 (Termination).
- (c) Termination of this Agreement shall be without prejudice to Operator's right to receive a proportional amount of the Service Fees that have accrued up to the date of Termination.
- (d) No later than one hundred eighty (180) calendar days prior to the end of the Term, Owner may request that the Term of this Agreement be extended by an additional period specified in such request. Parties shall negotiate an extension in good faith and in a timely fashion prior to the expiration of the Term, though neither Party shall not be obligated to enter into an extension.

3.2. Termination

- (a) Owner may terminate this Agreement in the event of any of the following:
  - (i) Operator becomes Insolvent; or
  - (ii) Failure by Operator to perform any of its material obligations under this Agreement, which failure is not remedied within thirty (30) calendar days of written notice of such failure from Owner to Operator; provided that if such failure can be remedied, and (1) such failure cannot reasonably be remedied within such thirty (30) calendar day period, and (2) Operator commences cure of such failure within such thirty (30) calendar day period and thereafter diligently seeks to remedy such failure, then Owner shall not be entitled to terminate this Agreement until such time as Operator ceases all reasonable endeavors to cure such failure unless such failure continues for a period of a sixty (60) calendar days from the original written notice from Owner; or
  - (iii) A Force Majeure Event occurs which prevents Operator from providing a material part of System Services for a continuous

period of at least sixty (60) calendar days and Owner reasonably concludes such prevention is not reasonably likely to be remedied within a further period of sixty (60) calendar days. Subject to Section 6.5, Owner shall compensate Operator for all System Services completed prior to the termination date.

- (b) Operator may terminate this Agreement in the event of any of the following:
- (i) Owner fails to pay to Operator any amounts due under this Agreement (other than any amounts which are the subject of a good faith dispute) within fifteen (15) calendar days of written notice of such failure from Operator to Owner, provided that failure to pay shall not be on account of the negligence or willful action or inaction of Operator; or
  - (ii) Material breach by Owner of any of its obligations under this Agreement, which materially impairs Operator's ability to perform its obligations under this Agreement, and which breach is not remedied within thirty (30) calendar days of written notice of such failure from Operator to Owner; provided that (1) if such failure can be remedied, and (A) such failure cannot reasonably be remedied within such thirty (30) calendar day period, and (B) Owner commences cure of such failure within such thirty (30) calendar day period, and thereafter diligently seeks to remedy such failure, then Operator shall not be entitled to terminate this Agreement until such time as Owner ceases reasonable efforts to cure such failure unless such failure continues for a period of ninety (90) calendar days from the original written notice from Operator; and (2) failure of Owner to perform its obligations is not on account of the negligence or willful action or inaction of Owner; or
  - (iii) Owner becomes Insolvent.
- (c) Parties may terminate this Agreement, either partially or in whole, by mutual written consent. Termination by mutual consent may be initiated by either Party at any time by written means. Upon such termination, Owner shall compensate Operator for all System Services completed prior to the termination date.
- (d) A notice of termination given pursuant to the foregoing provisions of this Section 3.2 ("Termination Notice") shall specify in reasonable detail the circumstances giving rise to the Termination Notice. Except to the extent otherwise provided herein, this Agreement shall terminate on the date specified in the Termination Notice, which date shall not be earlier than

the date upon which the applicable Party is entitled to effect such termination as provided above.

- (e) Termination of this Agreement shall not affect any rights or obligations as between the Parties which may have accrued prior to such termination or which expressly or by implication are intended to survive termination whether resulting from the event giving rise to termination or otherwise, including, without limitation, Sections 6.7 and 6.8.

#### 4. SERVICE FEES

##### 4.1. Compensation

As compensation for provision of System Services by Operator, Owner shall pay Operator an annual fee of \$7,750, inflating at 3.0% annually, for each year during the Term ("Service Fees"). Service Fees are due within thirty (30) calendar days of Invoice Date. First annual invoice will be submitted to the Owner upon signed agreement. All subsequent invoices will be submitted annually.

**Table 4.1**

<b>Year</b>	<b>Annual Amount</b>
Year 1	\$ 7,750.00
Year 2	\$ 7,982.50
Year 3	\$ 8,221.98
Year 4	\$ 8,468.63
Year 5	\$ 8,722.69
Year 6	\$ 8,984.37
Year 7	\$ 9,253.91
Year 8	\$ 9,531.52
Year 9	\$ 9,817.47
Year 10	\$ 10,111.99
<b>Total</b>	<b>\$ 88,845</b>

##### 4.2. Late Payments

Overdue payment obligations of Owner hereunder shall bear interest from the date due until the date paid at a rate per annum equal to the rate published by the Wall Street Journal as the "prime rate" on the date on which such interest begins to accrue.

##### 4.3. Disputed Payments



In the event that Owner disputes any portion of an invoice submitted by Operator, Owner shall pay the undisputed portion thereof when due. All disputed payments shall be resolved in accordance Section 6.6[A3].

5. OPERATOR'S GUARANTEE

- (a) Operator shall conduct and provide to Owner an evaluation each calendar year during the effective Term of the Agreement to determine the Cumulative Annual Energy Production from all the Systems combined.
- (b) The Cumulative Annual Energy Production shall be measured for each complete calendar year, January 1 to December 31 ("Annual Production Period"). No evaluation will be performed for the first partial period (Final Completion for all Systems to the first December 31 of the Term) and last partial period (last January 1 of the Term to Term expiration) due to incomplete data.
- (c) Operator hereby guarantees to Owner an energy output of ninety percent (90%) [A4] of the Expected Annual Energy Production for the aggregate of the Systems for each Annual Production Period ("Energy Production Guarantee"), subject to the adjustments in Section 5(fg), 5(gh), and 5(hi); and 5(ij).
- (d) The evaluation shall be conducted in accordance with the procedures provided in Exhibit E.
- (e) If the Systems fail to meet the Energy Production Guarantee, then within ninety (90) calendar days after the failure is identified, the Operator shall pay the Owner the difference between the Cumulative Annual Energy Production and the Energy Production Guarantee for such period multiplied by the Power Payment (\$0.17/kWh) ("True-Up Refund"). The True-Up Refund shall increase three percent (2%) annually upon commencement of the Term. [A5]
- (f) The Expected Annual Energy Production for the combined Systems shall be reduced accordingly for the period of time any System is not in operation in connection with (a) temporary removal of the System, a movement to an alternate location, or a temporary shutdown of the System or any portion thereof; (b) the occurrence of an event of Force Majeure has temporarily impaired or disabled the operation of any System or any portion thereof; (c) Owner interferes with the System; (d) vandalism or theft, (e) Utility caused outages, or (f) any manufacturer defects that cause outages. Operator shall provide and justify data verifying the loss of generation using the System Model defined in Exhibit E.
- (g) Operator's Expected Annual Energy Production shall proportionately terminate and be of no further force or effect if any System, or any portion

thereof, is subject to a permanent shutdown or an event of Force Majeure occurs, the effect of which to permanently impair or interfere with the operation of the System, or any portion thereof.

- (h) The Parties agree that Owner shall avoid activities that result in overshadowing or shading of the Systems in a manner that would prevent Operator from satisfying its Energy Production Guarantee. In the event the Systems, or any portion thereof, is overshadowed or shaded in a manner that prevents Operator from satisfying its Energy Production Guarantee for any reason beyond the control of Operator, Owner agrees that Operator's Expected Annual Energy Production shall be reduced accordingly. Operator shall provide and justify data verifying the loss of generation using the System Model of the System due to overshadowing or shading.

## 6. MISCELLANEOUS

### 6.1. No Partnership

This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between or among the Parties or to impose any such obligation or liability upon any Party. No Party shall have any right, power or authority to enter into any contract or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party or Parties.

### 6.2. Party Representatives

- (a) Owner Representative. Owner designates, and Operator agrees to accept, Alma Beltran, as "Owner Representative" for all matters relating to Owner's performance under this Agreement. The actions taken by Owner Representative regarding such performance shall be deemed the acts of Owner and shall be fully binding on Owner. Owner may, upon written notice to Operator, change the designated Owner Representative.
- (b) Operator Representative. Operator designates, and Owner agrees to accept, Matt Spence, as "Operator Representative" for all matters relating to Operator's performance under this Agreement. The actions taken by Operator Representative shall be deemed the acts of Operator. Operator may, upon written notice to Owner, change the designated Operator Representative.

### 6.3. Notices and Demands

Any notice, request, demand or other communication required or permitted under this Agreement, shall be deemed to be properly given by the sender and received by the addressee if made in writing and (a) if personally delivered; (b) three (3) days after deposit in the mail if mailed by certified or registered air mail, post prepaid, with a return receipt requested; or (c) if sent by facsimile with



confirmation. Mailed notices and facsimile notices shall be addressed as follows to:

**Owner:**

Name: City of Parlier  
Attention: Alma Beltran, Mayor  
Address: 1100 East Parlier Avenue, Parlier, CA 93648  
  
Phone: (559) 646-3545  
Facsimile: (559) 646-0416  
Email: ABeltran@parlier.ca.us

With a copy to:

Name: Neal E. Costanzo  
Attention: Neal E. Costanzo, Parlier City Attorney  
Address: 575 E. Locust, Suite 115, Fresno CA, 93720

**Operator:**

Famand, Inc. dba Indoor Environmental Services, a SitelogIQ Company  
Attention: Matt Spence, VP Energy Services  
1512 Silica Ave  
Sacramento, CA 95815  
Fax: (916) 348-3020  
Email: matt.spence@sitelogiq.com

6.4. Fingerprinting.

Unless exempted, Operator and its Subcontractors shall comply with the applicable requirements of Education Code Sections 45125.1 and 45125.2 with respect to fingerprinting of Operator and Subcontractor's employees and representatives who perform Work at the Site.

6.5. Force Majeure Event

- (a) Neither Party shall be considered to be in default of its obligations under this Agreement when and to the extent that performance of such obligations is prevented by any Force Majeure Event which arises after the date of this Agreement.
- (b) If either Party shall rely on the occurrence of a Force Majeure Event as a basis for being excused from the performance of its obligations under this Agreement, then the Party relying on the event or condition shall (i) provide prompt notice to the other Party of the occurrence of the Force Majeure Event, giving an estimation of its expected duration and the probable impact on the performance of its obligations hereunder; (ii) exercise all commercially reasonable efforts to continue to perform its obligations hereunder; (iii) expeditiously take any action within its reasonable control to correct or cure the Force Majeure Event excusing performance; (iv) exercise all commercially reasonable efforts to mitigate

or limit damages to the other Party to the extent such action will not adversely affect its own interests; and (v) provide periodic notices to the other Party with respect to its actions and plans for actions in accordance with (ii), (iii) and (iv) above and promptly notify to the other Party of the cessation of the event or condition giving rise to it being excused from performance.

- (c) In the event that Operator is prevented from providing all or part of System Services as a result of a Force Majeure Event for a period of thirty (30) consecutive days and it is reasonably expected that Operator will not be able to resume full performance of System Services within an additional thirty (30) days, Owner shall be entitled to require Operator to reduce the scope of System Services commencing as of the date of such notice by Owner until such time as Operator can demonstrate, to the reasonable satisfaction of Owner, that Operator is able to resume full performance of System Services. As from the date on which Owner reduces System Services until the date on which Operator resumes full performance of System Services, the obligation of Owner to pay the fee pursuant to Section 4 shall be reduced proportionately to take account of the level of System Services that Operator is actually performing.
- (d) Operator shall document any Force Majeure Event and its consequences so that costs which are directly attributable to such Force Majeure Event may be claimed by Owner from any insurance carried by Owner.

#### 6.6. Actions and Attorney's Fees

- (a) Actions and Attorneys' Fees. Any action to enforce this Agreement or arising out of this Agreement shall be venued in Fresno County, California. The prevailing Party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with such an action from the other Party.

#### 6.7. Indemnification.

The Parties hereto agree to defend, indemnify and hold one another harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury and/or damages arising from or in any way connected to the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the indemnifying party, its officers, agents or employees.

#### 6.8. Consequential Damages.

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Owner nor Operator, their respective officers, directors, partners, employees,



contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied Warranty.

6.9. Limit of Liability.

To the maximum extent permitted by law, Owner agrees to limit Operator's liability for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including ~~attorneys' fees and costs and~~ expert-witness fees and costs, so that the total aggregate liability of Operator to the Owner shall not exceed the equivalent to ~~one (1) year Service Fee as calculated for the first twelve (12) months of the~~ total value of this service <sup>A6</sup> Agreement ~~exclusive of reasonable attorneys fees~~. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

6.10. Governing Law.

The formation, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event of any Dispute that is not resolved pursuant to Section 6.5, the Parties hereto agree to submit to the jurisdiction of any court of competent jurisdiction within Fresno County, California and shall comply with all requirements necessary to give such court jurisdiction.

6.11. Tax Matters

Notwithstanding anything to the contrary set forth herein or in any other agreement to which the parties hereto are parties or by which they are bound, the obligations of confidentiality contained herein and therein, as they relate to the transactions described in and contemplated by such agreements, shall not apply to the U.S. Federal tax structure or U.S. Federal tax treatment of the System, and each of the parties hereto (and any employee, representative or agent of any party hereto) may disclose to any and all persons without limitation of any kind, the U.S. Federal tax structure and U.S. Federal tax treatment of such transactions. The preceding sentence is intended to cause the System or the interests in them pursuant to the agreements between the Parties not to be treated as having been offered under conditions of confidentiality for purposes of section 1.6011-4(b)(3) (or any successor provision) of the Treasury Regulations promulgated under Section 6011 of the Internal Revenue Code of 1986, as amended, and shall be construed in a manner consistent with such purpose. In addition, each of the Parties acknowledges that it has no proprietary or exclusive rights to the tax structure of the transactions described in and contemplated by the agreements between the Parties or any tax matter or tax idea related to such transactions.

6.12. Successors and Assigns

- (a) Except as set forth in this Agreement, no Party shall be entitled to assign this Agreement or any of its rights or obligations under this Agreement, nor shall it enter into any transaction as a result of which it may transfer,

assign, charge or dispose by any title of any of those rights and obligations, without the prior written consent of the other Party, which may be withheld in its sole and absolute discretion; provided that nothing herein shall prohibit Owner's Membership Interests from being sold to an Affiliate of Owner, or an entity which has, in whole or in part, common Ownership, directly or indirectly, with the Ownership of Owner.

- (b) Notwithstanding the foregoing, (i) Owner shall be entitled to assign its right, title and interest in and to this Agreement (and, in particular, any rights arising in relation to any insurance policy and any other right to collect any amount from Operator) to any lenders by way of security for the performance of obligations to such lenders without the consent of Operator; and (ii) Operator shall be entitled to assign its right, obligation, title and interest in and to this Agreement to any of its Affiliates or in connection with a merger or acquisition of Operator. Parties shall provide a written notice at least 30 days prior to assigning the rights, title, and interest in and to this Agreement.

6.13. Announcements and Publications.

Operator shall coordinate with Owner with respect to, and provide advance copies to Owner for review of, the text of any proposed announcements or publications that include any non-public information concerning the Work prior to the dissemination thereof to the public or to any Person other than Subcontractors or advisors of Operator, in each case, who agree to keep such information confidential. If Owner delivers written notice to Operator rejecting any such proposed announcement or publication within two (2) Business Days after receiving such advance copies, the Operator shall not make such public announcement or publication; provided, however, that Operator may disseminate or release such information in response to requirements of Governmental Authority.

6.14. No Waiver

No provision of this Agreement shall be considered waived by either Party except when such waiver is made in writing. The failure of either Party to insist, on one or more occasions, upon strict performance of any of the provisions of this Agreement or to take advantage of its rights hereunder or the delay or failure in exercising totally or partially any right or remedy under this Agreement, shall not be construed as a waiver of any such provisions or the relinquishment of any such rights or any other rights for the future, but the same shall continue and remain in full force and effect.

6.15. Validity.

The provisions contained in each section, subsection and clause of this Agreement shall be enforceable independently of each of the others and their validity shall not be affected if any of the others are invalid. If any of those provisions is void but would be valid if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid. The Parties shall, if necessary, negotiate in good faith and make any



necessary amendments to ensure the enforceable terms of this Agreement reflect the true intent of the Parties as of the date of execution of this Agreement.

6.16. Priority of Documents.

In the event of conflicting provisions in the Agreement, the provisions shall govern in the following priority: first, duly executed amendments to this Agreement (to the extent not superseded by a subsequent amendment), second, this Agreement, and third, Exhibits.

6.17. Time of Essence.

Time is expressly agreed to be of the essence of this Agreement and each, every and all of the terms, conditions and provisions herein.

6.18. Headings.

The headings in this Agreement are for convenience of reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

6.19. Binding Effect.

This Agreement shall be binding on the Parties hereto and on their respective permitted successors, heirs and assigns.

6.20. Counterparts; Signature Pages.

This Agreement may be executed in counterparts which, taken together, shall constitute a single instrument. Facsimile and other electronically transmitted signature pages shall be effective to bind a Party to this Agreement.

6.21. Complete Agreement.

- (a) This Agreement together with the Exhibits hereto completely and exclusively states the agreement of the Parties regarding its subject matter and its terms govern, all prior proposals, agreements, or other communications between the Parties, oral or written, regarding such subject matter. No verbal, or written agreement nor conversation with any officer or employee of either Party nor any or all prior proposals shall affect or modify any of the terms and conditions of this Agreement. This Agreement shall not be modified except by written amendment signed on behalf of the Owner and Operator by their duly authorized representatives. Any purported oral amendment to the Agreement shall have no effect.
- (b) Each Party acknowledges that it has not relied on any representation, warranty, collateral contract or other assurance made by or on behalf of any other party at any time before the signature of this Agreement. Each

Party waives all rights and remedies which, but for this clause (ii), might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.

**[Signature page follows]**

IN WITNESS WHEREOF, the Parties have executed this Operation and Maintenance Agreement as of the date first above written.

Owner:

Operator:

\_\_\_\_\_  
City of Parlier  
Name: Alma Beltran  
Title: Mayor

\_\_\_\_\_  
Famand, Inc. dba Indoor Environmental  
Services, a SitelogIQ Company  
Name: Matt Spence  
Title: Vice President, Energy Services



**EXHIBIT A  
TO  
OPERATION AND MAINTENANCE AGREEMENT**

**DEFINED TERMS**

As used in the attached Agreement, the following terms shall have the meanings set forth below:

**Additional Services** means any other services not defined in this Agreement which shall be billed at the rates specified in Exhibit F on a time and materials basis.

**Affiliate** of a specified Person means any Person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with, such specified Person. As used in this definition of Affiliate, the term "**control**" of a specified Person including, with correlative meanings, the terms, "**controlled by**" and "**under common control with**," means (a) the Ownership, directly or indirectly, of 50% or more of the equity interest in a Person or (b) the power to direct or cause the direction of the management and policies of a Person, whether through Ownership of voting securities, by contract or otherwise.

**Agreement** means this Operation and Maintenance Agreement as it may be amended and/or restated from time to time.

**Annual Energy Production Evaluation** is an analysis which measures and compares the Cumulative Annual Energy Production with the Energy Production Guarantee based on Exhibit E.

**Annual Production Period** is the period between January 1 and December 31.

**Annual Reports** has the meaning given in Section 2.2.

**Applicable Law** shall mean, with respect to any Governmental Authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, injunction, registration, license, permit, authorization, guideline, governmental approval, consent or requirement of such Governmental Authority, as construed from time to time by any Governmental Authority.

**Applicable Permits** shall mean, collectively, Operator Acquired Permits and the Owner Acquired Permits.

**Business Day** means a day (other than a Saturday or Sunday) on which banks are generally open in California for normal business.

**Cumulative Annual Energy Production** shall have the meaning ascribed to that term by Exhibit E and is the Generated Energy Production Output as defined in Section 5(**bd**).

**Energy Production Guarantee** is the guaranteed energy production output as defined in Section 5(**cd**[A7]).

**Expected Annual Energy Production** is defined in Exhibit E.

**Force Majeure Event** shall mean, when used in connection with the performance of a Party's obligations under this Agreement, any act or event (to the extent not caused by such Party or its agents or employees) which is unforeseeable, or being foreseeable, unavoidable and outside the control of the Party which invokes it, and which renders said Party unable to comply totally or partially with its obligations under this Agreement. In particular, any of the following shall be considered a Force Majeure Event:

(a) war (whether or not war is declared), hostilities, revolution, rebellion, insurrection against any Governmental Authority, riot, terrorism, acts of a public enemy or other civil disturbance;

(b) acts of God, including but not limited to, storms, floods, lightning, earthquakes, hailstorms, ice storms, tornados, typhoons, hurricanes, landslides, volcanic eruptions, fires, winds in excess of ninety (90) miles per hour, and objects striking the earth from space (such as meteorites);

(c) acts of sabotage or destruction by a third party (other than any Operator retained by or on behalf of the Party) of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;

(d) regional or national strikes, walkouts, lockouts or similar industrial or labor actions or disputes; and

(e) acts of any Governmental Authority that materially restrict or limit a Party's performance under this Agreement, including Operator's access to the Site or its activities at the Site.

**Governmental Authority** shall mean any national, autonomic, state, regional, province, town, city, or municipal government, whether domestic or foreign, or other administrative, regulatory or judicial body of any of the foregoing.

**Industry Standards** shall mean those standards of care and diligence normally practiced by small-scale solar engineering, construction and installation firms in performing services of a similar nature in jurisdictions in which System Services will be performed and in accordance with good engineering design practices, Applicable Laws, Applicable Permits, and other standards established for such Work. Industry Standards are not intended to be limited to optimum practice or methods to the exclusion of all others, but rather to be a spectrum of reasonable and prudent practices and methods that must take the conditions specific to any given facility into consideration.

**Insolvent** means (a) a Party shall file a voluntary petition in bankruptcy or shall be adjudicated as bankrupt or insolvent, or shall file any petition or answer or consent seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under the present or future applicable federal, state or other statute or law relative to bankruptcy, insolvency or other relief for debtors, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver, conservator or liquidator of such party or of all or any Final part of its



properties (the term "acquiesce", as used in this definition, includes the failure to file a petition or motion to vacate or discharge any order, judgment or decree within fifteen (15) days after entry of such order, judgment or decree); (b) a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against a Party seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy act, or any other present or future applicable Federal, state or other statute or law relating to bankruptcy, insolvency or other relief for debtors, and such party shall acquiesce and such decree shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof, or a trustee, receiver, conservator or liquidator of such party shall be appointed with the consent or acquiescence of such party and such appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days, whether or not consecutive; (c) a Party shall admit in writing its inability to pay its debts as they mature; (d) a Party shall give notice to any Governmental Authority of insolvency or pending insolvency, or suspension or pending suspension of operations; or (e) a Party shall make an assignment for the benefit of creditors or take any other similar action for the protection or benefit of creditors.

**Installer** shall mean the contractor responsible for the procurement, installation, startup, and testing of the System under separate contract with the Owner.

**Manufacturer Warranty** shall mean all warranties provided by the equipment manufacturers and assigned to Owner under the FSA..

**O&M Manual** shall mean the set of System operational and maintenance documents provided by the Installer to the Owner and by the Owner to the Operator for the purpose of instruction in the operation and maintenance needs of the System and its components.

**Operator** has the meaning given in the preamble to this Agreement.

**Operator Acquired Permits** shall mean those permits set forth in Exhibit D hereto.

**Operator Representative** shall mean the representative of Operator appointed pursuant to Section 6.2(b).

**Owner** has the meaning given in the preamble of this Agreement.

**Owner Acquired Permits** shall mean those permits set forth in Exhibit D hereto.

**Owner Representative** shall mean the representative of Operator appointed pursuant to Section 6.2(a).

**Parties** means each of Operator and Owner.

**Party** means either Operator or Owner.

**Permits** shall mean, collectively, Operator Acquired Permits and the Owner Acquired Permits.

**Person** means any natural person, corporation, general partnership, limited partnership, limited liability company, proprietorship, other business organization, trust, union, association, or Governmental Authority.

**Power Payment** shall have the meaning set forth in Section 5.

**Site** has the meaning given in the Recitals of this Agreement.

**Subcontractor** means any person to whom Operator subcontracts any of its obligations under this Agreement pursuant to a Subcontract, including the Suppliers and any person to whom such obligations are further subcontracted of any tier.

**Final Completion** shall have the meaning defined in the Facility Solutions Agreement between Operator and Owner.

**System** has the meaning set forth in the Recitals.

**System Services** means, collectively, the services set forth in Exhibit B.

**Technical Dispute** has the meaning given in Section 6.6(b).

**Term** has the meaning given in Section 3.1(a).

**Termination Notice** has the meaning given in Section 3.2(c).

**True-Up Refund** has the meaning given in Section 5(f).

**True-Up Fee** has the meaning given in Section 5(g).

**Warranty** means the Warranty Requirements set forth in the California Public Utilities Commission California Solar Initiative Program Handbook dated December 2011 (Section 2.4 – Warranty Requirements).

**EXHIBIT B**  
**TO**  
**OPERATION AND MAINTENANCE AGREEMENT**  
**SYSTEM SERVICES**

**Biennial Inspection Services**

Complete inspection, system maintenance, and recommissioning services at the end of years 1, 3 and 5 of this agreement term as detailed below. Report inspection finding, required repairs, and repair recommendations, including estimated costs for each maintenance visit. As part of our system maintenance, the following services will be completed and reported to the Customer during the Biennial report period.

**a) Visual Inspection**

- a. Visually inspect structures, arrays, and enclosures for excessive wear, damage, defects, rust/corrosion, etc.
- b. Verify new and/or existing shade concerns for the photovoltaic array.
- c. Verify module cleanliness and/or soiling issues; perform washing if requested by Customer.
- d. Verify that all signage and placards are firmly attached and legible.
- e. Verify condition of all wall & pad mounted switchgear, meters and inverters for corrosion and security of attachment to wall/structure/pad, etc. Note any new access issues.
- f. Verify condition of ac and dc disconnect(s).
- g. Confirm that the System is on line and that the output is at the expected level.
- h. Confirm that the monitoring system is in service and functioning properly.

**b) Photo Documentation**

- a. Take digital photos of all major system components
- b. Submit digital images along with checklist and other documentation following visit.

**c) Array – Structure & Modules**

- a. Complete inspection of array.
- b. Inspect and tighten structure ground bonding straps/fasteners.
- c. Verify secure module attachment by random torque testing or visual test.
- d. Verify condition of racking hardware connections, splices, etc.
- e. Verify condition of inter-module array wiring for aging and corrosion.
- f. Inspect visible random sampling of wiring connections.
- g. Inspect visible conduit system.

**d) Electrical Connection – Inverters & Combiner Box**

- a. Verify condition of inverters.
- b. Note condition of all circuit boards and electrical components.
- c. Check Voc & Isc of all strings (if required).



- d. Verify that all manufacturer updates and service bulletins have been performed.
- e. Coordinate inverter manufacturer service, if necessary.
- f. Perform all electrical connection torque tests.
- g. Inspect and clean heatsink, if applicable.
- h. Inspect and clean inverter exhaust fan and vents.
- i. Inspect and tighten connectors and lugs (inverter, transformer, disconnects).
- j. Oil and lubricate disconnects.
- k. Check all fuses for cleared fuse and replace any cleared fuses.
- l. Verify condition of wire transition junction boxes for weatherproofing, corrosion, and security of internal wiring connections.
- m. Verify condition of all DC and AC conduits and connections.
- n. Verify interior and exterior condition of DC combiner box(es).

**e) Data Acquisition System (DAS)**

- a. Clean all instrumentation and sensors and lubricate moving parts.
- b. Inspect and tighten connections.
- c. Check input signals.
- d. Confirm that pyranometer/sensor is aligned with the plane of the PV array.
- e. Log kWh readings from Inverters to meters, and compare data in a 24-hour increment to monitoring system to verify proper calibration of meters and monitoring system.
- f. Check calibration of the weather station instruments, as necessary.

**System Services Not Included**

- a. Weed abatement around array and immediate vicinity.
- b. Repair of fencing.
- c. Repair, replacement, or cleaning due to vandalism, theft, or accidental damage.
- d. Repair or replacement of light bulbs or lighting fixtures.
- e. Repairs not explicitly defined in this Exhibit B.
- f. Any services not included in this Agreement.
- g. Repairs not stated in the Agreement or in the FSA (Contractor Warranty) are considered Additional Services and shall be billed on a time and materials basis per the rates in Exhibit F.

**EXHIBIT C  
TO  
OPERATION AND MAINTENANCE AGREEMENT  
INSURANCE**

**Operator Insurance Requirements**

1. Required Coverages. Operator shall carry and maintain with carriers or self-insurance, as a minimum, the following insurance coverages:
  - i. Workers Compensation Insurance and Employers Liability. In accordance with the laws of the state of where work may be done with limits for employers liability in the minimum amount of one million dollars (\$1,000,000) for each occurrence and one million dollars (\$1,000,000) for each occurrence of disease on a per employee basis;
  - ii. Commercial General Liability. One million dollars (\$1,000,000) per occurrence/two million dollars (\$2,000,000) in the aggregate for bodily injury, personal injury and property damage, products and completed operations;
  - iii. Commercial Automobile Liability, Any Auto. One million dollars (\$1,000,000) per accident including owned, non-owned, and hired automobiles.
  - iv. Excess coverage of four million dollars (\$4,000,000) per occurrence and aggregate, or any other equivalent, available insurance coverage of the Operator.
2. Policy Endorsements. Insurance coverages required to be maintained by Operator under this Agreement shall:
  - i. provide a severability of interests or cross liability clause for Commercial General Liability Insurance;
  - ii. except in the case of worker's compensation insurance and other statutory insurances where it would be inappropriate, name Owner and others as may be reasonably required by Owner, as additional insured's; and to the extent permissible in accordance with the policy, include a waiver of subrogation by the insurers in favor of Owner and each of its respective assignees, Affiliates, agents, officers, directors, employees, insurers or policy issuers and a waiver of any right of the insurers to any set-off or counterclaim, whether by endorsement or otherwise, in respect of any type of liability of any of the Persons insured under any such policies.
3. Certificates. Operator shall throughout the Agreement Term provide certificate(s) and/or memoranda of insurance evidencing the coverage's specified in this Attachment C to Owner upon Owner's reasonable request.



## **Owner Insurance Requirements**<sup>[A8]</sup>

1. Required Coverages. Owner ~~shall carry and maintain with carriers or self insurance, as a minimum, the following insurance coverages~~ is a city and self-insured through a pooled insurance joint powers attorney, the San Joaquin Valley Risk Management Authority and has coverage for Workers Compensation, Commercial General Liability and Property Risk Insurance with coverage limits in excess of eight million dollars.

~~Workers Compensation Insurance and Employers Liability. In accordance with the laws of the state of where work may be done with limits for employers liability in the minimum amount of one million dollars (\$1,000,000) for each occurrence and one million dollars (\$1,000,000) for each occurrence of disease on a per-employee basis;~~

- i. ~~Commercial General Liability. One million dollars (\$1,000,000) per occurrence/two million dollars (\$2,000,000) in the aggregate for bodily injury, personal injury and property damage, products and completed operations;~~
  - ii. ~~Commercial Automobile Liability, Any Auto. One million dollars (\$1,000,000) per accident including owned, non-owned, and hired automobiles.~~
  - iii. ~~Property Risk Insurance. Amount equal to the replacement value of the Systems for loss or damage to the System by fire and lightning, vandalism, theft, malicious mischief, and extended coverage endorsement for all risks of physical loss.~~
  - iv. ~~Excess coverage of four million (\$4,000,000) per occurrence and aggregate, or any other equivalent, available insurance coverage of the Operator.~~
2. ~~Policy Endorsements. Insurance coverages required to be maintained by Owner under this Agreement shall provide a severability of interests or cross liability clause for Commercial General Liability Insurance;~~
  3. ~~Certificates. Owner shall throughout the Agreement Term provide certificate(s) and/or memoranda of insurance evidencing the coverage's specified in this Attachment C to Operator upon Operator's reasonable request.~~

**EXHIBIT D**  
**TO**  
**OPERATION AND MAINTENANCE AGREEMENT**  
**PERMITS**

**Operator Required Permits**

No Operating Permits Required

**Owner Required Permits**

No Operating Permits Required



**EXHIBIT E  
TO  
OPERATION AND MAINTENANCE AGREEMENT**

**ANNUAL ENERGY PRODUCTION EVALUATION**

**Cumulative Annual Energy Production Measurement**

The Cumulative Annual Energy Production is the actual AC electrical output in kilowatt-hours (kWh) for the Annual Production Period as measured and recorded by all of the Systems revenue meter(s) and adjusted for meter calibration error, if required[A9].

**Expected Annual Energy Production Calculation**

At the completion of each Annual Production Period, the Operator shall update the software model of the Systems to calculate the Expected Annual Energy Production of the Systems for that period for comparison with the Cumulative Annual Energy Production of the same period.

The model shall use the actual meteorological data from the System weather station at the Site. The calibration of the weather station instruments shall be checked as recommended by the manufacturer by a qualified testing agency using test instruments traceable to recognized national calibration standards. A report of the instrument calibration status shall be prepared by the testing agency detailing any deviation in meter values from the standard outside of the meter manufacturer's acceptable range. Data affected by instruments found out of calibration may be reviewed and adjusted by mutual agreement between the Owner and Operator.

The input values used in the System Model shall include the following parameters based on the final installed System:

- Albedo
- Module orientation
- Shading
- Equipment models and configuration
- Module thermal parameters
- Ohmic losses
- Module quality and mismatch losses
- Soiling losses, adjusted for calendar month and washing frequency
- IAM losses

Hidden parameters and preferences within the model shall remain at default values unless noted and justified. All input parameter values and assumptions shall be provided with the model for review, and shall remain consistent from year to year.

The following factors shall be adjusted in the System Model each year of operation:

- Actual weather data for the Annual Production Period
- Manufacturer Module degradation factors (Manufacturer Module Power Output Warranty)

- Adjustments per Section 5(f), 5(g), and 5(h) ~~§ 5(g), 5(h), 5(i), and 5(j)~~ <sup>[A10]</sup>

The final model calculation shall detail the Expected Annual Energy Production on an hourly basis (8760 hours per year) in addition to a total output value in kilowatt-hours (kWh).

### **Annual Energy Production Evaluation**

The measured Cumulative Annual Energy Production value for the System shall be compared with the calculated Expected Annual Energy Production value and evaluated for purposes of applying Section 5, Operator's Guarantee, of this Agreement.

#### **A. Modeled Annual Energy Production Calculation**

The temperature-derate model used by Operator to determine the modeled level of production a system. The system losses, DC system size, CEC inverter efficiency, and the panel temperature coefficient is the accumulation of losses, degradation rates, and efficiencies which are evaluated on an annual basis. These losses are initially calculated upon project commissioning and will only be re-calculated if components fail, degrade, or are changed. Cell temperature and POA irradiance are real-time calculations based on measurements from a reference cell.

Our system model is a combination of system specifications, estimated soiling, shade expectations, degradation expectations. This model is calculated by using the single line as-built plans and a production summary report from HelioScope and /or Locus Monitoring - ~~are~~ system are re-evaluated for accuracy on an annual basis. The Modeled Energy equation is:

$$\text{Modeled Energy}(kW AC) = \sigma \times (1 - S) \times \frac{I}{1000} \times P \times (1 + \gamma \times (T - 25))$$

Where:

$T$  = Cell Temperature

$S$  = System Model Loss

$I$  = POA Irradiance

$P$  = DC System Size

$\sigma$  = CEC Inverter Efficiency

$\gamma$  = Temperature Coefficient of the Panel

This modeled production will be compared to actual measured production to calculate operational performance of the system. Unplanned system outages and soiling above expectations will be evaluated and included in system losses.

**EXHIBIT F  
TO  
OPERATION AND MAINTENANCE AGREEMENT  
RATES FOR ADDITIONAL SERVICES  
2019 RATE SCHEDULE**

<b><u>Maintenance Services</u></b>	
<i>Lead Technician</i>	<i>\$140</i>
<i>Electrician</i>	<i>\$140</i>
<i>Laborer</i>	<i>\$80</i>
<b><u>Professional and Technical Services</u></b>	
<i>Project Manager/Engineer</i>	<i>\$175</i>
<i>Project Assistant</i>	<i>\$80</i>

**Other Costs**

1. Cost per truck roll for services above and beyond this agreement to be invoiced at time and materials (T&M) rate listed above and dispatched per Customer's request.
2. Daily/Saturday Overtime will be billed at 1.5 times the hourly rates. Sunday/Holiday Overtime will be billed at 2 times the rates.
3. Direct Expenses (non-equipment) will be billed at cost plus 10%.<sup>[A11]</sup>
4. Mileage will be billed at the published IRS mileage rates in effect.
5. Travel time to and from Customer sites will be billed at hourly rates shown above.
6. Federal published per diem rates (GSA) will apply if applicable.
7. Subcontractors will be billed at invoice price plus 15%.<sup>[A12]</sup>
8. Rates will escalate at 3%<sup>[A13]</sup> per calendar year.



**EXHIBIT G  
TO  
OPERATION AND MAINTENANCE AGREEMENT**

**ENERGY REPORTING AND MANAGEMENT SERVICES**

An energy specialist will provide the following services:

**ENERGY MANAGMENT**

Responsibility is to improve energy efficiency by evaluating our client's energy use and help craft energy policies, strategies, programs, and support energy measures.

- Evaluate the Client's energy use and offer assistance for energy saving policies, strategies, and programs.
- Quarterly utility bill analysis and energy monitoring report.
- Annual utility rate analysis for all electric service accounts to ensure and optimize utility cost.
- Work with Client staff to update existing lighting and mechanical HVAC controls systems settings including updating set points and holidays on thermostats/controls to increase and maintain savings.

**QUARTERLY REPORT CREATION AND UPDATE**

- Develop quarterly utility summary report in coordination with client's needs
- Update and deliver quarterly report to client with Energy Engineer review of trends, interval data usage, and anomalies.
- Develop and create an external accessible dashboard for communication with key stakeholders, staff, or customers about projects and performance.

# **FACILITY SOLUTIONS AGREEMENT**

by and between

City of Parlier  
1100 East Parlier Avenue  
Parlier, CA 93648

and

Famand, Inc  
(dba Indoor Environmental Services, a SitelogIQ Company)  
1512 Silica Avenue  
Sacramento, California, 95815

November 21, 2019

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### EXHIBITS

Exhibit A	Definitions
Exhibit B	Certifications
Exhibit B-1	Drug-Free Workplace / Tobacco-Free Environment Certification
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Exhibit D	Not Used
Exhibit E	Insurance
<del>Exhibit F</del>	<del>Certificate of Substantial / Final Completion and Acceptance</del>
<del>Exhibit G</del>	<del>Notice to Proceed</del>
<del>Attachment A</del>	<del>Operations and Maintenance Agreement</del>

## FACILITY SOLUTIONS AGREEMENT

This FACILITY SOLUTIONS AGREEMENT ("Agreement"), dated as of November 21, 2019, ("Effective Date"), is by and between City of Parlier, a City organized and existing under the laws of the State of California ("City") and Famand, Inc. (dba Indoor Environmental Services, a SitelogIQ Company), a California corporation ("Contractor") (each a "Party" and collectively, the "Parties").

### RECITALS

WHEREAS, City desires to reduce energy consumption and operational expenses through the installation of energy conservation and energy generation technologies ("System");

WHEREAS, California Government Code § 4217.10 et seq. authorizes Customers to enter into agreements, contracts and related documents with private sector entities for developing energy generation and conservation projects upon Customer's finding that the anticipated costs for such services provided under this Agreement, together with any financing costs, will be less than the anticipated marginal energy costs to Customer;

WHEREAS, City has assigned specific areas on City properties (each one, a "Site") on which the solar and energy conservation measures (each one, a "System") will be constructed;

WHEREAS, City desires to engage Contractor to install energy efficiency upgrades, design, supply and install selected and listed scope of work at each Site; and

WHEREAS, Contractor desires to provide such upgrades, design, supply and installation services, all in accordance with the terms and conditions set forth in this Agreement;

WHEREAS, Contractor is a full-service energy services company with the technical capabilities to provide services to the City, including, but not limited to, energy and energy system auditing, engineering, design, procurement, construction management, installation, construction, financing, training, monitoring and verification, maintenance, operation, and repair.

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:



## AGREEMENT

### 1. DEFINITIONS.

Unless otherwise required by the context in which any term appears: (a) capitalized terms used in this Agreement shall have the respective meanings set forth in Exhibit A; (b) the singular shall include the plural and vice versa; (c) the word “including” shall mean “including, without limitation,” (d) references to “Sections” and “Exhibits” shall be to sections and exhibits of this Agreement; (e) the words “herein”, “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection; and (f) references to this Agreement shall include a reference to all attached Exhibits, as the same may be amended, modified, supplemented or replaced from time to time.

### 2. CONTRACTOR CERTIFICATIONS

This Agreement includes the following contractor certifications, the forms of which are attached in Exhibit B, which must be completed by Contractor prior to commencement of the work on the Systems:

- 2.1. Fingerprinting/Criminal Background Investigation Certification (Exhibit B-1)
- 2.2. Drug-Free Workplace / Tobacco-Free Environment Certification (Exhibit B-2)
- 2.3. Asbestos & Other Hazardous Materials Certification (Exhibit B-5)

### 3. GENERAL

#### 3.1. Scope of Work

- (a) After the Funding Date and following City’s issuance of Notice to Proceed Contractor shall furnish to City energy efficiency upgrades and the engineering, design, procurement, construction management, installation, construction, monitoring, and commissioning of energy generation systems (each one a "System") installed at various sites (collectively, the upgrades and Systems shall be referred to as the "Project").
- (b) Operations and maintenance are not a part of this Agreement. The City shall enter into a separate contract for operations and maintenance to be executed concurrently with this Agreement.
- (c) Project will be executed by individual Work Orders, detailed in Exhibit C (“Work”).
- (d) Work shall be performed in accordance with this Agreement and Exhibits attached hereto.

#### 3.2. Contract Price

- (a) Contract Price. Subject to adjustments set forth in this Agreement, after the Funding Date and City’s issuance of Notice to Proceed Contractor agrees to perform the Work for a total

fixed price of **\$1,231,387.00** ("Contract Price"), including the following amounts detailed in Exhibit C ("Work Order Prices"):

- (i) Work Order 1, with a total fixed price of **\$738,832.20**
- (ii) Work Order 2, with a total fixed price of **\$492,554.80**
- (iii) Payment of the Contract Price shall be made in compliance with the process described in Exhibit C.

(b) Work Order Prices in Exhibit C assume all Work Orders are executed.

(b)(c) This Agreement shall not become effective and Contractor shall perform no work and City shall have no obligation to pay or perform under t-his Agreement until after the Funding Date and en issuance by the City of Notice to Proceed.

3.3. Protective Measures.

- (a) Contractor shall be responsible for all injury or damage to individuals or property that may occur as a result of its fault or negligence, or that of its Subcontractors, in connection with the performance of the Work.
- (b) Contractor shall take all reasonably necessary precautions for the safety of its employees and any and all other individuals present on the Site where the System is located and prevent accidents or injury to individuals on, about, or adjacent to the premises where the Work is being performed.
- (c) Contractor shall keep the relevant part of the Site where the System is located and surrounding areas free from accumulation of waste materials or rubbish caused by the Work, and at the end of each Day that the Contractor performs the Work, Contractor shall remove any debris, store such debris in containers at its sole expense, and leave the Site in a clean and orderly condition. Upon Final Completion, Contractor shall remove from the relevant part of the Site where the System is located all waste materials, rubbish, debris, debris containers, tools, Equipment, machinery and surplus materials from the Site and leave the Site in a clean and orderly condition.

3.4. Prevailing Wage.

- (a) California Labor Code. Contractor shall comply with all applicable provisions of the California Labor Code, Division 2, Part 7, Chapter 1, Articles 1-5, including (without limitation) the payment of the general prevailing per diem wage rates for public work projects in excess of \$1,000. In addition, Contractor and each Subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the California Labor Code, commencing with Section 1720, and including Sections 1735, 1777.5 and 1777.6 forbidding discrimination, and Sections 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Contractor or Subcontractor.
- (b) Certified Payroll Records. This Project is subject to the requirements of Subchapter 4.5 of Chapter 8 of Title 8 of the California Code of Regulations. Contractor and all subcontractors must furnish certified payroll records to the Department of Industrial



Relations' Compliance Monitoring Unit at least monthly, or within 10 days of any separate request by the Compliance Monitoring Unit, in the manner required by the Compliance Monitoring Unit.

- (c) Payment Withholding. Pursuant to 8 CCR 16463(e), the City may withhold contract payments when payroll records are delinquent or inadequate or as required by the Labor Commissioner. The amount withheld shall be limited to those payments due or estimated to be due to the Contractor or Subcontractor whose payroll records are delinquent or inadequate, plus any additional amount that the Labor Commissioner has reasonable cause to believe may be needed to cover a back wage and penalty assessment against the Contractor or Subcontractor whose payroll records are delinquent or inadequate; provided that the Contractor shall be required in turn to cease all payments to a Subcontractor whose payroll records are delinquent or inadequate until the Labor Commissioner provides notice that the Subcontractor has cured the delinquency or deficiency.
- (d) Site Access. Contractor shall provide site access to Department of Industrial Relations personnel upon request.
- (e) Prevailing Wage Notice. On each job site that is subject to compliance monitoring and enforcement by the Department of Industrial Relations, the Contractor shall post at appropriate, conspicuous, weatherproof points at the site the Notice of Projects Subject to Requirements of Subchapter provided in Title 8, section 16451(d) of the California Code of Regulations.
- (f) Prevailing Rate Penalty. Contractor shall, as a penalty, forfeit not less than Two Hundred Dollars (\$200.00) to the City for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the Department of Industrial Relations for such work or craft in which such worker is employed for the Work by the Contractor or by any Subcontractor, of any tier, in connection with the Work. Pursuant to California Labor Code §1775, the difference between prevailing wage rates and the amount paid to each worker each calendar day, or portion thereof, for which each worker paid less than the prevailing wage rate, shall be paid to each worker by Contractor.

3.5. Unanticipated Conditions. Contractor has conducted a full and complete visual inspection of each Site, including (a) the readily apparent surface conditions of any areas where a System will be installed in or on the ground, including areas where utilities are located such as manhole covers, pull boxes, marked underground service areas, etc., (b) all staging, storage, delivery, and other areas necessary to perform the Work, (c) ingress to and egress from each Site for all supplies, personnel and Equipment, and (d) all as-built drawings, Site layout, easement and other documentation provided by the City to Contractor as set forth in Exhibit C and Exhibit G. Contractor will document and provide to the City all findings in regard to the aforementioned inspection. If any conditions exist, arise, or are discovered at the Sites that differ materially from: (i) the information contained in the documents referenced in Exhibit C and Exhibit G, (ii) ~~the assumption that the soils at the Sites have an allowable vertical bearing pressure of 2,000 psf and a lateral bearing pressure of 300 psf/ft below natural grade, or~~ (iii) those conditions that Contractor discovered or should have reasonably discovered based on the inspections set forth in the first sentence of this Section 2.4, including without limitation, conditions related to Hazardous Materials or archeological findings, soils conditions, or subsurface obstructions of which Contractor was not aware on the date of this Agreement or could not reasonably be expected to anticipate based on the inspection described above, and such conditions involve the incurrence by Contractor of any material expenses to correct or accommodate such conditions (hereinafter, "Unanticipated Condition"), Contractor shall submit a request for approval of a Change Order and payment of the



related expenses to the City. The City and Contractor may mutually agree to reduce portions of the Work to offset the Change Order request to comply with City budget limits.

3.6. Labor. Contractor shall be responsible for all Contractor labor-related delays or disruption of the progress of the Work. Contractor shall promptly take any and all reasonable steps that may be available in connection with the resolution of violations of collective bargaining agreements or labor jurisdictional disputes. Contractor shall advise City promptly in writing of any actual or threatened labor dispute of which Contractor has knowledge that might materially affect the performance of the Work by Contractor or by any of its Subcontractors. Notwithstanding the foregoing, (a) the settlement of strikes, walkouts, lockouts or other labor disputes shall be at the discretion of the Party having the difficulty, (b) a labor-related delay shall not give rise to a change in the Construction Schedule unless such delay constitutes a Force Majeure Event under paragraph (c) of the definition thereof, and (c) in no event will labor-related delays or difficulties give rise to additional payments to Contractor.

3.7. Insurance.

- (a) Contractor ~~and the City~~, at ~~its~~~~their~~ own expense, shall procure or cause to be procured and maintain or cause to be maintained in full force and effect at all times commencing no later than commencement of the Work at the Site and until Final Completion, all insurance coverage specified in Exhibit E.
- (b) The City and any lenders to the City and Contractor shall be added as additional insureds under the commercial general liability, automobile liability and umbrella/ excess liability insurance procured and maintained by Contractor in connection with the Work. Contractor shall not add the City or any lender as additional insureds under its worker's compensation insurance policy.
- (c) ~~Contractor~~~~Each Party~~ shall furnish current certificates indicating that the insurance required under this Agreement is being maintained. ~~Contractor's~~~~Each Party's~~ certificate shall contain a provision whereby the insurer agrees to give the ~~City~~~~other Party~~ thirty (30) days (or ten (10) days in the event of failure to pay premiums) written notice before the insurance is cancelled.

3.8. Performance of the Work.

- (a) Contractor agrees to use, and agrees that it shall require each of its Subcontractors to use, only personnel who are qualified and properly trained and who possess every license, permit, registration, certificate or other approval required by Applicable Law or any Governmental Authority to enable such Persons to perform their Work involving any part of Contractor's obligations under this Agreement.
- (b) Contractor agrees that all materials and Equipment to be supplied or used by Contractor or its Subcontractors in the performance of its obligations under this Agreement shall be new (if being incorporated into the System) or in good operating condition (if not being incorporated into the System) and fit for the use(s) for which they are employed by Contractor or its Subcontractors. Such materials and Equipment shall at all times be maintained, inspected and operated pursuant to Industry Standards and as required by Applicable Law. Contractor further agrees that all licenses, permits, registrations and certificates or other approvals required by Applicable Law or any Governmental Authority will be procured and maintained for such materials and Equipment at all times during the

use of the same by Contractor or its Subcontractors in the performance of any of Contractor's obligations under this Agreement.

3.9. Hazardous Materials.

- (a) Contractor hereby specifically agrees to indemnify, defend and hold the City, their present and future Board members, administrators, employees, agents, representatives, successors and assigns harmless from and against any and all losses, liabilities, claims, demands, damages, causes of action, fines, penalties, costs and expenses (including, but not limited to, all reasonable consulting, engineering, attorneys' or other professional fees), that they may incur or suffer by reason of:
- (i) any release of a Hazardous Material brought on to the Site by Contractor, or any pre-existing Hazardous Materials that, through Contractor's sole negligence, are released or disturbed at the Site;
  - (ii) 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 Contractor; and
  - (iii) any action reasonably necessary to abate, remediate or prevent a violation or threatened violation of any Applicable Law by Contractor.
- (b) The City hereby specifically agrees to indemnify, defend and hold Contractor, its present and future direct or indirect parents, subsidiaries, affiliates, divisions, and their respective directors, officers, employees, shareholders, agents, representatives, successors and assigns harmless from and against any and all losses, liabilities, claims, demands, damages, causes of action, fines, penalties, costs and expenses (including, but not limited to, all reasonable consulting, engineering, attorneys' or other professional fees), that they may incur or suffer by reason of:
- (i) any release of a Hazardous Material brought on to the Site by the City, or the City Representative ~~except, or Third Party and any pre-existing Hazardous Material except pre-existing~~ Hazardous Material released or disturbed at the Site through Contractor's negligence;
  - ~~(-) 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 the City or the City Representative; and~~
  - ~~(-) any action reasonably necessary to abate, remediate or prevent a violation or threatened violation of any Applicable Law by the City or the City Representative.~~

~~3.12.3.10.~~ Suspension of the Work.

- (a) If Contractor does not receive payment of any undisputed invoices submitted in accordance with Section 4.2, Contractor shall have the right, upon not less than fifteen (15) days written notice, to suspend the Work under this Agreement. Contractor shall be entitled to compensation for all undisputed amounts under this Agreement. If the City issues full



payment of the undisputed invoice within fifteen (15) days of written notice of intention to suspend, the notice of intention to suspend shall have no further force or effect and Contractor shall continue to perform the services hereunder as if the notice of intention to suspend had not been given. In the event of any such suspension, Contractor shall be entitled to request (i) an extension of the deadlines of this Agreement for the same period of the suspension, ~~and (ii) the reimbursement of the additional costs and expenses, if any, reasonably incurred and substantiated by Contractor (provided Contractor undertakes reasonable efforts to mitigate such costs and expenses) in protecting, securing or insuring the Work, the delay resulting from such suspension, and in resumption of the Work.~~ If a suspension of the Work under this Section 3.10(a) continues for more than two (2) months, Contractor shall be entitled to, at its sole discretion, terminate this Agreement.

- (b) The City may suspend the Work temporarily at its discretion. In the event of any such suspension, Contractor shall be entitled to request (i) an extension of the deadlines of this Agreement for the same period of the suspension, and (ii) the reimbursement of the additional costs and expenses, if any, reasonably incurred and substantiated by Contractor (provided Contractor undertakes reasonable efforts to mitigate such costs and expenses) in protecting, securing or insuring the Work, the delay resulting from such suspension, and in resumption of the Work. If a suspension of the Work under this Section 3.10(b) continues for more than six (6) months, Contractor shall be entitled, at its sole discretion, to terminate this Agreement.
- (c) In the event that the Work is totally or partially suspended, the Party that has caused the suspension (whether by reason of an act, omission or default) shall bear all the damages, costs and expenses incurred by that Party caused by reason of the suspension. If the suspension is not due to an act, omission or default of any of the Parties, and such delay falls under the definition of an Excusable Delay, then the deadlines of this Agreement will be extended for the same period of the suspension, or for such other period that the Parties deem reasonable in view of the circumstances, ~~and the City shall assume any costs arising under the effects of the suspension on the obligations of the Parties under this Agreement. Notwithstanding the occurrence or continuation of any Force Majeure Event, the provisions of this Section 3.10 shall apply.~~
- (d) After the resumption of the performance of the Work, Contractor shall, after due notice to the City, examine the Work affected by the suspension. Contractor shall make good any defect, deterioration or loss of the construction or the Work affected that may have occurred during the suspension period. ~~Costs properly incurred by Contractor (including but not limited to demobilization and mobilization costs, insurance fees, and repair cost) shall be added to the Work Order Price, so long as the suspension did not arise due to any act, omission or default on the part of Contractor.~~

#### 3.13.3.11. Taxes.

The Work Order Price includes (and Contractor assumes exclusive liability for and shall pay before delinquency) all federal, state or local sales, use, value added, excise and other taxes, charges or contributions imposed on, or with respect to all Equipment and Contractor's services contemplated by this Agreement, provided that the City shall pay and have exclusive liability with respect to any taxes payable with respect to the City's income. Contractor shall hold harmless, indemnify and defend the City, together with any and all its governing board, administrators, agents and employees from any liability, penalty, interest and expense



by reason of Contractor's failure to pay such taxes, charges or contributions. Contractor and the City shall cooperate with each other to minimize the tax liability of both Parties to the extent legally permissible.

3.14.3.12. Liens.

Contractor warrants good title, free and clear of all liens, claims, charges, security interests, and encumbrances whatsoever, to all Equipment and other items furnished by it or any of its Subcontractors that become part of the System to the extent payment therefore has been received by Contractor from the City.

3.15.3.13. Compliance with Applicable Laws.

- (a) Contractor specifically agrees that it shall at all times fully comply with Applicable Laws and that it shall perform the Work in accordance with the Applicable Laws. Notwithstanding the foregoing, Contractor's responsibility for any environmental liabilities shall be governed by Section 3.9.
- (b) The City specifically agrees that in the performance of its obligations under this Agreement it shall at all times fully comply with Applicable Laws.

3.16.3.14. Environmental Attributes, Incentives, and Energy Credits.

- (a) The ~~Contractor~~City acknowledges that ~~City-Contractor~~ shall own, and may assign or sell in its sole discretion, all rights, title, and interest associated with or resulting from the development, construction, installation and ownership of the System or the production, sale, purchase or use of the energy output including, without limitation:
  - (i) All Environmental Incentives arising from the Environmental Attributes associated with the System;
  - (ii) The reporting rights and exclusive rights to claim that: (i) the energy output was generated by the System (except as stated in paragraph (a)), (ii) ~~City-Contractor~~ is responsible for the reductions in emissions of pollution and greenhouse gases resulting from the System, (iii) ~~City-Contractor~~ is entitled to all credits, certificates, registrations, etc., evidencing or representing any of the foregoing;
  - (iii) All carbon reduction tonnage as defined under the Climate Action Reserve or similar definition as enacted by the State of California or the U.S. Federal Government ("Carbon Credits");
  - (iv) All "renewable energy credits" (as such term is defined in Section 399.12(h)(2) of the California Public Utilities Code);
  - (v) All Environmental Incentives hereafter enacted into law, whether under federal, state or local law, arising from the Environmental Attributes of the System or the energy output or production, sale, purchase, consumption or use of the energy output from the System, ~~expressly excluding, however, any future Environmental Incentives that are or may be dependent on ownership of the System for federal tax purposes.~~

- (b) The Carbon Credits, renewable energy credits, grants and future Environmental Incentives as described herein shall be referred to collectively as "Energy Credits". The ~~City~~~~Contractor~~ may assign, sell, transfer or otherwise convey all or any part of its right, title, and interest in and to the Energy Credits from time to time as it may determine to be in its best interest. The ~~Contractor~~~~City~~ shall take such steps as ~~City~~~~Contractor~~ shall reasonably request to confirm ~~City's~~~~Contractor's~~ ownership of Energy Credits as herein provided and shall cooperate with ~~City~~~~Contractor~~, to the extent ~~City~~~~Contractor~~ reasonably requests and at ~~City's~~~~Contractor's~~ expense, in the sale or other disposition of Energy Credits.
- (c) Independent Contractor. Contractor is acting hereunder as an independent contractor and not as an agent or employee of the City. The Contractor shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of the City.

3.17.3.15. Subcontractors.

Contractor shall at all times be responsible for the acts and omissions of Subcontractors. Contractor shall be responsible for performance of all the Work, whether performed by Contractor or its Subcontractors. ~~Unless required by law~~ ~~t~~The City shall not undertake any obligation to pay or to be responsible for the payment of any sums to any Subcontractor. The City shall have no responsibility for settling Subcontractor claims or disputes.

3.18.3.16. Performance & Payment Bonds.

See individual Work Orders in Exhibit C for bonding requirements.

3.19.3.17. Title; Risk of Loss.

- (a) From Effective Date and until the date of Substantial Completion for the Work subject to the applicable Work Order, and subject to Sections 3.17(b) and 3.17(c), Contractor assumes risk of loss and full responsibility for the cost of replacing or repairing any damage to the System and all damages to and defects in materials, Equipment, supplies and maintenance equipment (including temporary materials, equipment and supplies) that are purchased by Contractor for permanent installation in or for use during construction of the System.
- (b) The City shall bear the risk of loss and full responsibility with respect of the System from and after the date of Substantial Completion of the Work subject to the Work Order.
- (c) Notwithstanding anything herein to the contrary, the City shall bear the risk of loss and full responsibility for the cost of replacing or repairing any damage to that portion of the System applicable to the Work Order and all materials, Equipment, supplies and maintenance equipment (including temporary materials, equipment and supplies) that are purchased by Contractor or the City for permanent installation in or for use during construction of the System to the extent caused by the negligent, grossly negligent or willful acts of the City or its agents, employees or representatives.
- (d) Title to all materials, Equipment, supplies and maintenance equipment required by this Agreement, to be purchased by Contractor for permanent installation as part of the System



or for use by the City or Project Owner in the operation of that portion of the System subject to the particular Work Order shall pass to the City upon the achievement of Substantial Completion of the Work required by that Work Order.

#### 4. PRICE AND PAYMENT

##### 4.1. Contract Price.

- (a) The Work Order Price is firm and fixed and includes all expenses to be incurred by Contractor including, but not limited to, Equipment and materials, erection, commissioning, inclusive of cost of travel and lodging expenses, Applicable Permits (other than the City Permits) and taxes, related to Contractor's performance of its obligations under this Agreement.
- (b) Any Changes to the System or Work above and beyond code requirements and Industry Standards requested by the City mayshall be resolved through a Change Order to this Agreement.
- (c) Any additional Work not otherwise specified in Exhibit C mayshall be resolved through a Change Order to this Agreement.
- (d) The City and Contractor may mutually agree to reduce portions of the Work to offset the Change Order request to comply with the City budget limits.
- (e) The Work Order Price shall only be changed by Change Order approved by Contractor and the City.

##### 4.2. Payment.

- (a) Subject to Section 4.2(e), the City shall pay to Contractor the progress payments set forth in Exhibit C when Contractor has completed the Work associated with such payment. Contractor must submit documentation at the time of invoicing for related progress payments.
- (b) The City shall pay one hundred percent (100%) of each progress payment when such payment is due.
- (c) Payments will be made by the City within fifteen (15) calendar days of receipt of the Contractor invoices. ~~Notwithstanding the immediately preceding sentence, the City shall pay one hundred percent (100%) of the Funding Date payment set forth in Exhibit C prior to Commencement of Work. Invoices shall include any partial Lien releases and any other supporting documentation that the City may reasonably request. The City shall notify Contractor of any missing documentation within five (5) Business Days of receipt of invoice.~~
- (d) The following minimum content will be contained in, or delivered together with, any payment request from Contractor to the City:



- (i) Contractor address, phone number, and fax
  - (ii) Contractor invoice number and date
  - (iii) Project Site address(es)
  - (iv) Description of completed milestones since the immediately preceding payment request
  - (v) Total invoice amount
  - (vi) "Remit to" details (for wire transfer)
  - (vii) Lien waivers from major Subcontractors (>5% of Work Order Price)
  - (viii) Signature of authorized representative of Contractor, certifying as to the accuracy of the payment request.
- (e) Overdue payment obligations of the City hereunder shall bear interest from the date due until the date paid at a rate per annum equal to the rate published by the *Wall Street Journal* as the "prime rate" on the date on which such interest begins to accrue ~~plus two percent~~ **(2%)**.
- (f) Customer may withhold or, on account of subsequently discovered evidence, nullify and require repayment of the whole or part of any payment to the extent necessary to protect the City from loss, including costs and actual attorneys' fees, on account of (1) any breach of this Agreement by Contractor; (2) claims filed or reasonable evidence indicating probable filing of claims; (3) failure of Contractor to make payments properly to its Subcontractors or for material, labor or fringe benefits; (4) a reasonable doubt that the Work to be completed as a condition to a payment has properly been completed; (5) penalties assessed against the City for failure of Contractor to comply with state, federal or local laws and regulations; or (6) any other ground for withholding payment allowed by state or federal law, or as otherwise provided in this Agreement. When the above matters are rectified, such amounts as then due and owing shall be paid or credited to Contractor.
- ~~(g) Customer agrees, and Contractor shall be entitled to, an increase in the Contract Price where the cost to Contractor for any raw material or component (including without limitation, solar panels, tracking equipment, inverters, lighting and mechanical system components or any other equipment necessary to complete the work required by this Agreement) increases enacted after the date of this Agreement. Contractor shall be entitled to an equitable adjustment in time and money for any costs that it incurs directly or indirectly that arise out of or relate to changes in taxes, tariffs, or similar charges due to such changes including, without limitation, escalation, delay damages, costs to re-procure, costs to change suppliers, costs of manufactured equipment or system components, or other costs of any kind resulting from the changes.~~

## 6.5. COMMENCEMENT & COMPLETION

### 6.5.1. Commencement and Substantial Completion.

- (a) Contractor shall perform the Work as soon as practicable following the ~~receipt of~~ Funding Date ~~payment and receipt of Site title reports and as-built drawings from the City~~ issuance of Notice to Proceed.
- (b) The Contractor shall achieve Substantial Completion as set forth in Work Order. Contractor may claim a justified extension of the Substantial Completion Date if it is or will be delayed in completing the Work for one or more of the following causes:
- (i) Unanticipated Conditions which directly affect the Project Milestones;
  - (ii) Changes in the design, scope, or schedule of the Project required by the City;
  - (iii) Breach of this Agreement by the City;
  - (iv) Suspension of the Work pursuant to Section 3.10; or
  - (v) Force Majeure Event.
- (c) The following are conditions precedent to Substantial Completion:
- (i) the System is mechanically, electrically, and structurally constructed in accordance with the requirements of this Agreement, the Work and Industry Standards, except for non-critical punchlist items that do not affect operations;
  - (ii) the electrical infrastructure and the grid connection for the System is mechanically, electrically and functionally complete and capable of interconnection with the local utility;
  - (iii) The City and Contractor shall have agreed on the punchlist items. For clarity purposes, the punchlist shall include final as-built drawings, operation and maintenance manuals, operation and maintenance training, permission to operate by local utility, Performance Test, and final lien waivers; and
  - (iv) all necessary documents have been submitted to the local public utility and all Work has been completed to the extent necessary for the local utility to issue a permission to operate.
- (d) When Contractor believes it has achieved Substantial Completion, Contractor shall provide notice to the City containing sufficient detail to enable the City to determine that Contractor has complied fully with the requirements of Section 5.1(c). Within five (5) days after receipt of such notice, the City shall either issue to Contractor the Certificate of Substantial Completion ~~in a form similar to Exhibit F~~, or, if reasonable cause exists for doing so, advise Contractor by notice (stating the reasons therefore) that Substantial Completion has not been achieved. In the event the City determines that Substantial Completion has not been achieved in accordance with the conditions precedent in Section 5.1(c), Contractor shall promptly take such action or perform such Work as is required to achieve Substantial Completion and shall thereupon issue to the City another notice as set forth above. This procedure shall be repeated until such time as the City has acknowledged Substantial Completion subject to Section 5.1(f).



- (e) All punchlist items shall be completed no later than sixty (60) Business Days after Substantial Completion Date unless otherwise delayed by the local utility. Failure of Contractor to fulfill this obligation shall entitle the City to complete the pending works on its own. The City shall issue final payment to Contractor minus the cost to complete remaining or incomplete punchlist items.

~~(f) Any dispute between the City and Contractor with respect to the projected achievement of Substantial Completion as contemplated by this Section 5.1(e) shall be resolved in accordance with Section 8.5(b).~~

#### 6.3.5.2. Final Completion.

- (a) Final Completion of the System shall be deemed to have occurred only if:
  - (i) all punchlist items contemplated in Section 5.1(c)(iii) have been completed or waived;
  - (ii) all manuals, drawings and other documents expressly required to be delivered by Contractor hereunder have been delivered to the City;
  - (iii) on-site operation and maintenance training as required has occurred;
  - (iv) all final Lien waivers have been obtained;
  - (v) a Certificate of Final Completion in a form similar to Exhibit F is duly signed by the City's Representative and the Contractor's Representative; and
  - (vi) the local utility has provided a permission to operate.

~~(b) Upon Final Completion, Contractor shall submit to the City a Certificate of Final Completion in a form similar to Exhibit F certifying that all of the foregoing conditions have been satisfied. City shall, within five (5) Business Days after the receipt by the City of such written certificate, shall execute an acknowledgment of such certificate if Contractor has achieved Final Completion or provide written notice of Contractor's failure to achieve Final Completion. Contractor shall promptly take such action or perform such Work as is required to achieve Final Completion and shall thereupon issue to the City another notice as set forth above. This procedure shall be repeated until such time as the City has acknowledged Final Completion subject to Section 5.2(c).~~

~~(e)(b) Any dispute between the City and Contractor with respect to the projected achievement of Final Completion as contemplated by this Section 5.2(a) shall be resolved in accordance with Section 8.5(b).~~

#### 6.4.5.3. Inspection.

All Work performed by Contractor and all Equipment shall be subject to inspection by the City, but such right of inspection of the Work or Equipment shall not relieve Contractor of responsibility for the proper performance of the Work or Equipment to the extent provided under this Agreement. Contractor shall provide to the City or the City's designee access to Contractor's facility or facilities where the Work is being performed during business hours, and subject to compliance with Site safety rules and policies. The City



shall ensure that the inspections do not affect the normal performance of this Agreement unless Work is not in compliance with this Agreement.

## 7.6. REPRESENTATIONS & WARRANTIES

### 7.1-6.1. Representations and Warranties of Contractor. Contractor represents and warrants to the City that:

- (a) Contractor is a California corporation, duly organized, validly existing, and in good standing under the laws of the State of California, and has full power to engage in the business it presently conducts and contemplates conducting, and is and will be duly licensed or qualified and in good standing under the laws of the State of California and in each other jurisdiction wherein the nature of the business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder.
- (b) Contractor has (either directly or through a Subcontractor) all the required authority, ability, skills, experience and capacity necessary to perform and shall diligently perform the Work in a timely and professional manner, utilizing sound procurement principles, project management procedures, construction procedures and supervisory procedures, all in accordance with Industry Standards. Contractor has (either directly or through a Subcontractor) the experience and skills necessary to determine, and Contractor has reasonably determined, that Contractor can perform the Work for the Work Order Price.
- (c) The execution, delivery and performance by Contractor of this Agreement will not (i) violate or conflict with any covenant, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected, or its organizational documents or (ii) subject the System or any component part thereof to any lien other than as contemplated or permitted by this Agreement.
- (d) There are no undisclosed actions, suits, proceedings, patent or license infringements or investigations pending or, to Contractor's knowledge, threatened against it before any court or arbitrator 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.
- (e) All goods, services, equipment, parts, and materials furnished in connection with the Work related to the System are new, unused and undamaged at the time of delivery to the Site.
- (f) The individual executing this Agreement on behalf of Contractor is duly authorized to execute and deliver this Agreement on behalf of Contractor and this Agreement is binding upon Contractor in accordance with its terms.

### 7.2-6.2. Representations and Warranties of the City. The City represents and warrants to Contractor that:

- (a) The City is a California City, duly organized, validly existing, and in good standing under the laws of the State of California, and has full legal capacity and standing to pursue its

purpose (including the capacity to dispose of and encumber all of its assets) and full power to engage in the business it presently conducts and contemplates conducting.

- (b) The execution, delivery and performance by the City of this Agreement will not (i) violate or conflict with any covenant, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected, or its organizational documents or (ii) subject the System or any component part thereof or the Site or any portion thereof to any lien other than as contemplated or permitted by this Agreement.
- (c) There are no undisclosed actions, suits, proceedings, patent or license infringements or investigations pending or, to the City's knowledge, threatened against it before any court or arbitrator 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 the City or in any impairment of its ability to perform its obligations under this Agreement.
- ~~(d) The City will exercise commercially reasonable efforts to procure funding for the Project within 365 days of the Effective Date.~~
- (e)(d) The City has proof of funds, to the satisfaction of the Contractor, that are necessary from time to time to pay Contractor the Work Order Price in accordance with the terms of this Agreement.
- (f)(e) The individual executing this Agreement on behalf of the City is duly authorized to execute and deliver this Agreement on behalf of the City and this Agreement is binding upon City in accordance with its terms.

## 8.7. BREACH & TERMINATION

### 8.1.7.1. Termination by the City:

- (a) Contractor agrees that the City shall be entitled to terminate this Agreement upon the occurrence of any of the following circumstances:
  - (i) Except as otherwise permitted under this Agreement, Contractor abandons the entire Work for more than ~~thirtyninety (3090)~~ days or fails to commence the Work within ~~one hundred and eighty (180)~~sixty (60) days after ~~receiving the Funding Date payment, and/or~~ after expiration of said period fails to commence or continue performance of the Work within ten (10) business days of Contractor's written notice from the City to commence or continue performance of the Work;
  - (ii) Contractor commits a material breach of this Agreement, and Contractor does not commence the cure of said breach and thereafter diligent pursuant to completion the cure of said breach, within ~~tenthirty (1030)~~ days following Contractor's receipt of written notice thereof from the City, or
  - (iii) Contractor makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency, or it becomes the subject of any proceeding commenced under any federal or state insolvency statute or law for the relief of debtors.



- (b) Upon the occurrence of any of the foregoing, the City may instruct Contractor to discontinue all or any part of the Work, and Contractor shall thereupon discontinue the Work of such parts thereof. The City shall thereupon have the right to continue and complete the Work or any part thereof, by contract or otherwise.
- (c) Upon exercising commercially reasonable efforts, the City shall be entitled to terminate this Agreement if it is unable to procure funding for the Project within 365 days of the execution of this Agreement-Effective Date. Upon this occurrence, the City shall have no further obligation to Contractor.
- ~~(d) If the City elects to terminate this Agreement for any reason other than provided herein, the City shall reimburse Contractor for all expenses incurred prior to termination, including but not limited to development and engineering cost prior to the Effective Date.~~
- (e)(d) If any covenant, condition or restriction upon the Site prohibits the installation of the System at the Site, the City has the right to terminate this Agreement. Upon such termination, the City shall pay to Contractor for all services rendered up to and including the date of termination; plus all costs incurred with respect to equipment or materials ordered (which order cannot be refunded, terminated or such costs otherwise recovered by Contractor) prior to the date of termination; ~~plus, if applicable, amounts payable to Subcontractors arising from costs or expenses reasonably incurred by such Subcontractor and directly resulting from such termination; plus, if applicable, costs incurred by Contractor in demobilizing its work force from Site; plus all engineering and development cost incurred by Contractor prior to the Effective Date.~~

#### 8.2.7.2. Termination by Contractor.

- (a) Without limiting the provisions of Section 8.5, the City agrees that upon the occurrence of any of the following, ~~the City shall reimburse Contractor for all expenses incurred prior to termination, including but not limited to development and engineering cost incurred prior to the Effective Date~~ may terminate this Agreement.:
- (b) If the City makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency, or it becomes the subject of any proceeding commenced under any federal or state insolvency statute or law for the relief of debtors.
- (c) If the City fails to make any payment to Contractor hereunder when due, which failure remains uncured for twenty (20) days following the City's receipt of written notice thereof from Contractor, the City shall be in breach and Contractor shall have all rights and remedies that may be available under Applicable Law against the City with respect thereto, including without limitation the right to suspend performance of the Work or terminate this Agreement ~~as set forth in Section 3.10~~.

#### 8.3.7.3. Indemnity.

- (a) Contractor shall fully indemnify, save harmless and defend the City from and against any and all costs, claims, and expenses incurred by the City and their successors, assigns, governing board members, administrators, managers, employees, agents, affiliates and partners in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any person (other than



Affiliates of the City) arising from or relating to Contractor's performance of its obligations under this Agreement, but only to the extent caused by (a) the negligence, gross negligence or willful misconduct of Contractor or its Subcontractors, agents or employees or others under Contractor's control or (b) a breach by Contractor of its obligations hereunder.

- (b) The City shall fully indemnify, save harmless and defend Contractor and its successors, assigns, officers, directors, members, managers, employees, agents, affiliates and partners in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any person (other than Affiliates of Contractor or Subcontractors) arising from or relating to this Agreement, but only to the extent caused by (a) the negligence, gross negligence or willful misconduct of the City or its agents or employees or others under the City's control or (b) a breach by the City of its obligations hereunder.
- (c) Each Party shall indemnify, defend and hold the other Party, and its present and future governing board members, administrators, direct and indirect parents, subsidiaries and Affiliates and their directors, officers, shareholders, employees, agents and representatives harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, damages, costs or expenses (including attorneys' fees and disbursements) of any kind whatsoever arising from (a) actual or alleged infringement or misappropriation by such Party (or in the case of Contractor, any Subcontractor) of any patent, copyright, trade secret, trademark, service mark, trade name, or other intellectual property right in connection with the System, including without limitation, any deliverable, (b) such Party's (and in the case of Contractor, any Subcontractor's) violation of any third-party license to use intellectual property in connection with the Work, including, without limitation, any deliverable. The City shall indemnify, defend and hold Contractor and its present and future direct and indirect parents, subsidiaries and Affiliates and their directors, officers, shareholders, employees, agents and representatives harmless from against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, damages, costs or expenses (including attorneys' fees and disbursements) of any kind whatsoever arising from the challenge to the procedures under which this Agreement was approved by the City. Notwithstanding the foregoing, the indemnification obligations of Contractor set forth in this Section 7.3(c) shall not apply when the claim of infringement arises from a particular design, process or product of a particular manufacturer or manufacturers that Contractor is directed by the City to use in connection with the Contract Documents, unless the Contractor has reason to believe there is an infringement of such intellectual property right.
- (d) If any claim is brought against a Party (the "Indemnified Party") that gives rise to a potential indemnity claim under this Section 7.3, then the Indemnified Party shall give written notice of said claim to the other Party (the "Indemnifying Party"). Upon receipt of written notice of the claim, the Indemnifying Party shall be entitled to participate in, and, unless in the opinion of counsel for the Indemnifying Party a conflict of interest between the Parties may exist with respect to such claim, assume the defense of such claim, with counsel reasonably acceptable to the Indemnified Party. Where the Indemnifying Party has elected not to assume the defense of a claim that gives rise to a potential indemnity claim under this Section 7.3, the Indemnifying Party shall reimburse the Indemnified Party for its reasonable and necessary defense expenses to the extent said claim is adjudged to be covered under the indemnity obligations. Even if the Indemnifying Party assumes the defense of the Indemnified Party with acceptable counsel, the Indemnified Party, at its sole

option, may participate in the defense, at its own expense, with counsel of its own choice without relieving the Indemnifying Party of any of its obligations hereunder.

#### 8.4.7.4. Limitations of Liability.

- (a) No Consequential Damages. IN NO CIRCUMSTANCES SHALL THE CONTRACTOR OR THE CITY OR ANY OF THEIR RESPECTIVE OFFICERS, MEMBERS OR EMPLOYEES BE LIABLE FOR PUNITIVE, CONSEQUENTIAL OR EXEMPLARY DAMAGES OF ANY NATURE INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOST PROFITS OR REVENUES OR THE LOSS OF USE OF SUCH PROFITS OR REVENUE, LOSS BY REASON OF PLANT SHUTDOWN OR INABILITY TO OPERATE AT RATED CAPACITY, COSTS OF REPLACEMENT POWER OR CAPITAL, DEBT SERVICE FEES OR PENALTIES, INVENTORY OR USE CHARGES, DAMAGES TO REPUTATION, DAMAGES FOR LOST OPPORTUNITIES, REGARDLESS OF WHETHER SAID CLAIM IS BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHER THEORY OF LAW. NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS ON PARTIES' LIABILITY FOR CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES IN THIS SECTION 7.4(a) SHALL NOT APPLY TO THE PARTIES' RESPECTIVE INDEMNITY OBLIGATIONS AS SET FORTH IN THIS AGREEMENT FOR SUCH DAMAGES WHEN SUCH DAMAGES ARE SOUGHT BY THIRD PARTIES.

- (b) Maximum Liability. Whether an action or claim is based on warranty, contract, tort or otherwise, under no circumstance shall ~~(i)~~ the City's total liability arising out of or related to this Agreement exceed one-hundred percent (100%) of the Contract Price, minus the aggregate amount of any payments or penalties paid by the City under this Agreement, ~~and (ii) Contractor's total liability arising out of or related to this Agreement exceed one-hundred percent (100%) of the aggregate amount of any payments to Contractor by the City minus any penalties paid by Contractor under this Agreement.~~

#### 9.8. MISCELLANEOUS

##### 9.1.8.1. Representatives.

- (a) The City Representative. City designates, and Contractor agrees to accept, Alma Beltran, Mayor as the City Representative for all matters relating to Contractor's performance of the Work. The actions taken by City Representative regarding such performance shall be deemed the acts of the City and shall be fully binding for the City. The City may, upon written notice to Contractor, pursuant to Section 8.6 hereof, change the designated the City Representative.
- (b) Contractor Representative. Contractor designates, and the City agrees to accept, Stan Butts as Contractor Representative for all matters relating to Contractor's performance under this Agreement. The actions taken by Contractor Representative shall be deemed the acts of Contractor and shall be fully binding for Contractor. Contractor may, upon written notice to City, pursuant to Section 8.6 hereof, change the designated Contractor Representative.



- (c) Power of Representatives. The Parties shall vest their Representatives with sufficient powers to enable them to assume the obligations and exercise the rights of Contractor or the City, as applicable, under this Agreement.
- (d) Notices to Representative. Notwithstanding Sections 8.1(a) and 8.1(b), all amendments, Change Orders, notices and other communications between Contractor and the City contemplated herein shall be delivered in writing and otherwise in accordance with Section 8.6.

#### 9.2.8.2. Ownership of Plans, Data, Reports and Material.

- (a) Subject to Sections 8.2(c), Contract Documents developed by Contractor under this Agreement shall become the property of the City when prepared and shall be delivered to the City upon completion of the Work; provided that nothing in the foregoing shall impair, alter or otherwise affect Contractor's proprietary rights in its patents, products or other intellectual property.
- (b) Any additional inventions or intellectual property created during performance of this Agreement shall be owned by Contractor.
- (c) Contractor further agrees to grant and hereby grants to the City an irrevocable, non-exclusive, royalty-free license under all patents, copyrights and other proprietary information of Contractor related to the Work now or hereafter owned or controlled by Contractor to the extent reasonably necessary for the operation, maintenance or repair of the System or any subsystem or component thereof designed, specified, or constructed by Contractor under this Agreement. No other license in such patents and proprietary information is granted pursuant to this Agreement.

#### 9.3.8.3. Governing Law.

The formation, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event of any Dispute that is not resolved ~~pursuant to Section 8.5~~, the Parties hereto agree to submit to the jurisdiction of any court of competent jurisdiction within Fresno County, California and shall comply with all requirements necessary to give such court jurisdiction.

~~Attorneys' Fees. The prevailing Party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with such an action from the other Party.~~

(a)

#### 9.4.8.4. Force Majeure.

Contractor shall promptly notify the City in writing of any delay or anticipated delay in Contractor's performance of this Agreement due to a Force Majeure Event, and the reason for and anticipated length of the delay. Contractor shall deliver such notice as soon as reasonably practicable, but in any event within forty-eight (48) hours of Contractor's becoming aware of such delay. Contractor shall be excused for any delays or defaults in the performance of its obligations under this Agreement that are the result of a Force Majeure Event. Contractor shall be entitled to a reasonable extension of time for delays due to a Force



Majeure Event; provided that any Work done or materials furnished by Contractor in restoring or rebuilding the System will be paid for by the City as an approved Change Order pursuant to Section 3.5.

9.5. ~~Dispute Resolution.~~

- ~~( ) — Good faith negotiations. In the event that any question, dispute, difference or claim arises out of or in connection with this Agreement, including any question regarding its existence, validity, performance or termination (a “Dispute”), which either Party has notified to the other, senior management personnel from both Contractor and the City shall meet and diligently attempt in good faith to resolve the Dispute for a period of thirty (30) days following one Party’s written request to the other Party for such a meeting. If, however, either Party refuses or fails to so meet, or the Dispute is not resolved by negotiation, the provisions of Sections 8.5(b), 8.5(c) and 8.5(d) shall apply to the extent applicable to the Dispute.~~
- ~~( ) — Technical Dispute. Technical Disputes shall be resolved by an independent expert. For the purposes of this Agreement, a “Technical Dispute” shall mean a Dispute regarding whether the System conforms to the Industry Standards and applicable Building Codes, whether the relevant part of the Site where the System is located meets the required Site characteristics, and any other Disputes of a technical or engineering nature. All Technical Disputes shall be resolved on an accelerated basis by a nationally recognized professional expert unless otherwise agreed in writing by Contractor and the City. Parties will share equally in the cost of the independent expert engaged to resolve Technical Disputes.~~
- ~~( ) — Non-Binding Mediation. If the Dispute remains unresolved, a Party may require that a non-binding mediation take place with a mediator mutually chosen by the City and Contractor. If the City and Contractor are unable to agree on a mediator, then either may request that the American Arbitration Association (the “AAA”) to appoint a mediator. The mediator’s fee and expenses shall be paid one-half by the City, and one-half by Contractor. In any such mediation, representatives of the Parties with authority to resolve the dispute shall meet for at least three hours with mediator. The obligation to mediate shall not be binding upon any Party with respect to (i) requests for preliminary injunctions, temporary restraining orders, specific performance, or other procedures in a court of competent jurisdiction to obtain interim relief deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by mediation of the actual Dispute; (ii) actions to collect payments not subject to bona fide Dispute; or (iii) claims involving third parties who have not agreed to participate in the mediation of the Dispute. The provisions of this Section 8.5 shall survive any termination of this Agreement.~~
- ~~( ) (a) — Attorneys’ Fees. The prevailing Party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorneys’ fees expended in connection with such an action from the other Party.~~

9.10.8.5. Notices and Demands.

Any notice, request, demand or other communication required or permitted under this Agreement, shall be deemed to be properly given by the sender and received by the addressee if made in writing (a) the same day if personally delivered; (b) three (3) days after deposit in the mail if mailed by certified or registered air mail, post prepaid, with a return receipt requested; or (c) the same day if sent by facsimile or electronic mail with confirmation. Mailed notices, facsimile notices or electronic notices shall be addressed as follows to:



**City:**

Name: City of Parlier  
Attention: Alma Beltran, Mayor  
Address: 1100 East Parlier Avenue, Parlier, CA 93648  
  
Phone: (559) 646-3545  
Facsimile: (559) 646-0416  
Email: [ABeltran@parlier.ca.us](mailto:ABeltran@parlier.ca.us)

**With a copy to:**

Name: Neal E. Costanzo  
Attention: Neal E. Costanzo, Parlier City Attorney  
Address: 575 E. Locust, Suite 115, Fresno CA, 93720

**Contractor:**

Name: Famand Inc., dba Indoor Environmental Services,  
a SitelogIQ Company  
Attention: Stan Butts, President  
Address: 1512 Silica Avenue  
Sacramento, CA 95815  
  
Phone: (916) 888-8808  
Facsimile: (916) 348-3020  
E-mail: [sbutts@ies-hvac.com](mailto:sbutts@ies-hvac.com)

**9.11.8.6. Nondisclosure.**

To the extent permitted by law, whichever Party receives confidential information (the "Receiving Party") from the other Party (the "Disclosing Party") shall not use for any purpose other than performing the Work under this Agreement or divulge, disclose, produce, publish, or permit access to, without the prior written consent of the Disclosing Party, any such information of the Disclosing Party. Confidential Information includes, without limitation, all information or materials prepared in connection with the Work performed under this or any related subsequent Agreement, 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, personnel names and other information related to Contractor, Suppliers, 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. Confidential information does not include (a) information known to the Receiving Party prior to obtaining the same from the Disclosing Party; (b) information in the public domain at the time of disclosure by the Receiving Party; or (c) information obtained by the Receiving Party from a third party who did not receive same, directly or indirectly, from the Disclosing Party. The Receiving Party shall use the higher of the standard of care that the Receiving Party uses to preserve its own confidential information or a reasonable standard of care to prevent unauthorized use or disclosure of such confidential information. Notwithstanding anything herein to the contrary, the Receiving Party has the right to disclose Confidential Information without the prior written consent of the Disclosing Party: (i) as required by any court or other Governmental Authority, or by any stock exchange upon which the shares of any Party are listed, (ii) as otherwise required by law, (iii) as advisable or required in connection with any government or regulatory filings, including without limitation, filings with any regulating authorities covering the relevant financial markets, (iv) to its

attorneys, accountants, financial advisors or other agents, in each case bound by confidentiality obligations, (v) to banks, investors and other financing sources and their advisors, in each case bound by confidentiality obligations; or (vi) in connection with an actual or prospective merger or acquisition or similar transaction where the party receiving the Confidential Information is bound by confidentiality obligations. If a Receiving Party believes that it will be compelled by a court or other Governmental Authority to disclose confidential information of the Disclosing Party, it shall give the Disclosing Party prompt written notice, and in all cases not less than five (5) Business Days' notice in advance of disclosure, so that the Disclosing Party may determine whether to take steps to oppose such disclosure. Notwithstanding the foregoing, Contractor acknowledges that this Agreement, once fully executed and approved by the City's Board of Directors, is public information, subject to release in response to public information requests under California Government Code § 6250 et seq. (Public Records Act). The City shall use reasonable efforts to prevent or limit disclosure of the Confidential Information.

#### 9.12.8.7. Time of Essence.

Time is expressly agreed to be of the essence of this Agreement and each, every and all of the terms, conditions and provisions herein.

#### 9.13.8.8. Validity.

The provisions contained in each section, subsection and clause of this Agreement shall be enforceable independently of each of the others and their validity shall not be affected if any of the others are invalid. If any of those provisions is void but would be valid if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid. The Parties shall, if necessary, negotiate in good faith and make any necessary amendments to ensure the enforceable terms of this Agreement reflect the true intent of the Parties as of the date of execution of this Agreement.

#### 9.14.8.9. Binding Effect.

This Agreement shall be binding on the Parties hereto and on their respective permitted successors, heirs and assigns.

#### 9.15.8.10. Modifications.

No oral or written amendment or modification of this Agreement by any administrator, Board member, officer, agent or employee of Contractor or the City, either before or after execution of this Agreement, shall be of any force or effect unless such amendment or modification is in writing and is signed by any duly authorized representative of both Parties to be bound thereby.

#### 9.16.8.11. Headings.

The headings in this Agreement are for convenience of reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

#### 9.17.8.12. Counterparts; Signature Pages.

This Agreement may be executed in counterparts which, taken together, shall constitute a single instrument. Facsimile and other electronically transmitted signature pages shall be effective to bind a Party to this Agreement.



9.18.8.13.           Announcements and Publications.

Contractor shall coordinate with the City with respect to, and provide advance copies to the City for review of, the text of any proposed announcements or publications that include any non-public information concerning the Work prior to the dissemination thereof to the public or to any Person other than Subcontractors or advisors of Contractor, in each case, who agree to keep such information confidential. If the City delivers written notice to Contractor rejecting any such proposed announcement or publication within two (2) Business Days after receiving such advance copies, the Contractor shall not make such public announcement or publication; provided, however, that Contractor may disseminate or release such information in response to requirements of Governmental Authority.

9.19.8.14.           Complete Agreement.

This Agreement together with the Exhibits hereto completely and exclusively states the agreement of the Parties regarding its subject matter and its terms govern, all prior proposals, agreements, or other communications between the Parties, oral or written, regarding such subject matter. No oral agreement or conversation with any officer or employee of either Party or any or all prior proposals shall affect or modify any of the terms and conditions of this Agreement. This Agreement shall not be modified except by written amendment signed on behalf of the City and Contractor by their duly authorized representatives. Any purported oral amendment to the Agreement shall have no effect.

9.20.8.15.           No Agency.

This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

9.21.8.16.           Priority of Documents.

In the event of conflicting provisions between any of the Contract Documents, the provisions shall govern in the following priority: first, duly executed amendments to this Agreement (to the extent not superseded by a subsequent amendment); second, this Agreement; third, Work Order in Exhibit C, and fourth, the other Contract Documents.

9.22.8.17.           Assignment.

No Party shall be entitled to assign or subcontract this Agreement or any of its rights or obligations under this Agreement, nor shall it enter into any transaction as a result of which it may transfer, assign, charge or dispose by any title of any of those rights and obligations, without the prior written consent of the other Party, which shall not be unreasonably withheld, provided that Contractor may subcontract that portion of the Work to Subcontractors. Notwithstanding the foregoing, (i) without the consent of the Contractor, the City shall be entitled to assign its right, title and interest in and to this Agreement (and, in particular, any rights arising in relation to any insurance policy and any other right to collect any amount from Contractor) to any lenders by way of security for the performance of obligations to such lenders; (ii) without consent of the City, Contractor shall be entitled to assign its right, obligation, title and interest in and to this Agreement in connection with a merger or acquisition of Contractor; and (iii) without consent of the City, Contractor shall be entitled to assign its right, obligation, title and interest in and to this Agreement to an Affiliate of the Contractor.

9.23-8.18. No Waiver.

Either Party's failure to enforce any provision of this Agreement of the waiver thereof in a particular instance shall not be construed as a general waiver of any part of such provision. The provision shall remain in full force and effect.

**[Signatures on following page]**

IN WITNESS WHEREOF, the Parties hereto have duly executed and delivered this Agreement as of the date set forth above.

**City of Parlier,**

a City organized and existing under the laws of the  
State of California

By: \_\_\_\_\_  
Name: Alma Beltran  
Title: Mayor

**Famand, Inc.,**

a California corporation, (dba) Indoor  
Environmental Services, a SitelogIQ Company

By: \_\_\_\_\_  
Name: Brad Harlow  
Title: Vice President, Business Development  
Contractor's License #: 646794



## EXHIBIT A DEFINITIONS

“Affiliate” of a specified Person means any Person that directly or indirectly through one or more intermediaries’ controls, is controlled by, or is under common control with, such specified Person. As used in this definition of Affiliate, the term “control” of a specified Person including, with correlative meanings, the terms, “controlled by” and “under common control with,” means (a) the ownership, directly or indirectly, of 50% or more of the equity interest in a Person or (b) the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

“Agreement” shall have the meaning set forth in the preamble.

“Applicable Law” shall mean, with respect to any Governmental Authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, injunction, registration, license, permit, authorization, guideline, governmental approval, consent or requirement of such Governmental Authority, as construed from time to time by any Governmental Authority.

“Applicable Permits” means those permits identified as the responsibility of Contractor as determined in Exhibit C.

“Authority Having Jurisdiction (AHJ)” means those local, state, or federal entities having regulatory authority over a specific aspect of the Project, such as building officials, Department of State Architecture, and fire departments.

“Business Day” means Mondays to Fridays, except ~~such~~ days that are legal holidays prescribed by ~~on which banks are permitted or required to close in~~ California law.

“Certificate of Substantial Completion” shall mean a document certifying substantial completion ~~in similar form to Exhibit F~~.

“Certificate of Final Completion” shall mean a document certifying final completion ~~in similar form to Exhibit F~~.

“Change” shall mean any addition to, deletion from, suspension of, or other modification to the quality, function, or intent of the Work, including without limitation any such addition, deletion, suspension, or other modification that effects a change in the scope of the Work. An “Unanticipated Condition” as defined in Section 2.4 hereof, experienced by Contractor during the course of the Work is included within the definition of “Change”.

“Change Order” shall mean a written document signed by the City and Contractor to adjust the Work Order Price or Construction Schedule as a result of a Change issued after execution of this Agreement.

“Commencement of Work” shall mean the commencement of Work for each Work Order.

“Construction Schedule” shall mean the schedule for implementation of the Work as determined by the Contractor and approved by City to meet the Project Milestones as set forth on Exhibit C.

“Construction Documents” shall mean construction documents prepared by Contractor and approved by the City.

“Contract Documents” shall mean this Agreement and Exhibits hereto, and drawings, specifications, plans, calculations, models and designs that are part of this Agreement and the Construction Documents prepared by Contractor and approved by the City.

“Contractor” shall have the meaning set forth in the preamble.

“Contractor Representative” shall mean the individual designated by the Contractor in accordance with Section 7.1(b).

“Day” means calendar day unless it is specified that it means a “Business Day”.

“Disclosing Party” shall have the meaning set forth in Section 7.7.

“Dispute” shall have the meaning set forth in Section 7.5(a).

“The City” shall have the meaning set forth in the Preamble to this Agreement.

“City Permits” means those permits identified as the responsibility of City in Exhibit C.

“City’s Representative” shall mean the individual designated by the City in accordance with Section 7.1(a).

“Dollar” and “\$” shall mean the lawful currency of the United States of America.

“Effective Date” shall mean the ~~date first set forth in the preamble~~ Funding Date.

“Environmental Attributes” means all environmental and other attributes that differentiate the System or the energy generated by fossil-fuel based generation units, fuels or resources, characteristics of the System that may result in the avoidance of environmental impacts on air, soil or water, such as the absence of emission of any oxides of nitrogen, sulfur or carbon or of mercury, or other gas or chemical, soot, particulate matter or other substances attributable to the System or the compliance of the System or the energy output with the law, rules and standards of the United Nations Framework Convention on Climate Change (the “UNFCCC”) or the Kyoto Protocol to the UNFCCC or crediting “early action” with a view thereto, or laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency or successor administrator or any state or federal entity given jurisdiction over a program involving transferability of Environmental Attributes and Reporting Rights.

“Environmental Incentives” means all rights, credits (including tax credits), grants, rebates, benefits, reductions, offsets and allowances and entitlements of any kind, howsoever entitled or named (including carbon credits and allowances), whether arising under federal, state or local law,



international treaty, trade association membership or the like arising from the Environmental Attributes of the System on each Site or the energy output or otherwise from the development, construction, installation or ownership of the System on each Site or the production, sale, purchase, consumption or use of the energy output from each Site. Without limiting the foregoing, “Environmental Incentives” includes green tags, renewable energy credits, grants, tradable renewable certificates, portfolio energy credits, the right to apply for (and entitlement to receive) incentive programs offered by the State of California and the right to claim federal income tax credits under Section 45 or 48 of the Code as such credits are available arising from the Environmental Attributes of the system on each Site or the energy output or otherwise from the development, construction, installation or ownership of the System on each Site or the production, sale, purchase, consumption or use of the energy output from each Site.

“Equipment” shall mean (a) all materials, supplies, apparatus, machinery, equipment, parts, tools, components, instruments, appliances, spare parts and appurtenances thereto that are required for prudent design, construction or operation of the System in accordance with Industry Standards and (b) all materials, supplies, apparatus, machinery, equipment, parts, tools, components, instruments, appliances, spare parts and appurtenances thereto described in, required by, reasonably inferable from or incidental to the Work or the Contract Documents.

“Excusable Delay” shall mean a Delay outside of Contractor’s control that prevents Contractor from achieving the Commercial Operation Date for any System in accordance with the Project Schedule, and to the extent that such Delay adversely affects the Work such that the performance of the Work is prevented or delayed, Contractor shall be entitled to an adjustment in the Construction Schedule and deadlines of this Agreement. For purposes of this Agreement, an Excusable Delay shall include any of the following events:

- (a) an act or failure to act of, or other delay caused by, or negligence of, the City or its agents or employees;
- (b) changes in the design, scope or schedule of the Project unilaterally required by the City;
- (c) the suspension of Work in whole or in part by the City;
- (d) labor disputes, fire, vandalism, delay in manufacturing and deliveries;
- (e) adverse weather conditions not reasonably anticipated and in excess of 150% of the normal weather (*e.g.*, rain, snow, sleet) for the local geographic area for the past ten (10) years as measured in a given month;
- (f) unforeseen conditions at any Site, including discovery or existence of Hazardous Substances;
- (g) the occurrence of a Force Majeure, or other unavoidable casualties or other causes beyond Contractor’s control;



- (h) the failure to obtain any Utility Interconnection Agreement, permission to operate, Applicable Permit, CEQA/NEPA approval or approval of a Governmental Authority or delays caused by changes and/or modifications to the Scope of Work as required by any Governmental Authority having jurisdiction over the Project;
- (i) any equipment or material delays caused by suppliers or vendors;
- (j) adverse changes to regulatory requirements;
- (k) any breach of this Agreement or the Utility Interconnection Agreement or any information provided to the Contractor by the City or Utility is inaccurate or incomplete; or
- (l) any other cause outside Contractor's control after Contractor's best efforts to mitigate that delay, to the extent that Contractor is able to mitigate such delay, provided that a failure to perform of Contractor's subcontractors' shall not be an Excusable Delay, unless such subcontractors are unable to perform the Work as a result of any of the events described in this definition of "Excusable Delay".

"Facility" shall mean any and all properties of the City upon which the System shall be constructed or to which the System shall be connected, including land, buildings, structures, equipment, and electrical tie-in points.

"Final Completion" shall mean satisfaction or waiver of all of the conditions for completion of that portion of the System applicable to a particular Work Order as set forth in Section 4.2.

"Force Majeure Event" shall mean, when used in connection with the performance of a Party's obligations under this Agreement, any act or event (to the extent not caused by such Party or its agents or employees) which is reasonably unforeseeable, or being reasonably foreseeable, reasonably unavoidable (including by taking prudent protective and preventative measures) and outside the control of the Party which invokes it, and which renders said Party unable to comply totally or partially with its obligations under this Agreement. In particular, any of the following shall be considered a Force Majeure Event:

- (a) war (whether or not war is declared), hostilities, revolution, rebellion, insurrection against any Governmental Authority, riot, terrorism, acts of a public enemy or other civil disturbance;
- (b) acts of God, including but not limited to, unusually severe storms, floods, lightning, earthquakes, hailstorms, ice storms, tornados, typhoons, hurricanes, landslides, volcanic eruptions, winds in excess of ninety (90) miles per hour, and objects striking the earth from space (such as

meteorites) sabotage or destruction by a third party (other than any contractor retained by or on behalf of the Party) of FACILITY and equipment relating to the performance by the affected Party of its obligations under this Agreement;

(c) strikes, walkouts, lockouts or similar industrial or labor actions or disputes, in each case of a regional or national nature;

(d) changes in Applicable Law after the Effective Date that materially impact a Party's ability to perform under this Agreement; and

(e) acts of any Governmental Authority that materially restrict or limit Contractor's access to the Site.

"Funding Date" shall mean the date that the City has received monetary funds on terms satisfactory to the City necessary to fulfill its obligations under this Agreement.

"Governmental Authority" shall mean any national, autonomic, regional, province, town, city, or municipal government, or other administrative, regulatory or judicial body of any of the foregoing.

"Hazardous Material" shall mean oil or petroleum and petroleum products, asbestos and any asbestos containing materials, radon, polychlorinated biphenyl's ("PCBs"), urea formaldehyde insulation, lead paints and coatings, and all of those chemicals, substances, materials, controlled substances, objects, conditions and waste or combinations thereof which are now listed, defined or regulated in any manner by any federal, state or Applicable Law.

"Indemnified Party" shall have the meaning set forth in Section 6.3(d).

"Indemnifying Party" shall have the meaning set forth in Section 6.3(d).

"Industry Standards" shall mean those standards of care and diligence normally practiced by a majority of engineering, construction and installation firms in performing services of a similar nature in jurisdictions in which the Work will be performed and in accordance with good construction practices, Applicable Permits, and other standards established for such Work.

"Manufacturer Warranty" shall have the meaning set forth in Exhibit C.

"Party" shall mean, individually, each of the parties to this Agreement.

"Performance Tests" means, the tests of the System, as more particularly described in Exhibit C.

"Person" shall mean any individual, corporation, partnership, company, joint venture, association, trust, unincorporated organization or Governmental Authority.

"Project" shall mean the entirety of Work to be performed by Contractor pursuant to the terms and conditions of the Work and any Change Orders.

"Receiving Party" shall have the meaning set forth in Section 7.7.



“Representatives” shall mean the Contractor Representative and the City Representative and each may individually be referred to as a "Representative".

“Rock” is defined as limestone, sandstone, granite or similar rocks in solid beds or masses in original or stratified position which can be removed only by continuous drilling, blasting or the use of pneumatic tools, and all boulders of 1 cubic yard in volume or larger. Material which can be loosened with a pick, frozen materials, soft laminated shale and hardpan, which for convenience or economy is loosened by drilling, blasting, wedging or the use of pneumatic tools, shall not be classified as “Rock”.

“The City” shall have the meaning set forth in preamble.

“Site” shall have the meaning set forth in the first recital, and is more fully described in Exhibit C. An individual Site shall mean any area of a property owned by the City upon which a System is constructed.

“Solar Plant” shall mean that portion of the System only related to converting solar radiation into electricity and explicitly excludes all energy conservation technologies.

“Subcontractor” shall mean any Person, other than Contractor and Suppliers, retained by Contractor to perform any portion of the Work (including any Subcontractor of any tier) in furtherance of Contractor’s obligations under this Agreement.

“Substantial Completion” shall mean satisfaction or waiver of all of the conditions for completion of that portion of the System applicable to a particular Work Order as set forth in Section 5.1(c).

“Substantial Completion Date” shall mean the actual date on which the Substantial Completion of the System, as defined in Section 5.1(c), has occurred.

“Suppliers” shall mean those Equipment suppliers with which Contractor contracts to build the System.

“System” shall have the meaning ascribed in the Recitals to this Agreement.

“Technical Dispute” shall have the meaning set forth in Section 7.5(b).

“Third Party” shall have the meaning of any persons or entity not affiliated with Contractor or the City.

“Unanticipated Condition” shall have the meaning set forth in Section 2.4.

“Work” shall mean all obligations, duties, and responsibilities assigned to or undertaken by Contractor and described in Exhibit C with respect to the System.

“Work Order” shall mean the assigned Work for each Site as described in Exhibit C.



“Work Order Price” shall mean the amount for performing the Work that is payable to Contractor as set forth in Section 3.2, as the same may be modified from time to time in accordance with the terms hereof, and as described in Exhibit C.

**EXHIBIT B**  
**CERTIFICATIONS**

Exhibit B-1    Drug-Free Workplace / Tobacco-Free Environment Certification

## **DRUG-FREE WORKPLACE / TOBACCO-FREE ENVIRONMENT CERTIFICATION (EXHIBIT B-1)**

Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990, requires that every person or organization awarded a contract or grant for the procurement of any property or service from any state agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a state agency may be subject to suspension of payments or termination of the contract or grant, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred. The City of Parlier is not a "state agency" as defined in the applicable section(s) of the Government Code, but the City of Parlier is a local agency and City under California law and requires all contractors on City of Parlier projects to comply with the provisions and requirements of Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990. Contractor shall certify that it will provide a drug-free workplace by doing all of the following:

1 Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying actions which will be taken against employees for violations of the prohibition;

2 Establishing a drug-free awareness program to inform employees about all of the following:

- a. The dangers of drug abuse in the workplace.
- b. The person's or organization's policy of maintaining a drug-free workplace.
- c. The availability of drug counseling, rehabilitation, and employee-assistance programs.
- d. The penalties that may be imposed upon employees for drug abuse violations.

3 Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required above, and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I understand that if the City of Parlier determines that I have either (a) made a false certification herein, or (b) violated this certification by failing to carry out the requirements of section 8355, that the Contract awarded herein is subject to termination, suspension of payments, or both. I further understand that, should I violate the terms of the Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of section 8350 et seq.

I acknowledge that I am aware of the provisions of Government Code section 8350 et seq. and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990.

In addition, and pursuant to, without limitation, 20 U.S.C section 6083, Labor Code section 6400 et seq., Health & Safety Code section 104350 et seq. and City of Parlier Board Policies, all City of Parlier sites, including the Sites, are tobacco-free environments. Smoking and the use of tobacco products by all persons is prohibited on or in City of Parlier property. City of Parlier Property includes City buildings, grounds, owned vehicles and vehicles owned by others while on City of Parlier property. I acknowledge that I am aware of the City of Parlier's policy regarding tobacco-free environments and hereby certify that I will adhere to the requirements of that policy and not permit any of my firm's employees, agents, subcontractors, or my firm's subcontractors' employees or agents to use tobacco and/or smoke on the Sites.

Date: November 21, 2019

Proper Name of Contractor: Famand, Inc. (dba Indoor Environmental Services, a SitelogIQ Company)

Signature: \_\_\_\_\_

Print Name: Brad Harlow, Vice President, Business Development

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**EXHIBIT C  
WORK ORDERS**

**Schedule of Values**

**Work Order #1  
Major Equipment and Materials Procurement**

**Work Order #2  
HVAC, Lighting, & Solar Installations**

## **EXHIBIT C**

### **Work Order #1 Major Equipment Procurement**

This scope of work is intended to define the requirements which will form the basis for the procurement of major Lighting, HVAC and photovoltaic (PV) equipment for the photovoltaic power systems (“System”) and Energy Conservation work at “City of Parlier” facilities that are part of the Agreement.

This Work Order includes the following:

- Lighting, HVAC and Solar (PV) Equipment Procurement Scope of Work
- Work Order Milestones
- Fixed Price Amount
- Progress Payment Schedule
- Performance and Payment Bonds

### **HVAC & SOLAR PV EQUIPMENT PROCUREMENT SCOPE OF WORK**

#### **General**

The scope of work for this Work Order includes the procurement and transportation of the major components of the System at each Facility. Contractor shall perform, supervise and direct the Work in accordance with Industry Standards, Applicable Law and Project Milestone dates.

#### **Procurement**

Contractor shall procure the Lighting, HVAC, PV modules, inverters, and structural steel material required to perform the work as described in Work Order #2.

#### **Shipping and Transportation**

The Contractor shall make all necessary arrangements with each manufacturer or distributor for the proper packaging and shipment of all equipment to the Customer Facility or Contractor warehouse. All equipment shall be shipped in appropriate packaging and by suitably equipped transportation to avoid damage to the equipment at all points from the manufacturer’s or distributor’s site to the Customer Facility or Contractor warehouse. The Contractor shall ensure that suitable equipment is available and used for unloading and handling of the equipment at the project Facility.



## Equipment Documentation

Upon placement and confirmation of the purchase order, the Contractor shall request from each manufacturer all applicable documentation regarding shipping, handling, factory testing, storage, installation, and maintenance for all equipment ordered. Upon receipt, this information shall be stored and/or transmitted to the Customer as appropriate.

## WORK ORDER MILESTONES

Estimated Work Order Milestone Schedule	
Milestone	Milestone Date
Notice to Proceed	TBD
Major Equipment Ordering	Notice to proceed + 2 weeks

~~Contractor shall be given a day for day slip in the Work Order Milestone Schedule for a delay in the Funding Date beyond the date shown above.~~

## FIXED PRICE AMOUNT

The fixed price for this Work Order #1 ("Work Order Price") is \$ 738,832.20.

## PROGRESS PAYMENT SCHEDULE

The Customer shall pay to Contractor the progress payments set forth below when Contractor has completed the Work associated with such payment. Contractor must submit documentation at the time of invoicing for related progress payments.

Progress Payments Schedule	
Payment Milestone	% of Total Task Order Price
Notice to Proceed	10%
Major Equipment Ordering	90%

## PERFORMANCE AND PAYMENT BONDS

No Performance or Payment Bonds are required for this Work Order.

## **EXHIBIT C**

### **Work Order #2**

#### **Solar Installations and Energy Conservation Work Including HVAC Installation and Roof Restoration**

### **SCOPE OF WORK**

#### **PROJECT SCOPE OF WORK INDEX**

<u>Section 1</u>	Basis of Energy Engineering
<u>Section 2</u>	HVAC Scope of Work
<u>Section 3</u>	Solar Plant Scope of Work
<u>Section 4</u>	Proposed Project Installation Timeline & Coordination
<u>Section 5</u>	Work Order #2 Milestones
<u>Section 6</u>	Work Order #2 Fixed Price Amount
<u>Section 7</u>	Progress Payment Schedule
<u>Section 8</u>	Performance and Payment Bonds

#### **1.0 BASIS OF ENERGY ENGINEERING**

Forecasted energy savings are the difference between the pre- and post-retrofit period consumption for the equipment included in the scope of Work. The pre-retrofit (or Baseline) data for this project covers the period from June 2018 through May 2019. The Baseline data takes into consideration the quantity of facilities and size; 2018/2019 building operational schedules; occupancy factors and utilization; utility usage, costs and utility rates along with the available average ASHRAE weather files for the closest weather station. Except weather files, all this data has been obtained from the Customer.

Since Contractor does not control/follow the building operations on a day-by-day basis, it is virtually impossible to track the energy consumption and savings from utility bills due to many dynamic factors that are out of the Contractor's control. These factors (permanent or temporary) include, but are not limited to: weather changes; changes in the use of any facility and number of occupants; changes to the hours of operation of any facility; changes to the control system scheduling; changes or modifications to the equipment or services provided under this Agreement; changes in utility suppliers, method of utility billing, number of days in the billing cycle, utility rates or method of utility purchasing; improper maintenance of the equipment or of any energy-consuming equipment; changes to the equipment or to any facility required by changes to building codes; additions or deletions of energy-consuming equipment; personal portable heaters; refrigerators and vending machines and/or additions or deletions of any facilities etc.

Therefore, engineering calculations approach is based on a measure-by-measure (ECM-by-ECM) basis and is to be derived by comparing the specific value of physical parameters after the installation



to its value prior to the installations. For example: lighting systems retrofit (see below) will result in lower wattage consumption than Baseline scenario. This measure is not affected by weather changes, HVAC or other unrelated equipment energy consumption that are reflected in the utility bills. Below are some key characteristics and features of the measure-by-measure energy saving calculations method:

- It calculates savings based on Customer inputs, field measurements, and agreed upon assumptions and stipulations.
- It does not involve utility bill comparisons; however, utility bills ~~shall be used~~ may be analyzed to identify Kilowatt Hour Usage of Electricity provided by the utility ~~energy consuming trend-s and correlations.~~
- It is structured so that the individual measure's savings, as described in Scope of Work, shall not be affected by unrelated building modifications.

In any event, the overall energy use of the facility would be lower than if the energy saving measures (retrofits) identified in the facility solutions project herein had not been implemented.

~~If desired, the Contractor may provide additional utility data analysis and benchmarking based on the standard engineering principals for an additional fee (excluded from this Scope of Work). The Customer is to notify Contractor in writing no later than thirty (30) days after any changes as outlined above made to the Property that would affect the energy usage at the Property. The Customer shall make available to Contractor no later than thirty (30) days upon receipt, on a monthly basis for at least one year after Completion and Acceptance Date, copies of all energy bills, energy usage data, and any and all other such documentation related to changes to energy usage as outlined above.~~

In the absence of the reliable site-specific as-built drawings, Contractor has made certain design engineering and estimating assumptions for all work prior to completion of the final engineering phase. Though unanticipated, there may be some changes to the scope of work based on the unknown pre-existing conditions & site services interconnection complexities. ~~After the completion of the final engineering phase, a credit may be issued or a fair and equitable solution will be negotiated in good faith between the Customer and Contractor for any additional costs required (if any).~~

## 2.0 GENERAL LIGHTING SCOPE OF WORK

Energy savings are realized due to the fact that the total input watts of the lighting fixtures will be reduced. Energy savings resulting from the Lighting System Retrofit have been estimated for each individual light fixture type based on the following simple formula:

$$\text{Annual Saving, \$} = (\text{Existing Watts} - \text{New Watts}) / 1000 \times \text{Hours/Year} \times \text{Utility Rate} \times N$$



Where,

*Existing Watts* – Wattage rating for the existing (Baseline) light fixture

*New Watts* – New wattage rating for the existing light fixture

*Hours/Year* – Annual number of “burn-hours” (as directed by Customer)

*Utility Rate* – Actual weighted composite utility rate, \$/kWh

*N* – Number of light fixtures of the particular type (see below for the actual quantities).

Currently the (6) sites have a mixture of lighting technologies. Past modernization and retrofit projects included the upgrading of several sites with first generation electronic ballasts and T8 fluorescent lamps.

This project will provide a significant energy reduction while greatly improving the overall quality and quantity of light. All fixtures presently powered by electronic ballasts and linear fluorescent lamp will be retrofitted with 4<sup>th</sup> generation electronic ballasts and T8 L.E.D. lamps. In addition to the linear fluorescent fixture retrofits all incandescent lamps will be replaced with L.E.D. lamps or fixtures.

All incandescent or CFL exit signs included in this project will be retrofitted with new L.E.D. exit sign kits as applicable.

All exterior lighting included in this project will be replaced with new L.E.D. fixtures or lamps as applicable.

All expended lighting lamps and ballasts will be disposed of per current EPA regulations. Any found lighting ballast containing PCB's will be treated as Hazardous waste and disposed of per EPA hazardous waste regulations.

Unless specifically requested by the Customer, the intent of lighting retrofit Work is not to increase the light levels but rather to maintain the existing or better lighting levels while maximize energy savings without re-designing the overall system. In some cases, where the areas are over illuminated (per Illumination Engineering Society recommendations), light levels may be reduced to the recommended levels.

Scope of Work presented herein is based on retrofits feasibility, cost effectiveness and maximum energy savings for the different options. The presented retrofits will not affect the usability of the buildings or facilities and therefore are not alterations, additions, new construction or modification of the existing systems. As a result, the scope of work is considered maintenance replacement of the existing outdated lighting system components with like-kind components of higher efficiency and longer useful life. Maintenance related items are not considered lighting alterations and are exempted from the code and Title 24 provisions for the facilities. Due to the possibility of dissimilar

interpretations of regulations, additional cost-incurring system upgrades may be requested. Upon the Customer requesting changes based on interpretations, the Contractor will provide a written change order to the Customer for review and approval.

Below is the Itemized Scope of work below for specific retrofit strategies and fixture totals for each site:

City Hall, 1100 E. Parlier Avenue, Parlier, CA 93648

<b>ITEMIZED LIGHTING FIXTURES (Interiors and Exteriors)</b>		
<b>Existing Description</b>	<b>Solution Description</b>	<b>Qty</b>
CFL-CF26W-1	(1) 6 INCH LED DOWNLIGHT RETRO FIT KIT - 2X18W CFL REPLACEMENT	8
INCAN-I65-1	(1) 6 INCH LED RESI 120V DOWNLIGHT KIT - 75W INC REPLACEMENT	20
MH-MH175-1	(1) AREA LIGHT LED W/PC - 175W HID REPLACEMENT	1
MH-MH250-1	(1) AREA LIGHT LED W/PC- 250W HID REPLACEMENT	2
CFL-CF32W-1	(1) WALL PACK LED W/PC - 50W/70W HID REPLACEMENT	21
CFL-CF13W-2	(2) 2-PIN HOR LED LINE VOLT/BALLAST DRIVEN - 13W CFL REPLACEMENT	6
INCAN-I60-2	(2) A19 LED DIM - 60W INC REPLACEMENT	8
F-F32T8-2	(2) T8 4FT LED BALLAST DRIVEN - F32T8 REPLACEMENT, (1) T8 BALLAST 2X32T8 ISN	179
F-F32T8-4	(4) T8 4FT LED BALLAST DRIVEN - F32T8 REPLACEMENT, (1) T8 BALLAST 4X32T8 ISN	4
F-F96T8-2	(4) T8 4FT LED BALLAST DRIVEN - F32T8 REPLACEMENT, (1) T8 BALLAST 4X32T8 ISN, (1) 1X8 4L T8/T5 REFLECTOR KIT	1
NEW	(1) 8 A SWITCH, RADIO POWR SAVR HALLWAY SENSOR	1
NEW	(1) 8 A SWITCH, RADIO POWR SAVR CEILING SENSOR	22
NEW	(1) DUAL TECH. WALL SWITCH OCC.SENSOR,120/277V, WHITE	1
NEW	(1) Fixture Mounted Sensor (factory installed)	2
NEW	(1) LINK TO SENSOR LINE ABOVE	5

Public Works, 780 Tulare Street, Parlier, CA 93648

<b>ITEMIZED LIGHTING FIXTURES (Interiors and Exteriors)</b>		
<b>Existing Description</b>	<b>Solution Description</b>	<b>Qty</b>
MH-MH175-1	(1) AREA LIGHT LED W/PC - 175W HID REPLACEMENT	4
CFL-CF26W-1	(1) FLOOD LIGHT LED W/PC - 100W HID REPLACEMENT	1
CFL-CF32W-1	(1) WALL PACK LED W/PC - 50W/70W HID REPLACEMENT	3
F-F32T8-2	(2) T8 4FT LED BALLAST DRIVEN - F32T8 REPLACEMENT, (1) T8 BALLAST 2X32T8 ISN	5



CFL-CF23W-4	(4) A19 LED DIM - 60W INC REPLACEMENT	1
F-F32T8-4	(4) T8 4FT LED BALLAST DRIVEN - F32T8 REPLACEMENT, (1) T8 BALLAST 4X32T8 ISN	21
NEW	(1) 8 A SWITCH, RADIO POWR SAVR CEILING SENSOR	3

Police Department, 8770 S Mendocino Avenue, Parlier, CA 93648

<b>ITEMIZED LIGHTING FIXTURES (Interiors and Exteriors)</b>		
<b>Existing Description</b>	<b>Solution Description</b>	<b>Qty</b>
MH-MH175-1	40W LED Barn Light w/ Mounting Arm	7
HPS-HPS150-1	Eco-Revolution Surface Mount 5000K w/PC	1
QUARTZ-Q200-1	Eiko Mini Flood 12W 5000K Knuckle Mount	2
F-F32T8-1	(1) Lunera 4' T8 and (1) ULT Ballast	10
CFL-CF15W-1	(1) SATCO A19 9.8W 4000K	3
CFL-CF15W-1	SATCO A19 5000K	2
2L 4' F32T8-NBF	(2) Lunera 4' T8 lamps and (1) ULT Ballast	86
NEW	(1) 8 A SWITCH, RADIO POWR SAVR CEILING SENSOR	15

Senior Center, 690 S Newmark Avenue, Parlier, CA 93648

<b>ITEMIZED LIGHTING FIXTURES (Interiors and Exteriors)</b>		
<b>Existing Description</b>	<b>Solution Description</b>	<b>Qty</b>
HAL-H25/LV-1	(1) MR16 GU5.3 LED DIM - 50W HAL REPLACEMENT	12
CFL-CF32W-1	(1) WALL PACK LED W/PC - 50W/70W HID REPLACEMENT	7
F-F32T8-2	(2) T8 4FT LED BALLAST DRIVEN - F32T8 REPLACEMENT, (1) T8 BALLAST 2X32T8 ISN	5
CFL-CF13W-3	(3) A19 LED DIM - 60W INC REPLACEMENT	1
F-F32T8-4	(4) T8 4FT LED BALLAST DRIVEN - F32T8 REPLACEMENT, (1) T8 BALLAST 4X32T8 ISN	20
NEW	(1) 8 A SWITCH, RADIO POWR SAVR CEILING SENSOR	5
NEW	(1) LINK TO SENSOR LINE ABOVE	1

Academy of Excellence, 8000 S Mendocino Avenue, Parlier, CA 93648

<b>ITEMIZED LIGHTING FIXTURES (Interiors and Exteriors)</b>
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Existing Description	Solution Description	Qty
CFL-CF26W-1	(1) 2/4-PIN HOR G BASE LINE VOLT - 18, 26, 32W CFL REPLACEMENT	9
CFL-CF32W-1	(1) 4-PIN VERT LED BALLAST DRIVEN - 18, 26, 32, 42W CFL REPLACEMENT, (1) 4-PIN QUAD BALALST 2X26CF/UNV	3
INCAN-I65-1	(1) 6 INCH LED RESI 120V DOWNLIGHT KIT - 75W INC REPLACEMENT	14
HPS-HPS250-1	(1) AREA LIGHT LED W/PC- 250W HID REPLACEMENT	4
MH-MH175-1	(1) FLOOD LIGHT LED W/PC- 175W HID REPLACEMENT	3
INCAN-I20-2	(1) LED Two Head Emergency Fixture	5
HAL-H25/LV-1	(1) MR16 GU5.3 LED DIM - 50W HAL REPLACEMENT	4
CFL-CF13W-2	(1) WALL PACK LED W/PC - 50W/70W HID REPLACEMENT	13
F-F32T8-2	(2) T8 4FT LED BALLAST DRIVEN - F32T8 REPLACEMENT, (1) T8 BALLAST 2X32T8 ISN	76
F-F32T8-4	(4) T8 4FT LED BALLAST DRIVEN - F32T8 REPLACEMENT, (1) T8 BALLAST 4X32T8 ISN	4
F-F28T5-6	(6) T5 4FT LED BALLAST DRIVEN - F28T5 REPLACEMENT, (3) T5 BALLAST 2X28T5 ISN	1
NEW	(1) 8 A SWITCH, RADIO POWR SAVR HALLWAY SENSOR	1
NEW	(1) 8 A SWITCH, RADIO POWR SAVR CEILING SENSOR	16
NEW	(1) Fixture Mounted Sensor (factory installed)	4

Civic Center, 748 Tulare Street, Parlier, CA 93648

ITEMIZED LIGHTING FIXTURES (Interiors and Exteriors)		
Solution Name	Solution Description	Qty
CFL-CF23W-1	(1) 6 INCH LED DOWNLIGHT RETRO FIT KIT - 2X18W CFL REPLACEMENT	9
CFL-CF13W-2	(1) 6 INCH LED RESI 120V DOWNLIGHT KIT - 75W INC REPLACEMENT	3
CFL-CF42W-1	(1) 8 INCH LED DOWNLIGHT RETRO FIT KIT - 2X26W CFL REPLACEMENT	4
HPS-HPS150-1	(1) FLOOD LIGHT LED W/PC- 175W HID REPLACEMENT	1
CFL-CF42W-1	(1) WALL PACK LED W/PC - 50W/70W HID REPLACEMENT	10
F-F32T8-2	(2) T8 4FT LED BALLAST DRIVEN - F32T8 REPLACEMENT, (1) T8 BALLAST 2X32T8 ISN	11
F-F54T5HO-4	(4) T5 4FT LED BALLAST DRIVEN - F54T5 REPLACEMENT, (2) T5 BALLAST 2X54T5 ISN	8

F-F32T8-4	(4) T8 4FT LED BALLAST DRIVEN - F32T8 REPLACEMENT, (1) T8 BALLAST 4X32T8 ISN	4
NEW	(1) 8 A SWITCH, RADIO POWR SAVR CEILING SENSOR	4
NEW	(1) LINK TO SENSOR LINE ABOVE	2

## 2.1 Lighting System Terms and Definitions

- 2L FO28T8/850/XP/SS/ECO
  - 2 Lamp, Fluorescent Octron, lamp wattage, 8/8”diameter Lamp, 85 CRI (Color Rendering Index), 5000 Kelvin (Color), Extended Performance, Super Saver (4<sup>th</sup> generation), Ecologic
- QHE2X32T8UNIVISL
  - Quicktronic High Efficiency electronic ballast, number of lamps by lamp wattage, 8/8” diameter Lamp, Universal( 120 - 277 watt), Instant Start Low output.
- 4L FP54T5Wrap
  - 4 Lamp, Fluorescent Pentron, lamp wattage, 5/8” diameter Lamp, Wrap lense
- (2L)Lt8/840/12G-EB-AC(1) VE232MVHIPE
  - 2 Lamp, T8 LED lamp, lamp wattage, 8/8”diameter Lamp, 84 CRI (Color Rendering Index), 4000 Kelvin (Color), Electronic Ballast (4<sup>th</sup> generation)
- RTK Reflector model
- PRS Prismatic Lense
- PF Precision Fluorescent (Brand Name)
- INC Standard Incandescent style lamp
- LED Light Emitting Diode technology
- EB Electronic Ballast
- ESB Energy Saving Ballast
- ESL Energy Saving Lamp (Fluorescent)
- T-5 High Efficient 5/8” diameter lamp
- RFL Powder Coated Reflector installed into Fixture to improve Efficiency
- SB Standard Magnetic Ballast
- CFL Compact Fluorescent Lamp
- NEW Means a "new" fixture is to be installed, and not retrofitted
- Wrap A type of fluorescent fixture, surfaced mounted with a "wrap around lens"
- Strip A type of fluorescent fixture, surfaced mounted with no lens
- Troffer A type of fluorescent fixture, Recessed inside a T-Bar style ceiling
- Pendant A type of fluorescent fixture, suspended from the ceiling
- High Bay Any building with an interior height above 15 – 18 foot,
- Wire Guard A device affixed to lighting fixtures to prevent damage to the lamps



- TDM Two or more fixtures wired to one ballast
- MH Metal Halide
- PS Pulse Start
- HPS High Pressure Sodium lamp
- MP Metalarc Pro-Tech lamp
- MS Super Metalarc Lamp
- PC Photocell
- Flood A type of exterior lighting fixture possessing directional capabilities.

## **2.2 Lighting Scope of Work Exclusions**

The impact of the following exclusions has not been estimated in the above Scope of Work:

- Repair of any preexisting electrical distribution problems.
- Repair or replacement of any existing lighting controls or new lighting controls.
- New acoustical ceiling tiles for the existing T-bar grid unless broken by the Contractor.
- Any items not specified in this scope of work

## **3.0 HVAC SCOPE OF WORK**

### **3.1 Basis of Design and Engineering**

The intent of this project is to reduce the Customer's utility costs and operational expenses by replacing the existing HVAC equipment with new high energy efficient units.

As requested, Contractor will be replacing the existing units listed below in Section 3.2 with new higher efficient equipment of equal capacity. These direct replacements are based on the assumption that the original units have been sized properly for the local weather conditions, current occupancy levels and space use. Unless specifically requested, it is not Contractor's intent to re-design or to modify these systems. Unless specified otherwise, it is Contractor's intent to maximally re-use the existing air distribution systems, rooftop units' platforms, electrical, gas & condensate drain connections and other existing HVAC system components. It is assumed that that these system components to be re-used are in good operational order and no repairs are needed.

The new equipment, as identified below, is selected based on the energy efficiency and economic viability. These retrofits are like-for-like equipment replacements that are not structural in nature. As it has been reviewed by the licensed Structural Engineer, no existing building structural elements will be affected by the replacement HVAC systems. The Work described herein is limited to HVAC systems replacement only.



In the absence of the reliable as-built drawings, Contractor has made certain design engineering and estimating assumptions for all work prior to completion of the final engineering and construction. Though unanticipated, there may be some changes to the scope of work based on the unknown pre-existing conditions. Should they arise; a fair and equitable solution will be negotiated in good faith between the Customer and Contractor for any additional costs required.

Contractor will use the current 2016 Title-24, 2016 California Building Code (CBC), 2016 California Plumbing Code (CPC), 2016 California Mechanical Code (CMC), the California Electrical Code (CEC), Sheet Metal & Air Conditioning Contractors' National Association (SMACNA) standards.

### **3.2 Mechanical Scope of Work**

The following lists in detail the mechanical Scope of Work to be performed for all unit replacements:

- Provide necessary rigging and trucking of new equipment to the project site.
- Provide and install new package and split unit systems as detailed below.
- Provide all sheetmetal as needed to connect new unit to existing opening.
- Furnish and install weather tight sealant on all seams, joints and connections to ensure full weather seal.
- Reconnect the gas, condensate and refrigerant lines to the new equipment with all materials as needed.
- Provide new flue piping for interior furnaces as needed.
- Reconnect electrical service to all new equipment with new disconnects, as needed.
- Contractor's technicians will perform a complete start-up and test of new equipment to ensure proper system operation.
- Provide new "Wi-Fi" 365 day programmable thermostats for new HVAC systems installed.
- Clean all areas daily as new work is completed.
- One year warranty on Contractor's provided equipment and workmanship. Warranty starts from the day of equipment start-up.

The quantities, sizes and location of all new HVAC units are listed below:

<b>Academy of Excellence Site</b>						
<b>Proposed Equipment</b>						
<b>Area</b>	<b>Qty</b>	<b>Nominal Tons</b>	<b>Type</b>	<b>Brand</b>	<b>Cooling Efficiency SEER/EER</b>	<b>Heating Efficiency AFUE %</b>
Main Building	4	5.0	Split/GE	Lennox	14.0 SEER	95%

City Hall Site						
Proposed Equipment						
Area	Qty	Nominal Tons	Type	Brand	Cooling Efficiency SEER/EER	Heating Efficiency AFUE %
Pool area	1	4.0	Split/GE	Lennox	14.0 SEER	95%
East Area	1	4.0	Pkg/GE	Lennox	14.0 SEER	80%
South Area	1	5.0	Pkg/GE	Lennox	14.0 SEER	80%

City Yard Site						
Proposed Equipment						
Area	Qty	Nominal Tons	Type	Brand	Cooling Efficiency SEER/EER	Heating Efficiency AFUE %
Main Site	1	4.0	Pkg/HP	Bard	11.0 EER	N/A

Police Station Site						
Proposed Equipment						
Area	Qty	Nominal Tons	Type	Brand	Cooling Efficiency SEER/EER	Heating Efficiency AFUE %
Main Building	3	5.0	Pkg/GE	Lennox	14.0 SEER	80%

Notes:

\* - G/E – denotes Gas Heating/Electric Cooling system unit.

-H/P – denotes Heat Pump system unit.

\*\* - Equipment brand noted above can be substituted with equal equipment based on the availability at the time of the scheduled installation (per Section 4.0 below), constructability and other considerations as determined by the Project Manager.

### **3.3 HVAC Scope of Work Exclusions**

The above Scope of Work excludes the following:

- Plumbing, Fire Sprinklers, Fire and Life Safety equipment and its components.
- Warranty, repair and/or upgrade of the existing mechanical, plumbing and electrical systems, air distribution and control systems found in disrepair or not compliant to code. Any and all systems and defects which require repairs/replacements as a result of pre-existing condition.
- Upgrade of the existing over all site electrical service capacity, if required for the new units.
- Controls; economizers where not required by code.
- Any and all hazardous materials work, i.e. asbestos, lead etc.
- Building systems commissioning unless specified above.
- All work is to be completed during normal working hours. Any request by Customer to change working times may result in a change order for added overtime rates.
- City Permit fees, reviews and approvals.
- Any items not specified in this Scope.



## **4.0 SOLAR PLANT SCOPE OF WORK**

### **General**

The scope of work for the System includes all engineering, permitting, procurement, construction, and commissioning, supervision, materials and supplies, labor, tools, construction equipment and machinery, utilities and transportation for the proper execution and completion of a fully integrated and operational System, unless otherwise excluded in this Work Order #2 or included in Work Order #1. Contractor shall perform, supervise and direct the Work in accordance with Industry Standards, Applicable Law and Project Milestone dates.

### **4.1 Solar System Summary**

The solar PV systems installations will be installed as illustrated in the Site Layout Plans provided in section 4.14. Any changes to the location, size, or orientation shall constitute a Change Order. In summary, the solar PV systems will include the following:

1. "Site #1 - Community Center & City Hall" solar installation will include one (1) electricity grid-connected carport structure photovoltaic (PV) system with a total rated approximate capacity of 29.6 kW-DC-STC. PV system will consist of 1 carport array with an azimuth of 180 degrees.
2. "Site #2 – Police Department" solar installation will include one (1) electricity grid-connected carport structure photovoltaic (PV) system with a total rated approximate capacity of 126.5 kW-DC-STC. PV system will consist of 2 carport arrays with an azimuth of 180 degrees.
3. "Site #3 – Senior Center" solar installation will include one (1) electricity grid-connected roof mounted photovoltaic systems with a total rated approximate capacity of 8.88 kW-DC-STC. PV Array to be installed on east roof of building with an azimuth of 90 degrees.
4. "Site #4 – Academy of Excellence" solar installation will include one (1) electricity grid-connected roof mounted photovoltaic system with a total rated approximate capacity of 17.8 kW-DC-STC. PV Array to be installed on south roof of building with an azimuth of 180 degrees.
- "Site #5 – Public Works" solar installation will one (1) electricity grid-connected roof mounted photovoltaic system with a total rated approximate capacity of 11.8 kW-DC-STC. PV Array to be installed on flat roof of -west building with an azimuth of 180 degrees.

5.

In general, the PV Systems will consist of the following:

- a. PV modules
- b. PV module support structure
- c. Inverter(s)
- d. System electrical protection
- e. Electrical disconnects
- f. Switchgear
- g. Revenue grade AC metering
- h. Meteorological (MET) stations
- i. Control and monitoring systems
- j. Computer Monitoring for system information installed in main office (Customer to provide internet access)
- k. Outdoor rated equipment enclosures
- l. Cables, wires, jumpers, connectors, system grounding and associated trenching and/or boring
- m. Equipment foundations
- n. Lighting Under Canopies (If Needed)
- o. Signage

#### **4.2 Engineering Design Services**

The Contractor shall be responsible for detailed design and operational coordination of all equipment and materials installed for the System. The Contractor shall conform to Industry Standard and Applicable Law. The following design services shall be provided by the Contractor:

A. Civil Engineering design, including the preparation of the following:

- Site Plan
- Geotechnical Report (if required)

B. Structural Engineering Design, including:

- Foundations and other structural concrete
- PV module support structural design
- Structural design calculations, as required

C. Mechanical Systems design, as required.

D. Electrical Systems design, including:

- PV modules
- Inverter
- DC combiners, disconnects, fuses, and wiring
- AC breakers and disconnects
- Revenue metering
- Enclosures, conduit, and wiring
- Communications and control systems as described herein
- All other electrical systems such as lighting

### 4.3 Permits

Contractor shall obtain and shall file on a timely basis any documents required to obtain Applicable Permits except those permits that are the responsibility of the Customer ("Customer Permits"). Customer shall obtain, and shall file on a timely basis, any documents required to obtain all such Customer Permits. ~~Customer shall pay for all taxes, fees, and costs required to obtain all Permits.~~

Applicable Permits include:

- Fire Marshall
- General Construction and Building Permits

Customer Permits include:

- CEQA (Categorical Exemption certified by the Customer is assumed for this project)
- Easements required to complete the work.
- ~~○ All other permits required for construction of the System, except for Applicable Permits~~

### 4.4 Procurement

Contractor shall procure all materials and equipment for the installation of a complete System under this Work Order ~~with the exception of all PV modules and inverters. These items will be procured under Work Order #1 as part of this Agreement.~~

### 4.5 Construction Services

The following services shall be provided by the Contractor as part of the general construction activities:

- A. Civil construction, including surveying, clearing, grubbing, tree removal, excavation, trenching, backfill, and fencing,
- B. Structural construction, including foundations, concrete work, grouting, anchors, erection of PV racks, shade structures, and other support structures
- C. Mechanical construction (if required)
- D. Electrical construction, including PV modules, combiners, inverter, disconnects, wiring, breakers, metering, control and monitoring systems, telecom systems, and lighting systems as required for a complete System
- E. Safety services, including on-site safety equipment, personnel training, and safety monitoring of all construction activities
- F. Support services, including Contractor's trailers, shaded worker rest areas, restroom facilities, and security
- G. Coordination with Customer's staff for site access, laydown, and storage with minimal interference with site operations
- H. Operator training services
- I. Restoration of landscape and hardscape to pre-construction condition, or in accordance with new design, as needed



- J. Construction inspections, material verification, and testing as required
- K. Lawful Disposal of all refuse, spoils, chemicals, and waste materials associated with construction activities
- L. Testing and start-up services for all electrical and control systems. Testing shall include all pre-operational functional tests, equipment calibration, and insulation resistance tests. All necessary test equipment and instrumentation will be provided.
- M. All miscellaneous ~~consumable~~ materials required to erect the System
- N. Coordination with Customer's Staff and Representatives, including Inspector of Record ("IOR") for all inspections and submittals.

#### 4.6 Documentation Submittals

Contractor will prepare and submit all designs, drawings, and specifications to the Customer for review and approval. Customer shall review the documents and provide any comments in writing to Contractor within ten (10) Business Days after receipt of such documents (the "Design Review Period"). Contractor will proceed with the assumption that Customer has approved the documents if no comments are received within ten (10) Business Days. ~~Any comments provided by Customer after ten (10) Business Days that result in re-work shall constitute a Change Order.~~ Customer shall consolidate all comments for each review cycle such that Contractor does not receive comments in separate submittals at different times from various Customer personnel. ~~Any re-work as a result of receiving comments in separate submittals shall constitute a Change Order.~~ To the extent consistent with Applicable Law and Industry Standards, Contractor will incorporate Customer comments into the final designs, drawings, and specifications (the "Construction Documents"), as applicable. Contractor shall submit such revised documents to Customer for additional Design Review Periods, which shall not extend longer than ten (10) Business Days, until Customer approves such revised documents subject to the terms of the Agreement.

The following list is not all inclusive but defines the Contract Documents that are required to be submitted by the Contractor for review and approval by the Customer.

- A. Facility drawing with Project improvements drawn to scale (Site Plan)
- B. Electrical design package including:
  - Single Line AC and DC diagrams
  - Communication, Monitoring and Control schematics
  - Electrical Circuit and Conduit schedule
  - Electrical Equipment installation plans
  - Lighting plan, if required
  - Placard schedule
  - Equipment data sheets
- C. Structural Calculations package including:
  - Ground structural elements for ground-mount systems
  - Equipment foundations and enclosures
- D. System energy production calculations and software model based on Site Plan

- E. Approved Applicable Permits
- F. Geotechnical report including Project applicable soil properties (if required)
- G. Project Schedule
- H. Environment, Health and Safety Plan
- I. System Manual with specifications, startup, commissioning and testing procedures for relevant equipment.
- J. System Operation and Maintenance manual (O&M plan)
- K. As-Built (Record Drawings)
- L. Professional Engineer Wet Stamps and signatures on final design documents:
  - Electrical Design package
  - Structural Calculation package
- M. Interconnection Agreement with Local Utility
- N. Documentation for Rate Change with Local Utility

#### 4.7 Workmanship Warranty

Commencing on the Final Completion Date and for a period of one (1) year thereafter, Contractor warrants that the Systems will be free from defects ("Workmanship Warranty"). If a System has a defect, and Customer provides written notification of said defect within the one (1) year workmanship warranty period, Contractor will, at its option, either repair or replace the portion of the System that is defective at no cost to Customer within forty-five (45) days of notification. The Workmanship Warranty shall not apply to the extent such defect is caused by any of the following:

- (a) Alterations or repairs made to the supporting structure of any System or associated wiring and parts without Contractor's prior written approval;
- (b) Failure of a System to perform caused by legislative, administrative, or executive regulation, order or requisition of the government, local utility or public utilities commission, or any state, provincial or municipal government or official;
- ~~(e) Use of a System beyond the scope contemplated in its operating manuals or technical specifications;~~
- ~~(d)~~(c) Damage to a System not caused directly or indirectly by Contractor or its subcontractors under any agreement between Contractor and Customer;
- ~~(e)~~(d) Force Majeure Events;
- ~~(f)~~(e) A change in usage of that portion of the Site on which the System is located which may affect building or site permits and related requirements, without the written approval of Contractor, or a change in ownership of building or property and the new owner has not signed an assumption agreement of the terms and conditions herein,
- ~~(g)~~(f) Any defect of deficiency to the extent the same results from a specific written direction from the Customer if, prior to implementing such written direction, Contractor advised Customer that Customer's written direction would so affect the warranty provided by Contractor hereunder.



#### 4.8 Manufacturer Warranties

Contractor shall procure and assign to Customer warranties from the equipment manufacturers (the "Manufacturer Warranty") to the extent said equipment is purchased and provided for the Solar Plant by Contractor. All solar energy equipment for electricity generation (PV modules, inverters) shall have a minimum ten (10) year manufacturer performance warranty to protect against degradation of electrical generation output of more than 15% from their originally rated electrical output. Except as expressly provided in this Agreement, Contractor's obligations under this warranty do not apply to any defects whatsoever in the equipment purchased and provided by Contractor for the Solar Plant, provided Contractor has procured and assigned to Customer the Manufacturer Warranty of such equipment. Contractor makes no representation or warranty, and Customer shall seek no recourse from Contractor, regarding the Manufacturer Warranties, ~~including, without limitation, any degradation in electrical generation output of the PV modules.~~ Contractor shall require that Manufacturers provide the following warranties:

- a. Inverters shall have a twenty (20) year standard Manufacturer Warranty.
- b. PV modules shall have the following standard Manufacturer Warranties:
  - i. Five (5) year material and workmanship warranty;
  - ii. Ten (10) year power output warranty at ninety percent (90%) of rated nominal power output; and
  - iii. Twenty-five (25) year power output warranty at eighty percent (80%) of rated nominal power output.
- c. Meters shall have a one (1) year standard Manufacturer Warranty.

#### 4.9 Performance Test

The Contractor is responsible for conducting the Performance Test of the complete System, including PV modules, inverters, metering, controls, and accessories. The Contractor shall provide all test equipment and special instrumentation required for the tests.

The Contractor shall operate the System during the Performance Tests. Customer shall be entitled to be present during any Performance Test.

Upon completion of any Performance Test, Contractor shall submit promptly the relevant certificate containing the results of such Performance Test to Customer's Representative as soon as practicable, but in any event within five (5) Business Days. Customer's Representative shall promptly review such certificate and the results set forth therein and shall determine whether the Performance Test has been successfully completed within five (5) Business Days following receipt of such certificate.

If the System fails to satisfy any Performance Test, ~~Customer's Representative shall execute the certificate including the Performance Test that failed.~~ Contractor shall repeat the Performance Test one or several times before Final Completion of the System. Contractor shall take all corrective



actions so that the System may successfully complete the Performance Tests, without prejudice to Customer's rights and remedies in accordance with this Agreement.

The Performance Test is the ability of the System to demonstrate Actual System Power Output is consistent with the Nameplate Rated Capacity during the test period commencing immediately after Substantial Completion and permission has been provided by the local utility.

The following additional definitions apply to the System Performance Test:

- "Actual System Power Output" means the AC kilowatt hour output of the System measured at the revenue meter at the Site adjusted for Standard Test Conditions, ancillary loads, System losses, and ambient conditions.
- "Nameplate Rated Capacity" means the total Nameplate Rated Capacity (kW-DC-STC) as calculated by adding the PV module nameplate ratings at Standard Test Conditions (STC) for all of the PV modules in the System.
- "Standard Test Conditions (STC)" are defined as the following:
  - Irradiance in the plane of the array (average module tilt angle and orientation of the System) of 1,000 W/m<sup>2</sup>.
  - 25°C module cell operating temperature as measured at the back surface or cell of the module.
  - Air Mass (AM) of 1.5.
- "Test Period" means a qualified period of time following Substantial Completion during which the Actual System Power Output and ambient conditions are measured and recorded. The Test Period shall consist of at least five (5) ~~valid~~ days. ~~A day is considered valid if a wide distribution of data is collected over the range of insolation values from 200 to 1000 W/m<sup>2</sup>. Each day shall have an adequate number (320 minimum) of valid data points in both the morning and afternoon.~~
- ~~A successful test will demonstrate that the Actual System Power Output equals or exceeds ninety-five percent (95%) of the Nameplate Rated Capacity. If the Actual System Power Output does not meet this criteria, the Contractor shall investigate the System for defects, make any necessary corrections, and retest the System to achieve a successful Performance Test.~~

Actual System Power Output generated has been estimated based on the actual utility rates & billing structure at this time. Minor changes or modifications to the utility rate structure may positively or negatively affect financial benefits. Utility billing structure is out of Contractor's control.

#### 4.10 Project Closeout

- a. Contractor shall deliver to Customer an owner's manual, operator's manual and as-built drawings for the System no later than ninety (90) days after Substantial Completion occurs. For the avoidance of doubt, the as-built drawings shall be included in the punchlist items.

- b. At Customer's request, Contractor shall provide Customer's personnel with no less than one (1) full Day of detailed and complete on-site operation training with respect to the System. Customer's personnel shall have the qualifications necessary to perform their activities and will be hired by Customer or its Affiliate. Contractor shall provide Customer reasonable assistance in soliciting and obtaining any subsidies, rebates or incentives that may be available from any Governmental Authority pursuant to or in connection with the purchase or operation of the System or otherwise. Contractor makes no representation nor warranty to Customer as to the availability or amount of any such subsidies, rebates or incentives.

#### 4.11 Customer Responsibilities

Contractor shall not be obligated to perform any work or activity beyond the scope of the work and its other obligations under this Agreement. In particular, the following shall not be included in the Scope of Work and therefore shall be performed by Customer:

- a. The Customer shall furnish, to the extent not already provided to Contractor: (a) all surveys or other information in Customer's possession that describe the physical characteristics, legal limitations, and utility locations in and around the Site; (b) any prior environmental review documentation and all known information in Customer's possession concerning subsurface conditions, including without limitation the existence of any known Hazardous Materials, in or around the general area of the Site where the Work will be performed; (c) all relevant information in Customer's possession, including any structural or other relevant as-built drawings and photographs, of prior construction undertaken in the general area where the Work will be performed; (d) title reports less than one (1) year in age; and (e) any and all easements, zoning variances, planning approvals, including any resolution of any environmental impact issues, and any other legal authorization regarding utilization of the Site essential to the execution of the Work.
- b. Customer shall provide continuous access to the Site to perform the Work according to the Construction Schedule;
- c. Customer shall make water source available at the Site for construction water;
- d. Customer shall obtain the Customer Permits;
- ~~e. Customer shall be responsible for hiring and paying for a Division of State Architect certified Inspector of Record;~~
- ~~f.e.~~ Customer shall select its own personnel so that it is present at the date of Substantial Completion;
- ~~— Customer shall pay for and provide communication access for system monitoring;~~
- ~~g. Customer shall pay for all taxes, fees, and costs required to obtain all Permits;~~
- ~~g.~~ Customer shall provide access to, and allow Contractor the use of, water lines, sewer lines, storm water lines, power lines, fuel lines, ~~telephone and communication lines,~~ pipelines, and drainage ditches; ~~and~~



~~Customer shall be responsible for operating the System from and after Substantial Completion.~~

~~f.~~

#### 4.12 General Clarifications & Qualifications to Scope of Work

- a. Work Order Price assumes one (1) review cycle by Customer of the equipment layout drawings, one (1) review cycle by Customer of final design documentation, and one (1) final set of as-built drawings delivered to Customer in electronic format and hard copy.
- b. Schedule and Work Order Price assumes Customer will review and provide comments on drawings within 10 business days.
- c. Work Order Price is based on code approved conduit and wiring methods.
- d. Work Order Price assumes that the Contractor will not encounter any Rock during trenching and excavating, that prevents trenching and excavating without removal of such Rock which results in a 5% or more increase to the Construction Schedule.
- e. Work Order Price assumes that the Contractor will not encounter any ground water during trenching and excavating which requires dewatering work that increases the Contract Schedule by 5% or more.
- f. Wiring from PV panels to combiners is USE cable and not placed in raceways.
- g. Grounding as required by NEC.
- h. AC and DC wiring to be aluminum where possible.
- i. Work Order Price is based on the COMEX and The Steel Index (TSI) material pricing as of the Effective Date. ~~Increases to COMEX and The Steel Index (TSI) may result in an increase in the Contract Price.~~
- ~~j. Work Order Price is based on site parking available to all Contractor and Subcontractor employees.~~
- ~~k.j.~~ k.j. Work Order Price is based on straight time Monday to Friday (no holidays) work week, 40 hours per week between 6:00 AM and 6:00 PM.
- ~~k.~~ k. Work Order Price and schedule assumes that Customer will receive all necessary easements within 45 business days after the Effective Date.
- ~~l. Work Order Scope assumes there are no existing encumbrances or easements on the site.~~
- ~~l. Work Order Price and Schedule assumes that the Customer has closed all previous construction projects with the Division of State Architecture that may cause a delay in the approval of this Project.~~

#### 4.13 Solar Scope of Work Exclusions

The Solar Work excludes the following:

- a. Plumbing, Fire Sprinklers, Fire and Life Safety equipment and its components.



- b. Warranty, repair and/or upgrade of the existing mechanical, plumbing and electrical systems, air distribution and control systems found in disrepair or not compliant to code. Any and all systems and structure defects repairs/replacements as a result of pre-existing condition.
- c. Upgrade of the existing site electrical service capacity.
- d. Any upgrades to existing parking lots, sidewalks, etc. unless otherwise included in scope.
- e. ~~W~~Drill hole casing, water mitigation, or Rock drilling, as specified in Section 4.12.
- ~~f.~~ Hazardous material abatement and/or removal of any kind.
- ~~g.~~ Plan Check Fees.
- ~~h.f.~~ Inspector of Record fees.
- ~~i.g.~~ Storm Water Pollution Prevention Plan (SWPPP).
- ~~j.h.~~ Americans with Disabilities Act (ADA) improvements including curb cutting, truncated dome installation, repainting, restriping, or installation of new signs other than what is required for installation of the PV systems or otherwise provided in the scope of work.
- ~~k.~~ California Solar Initiative (CSI) Incentive application fees.
- ~~l.~~ Tree Mitigation Costs.
- ~~m.~~ String level monitoring.
- ~~n.~~ Relocation and modification of underground utilities.
- ~~o.i.~~ Premium time (except for utility tie-in).
- ~~p.j.~~ Field painting – lot striping, conduit painting, etc. above and beyond any items altered during construction or otherwise specified in the scope of work.
- ~~q.k.~~ Asphalt (fog, coating, and striping)
- ~~r.l.~~ Operation and Maintenance services.
- ~~—~~ Other Fees (plan check, utility permits, parking, etc.).
- ~~s.~~ Any items not specified in this scope.

The Contractor will notify the Customer of any excluded work or repairs which are necessary to the function of the Work as soon as the Contractor becomes aware of such, and before proceeding with related work.

#### 4.14 Site Plans

##### Site #1 PV Layout – Community Center/City Hall



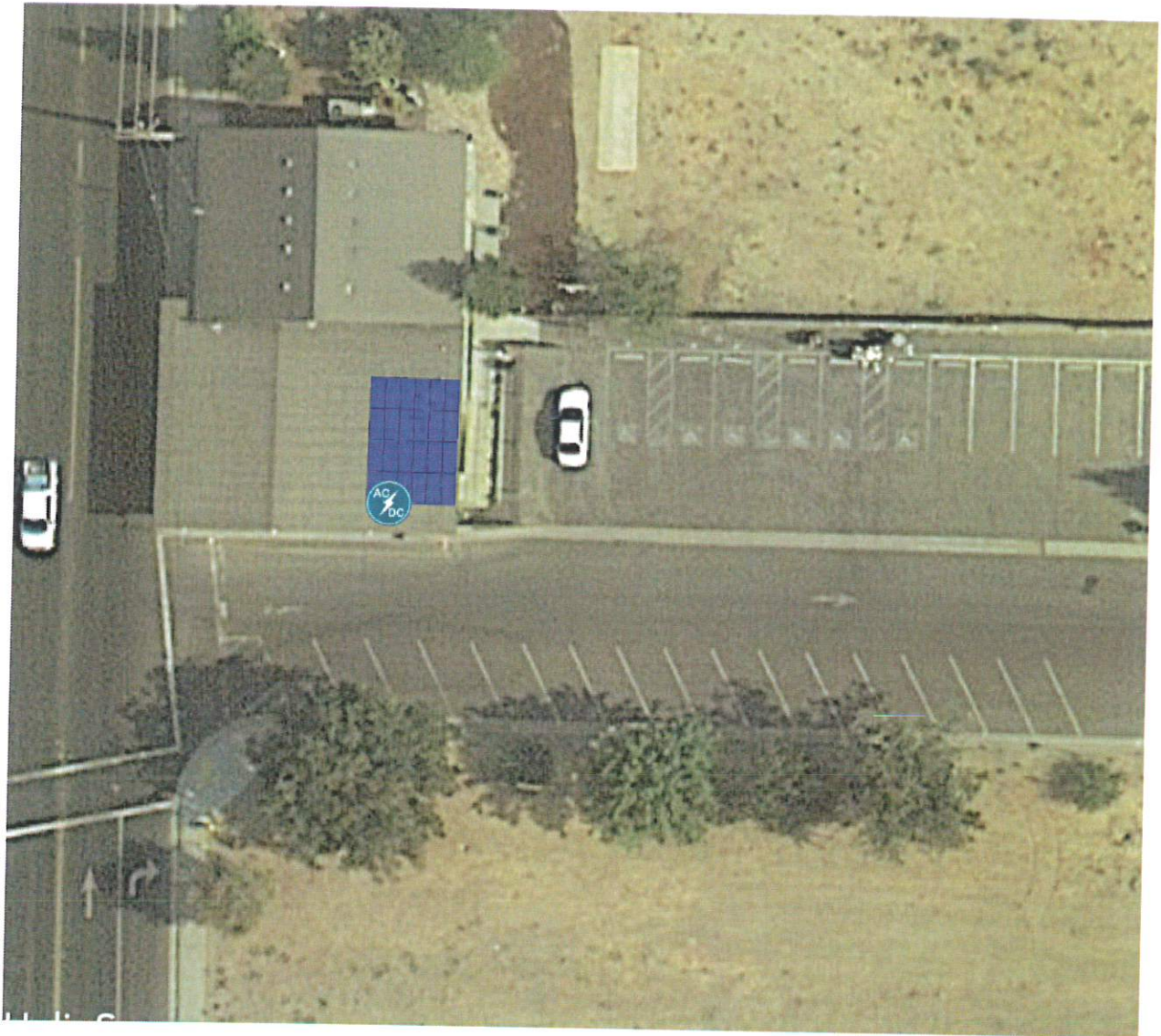


## Site #2 PV Layout – Police Department

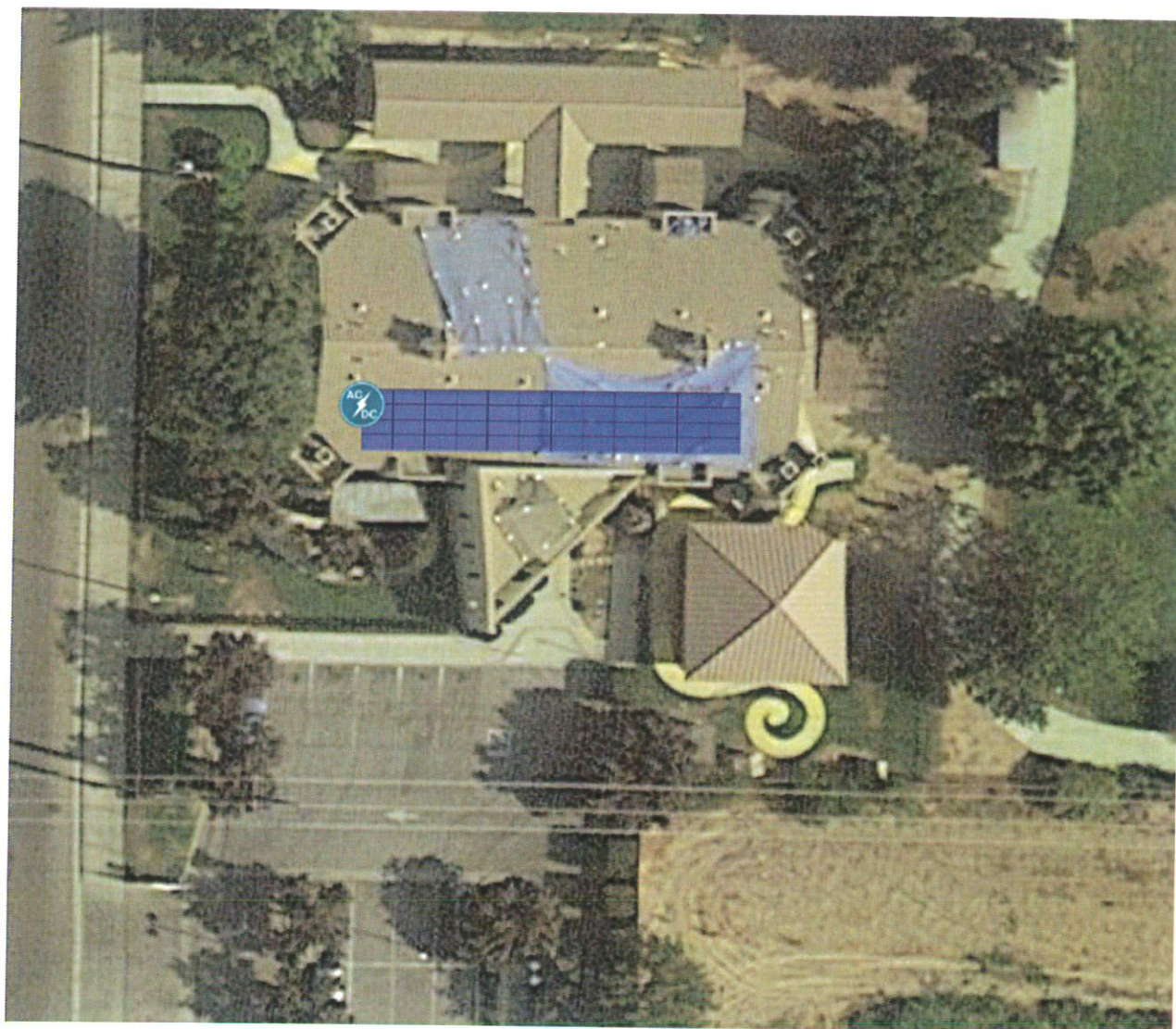




### Site #3 PV Layout – Senior Center



#### Site #4 PV Layout – Academy of Excellence





## Site #5 PV Layout – Public Works





## 5.0 PROPOSED PROJECT INSTALLATION TIME LINE & COORDINATION

This project will require extensive scheduling and coordination to ensure the efficient implementation of the Work shown herein. Contractor will provide retrofit services in Phases. Each construction Phase will include a complete PV and HVAC system retrofit at a given building or site.

The Customer shall provide safe access to the buildings and provide the necessary security for staff safety during the rigging and equipment handling process. During the retrofit services, areas of the building designated by Contractor may need to be vacated to ensure the safety of the occupants. It will be the Customer's responsibility to temporarily relocate the occupants to other areas or buildings and/or, if needed, provide temporary facilities for the duration of the given phase of each project.

In order to minimize the disruption of Customer's operation, coordination and scheduling items shall include but are not limited to multiple trips to the job site, multiple equipment riggings, temporary relocation of the tenants, etc. Contractor will work with the Customer to develop a detailed project schedule. Once the project schedule is confirmed, Contractor will provide the Customer with a Schedule of Values and a progress payment schedule, which corresponds to the project schedule. The installation of mechanical systems will start ~~upon executing this Agreement and ordering and obtaining all necessary equipment, parts and materials needed for installation only after Customer/contractor has secured funding for the project that is acceptable to Ceustomer (the Funding Date).~~ It is anticipated the construction phase of this project would be performed in 2019 - 2020.

Customer and its representatives shall coordinate all the project activities with Contractor's Project Manager only.

## 6.0 WORK ORDER MILESTONES

Estimated Work Order Milestone Schedule	
Milestone	Milestone Date
Notice to Proceed	TBD
Construction Mobilization	Notice to Proceed + 8 weeks
Substantial Completion	Notice to Proceed + 40 weeks
Final Completion	Notice to Proceed + 52 weeks

~~Contractor shall be given a day for day slip in the Work Order Milestone Schedule for a delay in the Funding Date beyond the date shown above.~~

## **7.0 FIXED PRICE AMOUNT**

The fixed price for this Work Order #2 (“Work Order Price”) is **\$492,554.80**

## **8.0 PROGRESS PAYMENT SCHEDULE**

The Customer shall pay to Contractor the progress payments set forth below when Contractor has completed the Work associated with such payment. Contractor must submit documentation at the time of invoicing for related progress payments.

<b>Progress Payments Schedule</b>	
<b>Payment Milestone</b>	<b>% of Total Task Order Price</b>
Notice to Proceed	10%
Progress Payments	75%
Substantial Completion	10%
Final Completion	5%

## **9.0 PERFORMANCE AND PAYMENT BONDS**

Upon the written request of the Customer prior to commencement of work, Contractor shall provide ~~evidence of~~ the following bonds to Customer:

a. Performance Bond. A bond issued by a corporate surety authorized to issue surety insurance in California, and reasonably acceptable to Customer, in an amount equal to one-hundred percent (100%) of this Work Order Price payable under the Agreement securing the faithful performance of this Work Order; and

b. Payment Bond. A bond issued by a corporate surety authorized to issue surety insurance in California, and reasonably acceptable to Customer, in an amount equal to one-hundred percent (100%) of this Work Order Price payable under the Agreement securing the payment of all claims for the performance of labor or services on, or the furnishing of materials for, the performance of this Work Order.

The Performance and Payment Bonds shall guarantee timely completion of the Work in accordance with this Work Order and shall cover the installation period. The warranty period shall extend one (1) year following Final Completion.

## **AGREEMENT FOR VOLUNTEER PLACEMENT OF IMPOUNDED ANIMALS**

This Agreement is made November \_\_\_\_, 2019, by and between the City of Parlier ("City") and Bambi's Army Rescue, a California Non-Profit Corporation ("Corporation") to govern the terms of the City's granting of permission to Corporation it's agents, employees and volunteers to enter the dog pound maintained by the City of Parlier for the purpose of placement of unclaimed or abandoned dogs.

1. Agreement to Provide Volunteer Dog Placement Services. By statute or ordinance, the City of Parlier maintains an animal control operation through employees who, among other things, impound dogs and other animals in the pound maintained by the City for that purpose and will euthanize or destroy dogs in accordance with ordinance or statute when the dog is unclaimed for a period specified by law, has been abandoned, is injured or is a vicious animal. To decrease the number of dogs euthanized, Corporation has requested, and City has agreed to provide Corporation, it's agents, employees and volunteers with access to the pound maintained by the City, to retrieve and place dogs in no kill shelters and/or for adoption as pets. Corporation is volunteering its services to place dogs impounded by the City with different, no kill shelters or for adoption and the City accepts those volunteer services.

2. No Employment or Other Relationship or Compensation. Corporation will perform the services referred to herein, free of charge and does not occupy the status of employee of the City or as an independent contractor and serves strictly as a volunteer in an effort to place abandoned or unclaimed dogs with no kill shelters or for adoption.

3. Volunteer Liability Waiver and Assumption of Risk. Corporation has been provided with keys to the pound maintained by the City of Parlier for the purpose of placing unclaimed or abandoned dogs with other shelters or up for adoption and recognizes and assumes the risk of danger of or the possibility of injury to itself, its agents and employees or volunteers in providing services with respect to removal of dogs from the pound for placement with a different no kill shelter or for adoption in that dogs may be vicious, diseased, or otherwise create a foreseeable risk of injury to Corporation and any other person providing the same services Corporation provides on a volunteer basis and Corporation and every person acting on its behalf or jointly with it with respect to the removal of dogs from the pound for placement with a no kill shelter or for adoption fully accept all risk of injury to their person or property arising from contact with any dog, whether maintained at the City pound, released to Corporation or being transported by Corporation to an different location. In consideration of being permitted to enter the pound, retrieve dogs for placement with a no kill shelter or for adoption to advance Corporation's desire to reduce the number of euthanized animals on its own behalf, and on behalf of every person acting jointly or for Corporation in providing such services, Corporation, it's, successors, assigns and agents hereby release, waive and discharge the City of Parlier, elected or appointed officials, officers, agents, volunteers and employees from any and all liability either to Corporation, or to any person acting for or with Corporation in removing or transporting any dog to a no kill



shelter or for adoption from any loss or damages or any claim or demand on account of personal injury or property damage because of Corporation or such other person coming into contact with any dog, the City pound, or from any cause whatsoever, whether caused by the negligence of the City or its agents, officers or appointed officials or volunteers or employees arising out of the participation of Corporation , or any person acting for or on behalf of Corporation , or jointly with it, if any, in any task, undertaking or activity performed by Corporation as a volunteer.

4. Protocol for Removal of Animals. Corporation shall, at all times, pre-notify either the Police Department or City Administration of any intention to remove any animal or dog from the City pound for relocation to a no kill shelter or for adoption and will, at all times, maintain to the best of its ability the security of the pound. No dog or other animal shall be removed from the pound by Corporation unless Corporation has located a no kill shelter that will accept the animal, or a person or persons who wish to adopt the animal. No dog or other animal shall be removed from the pound without the City Police Department or Administration being notified of and consenting to such removal, and the Police Department or Administration shall be fully informed by Corporation of the location to which any animal or dog is being transported and no dog shall be removed from the pound until after a period prescribed by the Police Department has passed following the dog's impoundment so that the owner has an opportunity to reclaim the dog before it is transported to any other location. No vicious or injured dog shall be removed from the pound by Corporation and Corporation agrees to conform to the determinations of the City Police Department relative to whether a dog is vicious or injured. Corporation shall adhere to directives and policies of the Police Department concerning entry into the pound, signing in and out upon entry into the pound and such other policies and directives as implemented by the Chief of Police relating to operations of the pound and activities of the Corporation relating to the removal of dogs from the pound.

5. No Representations, or Inducements. Corporation has read this Agreement and voluntarily agrees to execute this Agreement which contains a Release and Waiver of Liability and further agrees that no oral representations, statement or inducements have been made to Corporation in connection with the execution of this Agreement and this Agreement shall constitute the full and complete agreement made and entered into by the parties relating to the subject matter thereof.

Date: \_\_\_\_\_, 2019

Bambi's Army Rescue, a Non-Profit Corporation

By \_\_\_\_\_

Michelle Lopez, President

Date: \_\_\_\_\_, 2019

City of Parlier

By \_\_\_\_\_

Sonia Hall, City Administrator,  
City of Parlier

RESOLUTION NO. 2019-\_\_\_\_\_

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**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PARLIER  
APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AGREEMENT FOR  
VOLUNTEER PLACEMENT OF IMPOUNDED ANIMALS**

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**WHEREAS**, Bambi's Army Rescue, a California non-profit corporation, has offered to volunteer to remove dogs impounded by the City or its Police Department for placement in a no kill shelter and/or for adoption and to eliminate the need to euthanize dogs, the City desires to accept those volunteer services according to the provisions of the attached agreement for volunteer services for placement of impounded animals.

NOW, THEREFORE, be it resolved as follows:

1. The foregoing recitals are true and correct.
2. The City Council approves and authorizes the Mayor to execute Agreement for Volunteer Placement of Impounded Animals attached and incorporated by reference as Exhibit A.

\*\*\*\*\*

The foregoing Resolution was duly approved this \_\_\_\_ day of \_\_\_\_\_, 2019 by the following vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

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Alma Beltran, Mayor, City of Parlier

ATTEST:

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Bertha Augustine, City Clerk, City of Parlier