

## ENERGY SERVICES CONTRACT

This **ENERGY SERVICES CONTRACT** (this "Contract") is made and entered into as of February 21, 2018 (the "Contract Effective Date") by and between **ENGIE Services U.S. Inc.**, a Delaware corporation (formerly known as OpTerra Energy Services, Inc.), with California State Contractor's License Number 995037 ("ENGIE Services U.S."), and **Perris Union High School District**, a public school district organized and existing under California law ("District") and together with ENGIE Services U.S. the "Parties" and each of District and ENGIE Services U.S. a "Party").

### CONTRACT RECITALS

WHEREAS, District owns and operates certain public educational and administrative facilities specifically described in Attachment A (the "Facilities"); and

WHEREAS, District wishes to reduce the Facilities' energy consumption and costs and improve the Facilities' energy quality and reliability; and

WHEREAS, District wishes to use funding available under Proposition 39 - the California Clean Energy Jobs Act (codified at California Public Resources Code Division 16.3), in order to implement energy efficiency upgrades at its Facilities; and

WHEREAS, ENGIE Services U.S. is a full-service energy services company with the technical capabilities to provide services to District including identifying supply-side and demand-side energy conservation measures ("ECMs"), engineering, procurement, construction management, installation, construction and training; and

WHEREAS, District published a Request for Qualifications ("RFQ") to retain the services of a qualified provider of energy services in connection with preparing an Energy Expenditure Plan for submittal to the California Energy Commission ("CEC") and for installation of energy efficiency upgrades; and

WHEREAS, after evaluating the responses to the RFQ, District selected OpTerra Energy Services (predecessor to ENGIE Services U.S.) to enter into that certain Agreement for Energy-Related Professional Services, dated as of 18 March 2015 (the "Energy Planning Contract"); and

WHEREAS, pursuant to the Energy Planning Contract, OpTerra Energy Services performed an integrated energy assessment and presented District with recommendations (the "Recommendations") for the implementation of certain ECMs; and

WHEREAS, District accepted the Recommendations provided by OpTerra Energy Services, and on November 18, 2015 entered into the first of several energy services contracts contemplated in the Energy Planning Contract ("First Energy Services Contract") to implement the recommended ECMs on selected District sites; and

WHEREAS, ENGIE Services U.S., as successor to OpTerra Energy Services, and District now desire to enter into this Contract to implement recommended ECMs on the site of the California Military Institute ("CMI"); and

WHEREAS, District may enter into contracts for projects financed by Proposition 39 funds and related financing, provided that Proposition 39 requirements, as codified in the Public Resources Code, the California Energy Commission Guidelines and other applicable regulations are met; and

WHEREAS, District made the determination at a regularly scheduled Board meeting on February \_\_, 2018 that this Contract complies with Public Resources Code § 26206 et seq. in that the anticipated cost to District to implement the recommended ECMs is projected to be less than the anticipated energy costs to District would have been in the absence of the recommended ECMs; and

WHEREAS, District has determined that entering into this Contract to implement the ECM recommendations is in the best interests of District; and

WHEREAS, at the above-referenced meeting, District's governing board approved this Contract and authorized its execution.

NOW, THEREFORE, District and ENGIE Services U.S. hereby agree as follows:

**ARTICLE 1. DEFINITIONS**

For purposes of this Contract and its Attachments, defined terms will have the following meanings:

**“Abnormally Severe Weather Conditions”** means typhoons, hurricanes, tornadoes, lightning storms and other climatic and weather conditions that are abnormally severe for the period of time when, and the area where, such storms or conditions occur, in each case occurring at a property, the access roads to a property, or any other location where Work is then being performed. The term “Abnormally Severe Weather Conditions” specifically includes rain, snow or sleet in excess of one hundred fifty percent (150%) of the median level over the preceding ten (10) year period for the local geographic area and time of year in which such rain, snow or sleet accumulates.

**“Affiliate”** means any Person that directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Person specified. For purposes of this definition, control of a Person means the power, direct or indirect, to direct or cause the direction of the management and policies of such Person whether by contract or otherwise; ownership of fifty percent (50%) or more of the voting securities of another Person creates a rebuttable presumption that such Person controls such other Person.

**“Applicable Law”** means any statute, law, treaty, building code, rule, regulation, ordinance, code, enactment, injunction, writ, order, decision, authorization, judgment, decree, protocol, procedure or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, as may be in effect at the time the Work is undertaken.

**“Applicable Permits”** means all permits and approvals required to be issued by any Governmental Authority in connection with the building, installation and start-up of the Work as of the Contract Effective Date.

**“Application for Payment”** means a monthly progress payment as described in Section 8.01 or an invoice for materials stored off-site as described in Section 8.02.

**“Arbitral Panel”** is defined in Section 17.04(ii).

**“Arbitration Rules”** is defined in Section 17.04(ii).

**“Attachment”** means the following attachments to this Contract, each of which is an “Attachment:”

Attachment A	District's Facilities and Existing Equipment
Attachment B	Scope of Work
Attachment C	Lighting Scope of Work
Attachment D	Project Schedule
Attachment E	Estimated Payment Schedule
Attachment F	Certifications

**“Business Day”** means any calendar day, excluding any District scheduled holiday, on which the District is open for business.

**“CEQA”** means the California Environmental Quality Act, codified at California Public Resource Code § 21000 *et seq.*, and the applicable state and local guidelines promulgated thereunder.

**“Certificate of Final Completion”** means the certificate issued by ENGIE Services U.S. to District, in accordance with Section 6.03. A Certificate of Final Completion may be executed for an individual subcontract, a specific building, a portion of the Work, or the entire Work.

**“Certificate of Substantial Completion”** means the certificate issued by ENGIE Services U.S. to District, in accordance with Section 6.02. A Certificate of Substantial Completion may be executed for an individual subcontract, a specific building, a portion of the Work, or the entire Work.

**“Change”** means any addition to, deletion from, suspension of, or other modification to the quality, function, or intent of the Work.

**“Change in Law”** means any of the following events or circumstances occurring after the Contract Effective Date:

- (i) an amendment, modification, interpretation, construction, enforcement standard, supplement or other change in or

repeal of an existing Applicable Law; or (ii) an enactment or making of a new Applicable Law (excluding a change in any income or franchise tax law, worker's compensation, payroll or withholding tax law).

**"Change Order"** means a written document, signed by both ENGIE Services U.S. and District, authorizing ENGIE Services U.S. to perform a Change. The Change Order modifies the Scope of Work and should identify: (i) the applicable Change; (ii) any additional compensation to be paid to ENGIE Services U.S. to perform such Change; and (iii) any extension of time to complete the Project.

**"Construction"** means any and all Work to be performed that involves construction, alteration, repair, installation or removal of equipment, addition to, subtraction from, improving, moving, wrecking or demolishing any building, parking facility, excavation, or other structure or improvement, or any part thereof.

**"Construction Documents"** means the final designs, drawings, specifications and submittals that are submitted to DSA and used for Construction, and any Change Orders affecting those documents, that describe the technical requirements for the installation of all the materials and equipment pursuant to this Contract.

**"Contract"** is defined in the Preamble, and includes all Attachments hereto (all of which are incorporated herein by this reference), as well as all Change Orders, amendments, restatements, supplements and other modifications hereto.

**"Contract Amount"** means Three Hundred Sixty-One Thousand Eight Hundred Seventy-Four Dollars (\$361,874.00).

**"Contract Bonds"** is defined in Section 11.04.

**"Contract Effective Date"** is defined in the Preamble.

**"Delay"** means any circumstances involving delay, disruption, hindrance or interference affecting the time of performance of the Work.

**"Dispute"** is defined in Section 17.02.

**"District"** is defined in the Preamble.

**"District Persons"** means District, its agents, employees, subcontractors, architects, general contractors, lease/leaseback contractors or other Persons acting on behalf of District or for whom District is responsible.

**"DOE Guidelines"** is defined in Section 12.01.

**"DSA"** means the California Division of State Architect.

**"ECM"** is defined in the Recitals.

**"EMS"** means an energy management system.

**"Energy Efficiency Upgrades"** are those improvements to existing District systems, as described in the Recommendations of the Energy Planning Contract, for the purpose of maximizing the energy efficiency of District's current systems. Specific Energy Efficiency Upgrades are more particularly described in Attachment B.

**"Energy Usage Data"** is defined in Section 2.06.

**"ENGIE Services U.S."** is defined in the Preamble.

**"ENGIE Services U.S. Warranty"** is defined in Section 9.01.

**"Event of Default"** is defined in ARTICLE 14.

**"Excusable Event"** means an act, event, occurrence, condition or cause which negatively affects the project schedule or the Work and which is beyond the control of ENGIE Services U.S., including, but not limited to, the following: (i) any failure to act by the District (where the District was obligated to act under this Contract), or other Delay caused by any District Person; (ii) the failure of District to obtain, or delay in obtaining, any Applicable Permit, or approval of a Governmental Authority (including due to failure to make timely inspection) that District was obligated to obtain, or Delays caused by Changes and/or modifications to the Scope of Work required by a Governmental Authority, but not a failure or delay caused by the failure to act of ENGIE Services U.S. (where ENGIE Services U.S. was obligated to act under this Contract); (iii) changes in the design, scope or schedule of the Work required by any Governmental Authority or District Person after commencement of the Work; (iv) undisclosed or unforeseen conditions encountered at the Project Location, including discovery or existence of Hazardous Substances; (v) the failure by District to obtain, or delay in obtaining, approval of any Governmental Authority for design and installation of any portion of the Work, including any further or subsequent approval required with respect to any Change, that District was obligated to obtain, but not a failure or delay caused by the failure to act of ENGIE Services U.S. (where ENGIE Services U.S. was obligated to act under this Contract); (vi) information provided to ENGIE Services U.S. by any District Person or Utility is later found to be inaccurate or incomplete; (vii) any Change

in Law that negatively impacts the Project; (viii) Delay caused by pending arbitration related to this Contract; or (ix) Force Majeure.

“**Facilities**” is defined in the Recitals.

“**Final Completion**” means the stage in the progress of the Work at which the Construction Work as identified in the Scope of Work, or a designated portion thereof, has been completed and commissioned, including completion of all Punch List items, completion of all required training, and delivery to District of the final documentation (as-built drawings, operation and maintenance manuals, warranty documentation and final DSA submittals). Administrative closeout by the DSA is a condition to achieving Final Completion only for those parts of the Project requiring DSA approval, and then only if the failure to obtain DSA administrative closeout is due to the fault of ENGIE Services U.S..

“**Force Majeure**” means acts or events that are beyond the reasonable control of the affected Party and not caused by the negligence or fault of the other Party, which have a detrimental impact on the affected Party’s ability to make reasonable progress in fulfilling its obligations, which impact cannot be mitigated by the affected Party’s exercise of reasonable efforts, including but not limited to any of the following: (i) acts of God; (ii) acts of the public enemy or terrorist acts; (iii) relocation or construction of transmission facilities or the shutdown of such facilities for the purpose of necessary repairs; (iv) work by local Utility that interferes with the Project; (v) flood, earthquake, tornado, storm, fire, explosions, lightning, landslide or similar cataclysmic occurrence; (vi) theft, sabotage, vandalism, riots or civil disobedience; (vii) labor disputes or strikes; (viii) labor or material shortages, delay in manufacturing and deliveries of equipment not caused by ENGIE Services U.S. failing to order equipment on time; (ix) restraint by court order or Governmental Authority (whether valid or invalid); (x) inability to obtain or keep in force any Applicable Permit; (xi) Abnormally Severe Weather Conditions; (xii) any action by a Governmental Authority that prevents or inhibits the Parties from carrying out their respective obligations under this Contract; or (xiii) any Utility power outage at any Facility. Economic hardship shall not constitute an event of Force Majeure under this Contract.

“**Governmental Authority**” means any federal, state, regional, town, county, city, municipal or local government agency, department or regulatory body (including DSA) having jurisdiction under Applicable Law over the matter in question.

“**Greenhouse Gas**” is defined in Section 12.01.

“**Hazardous Substances**” means (i) any hazardous, toxic, or dangerous wastes, substances, chemicals, constituents, contaminants, pollutants, and materials and any other carcinogenic, liquids, corrosive, ignitable, radioactive, reactive, toxic, or otherwise hazardous substances or mixtures (whether solids, liquids, gases) now or at any time subject to regulation, control, remediation, or otherwise addressed under Applicable Laws; (ii) any “hazardous substance” as defined by the Resource, Conservation and Recovery Act of 1976 (42 U.S.C. §6901 *et seq.*), as amended, and regulations promulgated thereunder; (iii) any “hazardous, toxic or dangerous waste, substance or material” specifically defined as such in 42 U.S.C. §9601 *et seq.*), as amended and regulations promulgated thereunder; and (iv) any hazardous, toxic or dangerous waste, substance, or material as defined in any so-called “superfund” or “superlien” law.

“**Incentive Funds**” is defined in Section 8.06.

“**Inspector of Record**” means the project inspector required by the DSA and hired by the District, with notification to ENGIE Services U.S., to inspect and make necessary approvals of the Project.

“**Installation**” means the setting up, construction, and placement of any equipment or materials in the manner it will be operated, in accordance with the Scope of Work and in accordance with all Applicable Laws.

“**Instruments of Service**” is defined in Section 10.01(c).

“**Interest**” means interest calculated at the lesser of (i) the prime rate plus two percent (2%) or (ii) the maximum rate permitted by Applicable Law. The “prime rate” will be the “Prime Rate” of interest per annum for domestic banks as published in The Wall Street Journal in the “Money Rates” section.

“**Losses**” is defined in Section 11.01.

“**NEC**” means the National Electric Code.

“**Notice to Proceed**” is defined in Section 2.05.

“**Party**” and “**Parties**” are defined in the Preamble.

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

“**Project**” means the entirety of Work to be performed by ENGIE Services U.S. pursuant to the Scope of Work, and any Change Orders.

**“Project Location”** means the area or areas where the Project materials and equipment and any other energy related equipment, as described in the Scope of Work, are installed, and the general area where the Work is performed.

**“Project Manager”** is defined in Section 3.06.

**“Proposition 39”** means Proposition 39 (California Clean Energy Employment Act) and California Public Resources Code §§26200 *et seq.*

**“Proposition 39 Guidelines”** means Publication Number CEC-400-2014-022-CMF: the California Clean Energy Jobs Act – 2015 Program Implementation Guidelines promulgated by the California Energy Commission, Energy Efficiency Division, on 10 December 2014.

**“Proposition 39 Handbook”** means the Energy Expenditure Plan Handbook, as promulgated by the Energy Commission and last revised February 2015.

**“Punch List”** means, with respect to any portion of the Work, a list of minor corrective items which need to be completed or corrected in order to complete such portion of the Work, but do not impair District’s ability to beneficially operate and utilize such portion of the Work.

**“Recommendations”** is defined in the Recitals.

**“Retained Items”** is defined in Section 10.02.

**“Retention”** is defined in Section 8.03.

**“Schedule of Values”** is defined in Section 8.01.

**“Scope of Work”** means the Work set forth in Attachments B and C, as modified by any Change Order.

**“Substantial Completion”** means the stage in the progress of the Work at which the Work, or a designated portion thereof, is sufficiently complete, in conformance with the Scope of Work, the Construction Documents and any Change Orders, so that District can take beneficial use thereof.

**“Surety”** means the surety supplying the Contract Bonds, which must be an “admitted surety insurer,” as defined by California Code of Civil Procedure §995.120, authorized to do business in the State of California, and reasonably satisfactory to District.

**“Utility”** means Southern California Edison.

**“Work”** means the Work to be done by ENGIE Services U.S. pursuant to the Scope of Work, subject to any Change Orders.

## **ARTICLE 2. TERM; PERFORMANCE OF THE WORK**

Section 2.01 Contract Term. The term of this Contract commences on the Contract Effective Date and ends on the date of Final Completion, unless terminated earlier as provided in this Contract, and except for provisions that by their terms survive the termination of this Contract.

Section 2.02 Performance of Work.

- (a) The Work consists of Energy Efficiency Upgrades. ENGIE Services U.S. shall furnish to District, for a total price equal to the Contract Amount, the engineering, design, procurement, construction management, installation, construction, commissioning, and training, of the Energy Efficiency Upgrades, as set forth in this Contract.
- (b) The Work to be performed hereunder will be provided in accordance with the terms of this Contract and the applicable standard of care. ENGIE Services U.S. will perform its obligations under this Contract (i) using the degree of skill and care that is required by current, good and sound professional procedures and practices, and (ii) in conformance with (x) generally accepted professional standards prevailing at the time the Work is performed, (y) the covenants, terms and conditions of this Contract, and (z) applicable laws, codes, rules and regulations, including, without limitation, the applicable provisions of the California Building Code, Proposition 39, the Proposition 39 Guidelines and the Proposition 39 Handbook.
- (c) ENGIE Services U.S. represents and warrants that (i) it is fully experienced in projects of the nature and scope of the Work, and (ii) it is properly qualified, licensed and equipped to supply and perform the Work. ENGIE Services U.S. and its employees, agents, and subcontractors, shall secure and maintain in force, without cost to the District, all licenses as are required by law for the furnishing of materials, supplies, or services listed in this Contract.
- (d) The Work completed herein must meet the approval of District, such approval to be granted or denied in accordance with the requirements set forth in this Contract, and will be subject to District’s general right of inspection and supervision to secure the satisfactory completion thereof in accordance with this Contract.

Section 2.03 Scope of Work.

- (a) The Scope of Work may not exceed that set forth in Attachments B and C, except pursuant to a Change Order.
- (b) ENGIE Services U.S. warrants and represents that the Energy Efficiency Upgrades are eligible projects in accordance with Proposition 39 and comply with the Energy Expenditure Plan submitted to the California Energy Commission.
- (c) The Scope of Work includes the submission to the California Energy Commission of sufficient data to comply with the Proposition 39 tracking and reporting requirements.
- (d) The Scope of Work also includes providing to the District, or assisting the District in obtaining, sufficient data required for annual and final reports for Energy Efficiency Upgrades, to the extent required by California Public Resources Code §§26206 and 26240 and the Proposition 39 Guidelines.

Section 2.04 Project Schedule. After the Contract Effective Date, ENGIE Services U.S. will develop, with input from District, a master project schedule using Microsoft Project®. ENGIE Services U.S. will establish a weekly construction meeting at which time the Work of the previous week will be reviewed and a two-week look ahead will be coordinated. The project schedule will be updated monthly.

Section 2.05 Notice to Proceed.

- (a) The following are conditions precedent to District's issuing to ENGIE Services U.S. a written Notice to Proceed ("Notice to Proceed"):
  - (i) District must have closed the financing referenced in Section 2.07;
  - (ii) District must have registered the Project with the California Department of Industrial Relations, using Form PWC-100;
  - (iii) ENGIE Services U.S. must have submitted, and District must have approved, the endorsement(s) of insurance required by this Contract.
  - (iv) ENGIE Services U.S. must have submitted, and District must have approved, the Contract Bonds; and
  - (v) ENGIE Services U.S. must have completed and submitted the following documents, as required by District: Prevailing Wage Certification, Workers' Compensation Certification, Fingerprinting / Criminal Background Investigation Certification, Drug-Free Workplace / Tobacco-Free Environment Certification.
- (b) ENGIE Services U.S. will begin Work within thirty (30) calendar days after ENGIE Services U.S.' receipt of the Notice to Proceed. If District unreasonably fails to issue the Notice to Proceed within twenty (20) calendar days after the financing referenced in Section 2.07 has closed, ENGIE Services U.S. will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount as a result of such delay.

Section 2.06 District's Energy and Operational Records and Data. If ENGIE Services U.S. requests, District will provide to ENGIE Services U.S., within thirty (30) calendar days after such request, District's Energy Usage Data for the twelve (12) months preceding the Contract Effective Date, and will make commercially reasonable efforts to provide the Energy Usage Data for the thirty-six (36) months preceding the Contract Effective Date. "Energy Usage Data" means all of District's records and data, to the extent such documents are in District's possession or readily obtainable, concerning energy usage, energy-related maintenance, and other related costs for the Facilities, and including, without limitation, utility records; occupancy information; descriptions of any past, present or anticipated changes in a building's structure or its heating, cooling, lighting or other systems or energy requirements; descriptions of all energy consuming or saving equipment used in the Facilities; applicable building drawings, specifications, existing AutoCAD files, operation and maintenance manuals, and as-builts; bills and records relating to operation and maintenance of systems and equipment within the Facilities, and a description of operation and management procedures currently utilized. District agrees that ENGIE Services U.S. may rely on the foregoing data as being accurate in all respects. If ENGIE Services U.S. requests, District will also provide to ENGIE Services U.S., within thirty (30) calendar days after such request, any prior energy audits of the Facilities, and copies of District's financial statements and records related to energy usage and operational costs for said time period at the Facilities, to the extent such documents are in District's possession or readily obtainable, and will authorize its agents and employees to provide and freely discuss such records and to make themselves available for consultations and discussions with authorized representatives, employees, subcontractors, and agents of ENGIE Services U.S..

Section 2.07 Finance Contingency. It is acknowledged and agreed by the Parties that the continued existence of this Contract is expressly contingent upon District closing financing that will allow it to make the payments to ENGIE Services U.S. required by this Contract. Upon execution of this Contract, District will have sixty (60) calendar days to close such financing. If the financing is not closed within this time, for any reason, either Party may by written notice to the other Party declare this Contract to be null and void; and the Contract will be null and void as of the other

Party's receipt of this notice. It is acknowledged and agreed that ENGIE Services U.S. will have no obligation to commence performance of the Work unless and until the financing has been closed.

Section 2.08 Proof of Financial Arrangements. Prior to the commencement of the Work, District will provide ENGIE Services U.S. proof that financial arrangements have been made to fulfill District's obligations under this Contract. District's requirement to furnish such proof to ENGIE Services U.S. is a condition precedent to commencement of the Work. After commencement of the Work, ENGIE Services U.S. may request such proof if (i) District fails to make payments to ENGIE Services U.S. as this Contract requires; or (ii) a Change in the Work materially changes the Contract Amount. District will furnish such proof as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After District furnishes any such proof, District will not materially vary such financial arrangements without prior consent of ENGIE Services U.S.. If District fails to provide ENGIE Services U.S. with such proof within ten (10) calendar days of receiving a demand from ENGIE Services U.S., ENGIE Services U.S. will be entitled to suspend its performance under this Contract until such proof is received.

### **ARTICLE 3. PROJECT IMPLEMENTATION - GENERAL**

#### Section 3.01 Registrations, Permits and Approvals.

- (a) District will cooperate fully with and assist ENGIE Services U.S. in obtaining all Applicable Permits required under this Contract.
- (b) District will be responsible for filing notices of categorical exemption in compliance with CEQA, and for obtaining and paying for all other permits or approvals that may be required, including annual operating permits, if any.
- (c) ENGIE Services U.S. is responsible for obtaining (but not paying for) Applicable Permits, including DSA approval.
- (d) District is responsible for all fees associated with plan checks (including expedited plan checks), permits, and inspections.

Section 3.02 Coordination. District and ENGIE Services U.S. shall work together to coordinate their respective activities. ENGIE Services U.S. shall be responsible for ensuring that its subcontractors and suppliers cooperate with District's Project Manager.

Section 3.03 Project Meetings/Status Updates. During the course of the Work, ENGIE Services U.S. will meet with District on a regular basis agreed to by the Parties and outlined in Section 2.04 to report on the general status and progress of the Work.

Section 3.04 Project Location Access. District hereby grants to ENGIE Services U.S., without cost to ENGIE Services U.S., all rights of ingress and egress at the Project Location, necessary for ENGIE Services U.S. to perform the Work and provide all services contemplated by this Contract. ENGIE Services U.S. will provide twenty-four-hour advance notice to District for access to any District Facilities. All persons entering the Project Location, including District and its employees and agents, must follow ENGIE Services U.S.' safety procedures as well as the District's safety and security requirements.

Section 3.05 Consents; Cooperation. Whenever a Party's consent, approval, satisfaction, or determination will be required or permitted under this Contract, and this Contract does not expressly state that the Party may act in its sole discretion, such consent, approval, satisfaction, or determination will not be unreasonably withheld, qualified, conditioned, or delayed, whether or not such a "reasonableness" standard is expressly stated in this Contract. Whenever a Party's cooperation is required for the other Party to carry out its obligations hereunder, each Party agrees that it will act in good faith and reasonably in so cooperating with the other Party or its designated representatives or assignees or subcontractors. Each Party will furnish decisions, information, and approvals required by this Contract in a timely manner so as not to delay the other Party's performance under this Contract.

Section 3.06 Project Manager. District will assign a project manager for the Work performed under this Contract ("Project Manager"). The Project Manager is authorized to give ENGIE Services U.S. instructions and authorizations and issue written approvals and the Notice to Proceed on behalf of District. District reserves the right to designate a different Project Manager at any time. District shall provide forty-eight (48) hours' advance written notice to ENGIE Services U.S. if District designates a different Project Manager. Any task, including, but not limited to, reviews or approvals that District may perform pursuant to this Contract may be performed by the Project Manager, unless that task requires it be approved by the District's Board. The Project Manager will render decisions in a timely manner with regard to any documents submitted by ENGIE Services U.S. and to other requests made by ENGIE Services U.S. in order to avoid delay in the orderly and sequential progress of ENGIE Services U.S.' design services, Project construction and/or equipment installation.

Section 3.07 Independent Contractor. The Parties hereto agree that ENGIE Services U.S., and any agents and employees of ENGIE Services U.S., its subcontractors and/or consultants, are acting in an independent capacity in

the performance of this Contract, and not as public officials, officers, employees, consultants, or agents of District for purposes of conflict of interest laws or any other Applicable Law.

**ARTICLE 4. FINAL DESIGN PHASE – CONSTRUCTION DOCUMENTS / EQUIPMENT PROCUREMENT**

Section 4.01 General Provisions.

- (a) After receipt of the Notice to Proceed, ENGIE Services U.S. will proceed with the preparation of any necessary designs, drawings, and specifications related to the Scope of Work.
- (b) After completion of the design phase and approval of the final plans and specifications by DSA and District, ENGIE Services U.S. will order the equipment identified in the Scope of Work, and any other necessary materials and supplies in order to meet the project schedule. Delay by DSA in approving ENGIE Services U.S.' Construction Documents for reasons attributable to District, such as open A-numbers, that prevent ENGIE Services U.S. from proceeding with Construction, will constitute a valid basis for a Change Order. ENGIE Services U.S. will be compensated, and receive an extension of time for performance, if necessary, to the extent District approves in the relevant Change Order. Delay by DSA in approving ENGIE Services U.S.' Construction Documents for reasons attributable to ENGIE Services U.S., such as failure to timely submit applications or documents to DSA and other Governmental Authorities or failure to meet the applicable standards of such Governmental Authorities, will not constitute a valid basis for a Change Order.
- (c) ENGIE Services U.S. hereby acknowledges that the DSA and the Inspector of Record have authority to approve and/or stop Work if the Work does not comply with the Construction Documents, the requirements of Title 24 of the California Code of Regulations, and Applicable Law. ENGIE Services U.S. shall be liable for any Delay and extra work to the extent caused by its non-compliant Work. ENGIE Services U.S. shall not be liable for Delay to the extent caused by District, the Inspector of Record or the DSA, provided that ENGIE Services U.S.' submittals to DSA and other Governmental Authorities comply with the applicable standards of such Governmental Authorities.
- (d) Within fifteen (15) Business Days after ENGIE Services U.S.' request, District will:
  - (i) furnish all surveys or other information in District's possession that describe the physical characteristics, legal limitations, and utility locations in and around the Project Location;
  - (ii) disclose any prior environmental review documentation and all information in its possession concerning subsurface conditions, including without limitation the existence of any known Hazardous Substances, in or around the general area of the Project Location;
  - (iii) supply ENGIE Services U.S. with all relevant information in District's possession, including any as-built drawings and photographs, of prior construction undertaken at the Project Location;
  - (iv) obtain any and all title reports for those Project Locations reasonably requested by ENGIE Services U.S..
- (e) All information furnished pursuant to this Section 4.01 will be supplied at District's expense, and ENGIE Services U.S. will be entitled to rely upon the accuracy and completeness of all information provided. If ENGIE Services U.S. is adversely affected by any failure to provide, or delay in providing, the information specified in Section 4.01(d), ENGIE Services U.S. will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount.
- (f) If any information disclosed under this Section 4.01 gives rise to a Change to the Work or an Excusable Event, ENGIE Services U.S. will notify District. The Parties will meet and confer with respect to those Changes, and if the Parties agree, ENGIE Services U.S. will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount. If the Parties, however, are unable to agree on whether District's disclosed information gives rise to a Change to the Work or an Excusable Event, those disputes are to be resolved in accordance with Section 16.01.
- (g) ENGIE Services U.S. contemplates that it will not encounter any Hazardous Substances at the Project Location, except what has been disclosed as a pre-existing condition by District prior to the execution of this Contract. However, any disclosure of Hazardous Substances that will affect the performance of the Work after the execution of this Contract will constitute a valid basis for a Change Order.

Section 4.02 Review of Construction Documents. ENGIE Services U.S. will prepare and submit all drawings and specifications to District for review. District will review the documents and provide any comments in writing to ENGIE Services U.S. within fifteen (15) Business Days after receipt of the documents. ENGIE Services U.S. will incorporate appropriate District comments into the applicable drawings and specifications. ENGIE Services U.S. reserves the right to issue the drawings and specifications in phases to allow Construction to be performed in phases.



Section 4.03 Permits. The respective obligations of the Parties in obtaining permits are as specified in Section 3.01. District and ENGIE Services U.S. will agree to any nonmaterial changes to the designs, drawings, and specifications required by any Governmental Authority.

**ARTICLE 5. CONSTRUCTION PHASE**

Section 5.01 General Provisions. Upon securing the requisite Applicable Permits pursuant to Section 3.01, and completion of Construction Documents, ENGIE Services U.S. will commence the construction of the Project in accordance with the Construction Documents. The construction will be performed in accordance with all Applicable Laws and Applicable Permits, by ENGIE Services U.S. and/or one or more licensed subcontractors qualified to perform the Work.

Section 5.02 ENGIE Services U.S.' Responsibilities during Construction Phase.

- (a) As an independent contractor to District, ENGIE Services U.S. will provide, or cause to be provided by its subcontractor(s), all labor, materials, equipment, tools, transportation, and other facilities and services necessary for the proper execution, construction, and completion of the Work. ENGIE Services U.S. will purchase in advance all necessary materials and supplies for the construction of the Project in order to assure the prompt and timely delivery of the completed Work pursuant to the project schedule. ENGIE Services U.S. will also be responsible for all means, methods, techniques, sequences, and procedures required by the Construction Documents.
- (b) ENGIE Services U.S. will make commercially reasonable efforts to coordinate construction activities and perform the Work to minimize disruption to District's operations at the Project Location. ENGIE Services U.S. will provide at least thirty (30) calendar days' written notice to District of any planned power outages that will be necessary for the construction. ENGIE Services U.S. will cooperate with District in scheduling such outages, and District agrees to provide its reasonable approval of any scheduled outage.
- (c) ENGIE Services U.S. will initiate and maintain a safety program in connection with its Construction of the Project. ENGIE Services U.S. will take reasonable precautions for the safety of, and will provide reasonable protection to prevent damage, injury, or loss to: (i) employees of ENGIE Services U.S. and subcontractors performing Work under this Contract; (ii) ENGIE Services U.S.' property and other materials to be incorporated into the Project, under the care, custody, and control of ENGIE Services U.S. or its subcontractors; and (iii) other property at or adjacent to the Project Location not designated for removal, relocation, or replacement during the course of construction. ENGIE Services U.S. will not be responsible for District's employees' safety unless ENGIE Services U.S.' negligence in the performance of its Work is the proximate cause of the employee's injury.
- (d) ENGIE Services U.S. will provide notice to District of scheduled test(s) of installed equipment, if any, and District and/or its designees will have the right to be present at any or all such tests conducted by ENGIE Services U.S., any subcontractor, and/or manufacturers of the equipment.
- (e) Pursuant to California Labor Code §6705, if the Work is a public work involving an estimated expenditure in excess of \$25,000 and includes the excavation of any trench or trenches five (5) feet or more in depth, ENGIE Services U.S. will, in advance of excavation, submit to District and/or a registered civil or structural engineer, employed by District, to whom authority to accept has been delegated, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches, which provisions will be no less effective than the current and applicable CAL-OSHA Construction Safety Orders. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer. No excavation of such trench or trenches may be commenced until this detailed plan has been accepted by District or by the person to whom authority to accept has been delegated by District. Pursuant to California Labor Code §6705, nothing in this Section 5.02(e) imposes tort liability on District or any of its employees.
- (f) Pursuant to California Public Contract Code §7104, if the Work is a public work involving digging trenches or other excavations that extend deeper than four (4) feet below the surface of the ground:
  - (i) ENGIE Services U.S. will promptly, and before the following conditions are disturbed, notify District, in writing, of any:
    - 1) Material that ENGIE Services U.S. believes may be material that is hazardous waste, as defined in California Health and Safety Code §25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law;
    - 2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to ENGIE Services U.S. before the Contract Effective Date;

- 3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.
  - (ii) District will promptly investigate the conditions and, if it finds that the conditions do materially so differ or do involve hazardous waste, and cause a decrease or increase in ENGIE Services U.S.' cost of, or the time required for, performance of any part of the Work will issue a Change Order under the procedures described in this Contract.
  - (iii) If a dispute arises between District and ENGIE Services U.S., whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in ENGIE Services U.S.' cost of, or time required for, performance of any part of the Work, ENGIE Services U.S. will not be excused from any scheduled completion date provided for by this Contract but will proceed with all Work to be performed under this Contract. ENGIE Services U.S. will retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the Parties.
- (g) Pursuant to California Education Code §32244, no lead-based paint, lead plumbing and solders, or other potential sources of lead contamination will be utilized on this Project. District acknowledges and agrees that actions to abate existing risk factors for lead are expressly excluded from the Scope of Work, and ENGIE Services U.S. will have no obligation to take any such abatement action.
- (h) ENGIE Services U.S. shall at all times enforce strict discipline and good order among its employees and the employees of its subcontractors and shall not employ any unfit person or anyone not skilled in work assigned to him or her. Any person in the employ of ENGIE Services U.S. or a subcontractor whom the District may reasonably deem incompetent or unfit shall be dismissed from the Project Location and shall not again be employed at any Project Location without written consent from District.
- (i) ENGIE Services U.S. shall perform, at its own cost and expense and without reimbursement from District, any work necessary to correct errors or omissions which are caused by ENGIE Services U.S.' failure to comply with the Contract requirements and the standard of care required in this Contract.
- (j) No substitutions of material from those specified in Construction Documents shall be made without the prior written approval of the District, which shall not be unreasonably withheld.
- (k) ENGIE Services U.S. shall provide competent supervision of personnel employed on the Project Location, use of equipment, and quality of workmanship.
- (l) Debris shall be removed from the Project Location in a timely manner by ENGIE Services U.S. The Project Location shall be in order at all times when Work is not actually being performed and shall be maintained in a reasonably clean condition.
- (m) ENGIE Services U.S. shall erect and properly maintain at all times, as required by conditions and progress of the Work, all necessary safeguards, signs, barriers, lights, and security persons for protection of workers and the public, and shall post danger signs warning against hazards created by the Work. In an emergency affecting life and safety of life or of Work or of adjoining property, ENGIE Services U.S., without special instruction or authorization from District, is permitted to act at its discretion to prevent such threatened loss or injury.
- (n) ENGIE Services U.S. has examined the Facilities to determine the general condition of the Project Locations and their accessibility for materials, workers and utilities. Notwithstanding the foregoing, should ENGIE Services U.S. discover any latent or undisclosed conditions which will materially affect the performance of the Work hereunder, ENGIE Services U.S. shall immediately inform the Project Manager of such fact in writing and shall not proceed with the affected portion of the Work until written instructions are received from the Project Manager.

Section 5.03 District's Responsibilities during Construction Phase.

- (a) Inspection and acceptance of the Work shall be performed by the Inspector of Record and District's Construction Manager or designee.
- (b) District will use commercially reasonable efforts to provide a temporary staging area for ENGIE Services U.S., or its subcontractors, to use during Construction to store and assemble equipment for completion of the Work, if needed. District will use commercially reasonable efforts to provide sufficient space at the Facilities for the performance of the Work and the storage, installation, and operation of any equipment and materials. ENGIE Services U.S. acknowledges that District has limited security available and ENGIE Services U.S. will take commercially reasonable steps to protect any such equipment and materials from harm, theft and misuse. District will provide access to the Facilities for ENGIE Services U.S. and subcontractors to perform the Work during regular business hours, or such other reasonable hours as may be requested by ENGIE Services U.S. and acceptable to District. District will also either provide a set or sets of keys to ENGIE Services U.S. and its

subcontractors (signed out per District policy) or provide a readily available security escort to unlock and lock doors. District will not unreasonably restrict ENGIE Services U.S.' access to Facilities to make emergency repairs or corrections as ENGIE Services U.S. may determine are needed.

- (c) District will maintain the portion of the Project Location that is not directly affected by ENGIE Services U.S.' Work. To the extent within the control of the District, the District will keep the designated Project Location and staging area for the Project free of obstructions, waste, and materials.
- (d) District will obtain any environmental clearance required under CEQA, prior to scheduled construction start date.
- (e) District will prepare the Project Location for construction, including, but not limited to, clearance of all above and below ground obstructions, such as vegetation, buildings, appurtenances, and utilities. Subsurface conditions and obstacles (buried pipe, utilities, etc.) that are not otherwise previously and accurately documented by District and such documentation made available to ENGIE Services U.S. are the responsibility of District. If ENGIE Services U.S. encounters such unforeseen conditions in the performance of the Work, ENGIE Services U.S. will immediately notify the Project Manager and will not proceed with Construction until given notice to do so. If appropriate, ENGIE Services U.S. shall be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount.
- (f) District will remove any Hazardous Substances either known to District prior to the commencement of the Work or encountered by ENGIE Services U.S. during the construction of the Project, if necessary in order for the Work to progress safely, so long as the Hazardous Substances were not brought to the Project Location or knowingly released by ENGIE Services U.S.. ENGIE Services U.S. will respond to the discovery of Hazardous Substances at or around the Project Location during the course of ENGIE Services U.S.' construction in accordance with Section 5.06.
- (g) District will collaborate with ENGIE Services U.S. to coordinate the Work to be performed by ENGIE Services U.S. with work being performed by the District at or around the Project Location.
- (h) District will allow, and will cause District Persons to allow, ENGIE Services U.S. and its subcontractors access to and reasonable use of necessary quantities of District's water and other utilities, including electrical power, as needed for the construction of the Work, at no cost to ENGIE Services U.S..
- (i) District will provide, and will cause District Persons to provide, ENGIE Services U.S. and/or its subcontractors with reasonable access to the Project Location to perform the Work, including without limitation and at no extra cost to ENGIE Services U.S., access to perform Work on Saturdays, Sundays, legal holidays, and non-regular working hours.
- (j) District will also do the following:
  - (i) Attend the regularly scheduled progress meetings. Participate as needed regarding scheduling of the Work.
  - (ii) When requested by ENGIE Services U.S., participate in the job inspection walk-through with ENGIE Services U.S. to determine Substantial Completion of major equipment, and, if District so determines, will sign the Certificate(s) of Substantial Completion.
  - (iii) Perform a final walk-through of the Project and, upon satisfaction of any outstanding items on the Punch List, and receipt of the operation and maintenance manuals and as-built drawings, sign the Certificate of Final Completion for the related Work.
  - (iv) Upon the completion of the entire Scope of Work listed in Attachment B, including training, if any, and submission of close-out documents, sign a Certificate of Final Completion for the entire Project.

**Section 5.04 Changes.** Changes and/or modifications to the Work will be authorized only if documented in a written Change Order, accepted by the Project Manager as herein provided, and executed by the District and ENGIE Services U.S.. District shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations unless the Project Manager has authorized the scope and the cost thereof and a Change Order has been executed by the Parties. No extension of time for performance of the Work shall be allowed hereunder unless such time is duly included in the Change Order.

- (a) Change Orders Generally. The Change Order should state the change and/or modification to the Scope of Work, any additional compensation to be paid, and any applicable extension of time. ENGIE Services U.S. may, at its election, suspend performance of that portion of the Work affected by any proposed Change until a written Change Order with respect to the Changed or modified Work has been signed by both District and ENGIE Services U.S.. ENGIE Services U.S. will use its reasonable efforts to continue other portions of the Work not affected or impacted by such proposed Change until such time as the applicable Change Order is resolved. In addition, if the Project Manager requests a proposal from ENGIE Services U.S. for a Change and District subsequently elects to not proceed with such Change, District agrees that a Change Order will be issued

to reimburse ENGIE Services U.S. for any costs reasonably incurred for estimating services, design services, and/or preparation of the proposal requested by the Project Manager.

- (b) Change Orders Requiring Additional Compensation. If any District Person requests changes and/or modifications to the Work, and/or there are Excusable Events, District will pay the extra costs caused by such modifications and/or changes and/or Excusable Event and ENGIE Services U.S. will be entitled to additional compensation for the following reasons, that include, but are not limited to: (i) any District Person requests changes and/or modifications to the Scope of Work during the construction phase of the Project; (ii) any District Person causes delays during ENGIE Services U.S.' construction work; (iii) discovery of subsurface or other site conditions that were not reasonably anticipated or disclosed prior to the commencement of the Work; (iv) discovery of Hazardous Substances at or impacting the Project Location; (v) changes and/or modifications to the Scope of Work required to obtain required permits and approvals as required by any Governmental Authority; (vi) damage to any equipment or other Work installed by ENGIE Services U.S. caused by the act or omission of any District Person; (vii) changes and/or modifications to Scope of Work ordered by any Governmental Authority; and (viii) any other condition that would not reasonably have been anticipated by ENGIE Services U.S., that modifies and/or changes the Scope of Work or the Contract Amount.
- (c) Change Orders Requiring Additional Time. If any District Person requests changes and/or modifications to the Scope of Work and/or an Excusable Event occurs, the Parties agree that an equitable extension of time to complete the Work may be necessary. Prior to any extension of time, ENGIE Services U.S. will use commercially reasonable efforts to make up such delays, including authorizing overtime payments; *provided* that District has issued a Change Order authorizing any such overtime payment and has specifically agreed to pay all costs, including administrative charges and expenses, associated therewith.
- (d) Method for Adjustment. An increase or decrease in the Contract Amount and/or time resulting from a Change in the Work and/or Excusable Event must be determined by one or more of the following methods:
  - (i) unit prices set forth in this Contract or as subsequently agreed;
  - (ii) a mutually accepted, itemized lump sum; or
  - (iii) costs calculated on a basis agreed upon by District and ENGIE Services U.S. plus a fee (either a lump sum or a fee based on a percentage of cost) to which the Parties agree.
- (e) Disagreements. If there is a disagreement between District and ENGIE Services U.S. as to whether ENGIE Services U.S. is entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount, those disputes are to be resolved in accordance with the provisions of Section 16.01. Pending the resolution of any such dispute, ENGIE Services U.S. may suspend Work.

Section 5.05 Minor Changes to Scope of Work. ENGIE Services U.S. has the authority to make minor changes that do not change the total Contract Amount and are consistent with the intent of the Construction Documents, without prior notice to District. ENGIE Services U.S. will either promptly inform District, in writing, of any minor changes made during the implementation of the Project, or make available to District at the site a set of as-built drawings that will be kept current to show those minor changes.

Section 5.06 Hazardous Substances.

- (a) ENGIE Services U.S. will promptly provide written notice to District if ENGIE Services U.S. observes any Hazardous Substance, as defined herein, at or around the Facilities during the course of construction or installation of any equipment which have not been addressed as part of the Scope of Work. ENGIE Services U.S. will have no obligation to investigate the Facilities for the presence of Hazardous Substances prior to commencement of the Work unless otherwise specified in the Scope of Work. District will be solely responsible for investigating Hazardous Substances and determining the appropriate removal and remediation measures with respect to the Hazardous Substances. District will comply with all Applicable Laws with respect to the identification, removal and proper disposal of any Hazardous Substances known or discovered at or around the Facilities, and in such connection will execute all generator manifests with respect thereto. ENGIE Services U.S. will comply with all Applicable Laws in connection with the use, handling, and disposal of any Hazardous Substances in the performance of its Work. In connection with the foregoing, District will provide ENGIE Services U.S., within fifteen (15) Business Days of the execution of this Contract, a written statement that represents and warrants (i) whether or not, to its knowledge, there are Hazardous Substances either on or within the walls, ceiling or other structural components, or otherwise located in the Project Location, including, but not limited to, asbestos-containing materials; (ii) whether or not, to its knowledge, conditions or situations exist at the Facilities which are subject to special precautions or equipment required by federal, state, or local health or safety regulations; and (iii) whether or not, to its knowledge, there are unsafe working conditions at the Facilities.
- (b) District will indemnify, defend, and hold ENGIE Services U.S. harmless from and against any and all Losses that in any way result from, or arise under, such District owned or generated Hazardous Substances, except for

liabilities due to the negligence or willful misconduct of ENGIE Services U.S., or its subcontractors, agents or representatives, in the handling, disturbance or release of Hazardous Substances. This indemnification will survive any termination of this Contract.

Section 5.07 Pre-Existing Conditions. Certain pre-existing conditions may be present within the Facilities that (i) are non-compliant with applicable codes, (ii) may become non-compliant with applicable codes upon completion of ENGIE Services U.S.' Work, (iii) may cause ENGIE Services U.S.' completed Work to be non-compliant with applicable codes, (iv) may prevent District from realizing the full benefits of ENGIE Services U.S.' Work, (v) may present a safety or equipment hazard, or (vi) are otherwise outside the scope of ENGIE Services U.S.' Work. Regardless of whether or not such conditions may have been readily identifiable prior to the commencement of Work, ENGIE Services U.S. will not be responsible for repairing such pre-existing conditions unless such responsibility is expressly provided for in the Scope of Work or an approved Change Order. ENGIE Services U.S., in its sole discretion, may determine whether it will bring said pre-existing conditions into compliance by agreeing to execute a Change Order with District for additional compensation and, if appropriate, an extension of time.

## **ARTICLE 6. PROJECT COMPLETION**

Section 6.01 Occupancy or Use of Work. District may take occupancy or use of any completed or partially completed portion of the Work at any stage, whether or not such portion is Substantially Complete, *provided* that such occupancy or use is authorized by Governmental Authority and, *provided further*, that District assumes responsibility for the security of, insurance coverage for, maintenance, utilities for, and damage to or destruction of such portion of the Work. If Substantial Completion of a portion of the Construction Work is not yet achieved, occupancy or use of such portion of the Work will not commence until District's insurance company has consented to such occupancy or use. When occupancy or use of a portion of the Work occurs before Substantial Completion of such portion, District and ENGIE Services U.S. will accept in writing the responsibilities assigned to each of them for title to materials and equipment, payments and Retention with respect to such portion.

Section 6.02 Substantial Completion. When ENGIE Services U.S. considers the Work, or any portion thereof, to be Substantially Complete, ENGIE Services U.S. will supply to District a written Certificate of Substantial Completion with respect to such portion of the Work, including a Punch List of items and the time for their completion or correction. District will within fifteen (15) Business Days of receipt of the Certificate of Substantial Completion, review such portion of the Work for the sole purpose of determining that it is Substantially Complete, and sign and return the Certificate of Substantial Completion to ENGIE Services U.S. acknowledging and agreeing: (i) that such portion of the Work is Substantially Complete; (ii) the date of such Substantial Completion; (iii) that from the date of Substantial Completion District will assume responsibility for the security of, insurance coverage for, maintenance, utilities for, and damage to or destruction of such portion of the Work. District agrees that approval of a Certificate of Substantial Completion will not be unreasonably withheld, delayed or conditioned.

Section 6.03 Final Completion. When ENGIE Services U.S. considers the entirety of the Work to be Finally Complete, ENGIE Services U.S. will notify District that the Work is fully complete and ready for final inspection. Administrative closeout by the DSA is a condition to achieving Final Completion only for those parts of the Project requiring DSA approval, and then only if the failure to obtain DSA administrative closeout is due to the fault of ENGIE Services U.S.. District will inspect the Work to verify the status of Final Completion within fifteen (15) Business Days after its receipt of ENGIE Services U.S.' certification that the Work is complete. When District agrees that the Work is fully completed, ENGIE Services U.S. will issue a Certificate of Final Completion, for District to countersign. District agrees that its signing of the Certificate of Final Completion will not be unreasonably withheld, delayed or conditioned. At that time, District will pay ENGIE Services U.S. any remaining Contract Amount due and any outstanding Retention being withheld by District, in accordance with Section 8.03. District may give ENGIE Services U.S. written notice of acceptance of the Work and will promptly record a notice of completion or notice of acceptance in the office of the county recorder in accordance with California Civil Code §9204.

Section 6.04 Transfer of Title; Risk of Loss. Title to all or a portion of the Project equipment, supplies and other components of the Construction Work will pass to District upon the earlier of (i) the date payment for such Project equipment, supplies or components is made by District or (ii) the date any such items are incorporated into the Project Location. ENGIE Services U.S. will retain care, custody and control and risk of loss of such Project equipment, supplies and components until Substantial Completion. Transfer of title to District will in no way affect District's and ENGIE Services U.S.' rights and obligations as set forth in other provisions of this Contract.

## **ARTICLE 7. SUBCONTRACTORS**

Section 7.01 Authority to Subcontract. ENGIE Services U.S. may delegate its duties and performance under this Contract, and has the right to enter into agreements with any subcontractors and other service or material providers as ENGIE Services U.S. may select in its discretion to perform the Work. ENGIE Services U.S. will not be required to enter into any subcontracts with parties whom ENGIE Services U.S. has not selected or subcontractors whom ENGIE Services U.S. has objection to using. ENGIE Services U.S. shall select its subcontractors by a competitive process of its own choosing, which may include evaluation by the "best value" criteria defined in California Public

Contract Code §20133(c)(1) as a value determined by objective criteria related to price, features, functions, and life-cycles costs. ENGIE Services U.S. shall provide District with a description of the criteria employed to select its subcontractors.

Section 7.02 Prompt Payment of Subcontractors. ENGIE Services U.S. will promptly pay, when due, all amounts payable for labor and materials furnished in the performance of this Contract and will endeavor to prevent any lien or other claim under any provision of Applicable Law from arising against any District property, against ENGIE Services U.S.' rights to payments hereunder, or against District.

Section 7.03 Relationship. Nothing in this Contract constitutes or will be deemed to constitute a contractual relationship between any of ENGIE Services U.S.' subcontractors and District, or any obligation on the part of District to pay any sums to any of ENGIE Services U.S.' subcontractors.

Section 7.04 Designation of Subcontractors; Subcontracts. Unless otherwise stated in this Contract, ENGIE Services U.S. shall, prior to the start of Work, furnish in writing to District the names, licenses, addresses and contact information of the subcontractors to whom ENGIE Services U.S. plans to award Work. Contracts between ENGIE Services U.S. and its subcontractors shall provide that, to the extent the terms of this Contract apply to the Work to be performed by the subcontractor, (i) ENGIE Services U.S. will assume toward the subcontractor all the obligations, rights, duties and redress which District, by this Contract, assumes toward ENGIE Services U.S. and (ii) subcontractor will assume toward ENGIE Services U.S. all the obligations, rights, duties and redress which ENGIE Services U.S., by this Contract, assumes toward District.

Section 7.05 Prevailing Wages. To the extent required by California Labor Code §1771 or other Applicable Law, all employees of ENGIE Services U.S. and ENGIE Services U.S.' subcontractors performing Work at the Project Location will be paid the per diem prevailing wages for the employee's job classification in the locality in which the Work is performed. In accordance with California Labor Code §§1773 and 1773.2, District will obtain from the Director of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work, in the locality in which the Work is to be performed, for each craft, classification or type of worker needed to execute the Work at the Project Location, and will cause copies of such determinations to be kept on file at its principal office and posted at each Project Location.

## **ARTICLE 8. PAYMENTS**

Section 8.01 Monthly Progress Payments. Upon execution of this Contract, ENGIE Services U.S. will invoice District for a mobilization payment in the amount of Thirty-Six Thousand One Hundred Eighty-Seven Dollars (\$36,187.00). Upon approval by the District of the invoice, these amounts shall be paid to ENGIE Services U.S. within thirty (30) calendar days after District's receipt of an invoice for those amounts. In addition, as the Work progresses, ENGIE Services U.S. will submit to District its applications for monthly payments based on the progress made on the Project through the date on which ENGIE Services U.S. submits such Application for Payment. Attached hereto as Attachment E is a schedule of values apportioned to the various divisions or phases of the Work ("Schedule of Values"), in which each line item is assigned a value such that the total of all items equals the Contract Amount. All Applications for Payment will be in accordance with the Schedule of Values. Upon approval by District, the amounts invoiced shall be paid to ENGIE Services U.S. within thirty (30) calendar days of District's receipt of the invoice.

Section 8.02 Materials Stored Off-Site. In addition to the monthly progress payments specified in Section 8.01, ENGIE Services U.S. may invoice District for materials purchased in advance and not stored at the Project Location. Each such Application for Payment will be accompanied by proof of off-site material purchases, evidence that the materials have been delivered to a warehouse reasonably acceptable to District and evidence of appropriate insurance coverage. ENGIE Services U.S. will furnish to District written consent from the Surety approving the advance payment for materials stored off site. District will pre-pay one hundred percent (100%) of ENGIE Services U.S.' Application for Payment for the materials delivered, less Retention as indicated in Section 8.03. ENGIE Services U.S. will protect stored materials from damage. Damaged materials, even though paid for, will not be incorporated into the Work.

Section 8.03 Retention. District, or its designee, must approve and pay each Application for Payment, less a retention amount ("Retention") of five percent (5%) in accordance with California Public Contract Code §7201, within thirty (30) calendar days after its receipt of the Application for Payment; *provided, however*, that there is to be no Retention with respect to the assessment fee or the mobilization payment. A failure to approve and pay an Application for Payment in a timely manner is a material default by District under this Contract. District may make progress payments in full without Retention at any time after fifty percent (50%) of the Work has been completed, as permitted pursuant to California Public Contract Code §9203. In lieu of Retention being held by District, ENGIE Services U.S. may request that securities be substituted or Retention be held in an escrow account pursuant to California Public Contract Code §22300.

Section 8.04 Final Payment. The final Application for Payment may be submitted after Final Completion. The final payment amount must also include payment to ENGIE Services U.S. for any remaining Retention withheld by District.

Section 8.05 Disputed Invoices/Late Payments. District may in good faith dispute any Application for Payment, or part thereof, within fifteen (15) calendar days after the date the Application for Payment was received by District. If District disputes all or a portion of any Application for Payment, District will pay the undisputed portion when due and provide ENGIE Services U.S. a written notice and explanation of the basis for the dispute and the amount of the Application for Payment being withheld related to the dispute. District will be deemed to have waived and released any dispute known to it with respect to a bill if such notice and written explanation is not provided within fifteen (15) calendar days after the date the Application for Payment was received by District. If any amount disputed by District is finally determined to be due to ENGIE Services U.S., either by agreement between the Parties or as a result of dispute resolution pursuant to Section 16.01 below, it will be paid to ENGIE Services U.S. within fifteen (15) Business Days after such final determination, plus Interest from the date billed or claimed until such amount is paid.

Section 8.06 Rebate Programs. ENGIE Services U.S. will assist District in the preparation and submission to the applicable agencies of applications and documentation necessary for the Southern California Edison Energy Efficiency Program (Express & Customized Solutions). ENGIE Services U.S. makes no guarantee that District will receive funding from California Proposition 39 or any other energy efficiency rebate, incentive, and/or loan program(s), including those listed above (collectively, "Incentive Funds"), or any portion thereof; ENGIE Services U.S. expressly disclaims any liability for District's failure to receive any portion of the Incentive Funds, unless such failure is due solely to the negligence or manifest error of ENGIE Services U.S., and District acknowledges and agrees that ENGIE Services U.S. will have no liability for any failure to receive all or any portion of the Incentive Funds, unless such failure is due solely to the negligence or manifest error of ENGIE Services U.S.. Procurement, or lack thereof, of the Incentive Funds will not alter the Contract Amount of this Contract or the payment timeline associated with payment of the Contract Amount.

#### **ARTICLE 9. WARRANTY / LIMITATION OF LIABILITY**

EXCEPT FOR THE WARRANTIES PROVIDED IN THIS ARTICLE 9, ENGIE SERVICES U.S. MAKES NO WARRANTIES IN CONNECTION WITH THE WORK PROVIDED UNDER THIS CONTRACT, WHETHER EXPRESS OR IMPLIED IN LAW, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES AGAINST INTELLECTUAL PROPERTY INFRINGEMENT. DISTRICT WILL HAVE NO REMEDIES AGAINST EITHER ENGIE SERVICES U.S. OR ANY ENGIE SERVICES U.S. SUBCONTRACTOR OR VENDOR FOR ANY DEFECTIVE MATERIALS OR EQUIPMENT INSTALLED, EXCEPT FOR THE REPAIR OR REPLACEMENT OF SUCH MATERIALS OR EQUIPMENT IN ACCORDANCE WITH THE WARRANTIES INDICATED BELOW.

Section 9.01 ENGIE Services U.S. warrants to District that material and equipment furnished under this Contract will be of good quality and new, unless otherwise specifically required or permitted by this Contract. ENGIE Services U.S. further warrants that its workmanship provided hereunder, including its subcontractors' workmanship, will be free of material defects for a period of one (1) year from the date of Substantial Completion as indicated on the executed Certificate of Substantial Completion ("ENGIE Services U.S. Warranty"). Notwithstanding the preceding sentence, the date the ENGIE Services U.S. Warranty commences with respect to a specific piece or pieces of equipment may be further defined in Attachment B.

Section 9.02 Equipment and material warranties that exceed the ENGIE Services U.S. Warranty period will be provided directly by the equipment and/or material manufacturers and such warranties will be assigned directly to District, after the one (1) year period. During the ENGIE Services U.S. Warranty period, ENGIE Services U.S. will be District's agent in working with the equipment and material manufacturers in resolving any equipment or material warranty issues. If any material defects are discovered within the ENGIE Services U.S. Warranty period, ENGIE Services U.S., or ENGIE Services U.S.' subcontractors, will correct its defects, and/or ENGIE Services U.S. will work with the equipment or material manufacturer as District's agent to facilitate the manufacturer's correction of the equipment or material defect. Such warranty services will be performed in a timely manner and at the reasonable convenience of District. If a warranty issue arises on any equipment or material installed after the ENGIE Services U.S. Warranty period, and the equipment or material has a warranty period that exceeds one (1) year, District will contact the manufacturer directly to resolve such warranty issues and District acknowledges that the manufacturer will have sole responsibility for such issues.

Section 9.03 The warranties in this ARTICLE 9 expressly exclude any remedy for damage or defect caused by improper or inadequate maintenance of the installed equipment by service providers other than ENGIE Services U.S. or its subcontractors, corrosion, erosion, deterioration, abuse, modifications or repairs not performed by an authorized ENGIE Services U.S. subcontractor, improper use or operation, or normal wear and tear under normal usage.

#### **ARTICLE 10. OWNERSHIP OF CERTAIN PROPERTY AND EXISTING EQUIPMENT**

Section 10.01 Ownership of Certain Proprietary Property Rights.

- (a) Ownership: Except as expressly provided in this Contract, District will not acquire, by virtue of this Contract, any rights or interest in any formulas, patterns, devices, software, inventions or processes, copyrights, patents, trade

secrets, other intellectual property rights, or similar items of property which are or may be used in connection with the Work. ENGIE Services U.S. will own all inventions, improvements, technical data, models, processes, methods, and information and all other work products developed or used in connection with the Work, including all intellectual property rights therein.

- (b) License: Solely in connection with the Facilities, ENGIE Services U.S. grants to District a limited, perpetual, royalty-free, non-transferrable license for any ENGIE Services U.S. intellectual property rights necessary for District to operate, maintain, and repair any modifications or additions to Facilities, or equipment delivered, as a part of the Work.
- (c) Ownership and Use of Instruments of Service. All data, reports, proposals, plans, specifications, flow sheets, drawings, and other products of the Work (the "Instruments of Service") furnished directly or indirectly, in writing or otherwise, to District by ENGIE Services U.S. under this Contract will remain ENGIE Services U.S.' property and may be used by District only for the Work. ENGIE Services U.S. will be deemed the author and owner of such Instruments of Service and will retain all common law, statutory and other reserved rights, including copyrights. The Instruments of Service may not be used by District or any District Person for future additions or alterations to the Project or for other projects, without the prior written agreement of ENGIE Services U.S.. Any unauthorized use of the Instruments of Service will be at District's sole risk and without liability to ENGIE Services U.S.. If District uses the Instruments of Service for implementation purposes, including additions to or completion of the Project, without the written permission of ENGIE Services U.S., District agrees to waive and release, and indemnify and hold harmless, ENGIE Services U.S., its subcontractors, and their directors, employees, subcontractors, and agents from any and all Losses associated with or resulting from such use.

Section 10.02 Ownership of any Existing Equipment. Ownership of any equipment and materials presently existing at the Facilities at the time of execution of this Contract will remain the property of District even if such equipment or materials are replaced or their operation made unnecessary by work performed by ENGIE Services U.S.. If applicable, ENGIE Services U.S. will advise District in writing of all equipment and materials that will be replaced at the Facilities and District will, within fifteen (15) Business Days of ENGIE Services U.S.' notice, designate in writing to ENGIE Services U.S. which replaced equipment and materials should not be disposed of off-site by ENGIE Services U.S. (the "Retained Items"). District will be responsible for and designate the location and storage for the Retained Items. ENGIE Services U.S. will be responsible for the disposal of replaced equipment and materials, except for the Retained Items. ENGIE Services U.S. will use commercially reasonable efforts to remove the Retained Items in such a manner as to avoid damage thereto, or if it is unreasonable to avoid damage altogether, to minimize the damage done. ENGIE Services U.S. will not be responsible for the removal and/or disposal of any Hazardous Substances except as required by the Scope of Work.

**ARTICLE 11. INDEMNIFICATION / INSURANCE / BONDS**

Section 11.01 Indemnification. To the full extent permitted by Applicable Laws, each Party will indemnify, hold harmless, release and defend the other Party, its officers, employees, and agents from and against any and all actions, claims, demands, damages, disabilities, fines, penalties, losses, costs, expenses (including consultants' and attorneys' fees and other defense expenses) and liabilities of any nature ("Losses") that may be asserted by any person or entity, to the extent arising out of that Party's performance or activities hereunder, including the performance or activities of other persons employed or utilized by that Party in the performance of this Contract, excepting liabilities to the extent due to the negligence or willful misconduct of the indemnified party. This indemnification obligation will continue to bind the Parties after the termination of this Contract.

Section 11.02 Waiver of Consequential Damages and Limitation of Liability. The liability of a defaulting Party will be limited to direct, actual damages. Neither Party shall be liable to the other Party for any special, indirect, incidental or consequential damages whatsoever, whether in contract, tort (including negligence) or strict liability, including, but not limited to, operational losses in the performance of business such as lost profits or revenues or any increase in operating expense. Additionally, each Party waives any claims for negligence against the other Party to the greatest extent permitted by Applicable Law.

Section 11.03 ENGIE Services U.S. Insurance. ENGIE Services U.S. will maintain, or cause to be maintained, for the duration of this Contract, the insurance coverage outlined in (a) through (f) below, and all such other insurance as required by Applicable Law. Evidence of coverage will be provided to District via an insurance certificate.

- (a) Workers' Compensation/Employers Liability for states in which ENGIE Services U.S. is not a qualified self-insured. Limits as follows:

*	Workers' Compensation:	Statutory
*	Employers Liability:	Bodily Injury by accident \$1,000,000 each accident Bodily Injury by disease \$1,000,000 each employee Bodily Injury by disease \$1,000,000 policy limit

- (b) Commercial General Liability insurance with limits of:



- \* \$2,000,000 each occurrence for Bodily Injury and Property Damage
- \* \$4,000,000 General Aggregate - other than Products/Completed Operations
- \* \$4,000,000 Products/Completed Operations Aggregate
- \* \$2,000,000 Personal and Advertising Injury
- \* \$ 100,000 Damage to premises rented to ENGIE Services U.S.

Coverage to be written on an occurrence form. Coverage to be at least as broad as ISO form CG 0001 (04/13) or its equivalent forms, without endorsements that limit the policy terms with respect to: (1) provisions for severability of interest or (2) explosion, collapse, underground hazard.

(c) Auto Liability insurance for owned, hired and non-owned vehicles with limits of \$1,000,000 per accident. Coverage to be written on an occurrence form.

(d) Professional Liability insurance with limits of:

- \* \$1,000,000 per occurrence
- \* \$1,000,000 aggregate

Coverage to be written on a claims-made form.

(e) Umbrella/Excess Liability Insurance. Limits as follows:

- \* \$1,000,000 each occurrence
- \* \$1,000,000 aggregate

Coverage terms and limits to apply excess of the per occurrence and/or aggregate limits provided for Commercial General Liability and Professional Liability written on a claims made form. Coverage terms and limits also to apply in excess of those required for Employers Liability and Auto Liability written on an occurrence form.

(f) Policy Endorsements.

- \* The insurance provided for Workers' Compensation and Employers' Liability above will contain waivers of subrogation rights against District, but only to the extent of the indemnity obligations contained in this Contract.
- \* The insurance provided for Commercial General Liability and Auto Liability above will:
  - (i) include District as an additional insured with respect to Work performed under this Contract, but only to the extent of the indemnity obligations contained in this Contract, and
  - (ii) provide that the insurance is primary coverage with respect to all insureds, but only to the extent of the indemnity obligations contained in this Contract.

Section 11.04 **Performance and Payment Bonds.** Prior to commencing Work under this Contract, ENGIE Services U.S. will furnish a performance bond, in an amount equal to one hundred percent (100%) of the Contract Amount, and a payment bond to guarantee payment of all claims for labor and materials furnished, in an amount equal to one hundred percent (100%) of the Contract Amount (collectively, the "Contract Bonds"). The Contract Bonds are not being furnished to cover any equipment and/or material manufacturer's warranty or other third-party warranty being assigned to District.

## **ARTICLE 12. DOE GUIDELINES; ENERGY POLICY ACT**

Section 12.01 As authorized by §1605(b) of the Energy Policy Act of 1992 (Pub. L. No. 102-486) the U.S. Department of Energy has issued, and may issue in the future, guidelines for the voluntary reporting of Greenhouse Gas emissions ("DOE Guidelines"). "Greenhouse Gases" means those gases and other particles as defined in the DOE Guidelines. District hereby assigns and transfers to ENGIE Services U.S., and its Affiliates and assigns, any Greenhouse Gas emission reduction credits that result from the Work.

Section 12.02 As authorized by §1331 of the Energy Policy Act of 2005 (Pub. L. No. 109-58) District agrees that for the Work, ENGIE Services U.S. will be the "designer" as that term is identified in Internal Revenue Bulletin 2008-14, Notice 2008-40, and ENGIE Services U.S. will have the exclusive right to report to any federal, state, or local agency, authority or other party any tax benefit associated with the Work. Upon Final Completion, District agrees to execute a written allocation including a declaration related to Internal Revenue Code §179D. ENGIE Services U.S. will prepare the declaration and all accompanying documentation. ENGIE Services U.S. will be designated the §179D beneficiary.

## **ARTICLE 13. MUNICIPAL ADVISOR**

Section 13.01 THE PARTIES ACKNOWLEDGE AND AGREE THAT ENGIE SERVICES U.S. IS NOT A MUNICIPAL ADVISOR AND CANNOT GIVE ADVICE TO DISTRICT WITH RESPECT TO MUNICIPAL SECURITIES

OR MUNICIPAL FINANCIAL PRODUCTS ABSENT DISTRICT BEING REPRESENTED BY, AND RELYING UPON THE ADVICE OF, AN INDEPENDENT REGISTERED MUNICIPAL ADVISOR. ENGIE SERVICES U.S. IS NOT SUBJECT TO A FIDUCIARY DUTY WITH REGARD TO DISTRICT OR THE PROVISION OF INFORMATION TO DISTRICT. DISTRICT WILL CONSULT WITH AN INDEPENDENT REGISTERED MUNICIPAL ADVISOR ABOUT THE FINANCING OPTION APPROPRIATE FOR DISTRICT'S SITUATION.

Section 13.02 THE PARTIES ACKNOWLEDGE AND AGREE THAT ENGIE SERVICES U.S. CANNOT GIVE LEGAL ADVICE TO DISTRICT REGARDING COMPLIANCE WITH CALIFORNIA PUBLIC RESOURCES CODE §26235(C). DISTRICT HAS CONSULTED ITS OWN LEGAL COUNSEL.

#### **ARTICLE 14. EVENTS OF DEFAULT**

Section 14.01 Events of Default by ENGIE Services U.S.. Each of the following events or conditions will constitute an "Event of Default" by ENGIE Services U.S.:

- (i) any substantial failure by ENGIE Services U.S. to perform or comply with this Contract, including a material breach of any covenant contained herein, and such failure continues for thirty (30) calendar days after notice to ENGIE Services U.S. demanding that such failure to perform be cured; *provided* that (y) such failure to perform will not be deemed a default hereunder if it is excused by a provision of this Contract, and (z) if such cure cannot be effected in thirty (30) calendar days, ENGIE Services U.S. will be deemed to have cured the default upon the commencement of a cure within thirty (30) calendar days and diligent subsequent completion thereof; or
- (ii) any representation or warranty furnished by ENGIE Services U.S. in this Contract which was false or misleading in any material respect when made.

Section 14.02 Events of Default by District. Each of the following events or conditions will constitute an "Event of Default" by District:

- (i) any substantial failure by District to perform or comply with this Contract, including a material breach of any covenant contained herein, and such failure continues for thirty (30) calendar days after notice to District demanding that such failure to perform be cured; *provided* that (y) such failure to perform will not be deemed a default hereunder if it is excused by a provision of this Contract; and (z) if such cure cannot be effected in thirty (30) calendar days, District will be deemed to have cured the default upon the commencement of a cure within thirty (30) calendar days and diligent subsequent completion thereof; or
- (ii) any representation or warranty furnished by District in this Contract which was false or misleading in any material respect when made; or
- (iii) any failure by District to pay any amount to ENGIE Services U.S. which is not paid within ten (10) calendar days after written notice from ENGIE Services U.S. that the amount is past due.

#### **ARTICLE 15. REMEDIES UPON DEFAULT**

Section 15.01 Termination for Cause. If there is an Event of Default by either Party under this Contract, unless such Event of Default has been cured within the applicable time periods for a cure set forth in ARTICLE 14, the non-defaulting Party may terminate this Contract by providing five (5) Business Days' written notice to the defaulting Party in the case of a monetary default and fifteen (15) Business Days' written notice to the defaulting Party in the case of a non-monetary default. Upon termination of this Contract, each Party will promptly return to the other all papers, materials, and property of the other held by such Party in connection with this Contract. Each Party will also assist the other in the orderly termination of this Contract and the transfer of all aspects hereof, tangible and intangible, as may be necessary for the orderly, non-disrupted business continuation of each Party. If this Contract is so terminated, ENGIE Services U.S. will be entitled to payment for Work satisfactorily performed, earned profit and overhead, and costs incurred in accordance with this Contract up to the date of termination.

Section 15.02 Remedies upon Default by ENGIE Services U.S.. If an Event of Default by ENGIE Services U.S. occurs, District will be entitled to obtain any available legal or equitable remedies through arbitration proceedings instituted pursuant to Section 16.01, including, without limitation, terminating this Contract, or recovering amounts due and unpaid by ENGIE Services U.S. and/or damages, which will include District's reasonable, actual, direct out-of-pocket losses incurred by reason of such Event of Default and any cost of funding; loss of anticipated payment obligations; and any payment or delivery required to have been made on or before the date of the Event of Default and not made, including interest on any sums due, and losses and costs incurred as a result of terminating this Contract and all costs and expenses reasonably incurred in exercising the foregoing remedies.

Section 15.03 Remedies upon Default by District. If an Event of Default by District occurs, ENGIE Services U.S. will be entitled to obtain any available legal or equitable remedies through arbitration proceedings instituted pursuant to Section 16.01 including, without limitation, terminating this Contract or recovering amounts due and unpaid by District,

and/or damages which will include ENGIE Services U.S.' reasonable, actual, direct out-of-pocket losses incurred by reason of such Event of Default and any cost of funding; loss of anticipated payment obligations; and any payment or delivery required to have been made on or before the date of the Event of Default and not made, including Interest on any sums due, and losses and costs incurred as a result of terminating this Contract and all costs and expenses reasonably incurred in exercising the foregoing remedies.

**ARTICLE 16. CONDITIONS BEYOND CONTROL OF THE PARTIES**

Section 16.01 Force Majeure Events. In the event that any Party is delayed in, or prevented from, performing or carrying out its obligations under this Contract by reason of any event of Force Majeure, such circumstance will not constitute an Event of Default, and such Party will be excused from performance hereunder and will not be liable to any other Party for or on account of any loss, damage, injury or expense resulting from, or arising out of, such delay or prevention. Notwithstanding the foregoing, no Party will be excused from any payment obligations under this Contract as a result of an event of Force Majeure.

**ARTICLE 17. GOVERNING LAW AND RESOLUTION OF DISPUTES**

Section 17.01 Governing Law. This Contract is governed by and must be interpreted under the laws of the State where the Work is performed, without regard to the jurisdiction's choice of law rules.

Section 17.02 Initial Dispute Resolution. If a dispute arises out of or relates to this Contract, the transaction contemplated by this Contract, or the breach of this Contract (a "Dispute"), either Party may initiate the dispute resolution process set forth in this Section 16.01 by giving notice to the other Party. The Parties will endeavor to settle the Dispute as follows:

- (i) *Field Representatives' Meeting*: Within fifteen (15) Business Days after notice of the Dispute, ENGIE Services U.S.' senior project management personnel will meet with District's project representative in a good faith attempt to resolve the Dispute.
- (ii) *Management Representatives' Meeting*: If ENGIE Services U.S.' and District's project representatives fail to meet, or if they are unable to resolve the Dispute, senior executives for ENGIE Services U.S. and for District, neither of whom have had day-to-day management responsibilities for the Project, will meet, within thirty (30) calendar days after notice of the Dispute, in an attempt to resolve the Dispute and any other identified disputes or any unresolved issues that may lead to a dispute. If the senior executives of ENGIE Services U.S. and District are unable to resolve a Dispute or if a senior management conference is not held within the time provided herein, either Party may submit the Dispute to mediation in accordance with Section 17.03.

Section 17.03 Mediation. If the Dispute is not settled pursuant to Section 17.02, the Parties will endeavor to settle the Dispute by mediation under the Commercial Mediation Procedures of the American Arbitration Association. Mediation is a condition precedent to arbitration or the institution of legal or equitable proceedings by either Party. Once one Party files a request for mediation with the other Party and with the American Arbitration Association, the Parties agree to conclude the mediation within sixty (60) calendar days after filing the request. Either Party may terminate the mediation at any time after the first session, but the decision to terminate must be delivered in person by the Party's representative to the other Party's representative and the mediator. If the Dispute is not resolved by mediation within sixty (60) calendar days after the date of filing of the request for mediation, then the exclusive means to resolve the Dispute is final and binding arbitration, as described in Section 17.04. Either Party may initiate arbitration proceedings by notice to the other Party and the American Arbitration Association.

Section 17.04 Arbitration Proceedings. The following provisions apply to all arbitration proceedings pursuant to this Section 16.01:

- (i) The place of arbitration will be the American Arbitration Association office closest to where the Work was performed.
- (ii) One arbitrator (or three arbitrators if the monetary value of the Dispute is more than \$2,000,000) (the "Arbitral Panel") will conduct the arbitral proceedings in accordance with the Commercial Arbitration Rules and Mediation Procedures (Excluding the Procedures for Large, Complex Commercial Disputes) of the American Arbitration Association currently in effect ("Arbitration Rules"). To the extent of any conflicts between the Arbitration Rules and the provisions of this Contract, the provisions of this Contract prevail.
- (iii) The Parties will submit true copies of all documents considered relevant with their respective statement of claim or defense, and any counterclaim or reply. In the discretion of the Arbitral Panel, the production of additional documents that are relevant and material to the determination of the Dispute may be required.



155 East Fourth Street  
Perris, CA 92570  
Tel: (951) 943-6369 ext. 80202  
Attention: Candace Reines, Assistant Superintendent Business Services

With a COPY TO:

Fagen Friedman & Fulfroost LLP  
1525 Faraday Avenue, Suite 300  
Carlsbad, CA 92008  
Tel: (760) 304-6030  
Attention: Kathleen J. McKee

**ARTICLE 20. CONSTRUCTION OF CONTRACT**

This Contract is the result of arms-length negotiations between two sophisticated parties and ambiguities or uncertainties in it will not be construed for or against either Party, but will be construed in a manner that most accurately reflects the intent of the Parties as of the Contract Effective Date. Each of the Parties acknowledges and agrees that neither Party has provided the other with any legal, accounting, regulatory, financial, or tax advice with respect to any of the transactions contemplated hereby, and each Party has consulted its own legal, accounting, regulatory, financial and tax advisors to the extent it has deemed appropriate.

**ARTICLE 21. BINDING EFFECT**

Except as otherwise provided herein, the terms and provisions of this Contract will apply to, be binding upon, and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and permitted assigns.

**ARTICLE 22. NO WAIVER**

The failure of ENGIE Services U.S. or District to insist upon the strict performance of this Contract will not constitute or be construed as a waiver or relinquishment of either Party's right to thereafter enforce the same in accordance with this Contract in the event of a continuing or subsequent default on the part of ENGIE Services U.S. or District.

**ARTICLE 23. SEVERABILITY**

If any clause or provision of this Contract or any part thereof becomes or is declared by a court of competent jurisdiction invalid, illegal, void, or unenforceable, this Contract will continue in full force and effect without said provisions; *provided* that no such severability will be effective if it materially changes the benefits or obligations of either Party hereunder.

**ARTICLE 24. HEADINGS**

Headings and subtitles used throughout this Contract are for the purpose of convenience only, and no heading or subtitle will modify or be used to interpret the text of any section.

**ARTICLE 25. COUNTERPARTS; INTEGRATION**

This Contract may be executed in counterparts (and by different Parties hereto in different counterparts), each of which will constitute an original, but all of which when taken together will constitute a single contract. This Contract constitutes the entire contract among the Parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Delivery of an executed counterpart of a signature page of this Contract by email or fax will be effective as delivery of a manually executed counterpart of this Contract.

*[the Parties' signatures appear on the following page]*

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto subscribe their names to this Contract by their duly authorized officers as of the Contract Effective Date.

**ENGIE SERVICES U.S.:**

**DISTRICT:**

ENGIE Services U.S., Inc.

Perris Union High School District

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**ATTACHMENT A**

**DISTRICT'S FACILITIES and EXISTING EQUIPMENT**

The following District Facilities are included under the Scope of Work as listed below:

Facility	Address	Approximate Square Feet
California Military Institute	755 N A Street, Perris, CA 92570	147,714

## ATTACHMENT B

### SCOPE OF WORK

California State Contractor's License Number 995037

#### Energy Conservation Measures to Be Implemented

ECM #	Description
L-01	Energy Efficiency Lighting Upgrade

#### **General Conditions Scope of Work provided by ENGIE Services U.S.:**

- Project management and engineering.
- Construction management and supervision. An ENGIE Services U.S. construction manager will be assigned to this project and will be responsible for monitoring the on-site construction.
- Provide onsite storage containers for project materials and equipment.
- Provide trash dumpsters as needed as well as cleanup and disposal of refuse generated by project.
- Provide temporary fencing as required for access control in the areas of and for the duration of work.
- Provide cranes, lifts and rigging necessary for scope of work.
- Provide startup, acceptance testing, commissioning, training and Operation & Maintenance manuals as needed on systems provided.
- One year parts and labor warranty upon beneficial use on all systems provided under this contract.
- Manufacturers' warranty will be transferred to District.
- As-built documentation will be provided for all the work.

#### **General Engineering Scope of Work provided by ENGIE Services U.S.:**

- Provide equipment submittals for District and Architect/Engineer for Record acceptance.

#### **General Project Exclusions and Clarifications:**

- DSA plan check and associated fees are excluded.
- DSA inspector costs are excluded
- ADA, Fire Life Safety, and other work required as a result of DSA submission are excluded.
- ENGIE Services U.S. has assumed Construction will be allowed to proceed smoothly and in a continuous flow. No allowance has been made to demobilize and remobilize resources due to schedule interruptions.
- Temporary utilities are to be provided by District at no cost to ENGIE Services U.S. (including, without limitation, trailer power, phone lines, and construction power).
- Removal and disposal of Hazardous Substances, including asbestos containing materials, to be by District. If ENGIE Services U.S. encounters material suspected to be hazardous, ENGIE Services U.S. will notify District representative and stop further work in the area until the material is removed.
- ENGIE Services U.S. will require the assistance of District personnel to secure the Project Location and to provide traffic redirection during the move-in and move-out of large equipment.
- No allowance has been made for structural upgrades to existing structures, except as specifically set forth in this Scope of Work.
- ENGIE Services U.S. standard construction means and methods will be used.
- District will provide access to the Facilities, laydown areas at the work sites, and a reasonable number of parking spaces for ENGIE Services U.S. and ENGIE Services U.S.' subcontractor vehicles in parking lots at the Facilities.
- The Scope of Work assumes that, unless specifically identified otherwise, all existing systems are functioning properly and are up to current codes. ENGIE Services U.S. will not be responsible for repairs or upgrades to existing systems that are not functioning properly or compliant with current codes. No allowances have been made to bring existing systems up to code.
- No allowance has been made to repair or replace damaged or inoperable existing equipment that is not specifically being replaced under the Scope of Work. When such items are discovered, ENGIE Services U.S. will immediately notify District representative.
- ENGIE Services U.S. is not responsible for repairing or replacing existing damaged, blocked, or leaky ductwork, or cleaning dirt or mildew.

#### **ECM L-01: Energy Efficiency Lighting Upgrades**

The following site will receive energy efficiency lighting upgrades.

- California Military Institute



**Energy Services Contract  
Perris UHSD and ENGIE Services U.S.**

Existing light fixtures will be replaced or retrofitted/installed with energy efficiency LED fixtures and kits as specified in Attachment C.

ENGIE Services U.S. will perform the following work:

- Provide equipment and materials as specified in Attachment C.
- Disposal of old lamps and ballasts per EPA, state and local regulations is included.

ENGIE Services U.S. has assumed that the buildings are code compliant. ENGIE Services U.S. has excluded any upgrade to any building electrical system to local, state or federal building or safety codes. Scopes of work excludes replacing conductors and conduit, and grounding systems. Existing emergency and egress lighting will not be altered, relocated or removed except as documented in the lighting survey.



**ATTACHMENT C**  
**LIGHTING SCOPE OF WORK**

Line	Bldg	Detailed Area Description	Existing			Proposed				
			Fixture Code	Qty	Fixture Wattage	Retrofit Description	Part Number	Qty	Fixture Wattage	
176	ADMIN OFFICE	MAIN ENTRY	242RT P1	1	58	Retrofit existing 2x4 with Evokit	EvoKit 2x4 P 36L 26W 840 2 0-10 7 G4	1	28	
177	ADMIN OFFICE	RECEPTION OPEN	242RT P1	11	58	Retrofit existing 2x4 with Evokit	EvoKit 2x4 P 36L 26W 840 2 0-10 7 G4	11	28	
178	ADMIN OFFICE	OFFICE 1	242RT P1	2	58	Retrofit existing 2x4 with Evokit	EvoKit 2x4 P 36L 26W 840 2 0-10 7 G4	2	28	
179	ADMIN OFFICE	PRINCIPAL	242RT P1	6	58	Retrofit existing 2x4 with Evokit	EvoKit 2x4 P 36L 26W 840 2 0-10 7 G4	6	28	
180	ADMIN OFFICE	PRINCIPAL	142WP1	2	58	Relamp and Driver existing wrap fixture with 2 lamps and 1 driver @ 10ft	Linmore LL-T8-4-2-ED-F-40K, LL-DR-22W-T2-DIM	2	26	
181	ADMIN OFFICE	STORAGE	242RT P1	1	58	Retrofit existing 2x4 with Evokit	EvoKit 2x4 P 36L 26W 840 2 0-10 7 G4	1	28	
182	ADMIN OFFICE	BREAK ROOM	242RT P1	1	58	Retrofit existing 2x4 with Evokit	EvoKit 2x4 P 36L 26W 840 2 0-10 7 G4	1	28	
183	ADMIN OFFICE	ASSISTANT PRINCIPAL	242RT P1	3	58	Retrofit existing 2x4 with Evokit	EvoKit 2x4 P 36L 26W 840 2 0-10 7 G4	3	28	
184	ADMIN OFFICE	ADMIN ASSISTANT	242RT P1	1	58	Retrofit existing 2x4 with Evokit	EvoKit 2x4 P 36L 26W 840 2 0-10 7 G4	1	28	
185	ADMIN OFFICE	DEPUTY COMMAND	242RT P1	4	58	Retrofit existing 2x4 with Evokit	EvoKit 2x4 P 36L 26W 840 2 0-10 7 G4	4	28	
186	ADMIN OFFICE	DEPUTY COMMAND	D2CFSI23	1	46	Replace small ceiling fixture with similar LED	Lithonia FMLRL 14 40K	1	24	
187	ADMIN OFFICE	DEPUTY COMMANDANT	D2CFSI23	1	46	Replace small ceiling fixture with similar LED	Lithonia FMLRL 14 40K	1	24	
188	ADMIN OFFICE	HALLWAY	242RT P1	4	58	Retrofit existing 2x4 with Evokit	EvoKit 2x4 P 36L 26W 840 2 0-10 7 G4	4	28	
189	ADMIN OFFICE	NURSE	242RT P1	1	58	Retrofit existing 2x4 with Evokit	EvoKit 2x4 P 36L 26W 840 2 0-10 7 G4	1	28	
190	ADMIN OFFICE	MRS GALVAN	242RT P1	2	58	Retrofit existing 2x4 with Evokit	EvoKit 2x4 P 36L 26W 840 2 0-10 7 G4	2	28	
191	ADMIN OFFICE	MRS GONZALEZ	242RT P1	2	58	Retrofit existing 2x4 with Evokit	EvoKit 2x4 P 36L 26W 840 2 0-10 7 G4	2	28	
192	ADMIN OFFICE	BREAK ROOM	242RT P1	4	58	Retrofit existing 2x4 with Evokit	EvoKit 2x4 P 36L 26W 840 2 0-10 7 G4	4	28	
193	ADMIN OFFICE	MECHANICAL	KCFNS23	2	23	Relamp existing "A" lamp	GC 17A21G4DIM/840/R (16181)	2	17	
194	ADMIN OFFICE	WOMENS	142WP1	1	58	Relamp and Driver existing wrap fixture with 2 lamps and 1 driver @ 10ft	Linmore LL-T8-4-2-ED-F-40K, LL-DR-22W-T2-DIM	1	26	
195	ADMIN OFFICE	CUSTODIAN	KCFNS23	1	23	Relamp existing "A" lamp	GC 17A21G4DIM/840/R (16181)	1	17	
196	ADMIN OFFICE	MENS	142WP1	1	58	Relamp and Driver existing wrap fixture with 2 lamps and 1 driver @ 10ft	Linmore LL-T8-4-2-ED-F-40K, LL-DR-22W-T2-DIM	1	26	
214	C	CLASSROOM	143T5	14	179	Replace cable hung wraps with new 8ft pendant at 10ft	Lunera (3) HN-T5-D-48-25W-840-G1 & Philips (2)ICN-2SS4-90C-T	14	75	
215	C	CLASSROOM	143T5	14	179	Replace cable hung wraps with new 8ft pendant at 10ft	Lunera (3) HN-T5-D-48-25W-840-G1 & Philips (2)ICN-2SS4-90C-T	14	75	
216	C	CLASSROOM	143T5	14	179	Replace cable hung wraps with new 8ft pendant at 10ft	Lunera (3) HN-T5-D-48-25W-840-G1 & Philips (2)ICN-2SS4-90C-T	14	75	
217	C	CLASSROOM	143T5	14	179	Replace cable hung wraps with new 8ft pendant at 10ft	Lunera (3) HN-T5-D-48-25W-840-G1 & Philips (2)ICN-2SS4-90C-T	14	75	
217B	C	PRACTICE ROOM	242RT P1	1	58	Relamp and Driver existing wrap fixture with 2 lamps and 1 driver @ 10ft	Linmore LL-T8-4-2-ED-F-40K, LL-DR-22W-T2-DIM	1	22	
217C	C	PRACTICE ROOM	242RT P1	1	58	Relamp and Driver existing wrap fixture with 2 lamps and 1 driver @ 10ft	Linmore LL-T8-4-2-ED-F-40K, LL-DR-22W-T2-DIM	1	22	
217D	C	PRACTICE ROOM	242RT P1	1	58	Relamp and Driver existing wrap fixture with 2 lamps and 1 driver @ 10ft	Linmore LL-T8-4-2-ED-F-40K, LL-DR-22W-T2-DIM	1	22	
218	C	PREP	242RT P1	6	58	Relamp and Driver existing wrap fixture with 2 lamps and 1 driver @ 10ft	Linmore LL-T8-4-2-ED-F-40K, LL-DR-22W-T2-DIM	6	22	
219	C	STORAGE	142WP1	2	58	Relamp and Driver existing wrap fixture with 2 lamps and 1 driver @ 10ft	Linmore LL-T8-4-2-ED-F-40K, LL-DR-22W-T2-DIM	2	26	
220	C	MENS	142RT P1	2	58	Relamp and Driver existing wrap fixture with 2 lamps and 1 driver @ 10ft	Linmore LL-T8-4-2-ED-F-40K, LL-DR-22W-T2-DIM	2	22	
221	C	WOMENS	142RT P1	2	58	Relamp existing troffer with 2 lamps and 1 driver	Linmore LL-T8-4-2-ED-F-40K, LL-DR-22W-T2-DIM	2	22	
222	C	CUSTODIAN	142RT P1	1	58	Relamp existing troffer with 2 lamps and 1 driver	Linmore LL-T8-4-2-ED-F-40K, LL-DR-22W-T2-DIM	1	22	
223	C	DATA	142RT P1	1	58	Relamp existing troffer with 2 lamps and 1 driver	Linmore LL-T8-4-2-ED-F-40K, LL-DR-22W-T2-DIM	1	22	
224	C	ELECTRICAL	142RT P1	1	58	Relamp existing troffer with 2 lamps and 1 driver	Linmore LL-T8-4-2-ED-F-40K, LL-DR-22W-T2-DIM	1	22	
226	D	CLASSROOM	184HI	15	112	Replace existing H Frame fixture with new 8 ft Linear Pendant on existing drops	Eaton 8WSL-LD2-80-SPC-UPL15-UNV-L840-CD-1 CLC-WSL-EXT-B	15	73	
227	D	CLASSROOM Over Board for D1 and D2	142RT P1	6	58	Replace 1x4 box with new box fixture	La Lighting MHL310-4-4LPPA2-1DRDM-UNV-2-840	6	32	
228	D	CLASSROOM	184HI	15	112	Replace existing H Frame fixture with new 8 ft Linear Pendant on existing drops	Eaton 8WSL-LD2-80-SPC-UPL15-UNV-L840-CD-1 CLC-WSL-EXT-B	15	73	
229	D	CENTER WORKROOM	242RT P1	6	58	Retrofit existing 2x4 with Evokit	EvoKit 2x4 P 36L 26W 840 2 0-10 7 G4	6	28	
231	E	CLASSROOM	142IHI	11	58	Replace existing H Frame fixture with new 4 ft Linear Pendant on existing drops	Eaton 4WSL-LD2-40-SRC-UPL15-UNV-L840-CD-1	11	37	
232	E	OPEN AREA	242RT P1	9	58	Retrofit existing 2x4 with Evokit	EvoKit 2x4 P 36L 26W 840 2 0-10 7 G4	9	28	
233	E	OFFICE 1	242RT P1	2	58	Retrofit existing 2x4 with Evokit	EvoKit 2x4 P 36L 26W 840 2 0-10 7 G4	2	28	
234	E	OFFICE 2	242RT P1	2	58	Retrofit existing 2x4 with Evokit	EvoKit 2x4 P 36L 26W 840 2 0-10 7 G4	2	28	
235	E	BREAK ROOM	242RT P1	1	58	Retrofit existing 2x4 with Evokit	EvoKit 2x4 P 36L 26W 840 2 0-10 7 G4	1	28	
236	E	EQUIPMENT	142IH	3	72	Replace industrials with new LED strip fixtures	Linmore LL-RLB-4B-22W-4IK-F	3	22	
237	E	CLASSROOM	242RT P1	13	58	Retrofit existing 2x4 with Evokit	EvoKit 2x4 P 36L 26W 840 2 0-10 7 G4	13	28	
238	E	TEXTBOOKS	242RT P1	2	58	Retrofit existing 2x4 with Evokit	EvoKit 2x4 P 36L 26W 840 2 0-10 7 G4	2	28	
239	E	WORKROOM	242RT P1	2	58	Retrofit existing 2x4 with Evokit	EvoKit 2x4 P 36L 26W 840 2 0-10 7 G4	2	28	
240	E	CHAIR	142WP1	2	58	Relamp and Driver existing wrap fixture with 2 lamps and 1 driver @ 10ft	Linmore LL-T8-4-2-ED-F-40K, LL-DR-22W-T2-DIM	2	26	

**Energy Services Contract  
Perris UHSD and ENGIE Services U.S.**

Line	Bldg	Detailed Area Description	Existing			Proposed			
			Fixture Code	Qty	Fixture Wattage	Retrofit Description	Part Number	Qty	Fixture Wattage
241	E	CLASSROOM	242RTPI	17	58	Retrofit existing 2x4 with Evokit	EvoKit 2x4 P 36L 26W 840 2 0-10 7 G4	17	28
242	E	CHAIR	142WPI	3	58	Relamp and Driver existing wrap fixture with 2 lamps and 1 driver @ 10ft	Linmore LL-T8-4-2-ED-F-40K, LL-DR-22W-T2-DIM	3	26
243	E	MECHANICAL	KCFSI23	1	23	Relamp existing "A" lamp	GC 17A21G4DIM/840/R (16181)	1	17
245	S	CLASSROOM	184HI	9	112	Replace existing H Frame fixture with new 8 ft Linear Pendant on existing drops	Eaton 8WSL-LD2-80-SPC-UPL15-UNV-L840-CD-1 CLC-WSL-EXT-B	9	73
246	S	CLASSROOM	184HI	9	112	Replace existing H Frame fixture with new 8 ft Linear Pendant on existing drops	Eaton 8WSL-LD2-80-SPC-UPL15-UNV-L840-CD-1 CLC-WSL-EXT-B	9	73
255	P	CLASSROOM	242RTPI	20	58	Relamp and Driver existing wrap fixture with 2 lamps and 1 driver @ 10ft	Linmore LL-T8-4-2-ED-F-40K, LL-DR-22W-T2-DIM	20	22
256	P	CLASSROOM	242RTPI	20	58	Relamp and Driver existing wrap fixture with 2 lamps and 1 driver @ 10ft	EvoKit 2x4 P 36L 26W 840 2 0-10 7 G4	20	28
270	BOYS	LOCKERS	142IHI	43	58	Replace existing H Frame fixture with new 4 ft Linear Pendant on existing drops	FSC L7648-1-25WT4-40K	43	25
271	BOYS	COACH	142IHI	6	58	Replace existing H Frame fixture with new 4 ft Linear Pendant on existing drops	FSC L7648-1-25WT4-40K	6	25
272	BOYS	COACH	142IHI	2	58	Replace existing H Frame fixture with new 4 ft Linear Pendant on existing drops	FSC L7648-1-25WT4-40K	2	25
273	BOYS	COACH TOILET	D2CFSI23	1	46	Replace small ceiling fixture with similar LED	Lithonia FMLRL 14 40K	1	24
274	BOYS	COACH SHOWER	JCFSI23	1	23	Relamp existing "A" lamp	GC 17A21G4DIM/840/R (16181)	1	21
275	BOYS	CUSTODIAN	KCFSI23	1	23	Relamp existing "A" lamp	GC 17A21G4DIM/840/R (16181)	1	17
276	BOYS	EQUIPMENT	142IHI	6	58	Replace existing H Frame fixture with new 4 ft Linear Pendant on existing drops	FSC L7648-1-25WT4-40K	6	25
277	BOYS	SHOWERS (STORAGE)	JCFSI23	7	23	Relamp existing "A" lamp	GC 17A21G4DIM/840/R (16181)	7	21
278	BOYS	ELECTRICAL	CHI200	2	200	Relamp existing "A" lamp	GC 17A21G4DIM/840/R (16181)	2	17
282	GIRLS	LOCKERS	142IHI	43	58	Replace existing H Frame fixture with new 4 ft Linear Pendant on existing drops	FSC L7648-1-25WT4-40K	43	25
283	GIRLS	COACH	142IHI	6	58	Replace existing H Frame fixture with new 4 ft Linear Pendant on existing drops	FSC L7648-1-25WT4-40K	6	25
284	GIRLS	COACH	142IHI	2	58	Replace existing H Frame fixture with new 4 ft Linear Pendant on existing drops	FSC L7648-1-25WT4-40K	2	25
285	GIRLS	COACH TOILET	D2CFSI23	1	46	Replace small ceiling fixture with similar LED	Lithonia FMLRL 14 40K	1	24
286	GIRLS	COACH SHOWER	JCFSI23	1	23	Relamp existing "A" lamp	GC 17A21G4DIM/840/R (16181)	1	21
287	GIRLS	CUSTODIAN	KCFSI23	1	23	Relamp existing "A" lamp	GC 17A21G4DIM/840/R (16181)	1	17
288	GIRLS	EQUIPMENT	142IHI	6	58	Replace existing H Frame fixture with new 4 ft Linear Pendant on existing drops	FSC L7648-1-25WT4-40K	6	25
289	GIRLS	SHOWERS (STORAGE)	JCFSI23	7	23	Relamp existing "A" lamp	GC 17A21G4DIM/840/R (16181)	7	21
290	GIRLS	ELECTRICAL	CHI200	2	200	Relamp existing "A" lamp	GC 17A21G4DIM/840/R (16181)	2	17
293	N	CLASSROOM	184HI	9	112	Replace existing H Frame fixture with new 8 ft Linear Pendant on existing drops	Eaton 8WSL-LD2-80-SPC-UPL15-UNV-L840-CD-1 CLC-WSL-EXT-B	9	73
294	N	CLASSROOM	184HI	9	112	Replace existing H Frame fixture with new 8 ft Linear Pendant on existing drops	Eaton 8WSL-LD2-80-SPC-UPL15-UNV-L840-CD-1 CLC-WSL-EXT-B	9	73
295	N	CLASSROOM	184HI	9	112	Replace existing H Frame fixture with new 8 ft Linear Pendant on existing drops	Eaton 8WSL-LD2-80-SPC-UPL15-UNV-L840-CD-1 CLC-WSL-EXT-B	9	73
298	M	WEIGHT ROOM	184HI	15	112	Replace existing H Frame fixture with new 8 ft Linear Pendant on existing drops	Eaton 8WSL-LD2-80-SPC-UPL15-UNV-L840-CD-1 CLC-WSL-EXT-B	15	73
300	L	LIBRARY	242RTPI	20	58	Retrofit existing 2x4 with Evokit	EvoKit 2x4 P 36L 26W 840 2 0-10 7 G4	20	28
301	L	ACTIVITIES (STORAGE)	242RTPI	2	58	Retrofit existing 2x4 with Evokit	EvoKit 2x4 P 36L 26W 840 2 0-10 7 G4	2	28
302	L	ACTIVITIES (STORAGE)	142IHI	2	58	Replace existing H Frame fixture with new 4 ft Linear Pendant on existing drops	Eaton 4WSL-LD2-40-SRC-UPL15-UNV-L840-CD-1	2	37
303	L	LIBRARY (STORAGE)	142IHI	6	58	Replace existing H Frame fixture with new 4 ft Linear Pendant on existing drops	Eaton 4WSL-LD2-40-SRC-UPL15-UNV-L840-CD-1	6	37
304	L	MENS	142WPI	3	58	Relamp and Driver existing wrap fixture with 2 lamps and 1 driver @ 10ft	Linmore LL-T8-4-2-ED-F-40K, LL-DR-22W-T2-DIM	3	26
305	L	MENS	KI60	1	60	Relamp existing "A" lamp	GC 17A21G4DIM/840/R (16181)	1	17
306	L	WOMENS	142WPI	3	58	Relamp and Driver existing wrap fixture with 2 lamps and 1 driver @ 10ft	Linmore LL-T8-4-2-ED-F-40K, LL-DR-22W-T2-DIM	3	26
309	K	CLASSROOM	184HI	9	112	Replace existing H Frame fixture with new 8 ft Linear Pendant on existing drops	Eaton 8WSL-LD2-80-SPC-UPL15-UNV-L840-CD-1 CLC-WSL-EXT-B	9	73
310	K	CLASSROOM	184HI	9	112	Replace existing H Frame fixture with new 8 ft Linear Pendant on existing drops	Eaton 8WSL-LD2-80-SPC-UPL15-UNV-L840-CD-1 CLC-WSL-EXT-B	9	73
313	I	CLASSROOM	184HI	9	112	Replace existing H Frame fixture with new 8 ft Linear Pendant on existing drops	Eaton 8WSL-LD2-80-SPC-UPL15-UNV-L840-CD-1 CLC-WSL-EXT-B	9	73
314	I	CLASSROOM	184HI	9	112	Replace existing H Frame fixture with new 8 ft Linear Pendant on existing drops	Eaton 8WSL-LD2-80-SPC-UPL15-UNV-L840-CD-1 CLC-WSL-EXT-B	9	73
315	I	CLASSROOM	184HI	9	112	Replace existing H Frame fixture with new 8 ft Linear Pendant on existing drops	Eaton 8WSL-LD2-80-SPC-UPL15-UNV-L840-CD-1 CLC-WSL-EXT-B	9	73
318	F	CLASSROOM	242RTPI	6	58	Retrofit existing 2x4 with Evokit	EvoKit 2x4 P 36L 26W 840 2 0-10 7 G4	6	28
319	F	OPEN	242RTPI	6	58	Retrofit existing 2x4 with Evokit	EvoKit 2x4 P 36L 26W 840 2 0-10 7 G4	6	28
320	F	OFFICE 1	242RTPI	3	58	Retrofit existing 2x4 with Evokit	EvoKit 2x4 P 36L 26W 840 2 0-10 7 G4	3	28
321	F	OFFICE 2	242RTPI	3	58	Retrofit existing 2x4 with Evokit	EvoKit 2x4 P 36L 26W 840 2 0-10 7 G4	3	28
322	F	CUSTODIAN	KCFSI23	3	23	Relamp existing "A" lamp	GC 17A21G4DIM/840/R (16181)	3	17
325	H	CLASSROOM	184HI	9	112	Replace existing H Frame fixture with new 8 ft Linear Pendant on existing drops	Eaton 8WSL-LD2-80-SPC-UPL15-UNV-L840-CD-1 CLC-WSL-EXT-B	9	73
326	H	CLASSROOM	184HI	9	112	Replace existing H Frame fixture with new 8 ft Linear Pendant on existing drops	Eaton 8WSL-LD2-80-SPC-UPL15-UNV-L840-CD-1 CLC-WSL-EXT-B	9	73
329	G	MENS	142WPI	3	58	Relamp and Driver existing wrap fixture with 2 lamps and 1 driver @ 10ft	Linmore LL-T8-4-2-ED-F-40K, LL-DR-22W-T2-DIM	3	26
330	G	MENS	KI60	1	60	Relamp existing "A" lamp	GC 17A21G4DIM/840/R (16181)	1	17
331	G	WOMENS	142WPI	3	58	Relamp and Driver existing wrap fixture with 2 lamps and 1 driver @ 10ft	Linmore LL-T8-4-2-ED-F-40K, LL-DR-22W-T2-DIM	3	26
332	G	CLASSROOM	184HI	9	112	Replace existing H Frame fixture with new 8 ft Linear Pendant on existing drops	Eaton 8WSL-LD2-80-SPC-UPL15-UNV-L840-CD-1 CLC-WSL-EXT-B	9	73
333	G	CLASSROOM	242RTPI	9	112	Retrofit existing 2x4 with Evokit	EvoKit 2x4 P 36L 26W 840 2 0-10 7 G4	9	28
334	G	CLASSROOM	184HI	9	112	Replace existing H Frame fixture with new 8 ft Linear Pendant on existing drops	Eaton 8WSL-LD2-80-SPC-UPL15-UNV-L840-CD-1 CLC-WSL-EXT-B	9	73

**ATTACHMENT D**  
**PROJECT SCHEDULE**

After the Contract Effective Date, the ENGIE Services U.S. Construction Manager will develop, with input from District staff, a master Microsoft® Project schedule. The project team will establish a weekly construction meeting at which time the work of the previous week will be reviewed, and a two week look ahead will be coordinated. The Microsoft® Project schedule will be updated on a monthly basis. At this time, ENGIE Services U.S. estimates that after contract execution, the issuing of subcontractor contracts, design, engineering, mobilization, construction, and commissioning/turnover will take three (3) months.

**ATTACHMENT E**

**ESTIMATED PAYMENT SCHEDULE**

<b>Design &amp; Engineering Fee</b>	<b>\$36,187</b>
<b>Remaining Implementation Cost</b>	<b>\$325,687</b>
=====	
<b>Contract Amount</b>	<b>\$361,874</b>

A design and engineering fee will be invoiced to District upon both Parties signing the Energy Services Contract, and shall be due and payable as provided in the Contract.

**Estimated Payment Schedule**

<b>Month</b>	<b>Estimated Invoice Amount</b>
01	\$36,187
02	\$307,593
03	\$18,094

**ATTACHMENT F  
CERTIFICATIONS**

Forms to be obtained from District, and completed forms submitted to District prior to commencement of Work

1. Prevailing Wage Certification
2. Workers' Compensation Certification
3. Fingerprinting / Criminal Background Investigation Certification
4. Drug-Free Workplace / Tobacco-Free Environment Certification