

917



# SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

FORM APPROVED COUNTY COUNSEL  
BY: *[Signature]* 10/9/14  
DATE  
BY: GREGORY P. PRIAMOS

**FROM:** Economic Development Agency

**SUBMITTAL DATE:**  
October 16, 2014

**SUBJECT:** Award of Energy Conservation Program - Public Hearing, ALL Districts, 20 years.  
[\$54,603,300], [\$25,000 Ongoing Costs]. Energy Management 100% (Vote Separately)

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the Energy Conservation Program and associated tax-exempt lease financing, as described herein, with a project budget of \$54,603,300;
2. Make the following finding:  
The funds for the repayment of the financing or cost of design, construction, and operation of the energy conservation facility, or both, as required by contract are projected to be available from revenues which otherwise would have been used for the purchase of electrical, thermal, or other energy required by the County of Riverside in absence of the energy conservation facility;

(Continued)

*[Signature]*

Robert Field  
Assistant County Executive Officer/EDA

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 0	\$ 1,920,045	\$ 54,603,300	\$ 25,000	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	
<b>SOURCE OF FUNDS:</b> -Energy Management 100%				<b>Budget Adjustment:</b> No	
				<b>For Fiscal Year:</b> 2015/16-2033/35	

**C.E.O. RECOMMENDATION:**

**REVIEWED BY CIP**  
*[Signature]*  
Ivan M. Chand  
10/21/2014

**APPROVE**  
*[Signature]*  
BY: Rohini Dasika  
Rohini Dasika

County Executive Office Signature

## MINUTES OF THE BOARD OF SUPERVISORS

FISCAL PROCEDURES APPROVED  
PAUL ANGULO, CPA, AUDITOR-CONTROLLER  
BY: *[Signature]* 10/17/14  
Esteban Hernández

Departmental Concurrence

- A-30
- 4/5 Vote
- Positions Added
- Change Order

Prev. Agn. Ref.: 3.22 of 5/20/14

District: ALL

Agenda Number:

9-1

# **SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

Economic Development Agency

**FORM 11:** Award of Energy Conservation Program – Public Hearing, ALL Districts, 20 years, [\$54,603,300],  
[\$25,000 Ongoing Costs], Energy Management 100% (Vote Separately)

**DATE:** October 16, 2014

**PAGE:** 2 of 5

## **RECOMMENDED MOTION:** (Continued)

3. Adopt resolution No. 2014-203, resolution approving certain energy conservation measures. Authorizing the execution of agreements, signatories, and other determinations in connection Therewith;
4. Approve the attached agreements consisting of an Energy Services agreement and a Maintenance Services agreement with OpTerra Energy Services (formerly Chevron Energy Solutions) and authorize the Chairman to execute the agreements on behalf of the County;
5. Approve the selection of Bowie, Arneson, Wiles & Giannone, as Bond Counsel for the tax-exempt opinion on the project financing at a cost not to exceed \$30,000 (contingent on successful funding);
6. Approve, subject to Bond Counsel tax-exempt opinion, the attached financial documents in substantial final form consisting of a tax-exempt lease purchase agreement with Bank of America Public Capital Corporation and an escrow agreement with Bank of America, National Association and authorize the Chairman to execute the agreements on behalf of the County;
7. Delegate project management authority for this project to the Assistant County Executive Officer/EDA in accordance with applicable Board policies

## **BACKGROUND:**

### **Summary**

Chapter 3.2 of Division 5, of Title 1 of the Government Code (the Code), Section 4217.10 et seq., Energy Conservation Contracts, allows local governments to develop certain energy conservation programs at the facilities of public agencies and provides the authority to finance such programs.

Pursuant to these sections of the Code, the County has successfully undertaken three previous energy conservation projects. The three projects totaled \$19.5 million, included 92 county-owned facilities and encompassed various Energy Conservation Measures (ECMs) such as replacement of lights and ballasts, heating ventilation air condition modifications, re-glazing, thermal energy storage, new cooling towers and new chillers.

Energy performance contracts afford the county the opportunity to make major system changes and immediately take advantage of the improved energy efficiency at county facilities and the benefits they provide. There is no additional cost to the General Fund, and the financing is paid through utility savings and capital cost avoidance. In addition, the previous contracts have realized approximately \$800,000 in rebates and incentives and have eliminated approximately \$1,000,000 of project costs from the county's deferred maintenance budget.

(Continued)

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**FORM 11:** Award of Energy Conservation Program – Public Hearing, ALL Districts, 20 years, [\$54,603,300],  
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**DATE:** October 16, 2014

**PAGE:** 3 of 5

## **BACKGROUND:**

### **Summary** (Continued)

On May 20, 2014 the county entered into a Program Development Agreement with Chevron Energy Solutions (now OpTerra Energy Services) to provide a detailed analysis of possible ECMs at various county facilities. On August 29, 2014, Chevron Energy Solutions (CES) was purchased by OpTerra Energy Services (OpTerra). OpTerra is backed by Oaktree Capital Management, a private equity firm in Los Angeles with over \$90 billion in assets under management and a strong track record of energy sector investing. It develops energy-savings projects, as well as clean-energy systems from technologies like solar and fuel cells.

The ECM opportunities focused on solar photovoltaic systems and the enrollment of Riverside County in a special local-government program called the Renewable Energy Self-Generation Bill Credit Transfer (RES-BCT) program and tariff. This RES-BCT tariff will allow the county to generate solar electricity at one account and transfer any available excess bill credits (in dollars) to another county account--called a "benefitting" account.

This program offers great potential for energy cost savings on the county's large Southern California Edison (SCE) electric accounts. The beauty of this program is that electricity generated by county solar system, when transferred to another county account, is valued at the full retail price per kilowatt hour (kWh) of the receiving or "benefitting" account. Creation of such a program on county property within SCE territory would not only save electricity costs on existing accounts, but also avoid the costs of future SCE rate increases. This would help keep the generation portion of large county electric bill levels over the life of the project.

## **PROJECT SPECIFICS:**

This project will consist of two types of installations--Generating Sites RES-BCT tariff and Net Metering Sites (traditional sites providing a solar power offset for facility). The sites, installation type, solar structure and system size are shown below.

Site Name	Installation Type	Solar Structure	System Size
Brookside Materials Yard	RES-BCT	Ground Mount Solar	4.5 MW
Ben Clark Training Center	RES-BCT	Shade Structures--Parking	2.3 MW
San Jacinto Animal Shelter	NEM	Shade Structures--Parking	144 kW
	RES-BCT	Ground Mount Solar	1.1 kW
Riverside County Regional Medical Center	RES-BCT	Shade Structures-Parking	1.2 MW
Perris Sheriff-CHA Campus	NEM	Shade Structures-Parking	738 kW
Temecula County Administration Center	NEM	Shade Structures-Parking	187 kW
Palm Desert Sheriff Station	NEM	Shade Structures-Parking	655 kW
Perris County Coroner	NEM	Shade Structures-Parking	252 kW
Mead Valley Transportation Hub	NEM	Shade Structures-Parking	536 kW
Western Riverside Animal Shelter	NEM	Shade Structures-Parking	601 kW
<b>GRAND TOTAL</b>			<b>12.25 MW</b>

## **PROGRAM FINANCIALS:**

There is no upfront capital funding required to perform this project. The project is self-supporting in that the savings generated by the project will pay for the debt service over the 20-year term of the lease-purchase agreement. Opterra will guarantee the projected savings. If the savings are not achieved as projected, OpTerra will pay the county for the difference. The financing for the project is secured by the solar system equipment.

(Continued)

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Economic Development Agency

**FORM 11:** Award of Energy Conservation Program – Public Hearing, ALL Districts, 20 years, [\$54,603,300],  
[\$25,000 Ongoing Costs], Energy Management 100% (Vote Separately)

**DATE:** October 16, 2014

**PAGE:** 4 of 5

## **BACKGROUND:**

### **Summary** (Continued)

The first debt service payment will begin after installation is complete (approximately December 1, 2015). Ongoing costs for internet monitoring of installed solar systems will be approximately \$25,000 annually and will be paid by the Energy Management budget.

Total Project Cost:	\$54,603,300 million
Rate of Return:	8.22%
Annual Net Savings:	\$224,347
30-Year Program Savings:	\$116.1 million

### Assumptions:

Interest Rate:	3.33% fixed for 20 years
Utility Escalation:	6.0%

The financing for this project was approved by the Debt Advisory Committee on September 11, 2014. The completion and funding of the financing is contingent on Bond Counsel providing an unqualified opinion as to the validity and tax-exempt status of the proposed financing and on the County receiving planned savings.

EDA is requesting the services of Bowie, Arneson, Wiles & Giannone (BAWG) as Bond Counsel to evaluate the financing and render a legal opinion on this tax-exempt status. The cost is estimated as \$30,000. Payment is only required if the tax-exempt status is verified. Otherwise, no payment will be necessary. The price is reasonable because it is within the range of reasonable prices estimated by our office. It is highly specialized legal work that involves a high degree of expertise and experience that is not generally available among bond counsel firms. Based on the skill, time, research, and effort involved, the price is reasonable.

### **Impact on Citizens and Businesses**

The impact of this project will result in greater availability of shaded parking at county facilities. Also, this project is expected to generate 19,034,548 kWh per year which will remove 13,125 metric tons of Carbon Dioxide (GHG equivalent) annually from Riverside County air. This will help improve the air quality of the county.

## **SUPPLEMENTAL:**

### **Additional Fiscal Information**

Across SCE territory, the following average rate increases have gone into effect in the recent past:

October 2012	10% increase
January 2013	7.3% increase
June 2013	1% increase
November 2013	3% increase
January 2014	-1.1% decrease
April 2014	1.3 % increase
June 2014	7.8% increase (approved)

(Continued)

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**PAGE:** 5 of 5

**SUPPLEMENTAL:**

**Additional Fiscal Information**

(Continued)

In addition to a 2% increase requested for first quarter 2015, there are other factors that will likely increase utility prices in the next 5-10 years. Utilities are expected to raise rates as they buy power to replace nuclear power previously generated by the San Onofre Nuclear Generating Station.

SCE has already filed a rate increase case with the California Public Utilities Commission for costs related to the requirement for large utilities to reduce greenhouse gas emissions. Finally, the state requirement for electric utilities to have 33% of their electric portfolio obtained from renewable energy production will definitely cause rates to rise. This makes it even more imperative for the county to implement cost savings measures from programs like this one.

The following summarizes the funding necessary for the lease financing and bond counsel charges:

Financed Amount for 20 years	\$54,573,300
Estimated Bond Counsel Charges	\$30,000
<b>Total Estimated Acquisition Costs:</b>	<b>\$54,603,300</b>

**Attachments:**

- Energy Services Contract
- Escrow Agreement
- Lease Purchase Agreement
- Project Cash Flow
- Resolution 2014-203

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4 **RESOLUTION NO. 2014 – 203**

5 **RESOLUTION APPROVING CERTAIN ENERGY CONSERVATION MEASURES**  
6 **AUTHORIZING THE EXECUTION OF AGREEMENTS, SIGNATORIES**  
7 **AND MAKING OTHER DETERMINATIONS IN CONNECTION THEREWITH**

8 WHEREAS, the Board of Supervisors (the "Board") of the County of Riverside (the  
9 "County") is authorized pursuant to Section 4217.10 *et seq.* of the California Government Code  
10 (respectfully, the "Chapter 3.2" and the "Code") to enter into energy conservation contracts  
11 pursuant to which the County may purchase, acquire, lease, and finance equipment and  
12 services to reduce energy use or to make more efficient use of energy; and

13 WHEREAS, pursuant to the Chapter 3.2, the County proposes to enter into an Energy  
14 Services Contract (the "Contract") and a Maintenance Services and Savings Guarantee  
15 Agreement (the "Maintenance Agreement") with OpTerra Energy Group ("OpTerra") for the  
16 acquisition and installation of a solar photovoltaic project (the "Project") and the maintenance of  
17 the Project; and

18 WHEREAS, Banc of America Public Capital Corp (the "Corporation") has offered to  
19 enter into a Tax-Exempt Equipment Lease-Purchase Agreement (the "Lease Agreement"), and  
20 an Escrow and Account Control Agreement (the "Escrow Agreement") with the County in order  
21 to provide for the purchase, acquisition, and lease of the Project; and

22 WHEREAS, THE Project constitutes personal property necessary for the County to  
23 perform essential government functions; and

24 WHEREAS, notice of the public hearing with regard to consideration of the Agreement  
25 and the Project was published in *The Press Enterprise* on October 11, 2014 and *The Desert*  
26 *Sun* on October 10, 2014 consistent with the terms of Chapter 3.2;

FORM APPROVED COUNTY COUNSEL

BY: *DALE A. GARDNER*  
DATE: *10/14/14*

1 NOW, THEREFORE BE IT FOUND, DETERMINED ORDERED AND RESOLVED by  
2 the Board of Supervisors of the County of Riverside as follows:

3 Section 1. The Recitals are true and accurate statements of fact.

4 Section 2. The Board, consistent with the provisions of Section 4217.13 of the  
5 Code, makes the following determinations:

6 (a) The anticipated cost to the County of "conservation services" as said term is  
7 defined in Section 4217.11(c) of the Code and as provided for by the Contract, will be less than  
8 the anticipated marginal cost to the County of energy that would have been consumed by the  
9 County at the project sites in absence of the Project.

10 (b) The difference between the fair rental value of the personal property that is the  
11 subject of the Lease Agreement is and the agreed rent is anticipated to be offset by savings in  
12 energy costs realized from the Contract.

13 (c) Funds for the payment of amounts due under the Lease Agreement are  
14 projected to be available from the revenues which otherwise have been used for purchase of  
15 energy required by the County at the project sites in the absence of the Project.

16 Section 3. The form of the Contract by and between OpTerra and the County, the  
17 Lease Agreement by and between the Lessor and the County and the Escrow Agreement by  
18 and among the Lessor, the County and Bank of America National Association as escrow agent,  
19 are hereby approved and the Chairman of the Board and the Clerk of the Board are hereby  
20 authorized and directed on behalf of the County and in its name to execute and deliver the  
21 Contract, the Maintenance Agreement, the Lease Agreement and the Escrow Agreement in  
22 the form so approved, with such additions thereto and changes therein as are necessary to  
23 insure the completion and financing of the Project. Approval of such additions and changes  
24 shall be conclusively evidenced by the execution and delivery of said Agreements.  
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1 The Assistant Chief Executive Officer of the Economic Development Agency (EDA), or  
2 his/her designee, is hereby authorized to take all action necessary or reasonably required by  
3 the Contract to carry out, give effect to and consummate the purpose and intent of the Contract  
4 and to execute on behalf of the County those notices, required pursuant to the terms of the  
5 Contract.

6 The County Executive Officer, or his/her designee, is hereby authorized to take all  
7 action necessary or reasonably required by the Lease Agreement and the Escrow Agreement  
8 to carry out, give effect to and consummate the purpose and intent of said agreements and to  
9 execute on behalf of the County those notices, requisitions, etc. as required by the terms of  
10 said agreements.

11 Section 4. The Chairman, the Clerk of the Board, the County Executive Officer, the  
12 Assistant Chief Executive Officer of EDA and the officers and staff of said departments are  
13 hereby authorized and directed to take such actions and execute and deliver such documents,  
14 instruments and certificates as are deemed necessary or advisable to accomplish the purposes  
15 of this Resolution, the Lease Agreement, Contract, Escrow Agreement and the transactions  
16 contemplated thereby.  
17

18 Section 5. All actions heretofore taken by the County in connection with the Project  
19 and the financing of the Project that are not inconsistent with this Resolution are hereby  
20 approved, ratified and confirmed.  
21

22 Section 6. If any section, paragraph, clause or provision of this Resolution shall for  
23 any reason be held to be invalid or unenforceable, the invalidity or enforceability of such  
24 section, paragraph, clause or provision shall not affect any of the remaining provisions of this  
25 Resolution.

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Section 7. This Resolution shall take effect immediately upon its adoption.

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OpTerra ES Project #: 3 2 6 4 2 - \_ \_ \_ \_  
OpTerra ES Contract # R 3 0 0 4

## ENERGY SERVICES CONTRACT

This **ENERGY SERVICES CONTRACT** (this "Contract") is made and entered into as of 28 October 2014 (the "Contract Effective Date") by and between **OpTerra Energy Services, Inc.**, a Delaware corporation ("OpTerra Energy Services"), and the County of Riverside ("Riverside County") and together with OpTerra Energy Services the "Parties" and each of Riverside County and OpTerra Energy Services a "Party").

### CONTRACT RECITALS

WHEREAS, Riverside County owns and/or operates certain public facilities specifically described in Attachment D (the "Facilities") and Riverside County wishes to reduce the Facilities' energy consumption and costs and improve the Facilities' energy quality and reliability; and

WHEREAS, OpTerra Energy Services is a full-service energy services company with the technical capabilities to provide services to Riverside County including identifying supply-side and/or demand-side energy conservation measures ("ECMs"), engineering, procurement, construction management, installation, construction and training; and

WHEREAS, Riverside County executed a Program Development Agreement with OpTerra Energy Services, as successor-in-interest to Chevron Energy Solutions Company, a division of Chevron U.S.A. Inc., to perform an integrated energy assessment and present Riverside County with a recommended energy plan to implement certain ECMs (the "Recommendations"); and

WHEREAS, in the Recommendations, OpTerra Energy Services identified potential energy and operational savings opportunities at Riverside County's Facilities and estimated program costs to implement the recommended ECMs and presented an overall potential energy cost and consumption savings for implementing the Recommendations; and

WHEREAS, on 20 August 2014, OpTerra Energy Services delivered the Recommendations, on an arms' length basis, to personnel of Riverside County with requisite technical training and experience, for those personnel to make judgments and determinations as to the desired scope of work; and

WHEREAS, Riverside County has accepted the Recommendations and determined that the anticipated cost to Riverside County to implement the Recommendations will be less than the anticipated cost to Riverside County for thermal, electrical, and other energy, together with anticipated operational, maintenance and other costs, that would have been consumed by Riverside County in the absence of the recommended ECMs in compliance with California Government Code §§4217.10 through 4217.18; and

WHEREAS, pursuant to California Government Code §4217.12, Riverside County's Board of Supervisors held a regularly scheduled public hearing on 28 October 2014, of which two weeks advance public notice was given regarding this Contract and its subject matter, and

WHEREAS, Riverside County's Board of Supervisors has determined that entering into this energy services contract to implement the Recommendations is in the best interests of Riverside County and that California Government Code §4217.10 *et seq.* allows Riverside County to enter into this Contract; and

WHEREAS, by adoption of Resolution No. 2014-\_\_\_\_\_ at the above-referenced meeting, Riverside County approved this Contract and authorized its execution.

NOW, THEREFORE, Riverside County and OpTerra Energy Services 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 or Professional Services are 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, anti-dumping duty, tariff, 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 or Professional Services are undertaken.

**"Applicable Permits"** means all permits and approvals required to be issued by any Governmental Authority in connection with the Professional Services or 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 21.04(ii).

**"Arbitration Rules"** is defined in Section 21.04(ii).

**"ARRA"** is defined in ARTICLE 14.

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

Attachment A	Form of Performance Bond
Attachment B	Form of Payment Bond
Attachment C	List of Incentives
Attachment D	Riverside County's Facilities & Existing Equipment
Attachment E	<i>Not Included</i>
Attachment F	Scope of Work
Attachment G	Scope of Monitoring Installation
Attachment H	Scope of M&V Services
Attachment I	Scope of Maintenance Services
Attachment J	Iran Contracting Act Certification

**"Beneficial Use"** means when major new equipment and systems included in the Scope of Work are properly installed, inspected, operational, and are capable of being used for their intended purpose. Criteria for Beneficial Use of equipment / systems will be established as defined in Attachment F.

**"Business Day"** means any calendar day other than a Saturday, a Sunday or a calendar day on which banking institutions in San Francisco, California, are authorized or obligated by law or executive order to be closed.

**"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 Beneficial Use"** means the certificate, issued by OpTerra Energy Services to Riverside County and subcontractor(s), which identifies when Riverside County took Beneficial Use of the Work or any portion thereof. A Certificate of Beneficial Use may be executed for an individual subcontract, a specific building, a portion of the Work, or the entire Work.

**"Certificate of Final Completion"** means the certificate issued by OpTerra Energy Services to Riverside County, 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 OpTerra Energy Services to Riverside County, 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 or Professional Services.

**"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 OpTerra Energy Services and Riverside County, authorizing OpTerra Energy Services 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 OpTerra Energy Services 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 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.

**"Construction Period"** means the period beginning with the first day of the month in which material or equipment is first installed at the Facilities and continuing until the M&V Commencement Date.

**"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 Fifty-Four Million Four Hundred Sixty-Eight Thousand Three Hundred Dollars (\$54,468,300), which is inclusive of the assessment fee for the Recommendations and the mobilization fee, as set forth in Section 8.01, but exclusive of the Quarterly M&V Fee and the Quarterly Maintenance Fee.

**"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 or the Professional Services.

**"Dispute"** is defined in Section 21.02.

**"DOE Guidelines"** is defined in Section 13.01.

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

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

**"Energy Delivery Point"** means, for each Generating Facility, the point at which Utility meter energy is being delivered, as designated in the Interconnection Agreement.

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

**"Event of Default"** is defined in ARTICLE 18.

**"Excusable Event"** means an act, event, occurrence, condition, or cause beyond the control of OpTerra Energy Services, including, but not limited to, the following: (i) any act or failure to act of, or other Delay caused by any Riverside County Person; (ii) the failure to obtain, or delay in obtaining, any Interconnection Agreement, Applicable Permit, or approval of a Governmental Authority (including due to failure to make timely inspection), or Delays caused by Changes and/or modifications to the Scope of Work required by a Governmental Authority, other than a failure caused by the action or inaction of OpTerra Energy Services; (iii) changes in the design, scope or schedule of the Work required by any Governmental Authority or Riverside County Person; (iv) undisclosed or unforeseen conditions encountered at the Project Location, including discovery or existence of Hazardous Substances; (v) information provided to OpTerra Energy Services by any Riverside County Person or Utility is later found to be inaccurate or incomplete; (vi) any Change in Law; (vii) acts of God; (viii) acts of the public enemy or terrorist acts; (ix) relocation or construction of transmission facilities or the shutdown of such facilities for the purpose of necessary repairs; (x) work by Utility; (xi) flood, earthquake, tornado, storm, fire, explosions, lightning, landslide or similar cataclysmic occurrence; (xii) sabotage, vandalism, riots or civil disobedience; (xiii) labor disputes or strikes; (xiv) labor or material shortages, delay in manufacturing and deliveries of equipment; (xv) Abnormally Severe Weather Conditions; (xvi) an annual level of direct beam solar resource availability that is less than or equal to 90% of historical averages as measured by long-term weather data (minimum 5 years) collected at the applicable Facility and/or other reliable calibrated and appropriate weather station representative of such Facility; (xvii) requirement by Utility that any Generating Facility

discontinue operation; (xviii) any action by a Governmental Authority that prevents or inhibits the Parties from carrying out their respective obligations under this Contract (including an unstayed order of a court or administrative agency having the effect of subjecting the sales of energy output to federal or state regulation of prices and/or services); or (xix) any Utility power outage at a Facility.

**"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 Riverside County of the final documentation (as-built drawings, operation and maintenance manuals, warranty documentation and final submittals).

**"Generating Facility"** means each of the photovoltaic, solar powered generating facilities located at the sites listed in Attachment H, and includes all associated photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wires and other equipment that may be necessary to connect the Generating Facility to the applicable Energy Delivery Point.

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

**"Greenhouse Gas"** is defined in Section 13.01.

**"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.

**"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).

**"Interconnection Agreement"** means the Interconnection Agreement to be entered into between Riverside County and the Utility with respect to the Generating Facilities.

**"Interconnection Facilities"** is defined in Section 20.02.

**"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.

**"M&V Commencement Date"** means the first day of the month immediately following the later of (i) OpTerra Energy Services' receipt of the fully signed Certificate of Final Completion, or (ii) OpTerra Energy Services' receipt of the full Contract Amount.

**"M&V Services"** is defined in Attachment H.

**"Maintenance Services"** is defined in Attachment I.

**"Measurement Period"** means each one-year period following the M&V Commencement Date.

**"NEC"** means the National Electric Code.

**"Notice to Proceed"** is defined in Section 2.05.

**"OpTerra Energy Services"** is defined in the Preamble.

**"OpTerra Energy Services Warranty"** is defined in Section 9.01.

**"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.

**“Professional Services”** means professional services provided by OpTerra Energy Services to Riverside County under this Contract, including the Maintenance Services and the M&V Services.

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

**“Project Location”** means the area or areas, enclosed by the temporary construction fence(s) to be erected from time to time by OpTerra Energy Services, where the Project materials and equipment and any other energy related equipment, as described in the Scope of Work, are being installed.

**“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 Riverside County’s ability to beneficially operate and utilize such portion of the Work.

**“Quarterly M&V Fee”** means a fee payable quarterly in arrear by Riverside County to OpTerra Energy Services, in consideration of the provision of up to five (5) years of M&V Services. The Quarterly M&V Fee for each of the four quarters of the first Measurement Period will be Fifteen Thousand One Hundred Fifty Dollars (\$15,150). The Quarterly M&V Fee will be increased annually thereafter at the rate of three percent (3%) per annum, each increase to be effective on the first day of the corresponding Measurement Period.

**“Quarterly Maintenance Fee”** means a fee payable quarterly in arrear by Riverside County to OpTerra Energy Services, in consideration of the performance of up to five (5) years of Maintenance Services. The Quarterly Maintenance Fee for each of the four quarters of the first Measurement Period will be Fifty-Three Thousand Dollars (\$53,000). The Quarterly Maintenance Fee will be increased annually thereafter at the rate of three percent (3%) per annum, each increase to be effective on the first day of the corresponding Measurement Period.

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

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

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

**“Riverside County”** is defined in the Preamble.

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

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

**“Scope of Work”** means the Work set forth in Attachments F and G, 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 Riverside County 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 Riverside County.

**“Utility”** is defined in Section 20.02.

**“Work”** means the Work to be done by OpTerra Energy Services 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 last day of the Energy Savings Term, unless terminated earlier as provided in this Contract.

Section 2.02 Performance of Work. The Work and Professional Services to be performed hereunder will be provided in accordance with the terms of this Contract and the applicable standard of care. OpTerra Energy Services 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. OpTerra Energy Services represents and warrants that it is fully experienced in projects of the nature and scope of the Work and Professional Services, and that it is properly qualified, licensed and equipped to supply and perform the Work and Professional Services. OpTerra Energy Services must maintain the appropriate California State Contractor's License, or require its subcontractors to maintain the appropriate license(s), for the Work. The Work completed herein must meet the approval of Riverside County, such approval to be granted or denied in accordance with the requirements set forth in this Contract, and will be subject to Riverside County'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 F and G, except pursuant to a Change Order.
- (b) The Professional Services may not exceed those set forth in Attachments H, and I, except pursuant to a Change Order.
- (c) If OpTerra Energy Services determines during the design phase that it is necessary to decrease (or possible to increase) the expected size of a Generating Facility at a Project Location as set forth in Attachment F, the Parties agree to negotiate in good faith regarding such a change in scope, and if appropriate, execute a Change Order with respect to such Generating Facility to reduce (or increase) the Contract Amount by Three and 94/100 Dollars (\$3.94) per watt of reduced (or additional) capacity.

Section 2.04 Project Schedule. After the Contract Effective Date, OpTerra Energy Services will develop, with input from Riverside County, a master project schedule using Microsoft Project®. OpTerra Energy Services 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. Within ten (10) days after Riverside County has closed the financing referenced in Section 2.07, and if OpTerra Energy Services has submitted Contract Bonds and a fully executed Iran Contracting Act Declaration, set forth in Attachment J, Riverside County will issue to OpTerra Energy Services a written Notice to Proceed ("Notice to Proceed"). OpTerra Energy Services will begin Work within twenty (20) Business Days after OpTerra Energy Services' receipt of the Notice to Proceed. If Riverside County fails to issue the Notice to Proceed within fifteen (15) Business Days after the financing has closed, OpTerra Energy Services may be entitled to an equitable extension of time as a result of such delay.

Section 2.06 Riverside County's Energy and Operational Records and Data. If OpTerra Energy Services requests, Riverside County will provide to OpTerra Energy Services, within twenty (20) Business Days after such request, Riverside County'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 Riverside County's records and complete data 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. Riverside County agrees that OpTerra Energy Services may rely on the foregoing data as being accurate in all respects. If OpTerra Energy Services requests, Riverside County will also provide to OpTerra Energy Services, within twenty (20) Business Days after such request, any prior energy audits of the Facilities, and copies of Riverside County's published financial statements and records related to energy usage and operational costs for said time period at the Facilities, 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 OpTerra Energy Services.

Section 2.07 Finance Contingency. It is acknowledged and agreed by the Parties that the continued existence of this Contract is expressly contingent upon Riverside County closing financing that will allow it to make the payments to OpTerra Energy Services required by this Contract. Upon execution of this Contract, Riverside County will have twenty (20) Business 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 OpTerra Energy Services will have no obligation to commence performance of the Work unless and until the financing has been closed.

**ARTICLE 3. PROJECT IMPLEMENTATION - GENERAL**

Section 3.01 Permits and Approvals. Riverside County will cooperate fully with and assist OpTerra Energy Services in obtaining all Applicable Permits required under this Contract. OpTerra Energy Services is responsible for obtaining (but not paying for) Applicable Permits, except those Applicable Permits to be issued by Riverside County itself. Riverside County will be responsible for obtaining and paying for all other permits or approvals that may be required, including annual operating permits and any approvals or exemptions required by CEQA, as applicable. Riverside County is also responsible for all fees associated with plan checks (including expedited plan checks), permits, inspections and utility interconnection(s), including any additional Scope of Work that may be required by the Utilities as part of the Interconnection Agreement(s).

Section 3.02 Coordination. Riverside County will be responsible for coordinating the activities of Riverside County Persons with those of OpTerra Energy Services and OpTerra Energy Services' subcontractors and suppliers.

Section 3.03 Project Meetings/Status Updates. During the course of the Work, OpTerra Energy Services will periodically meet with Riverside County to report on the general status and progress of the Work. OpTerra Energy Services may (but is not required to) make food and beverage items of nominal value available to Riverside County and Riverside County's employees and agents at such meetings, which if offered will be deemed part of the Scope of Work and included in the Contract Amount.

Section 3.04 Project Location Access. Riverside County hereby grants to OpTerra Energy Services, without cost to OpTerra Energy Services, all rights of ingress and egress at the Project Location, necessary for OpTerra Energy Services to perform the Work and provide all services contemplated by this Contract. OpTerra Energy Services will provide twenty-four-hour advance notice to Riverside County for access to any Riverside County Facilities. All persons entering the Project Location, including Riverside County and its employees and agents, must follow OpTerra Energy Services' safety procedures. OpTerra Energy Services may (but is not required to) make transportation available to Riverside County and Riverside County's employees and agents between and within Project Locations, which if offered will be deemed part of the Scope of Work and included in the Contract Amount.

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 Independent Contractor. The Parties hereto agree that OpTerra Energy Services, and any agents and employees of OpTerra Energy Services, its subcontractors and/or consultants, is acting in an independent capacity in the performance of this Contract, and not as a public official, officer, employee, consultant, or agent of Riverside County 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 the issuance of the Notice to Proceed, OpTerra Energy Services 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 Riverside County, OpTerra Energy Services will order the equipment identified in the Scope of Work, and any other necessary materials and supplies in order to meet the project schedule.
- (c) Riverside County will designate a single-point representative with whom OpTerra Energy Services may consult on a reasonable, regular basis and who is authorized to act on Riverside County's behalf with respect to the Project design. Riverside County's representative will render decisions in a timely manner with regard to any documents submitted by OpTerra Energy Services and to other requests made by OpTerra Energy Services in order to avoid delay in the orderly and sequential progress of OpTerra Energy Services' design services.
- (d) Within ten (10) Business Days after OpTerra Energy Services' request, Riverside County will:
  - (i) furnish all surveys or other information in Riverside County'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; and
  - (iii) supply OpTerra Energy Services with all relevant information in Riverside County's possession, including any as-built drawings and photographs, of prior construction undertaken at the Project Location.
- (e) Within thirty (30) Business Days after OpTerra Energy Services' request, Riverside County will:
- (i) obtain, or begin the process to obtain (if Board of Supervisors approval is required), any and all easements, zoning variances, planning approvals, including any resolution of any environmental impact issues, and any other legal authorization regarding utilization of the Project Location for the execution of the Work; and
  - (ii) obtain any and all title reports for those Project Locations reasonably requested by OpTerra Energy Services.
- (f) All information furnished pursuant to this Section 4.01 will be supplied at Riverside County's expense, and OpTerra Energy Services will be entitled to rely upon the accuracy and completeness of all information provided. If OpTerra Energy Services is adversely affected by any failure to provide, or delay in providing, the information specified in Section 4.01(d), OpTerra Energy Services may be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount.
- (g) If any information disclosed under this Section 4.01 gives rise to a Change to the Work or an Excusable Event, OpTerra Energy Services will notify Riverside County in writing within fifteen (15) Business Days. The Parties will meet and confer with respect to those Changes, and OpTerra Energy Services may 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 Customer's disclosed information gives rise to a Change to the Work or an Excusable Event, those disputes are to be resolved in accordance with ARTICLE 21.
- (h) OpTerra Energy Services contemplates that it will not encounter any Hazardous Substances at the Project Location, except as has been disclosed as a pre-existing condition by Riverside County 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. OpTerra Energy Services will prepare and submit all drawings and specifications to Riverside County for review. Riverside County will review the documents and provide any comments in writing to OpTerra Energy Services within twenty (20) Business Days after receipt of the documents, if OpTerra Energy Services has provided reasonable advance notice to Riverside County of the expected delivery of such documents. OpTerra Energy Services will incorporate appropriate Riverside County comments into the applicable drawings and specifications. OpTerra Energy Services reserves the right to issue the drawings and specifications in phases to allow Construction to be performed in phases. If Riverside County fails to provide written comments within the ten (10) Business Day period, Riverside County will be deemed to have no comments regarding the documents.

Section 4.03 Permits. The respective obligations of the Parties in obtaining permits are as specified in Section 3.01. Riverside County will agree to any nonmaterial changes to the designs, drawings, and specifications required by any Governmental Authority. If any Governmental Authority requires a Change as a condition to issuing a permit, the Parties may agree either to (i) increase the Contract Amount by the additional cost incurred by OpTerra Energy Services, and increase the time required to complete the Work by the number of additional days required to complete the Work, because of such Change imposed by a Governmental Authority or (ii) revise the Scope of Work and the Contract Amount to remove the portion of the Scope of Work affected by such requirement of Governmental Authority.

Section 4.04 Changes during Final Design Phase. If during the design phase any Riverside County Person requests Changes and/or modifications to the Work and/or an Excusable Event occurs, the Parties will negotiate in good faith a modification of this Contract to provide for an equitable adjustment of time and/or an equitable adjustment in the Contract Amount. Valid bases for adjusted compensation and/or time adjustment include, but are not limited to: (i) any Riverside County Person requests changes and/or modifications to the Project Scope of Work during the Project design phase; (ii) any Riverside County Person causes delays during OpTerra Energy Services' design work; (iii) the discovery of subsurface or other site conditions that were not reasonably anticipated or disclosed as of the Contract Effective Date and require significant modification of the Scope of Work; (iv) the discovery of Hazardous Substances at or impacting the Project Location, that impact the design; (v) changes to the Scope of Work required to obtain Applicable Permits; (vi) changes and/or modifications to Scope of Work ordered by any Governmental Authority; *provided* that if such changes are material, the Parties will discuss revising the Scope of

Work in lieu of adjusted compensation and/or time adjustment; and (vii) any other condition that would not reasonably have been anticipated by OpTerra Energy Services, that modifies and/or changes the Scope of Work, that increases the agreed-upon Contract Amount or increases the time needed to complete the Work. Delay caused by OpTerra Energy Services will not be a valid basis for adjusted compensation and/or time adjustment. Any such Change will be the subject of an amendment or Change Order signed by the Parties.

**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, OpTerra Energy Services 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 OpTerra Energy Services and/or one or more licensed subcontractors qualified to perform the Work.

Section 5.02 OpTerra Energy Services' Responsibilities during Construction Phase.

- (a) As an independent contractor to Riverside County, OpTerra Energy Services 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. OpTerra Energy Services 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. OpTerra Energy Services will also be responsible for all means, methods, techniques, sequences, and procedures required by the Construction Documents.
- (b) OpTerra Energy Services will make commercially reasonable efforts to coordinate construction activities and perform the Work to minimize disruption to Riverside County's operations at the Project Location. OpTerra Energy Services will provide at least twenty (20) Business Days' written notice to Riverside County of any planned power outages that will be necessary for the construction. OpTerra Energy Services will cooperate with Riverside County in scheduling such outages, and Riverside County agrees to provide its reasonable approval of any scheduled outage.
- (c) OpTerra Energy Services will initiate and maintain a safety program in connection with its Construction of the Project. OpTerra Energy Services will take reasonable precautions for the safety of, and will provide reasonable protection to prevent damage, injury, or loss to: (i) the Project Location; (ii) employees of OpTerra Energy Services and subcontractors performing Work under this Contract; (iii) OpTerra Energy Services' property and other materials to be incorporated into the Project, under the care, custody, and control of OpTerra Energy Services or its subcontractors; and (iv) other property at or adjacent to the Project Location not designated for removal, relocation, or replacement during the course of construction. OpTerra Energy Services will be responsible and liable for damages, injury or loss at the Project Location throughout Construction; provided that OpTerra Energy Services will not be responsible for injuries to Riverside County Persons if (i) the Work is not the proximate cause of the damage, loss, or injury to such Riverside County Person or (ii) the damage, loss, or injury to such Riverside County Person is due to the negligence of such Riverside County Person, or to the failure by such Riverside County Person to follow OpTerra Energy Services' safety program.
- (d) OpTerra Energy Services will provide notice to Riverside County of scheduled test(s) of installed equipment, if any, and Riverside County and/or its designees will have the right to be present at any or all such tests conducted by OpTerra Energy Services, 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, OpTerra Energy Services will, in advance of excavation, submit to Riverside County and/or a registered civil or structural engineer, employed by Riverside County, 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. No excavation of such trench or trenches may be commenced until this detailed plan has been accepted by Riverside County or by the person to whom authority to accept has been delegated by Riverside County. Pursuant to California Labor Code §6705, nothing in this Section 5.02(e) imposes tort liability on Riverside County 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) OpTerra Energy Services will promptly, and before the following conditions are disturbed, notify Riverside County, in writing, of any:
    - 1) Material that OpTerra Energy Services 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 OpTerra Energy Services 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) Riverside County 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 OpTerra Energy Services' 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) In the event that a dispute arises between Riverside County and OpTerra Energy Services, whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in OpTerra Energy Services' cost of, or time required for, performance of any part of the Work, OpTerra Energy Services 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. OpTerra Energy Services 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.

**Section 5.03      Riverside County's Responsibilities during Construction Phase.**

- (a) Riverside County will designate a single-point representative authorized to act on Riverside County's behalf with respect to Project construction and/or equipment installation. Riverside County may from time to time change the designated representative and will provide written notice to OpTerra Energy Services of such change. Any independent review of the construction will be undertaken at Riverside County's sole expense, and will be performed in a timely manner so as to not unreasonably delay the orderly progress of OpTerra Energy Services' Work.
- (b) Riverside County will provide a temporary staging area for OpTerra Energy Services, or its subcontractors, to use during the construction phase to store and assemble equipment for completion of the Work, if needed. Riverside County will provide sufficient space at the Facilities for the performance of the Work and the installation, and operation of any equipment and materials and will take reasonable steps, consistent with its current practice, to protect any such equipment and materials from harm, theft and misuse. OpTerra Energy Services will have primary responsibility for protection of such equipment and materials during the Construction Period. Riverside County will provide access to the Facilities, including parking permits and identification tags, for OpTerra Energy Services and subcontractors to perform the Work during regular business hours, or such other reasonable hours as may be requested by OpTerra Energy Services and acceptable to Riverside County. Riverside County will also either provide a set or sets of keys to OpTerra Energy Services and its subcontractors (signed out per Riverside County policy) or provide a readily available security escort to unlock and lock doors. Riverside County will not unreasonably restrict OpTerra Energy Services' access to Facilities to make emergency repairs or corrections as OpTerra Energy Services may determine are needed.
- (c) Riverside County will maintain the portion of the Project Location that is not directly affected by OpTerra Energy Services' Work. Riverside County will keep the designated Project Location and staging area for the Project free of obstructions, waste, and materials within the control of Riverside County.
- (d) Riverside County will obtain any required environmental clearance from, and any special permits required by, any federal, state, and local jurisdictions, including but not limited to any clearances required under CEQA, prior to scheduled construction start date.
- (e) Riverside County will provide access to OpTerra Energy Services to 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 Riverside County and such documentation made available to OpTerra Energy Services are the responsibility of Riverside County. If

OpTerra Energy Services encounters such unforeseen conditions in the performance of the Work, OpTerra Energy Services may be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount.

- (f) Riverside County will remove any Hazardous Substances either known to Riverside County prior to the commencement of the Work or encountered by OpTerra Energy Services during the construction of the Project, if necessary in order for the Work to progress safely, that were not knowingly released or brought to the site by OpTerra Energy Services. OpTerra Energy Services will respond to the discovery of Hazardous Substances at or around the Project Location during the course of OpTerra Energy Services' construction in accordance with Section 5.05.
- (g) Riverside County will coordinate the Work to be performed by OpTerra Energy Services with its own operations and with any other construction project that is ongoing at or around the Project Location, with the exception that OpTerra Energy Services will coordinate the Interconnection Facilities work, if any, which will be performed by the local utility.
- (h) Riverside County will, and will cause Riverside County Persons to, allow OpTerra Energy Services and its subcontractors access to and reasonable use of necessary quantities of Riverside County's water and other utilities, including electrical power, as needed for the construction of the Work, at no cost to OpTerra Energy Services.
- (i) Riverside County will, and will cause Riverside County Persons to, provide OpTerra Energy Services and/or its subcontractors with reasonable access to the Project Location to perform the Work, including without limitation and at no extra cost to OpTerra Energy Services, access to perform Work on Saturdays, Sundays, legal holidays, and non-regular working hours.
- (j) Riverside County will also do the following:
  - (i) Attend the regularly scheduled progress meetings. Participate as needed regarding scheduling of the Work.
  - (ii) When requested by OpTerra Energy Services, participate in the job inspection walk-through with OpTerra Energy Services to determine Substantial Completion or Beneficial Use of major equipment. Execution of the Certificate(s) of Substantial Completion by Riverside County will not be unreasonably delayed, withheld or conditioned.
  - (iii) Perform a final walk-through of the Project and, upon receipt of the operation and maintenance manuals and as-built drawings. Execution of the Certificate(s) of Final Completion by Riverside County will not be unreasonably delayed, withheld or conditioned.
  - (iv) Upon the completion of the entire Scope of Work listed in Attachment C, including training, if any, and submission of close-out documents, sign a Certificate of Final Completion for the entire Project. Execution of such Certificate of Final Completion by Riverside County will not be unreasonably delayed, withheld or conditioned.

**Section 5.04      Changes.**

- (a) Change Orders Generally. Changes and/or modifications to the Scope of Work will be authorized by a written Change Order. 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. OpTerra Energy Services may, with the concurrence of Riverside County, 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 Riverside County and OpTerra Energy Services. OpTerra Energy Services 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. A request for a change or modification to the Scope of Work from Riverside County is only valid if given in writing and bearing the written authorization of the Assistant County Executive Officer-EDA, or an individual designated in writing in advance by the Assistant County Executive Officer-EDA. In addition, if the Assistant County Executive Officer-EDA, or an individual designated in writing in advance by the Assistant County Executive Officer-EDA, presents to OpTerra Energy Services a valid request for change or modification as described above and Riverside County subsequently elects not to proceed with such Change, Riverside County agrees that a Change Order will be issued to reimburse OpTerra Energy Services for any costs reasonably incurred for estimating services, design services, and/or preparation of the proposal requested by the Assistant County Executive Officer-EDA, or an individual designated in writing in advance by the Assistant County Executive Officer-EDA. Riverside County is not liable for any costs incurred by OpTerra Energy Services if the request for change does not have written authorization from the Assistant County Executive Officer-EDA, or an individual designated in writing in advance by the Assistant County Executive Officer-EDA.

- (b) Change Orders Requiring Additional Compensation. If during construction any Riverside County Person requests changes and/or modifications to the Work, and/or there are Excusable Events, Riverside County will pay the extra costs caused by such modifications and/or changes and/or Excusable Event and OpTerra Energy Services may be entitled to additional compensation for the following reasons, that include, but are not limited to: (i) any Riverside County Person requests changes and/or modifications to the Scope of Work during the construction phase of the Project; (ii) delays during OpTerra Energy Services' construction work to the extent caused by any Riverside County Person; (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, to the extent not caused by actions or failure to act of OpTerra Energy Services; (vi) damage to any equipment or other Work installed by OpTerra Energy Services caused by the act or omission of any Riverside County Person; and (vii) any other condition that would not reasonably have been anticipated by OpTerra Energy Services, that modifies and/or changes the Scope of Work or the Contract Amount.
- (c) Change Orders Requiring Additional Time. If during construction any Riverside County 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, OpTerra Energy Services will use commercially reasonable efforts to make up such delays, including authorizing overtime payments; *provided* that Riverside County 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 Riverside County and OpTerra Energy Services.
- (e) Disagreements. If there is a disagreement between Riverside County and OpTerra Energy Services as to whether OpTerra Energy Services 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 ARTICLE 21. Pending the resolution of any such dispute, the Parties will continue to perform their respective obligations under the Contract. Continued performance by OpTerra Energy Services will not be interpreted as a waiver of its claim to a contract adjustment.

Section 5.05      Hazardous Substances.

- (a) OpTerra Energy Services will promptly provide written notice to Riverside County if OpTerra Energy Services 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. OpTerra Energy Services 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. Riverside County will be solely responsible for investigating Hazardous Substances and determining the appropriate removal and remediation measures with respect to the Hazardous Substances. Riverside County 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. OpTerra Energy Services 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, Riverside County will provide OpTerra Energy Services, within ten (10) 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; and (ii) whether or not, to its knowledge, there are unsafe working conditions at the Facilities.
- (b) Riverside County will indemnify, defend, and hold OpTerra Energy Services harmless from and against any and all Losses that in any way result from, or arise under, such Riverside County owned or generated Hazardous Substances, except for liabilities due to the negligence or willful misconduct of OpTerra Energy Services, 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 5.06 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 OpTerra Energy Services' Work, (iii) may cause OpTerra Energy Services' completed Work to be non-compliant with applicable codes, (iv) may prevent Riverside County from realizing the full benefits of OpTerra Energy Services' Work, (v) may present a safety or equipment hazard, or (vi) are otherwise outside the scope of OpTerra Energy Services' Work. OpTerra Energy Services will be responsible for repairing such pre-existing conditions unless such conditions have been brought to the attention of Riverside County in the Recommendations or specifically excluded from the Scope of Work.

## **ARTICLE 6. PROJECT COMPLETION**

Section 6.01 Occupancy or Use of Work. Riverside County 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 Riverside County 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 Riverside County'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, Riverside County and OpTerra Energy Services will discuss and agree in writing upon 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 / Reduction of Retention. When OpTerra Energy Services considers the Work, or any portion thereof, to be Substantially Complete, OpTerra Energy Services will supply to Riverside County 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. Riverside County will within ten (10) 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, if appropriate, sign and return the Certificate of Substantial Completion to OpTerra Energy Services 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 Riverside County will assume responsibility for the security of, insurance coverage for, maintenance, utilities for, and damage to or destruction of such portion of the Work. Riverside County agrees that approval of a Certificate of Substantial Completion will not be unreasonably withheld, delayed or conditioned.

Section 6.03 Final Completion. When OpTerra Energy Services considers the entirety of the Work to be Finally Complete, OpTerra Energy Services will notify Riverside County that the Work is fully complete and ready for final inspection. Riverside County will inspect the Work to verify the status of Final Completion within ten (10) Business Days after its receipt of OpTerra Energy Services' certification that the Work is complete. When Riverside County agrees that the Work is fully completed, OpTerra Energy Services will issue a Certificate of Final Completion, which Riverside County must sign. Riverside County agrees that its signing of the Certificate of Final Completion will not be unreasonably withheld, delayed or conditioned. At that time, Riverside County will pay OpTerra Energy Services any remaining Contract Amount due and any outstanding Retention being withheld by Riverside County, in accordance with Section 8.03. Riverside County may give OpTerra Energy Services written notice of acceptance of the Work and will promptly record a notice of completion or notice of acceptance in the office of Riverside 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 Riverside County upon the earlier of (i) the date payment for such Project equipment, supplies or components is made by Riverside County or (ii) the date any such items are incorporated into the Project Location. OpTerra Energy Services will retain care, custody and control and risk of loss of such Project equipment, supplies and components until the earlier of Beneficial Use or Substantial Completion. Transfer of title to Riverside County will in no way affect Riverside County's and OpTerra Energy Services' rights and obligations as set forth in other provisions of this Contract. Except as provided in this Section 6.04, after the date of Substantial Completion, OpTerra Energy Services will have no further obligations or liabilities to Riverside County arising out of or relating to this Contract, except for the obligation to complete any Punch List items, the obligation to perform any warranty service under Section 9.01, and obligations which, pursuant to their terms, survive the termination of this Contract.

## **ARTICLE 7. SUBCONTRACTORS**

Section 7.01 Authority to Subcontract. OpTerra Energy Services 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 OpTerra Energy Services may select in its discretion to perform the Work. OpTerra Energy Services will not be required to enter into any subcontracts with parties whom OpTerra Energy Services has

not selected or subcontractors whom OpTerra Energy Services has objection to using. OpTerra Energy Services will notify Riverside County of any proposed subcontractor who is anticipated to provide services on County facilities and will provide basic information requested by Riverside County regarding the background and work experience of the subcontractor(s) for approval by Riverside County, which will not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, OpTerra Energy Services remains the responsible party for all Work being performed under this Contract.

Section 7.02 Prompt Payment of Subcontractors. OpTerra Energy Services 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 Riverside County property, against OpTerra Energy Services' rights to payments hereunder, or against Riverside County.

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

Section 7.04 Prevailing Wages. All employees of OpTerra Energy Services and OpTerra Energy Services' 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 the requirements of California Labor Code §1771. In accordance with California Labor Code §§1773 and 1773.2, Riverside County 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 provided to OpTerra Energy Services for posting at each Project Location. OpTerra Energy Services will post at each Project Location the changes to such prevailing wage determination received from Riverside County.

## **ARTICLE 8. PAYMENTS**

As compensation for the performance of the Work hereunder, Riverside County will pay the Contract Amount to OpTerra Energy Services. As compensation for the M&V Services hereunder, Riverside County will pay the Quarterly M&V Fee to OpTerra Energy Services. As compensation for the performance of the Maintenance Services hereunder, Riverside County will pay the Quarterly Maintenance Fee to OpTerra Energy Services.

Section 8.01 Monthly Progress Payments. Upon execution of this Contract, OpTerra Energy Services will invoice Riverside County for the assessment fee for the Recommendations in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) plus a mobilization fee in the amount of Ten Million Eight Hundred Seventy-Six Thousand Five Hundred Forty-Two Dollars (\$10,876,542). These amounts must be paid to OpTerra Energy Services within twenty (20) Business Days of Riverside County's receipt of an invoice for those amounts. In addition, as the Work progresses, OpTerra Energy Services will submit to Riverside County its applications for monthly payments based on the progress made on the Project through the date on which OpTerra Energy Services submits such Application for Payment. Within fifteen (15) Business Days from the Contract Effective Date, OpTerra Energy Services will prepare and submit to Riverside County for review and approval a schedule of values apportioned to the various divisions or phases of the Work ("Schedule of Values"). Each line item contained in the Schedule of Values will be 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.

Section 8.02 Materials Stored Off-Site. In addition to the monthly progress payments specified in Section 8.01, OpTerra Energy Services may invoice Riverside County for materials purchased in advance and stored at the Project Location, or subject to, or under the control of, the local agency, and unused. 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 Riverside County and evidence of appropriate insurance coverage. OpTerra Energy Services will furnish to Riverside County written consent from the Surety approving the advance payment for materials stored off site. Riverside County will pay one hundred percent (100%) of OpTerra Energy Services' Application for Payment for the materials delivered, less Retention as indicated in Section 8.03. OpTerra Energy Services will protect stored materials from damage, theft or vandalism. OpTerra Energy Services will be responsible for replacing any damaged or stolen materials. Damaged materials, even though paid for, will not be incorporated into the Work.

Section 8.03 Retention. Riverside County, or its designee, shall review and 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 twenty (20) Business Days after its receipt of the Application for Payment; *provided, however*, that there is to be no Retention with respect to the design and engineering and any fee for the Recommendations, as these fees are for professional services. A failure to approve and pay the undisputed portion of an Application for Payment in a timely manner is a material default by Riverside County under this Contract.

Riverside County, in its discretion, 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. Riverside County will pay OpTerra Energy Services the remaining Retention amount upon achieving Final Completion. In lieu of Retention being held by Riverside County, OpTerra Energy Services 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 OpTerra Energy Services for any remaining Retention withheld by Riverside County.

Section 8.05 Disputed Invoices/Late Payments. Riverside County may in good faith dispute any Application for Payment, or part thereof, within twenty (20) Business Days after the date the Application for Payment was received by Riverside County. In the event that Riverside County disputes all or a portion of any Application for Payment, Riverside County will pay the undisputed portion when due and provide OpTerra Energy Services 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. If any amount disputed by Riverside County is finally determined to be due to OpTerra Energy Services, either by agreement between the Parties or as a result of dispute resolution pursuant to ARTICLE 21 below, it will be paid to OpTerra Energy Services within twenty (20) Business Days after such final determination, plus Interest from the date billed or claimed until such amount is paid.

Section 8.06 Rebate Programs. OpTerra Energy Services will assist Riverside County in the preparation and submission to the applicable agencies of applications and documentation necessary for the energy efficiency rebate, incentive, and/or loan program(s) shown on Attachment C. OpTerra Energy Services makes no guarantee that Riverside County will receive funding from California Proposition 39 or any other energy efficiency rebate, incentive, and/or loan program(s), including those listed on Attachment C (collectively, "Incentive Funds"), or any portion thereof; OpTerra Energy Services expressly disclaims any liability for Riverside County's failure to receive any portion of the Incentive Funds, and Riverside County acknowledges and agrees that OpTerra Energy Services will have no liability for any failure to receive all or any portion of the Incentive Funds. 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, OPTERRA ENERGY SERVICES 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. RIVERSIDE COUNTY WILL HAVE NO REMEDIES AGAINST EITHER OPTERRA ENERGY SERVICES OR ANY OPTERRA ENERGY SERVICES 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. SPECIFICALLY, NEITHER OPTERRA ENERGY SERVICES, NOR OPTERRA ENERGY SERVICES' SUBCONTRACTORS OR VENDORS, WILL BE LIABLE TO RIVERSIDE COUNTY FOR LOSS OF PROFITS OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY.

Section 9.01 OpTerra Energy Services warrants to Riverside County that material and equipment furnished under this Contract will be of good quality and new, unless otherwise specifically required or permitted by this Contract. OpTerra Energy Services 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, or the date of Beneficial Use as indicated on the executed Certificate of Beneficial Use ("OpTerra Energy Services Warranty"). Notwithstanding the preceding sentence, the date the OpTerra Energy Services Warranty commences with respect to a specific piece or pieces of equipment may be further defined in Attachment F.

Section 9.02 Pursuant to the requirements of the California Solar Initiative Program, for each Generating Facility, OpTerra Energy Services further warrants to Riverside County, for a period of one (1) year from the date of Substantial Completion as indicated on the executed Certificate of Substantial Completion, or the date of Beneficial Use as indicated on the executed Certificate of Beneficial Use for such Generating Facility, that any additional equipment and materials that are not part of the solar generating systems, as described below, including meters (other than meters that are integrated into any inverter, which are covered under the 10 Year OpTerra Energy Services Warranty), shall be free from degradation in electrical output of more than fifteen percent (15%) from their originally rated electrical output as a result of faulty installation during such one (1) year warranty period. This



OpTerra Energy Services Warranty expressly excludes any remedy for corrosion, erosion, or damage directly or indirectly caused by parties other than OpTerra Energy Services or its subcontractors, but does not exclude damage directly or indirectly caused by OpTerra Energy Services or its subcontractors in performing any obligation under the Contract including without exception Maintenance Services.

Section 9.03 Pursuant to the requirements of the California Solar Initiative Program, for each Generating Facility, OpTerra Energy Services warrants to Riverside County, for a period of ten (10) years from the Substantial Completion Date for such Generating Facility, (i) that such Generating Facility shall be free from defects in workmanship provided hereunder; and (ii) that the equipment shall be free of defective system or component breakdown, or degradation in electrical output of more than fifteen percent (15%) from its originally rated electrical output as a result of faulty installation ("10 Year OpTerra Energy Services Warranty"). This 10 Year OpTerra Energy Services Warranty covers solely the solar generating system, including PV modules (panels) and inverters (including meters that are integrated into any inverter) associated with the solar generating systems for each Generating Facility, and provides for the no-cost repair or replacement of solar generating system components to the extent not otherwise covered by a manufacturer's warranty. This warranty expressly excludes any remedy for corrosion, erosion, or damage directly or indirectly caused by parties other than OpTerra Energy Services or its subcontractors, but does not exclude damage directly or indirectly caused by OpTerra Energy Services or its subcontractors in performing any obligation under the Contract including without exception Maintenance Services.

Section 9.04 Equipment and material warranties that exceed the OpTerra Energy Services Warranty period will be provided directly by the equipment and/or material manufacturers and such warranties will be assigned directly to Riverside County, after the one (1) year period. During the OpTerra Energy Services Warranty period, OpTerra Energy Services will be Riverside County's agent in working with the equipment and material manufacturers in resolving any equipment or material warranty issues. Any material defects that are discovered within the OpTerra Energy Services Warranty period, OpTerra Energy Services, or OpTerra Energy Services' subcontractors, will correct its defects, and/or OpTerra Energy Services will work with the equipment or material manufacturer as Riverside County'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 Riverside County. If a warranty issue arises on any equipment or material installed after the OpTerra Energy Services Warranty period, and the equipment or material has a warranty period that exceeds one (1) year, Riverside County will contact the manufacturer directly to resolve such warranty issues and Riverside County acknowledges that the manufacturer will have sole responsibility for such issues.

Section 9.05 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 OpTerra Energy Services or its subcontractors, corrosion, erosion, deterioration, abuse, modifications or repairs not performed by an authorized OpTerra Energy Services subcontractor, improper use or operation, or normal wear and tear under normal usage. Unless otherwise specified, all warranties hereunder, including without limitation those for patent defects in design, engineering, or construction, will terminate one (1) year from the date of Substantial Completion or Beneficial Use; and thereafter, OpTerra Energy Services will have no liability for breach of any warranty or for any patent defect of any kind pursuant to California Code of Civil Procedure §§337.15 and 338.

Section 9.06 Riverside County and OpTerra Energy Services have discussed the risks and rewards associated with this Project, as well as the Contract Amount to be paid to OpTerra Energy Services for performance of the Work. Riverside County and OpTerra Energy Services agree to allocate certain of the risks so that, to the fullest extent permitted by Applicable Law, OpTerra Energy Services' total aggregate liability to Riverside County and all third parties is limited to one hundred thirty percent (130%) of the Contract Amount for any and all injuries, damages, claims, losses, expenses, or claim expenses (including attorney's fees) arising out of this Contract from any cause or causes. Such causes include, but are not limited to, negligence, errors, omissions, strict liability, breach of contract, or breach of warranty.

## **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, Riverside County 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. OpTerra Energy Services 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, OpTerra Energy Services grants to Riverside County a limited, perpetual, royalty-free, non-transferrable license for any OpTerra Energy Services intellectual

property rights necessary for Riverside County 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 Riverside County by OpTerra Energy Services under this Contract during the Construction Period will remain OpTerra Energy Services' property and may be used by Riverside County only for the Work. OpTerra Energy Services 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 Riverside County or any Riverside County Person for future additions or alterations to the Project or for other projects, without the prior written agreement of OpTerra Energy Services. Any unauthorized use of the Instruments of Service will be at Riverside County's sole risk and without liability to OpTerra Energy Services. If Riverside County uses the Instruments of Service for implementation purposes, including additions to or completion of the Project, without the written permission of OpTerra Energy Services, Riverside County agrees to waive and release, and indemnify and hold harmless, OpTerra Energy Services, 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 Riverside County even if such equipment or materials are replaced or their operation made unnecessary by work performed by OpTerra Energy Services. If applicable, OpTerra Energy Services will advise Riverside County in writing of all equipment and materials that will be replaced at the Facilities and Riverside County will, within five (5) Business Days of OpTerra Energy Services' notice, designate in writing to OpTerra Energy Services which replaced equipment and materials should not be disposed of off-site by OpTerra Energy Services (the "Retained Items"). Riverside County will be responsible for and designate the location and storage for the Retained Items. OpTerra Energy Services will be responsible for the disposal of replaced equipment and materials, except for the Retained Items. OpTerra Energy Services 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. OpTerra Energy Services 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.

Section 11.03 OpTerra Energy Services Insurance. OpTerra Energy Services 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 Riverside County via a certificate of insurance.

- (a) Workers' Compensation/Employers Liability for states in which OpTerra Energy Services 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:

- \* \$1,000,000 each occurrence for Bodily Injury and Property Damage
- \* \$1,000,000 General Aggregate - other than Products/Completed Operations

- \* \$1,000,000 Products/Completed Operations Aggregate
- \* \$1,000,000 Personal & Advertising Injury
- \* \$ 100,000 Damage to premises rented to OpTerra Energy Services

Coverage to be written on a claims made form. Coverage to be at least as broad as ISO form CG 0002 (12/07), 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) 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 Riverside County, 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 Riverside County 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, OpTerra Energy Services will furnish a performance bond in the form of Attachment A in an amount equal to one hundred percent (100%) of the Contract Amount, and a payment bond in the form of Attachment B 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 the performance of any Professional Services, including any energy guaranty or guaranteed savings under this Contract.

## **ARTICLE 12. CONFLICTS OF INTEREST**

Conflicts of interest relating to this Contract are strictly prohibited. Except as otherwise expressly provided herein, neither Party nor any director, employee or agent of any Party will give to or receive from any director, employee or agent of any other Party any gift, entertainment or other favor of significant value, or any commission, fee or rebate in connection with this Contract. Likewise, neither Party nor any director, employee or agent of any Party, will without prior notification thereof to all Parties enter into any business relationship with any director, employee or agent of another Party or of any Affiliate of another Party, unless such person is acting for and on behalf of the other Party or any such Affiliate. A Party will promptly notify the other Parties of any violation of this ARTICLE 12 and any consideration received as a result of such violation will be paid over or credited to the Party against whom it was charged. Any representative of any Party, authorized by that Party, may audit the records of the other Parties related to this Contract, including the expense records of the Party's employees involved in this Contract, upon reasonable notice and during regular business hours, for the sole purpose of determining whether there has been compliance with this ARTICLE 12.

## **ARTICLE 13. DOE GUIDELINES; ENERGY POLICY ACT**

Section 13.01 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. Riverside County shall retain any Greenhouse Gas emission reduction credits that result from the Work.

Section 13.02 As authorized by §1331 of the Energy Policy Act of 2005 (Pub. L. No. 109-58) Riverside County agrees that for the Work, OpTerra Energy Services will be the “designer” as that term is identified in Internal Revenue Bulletin 2008-14, Notice 2008-40, and OpTerra Energy Services 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, Riverside County agrees to execute a written allocation including a declaration related to Internal Revenue Code §179D. OpTerra Energy Services will prepare the declaration and all accompanying documentation. OpTerra Energy Services will be designated the §179D beneficiary.

**ARTICLE 14. AMERICAN RECOVERY AND REINVESTMENT ACT**

In the event Riverside County is using American Recovery and Reinvestment Act (“ARRA”) funding, in whole or in part, to pay for the Work, Riverside County acknowledges and agrees that the supplies and services under this Contract are being procured and purchased under state or local procurement laws and OpTerra Energy Services is a “vendor” or “contractor” under this Contract. As such, Riverside County agrees that OpTerra Energy Services is not a recipient, grantee, awardee, subrecipient, subgrantee or subawardee of ARRA funds. In the event that after Contract execution the awarding agency or a court of proper jurisdiction determines that OpTerra Energy Services is a recipient, grantee, awardee, subrecipient, subgrantee or subawardee under the ARRA funded grant rather than a “vendor” or “contractor”, OpTerra Energy Services reserves the right to terminate this Contract at its discretion upon written notice to Riverside County. Riverside County agrees to release, defend, indemnify, and hold OpTerra Energy Services harmless from and against any and all claims, costs, or damages arising out of or related to such a determination notwithstanding any other provisions of this Contract.

**ARTICLE 15. MUNICIPAL ADVISOR**

THE PARTIES ACKNOWLEDGE AND AGREE THAT OPTERRA ENERGY SERVICES IS NOT A MUNICIPAL ADVISOR AND CANNOT GIVE ADVICE TO RIVERSIDE COUNTY WITH RESPECT TO MUNICIPAL SECURITIES OR MUNICIPAL FINANCIAL PRODUCTS ABSENT RIVERSIDE COUNTY BEING REPRESENTED BY, AND RELYING UPON THE ADVICE OF, AN INDEPENDENT REGISTERED MUNICIPAL ADVISOR. OPTERRA ENERGY SERVICES IS NOT SUBJECT TO A FINANCIAL FIDUCIARY DUTY WITH REGARD TO RIVERSIDE COUNTY OR THE PROVISION OF INFORMATION TO RIVERSIDE COUNTY. RIVERSIDE COUNTY WILL CONSULT WITH AN INDEPENDENT REGISTERED MUNICIPAL ADVISOR ABOUT THE FINANCING OPTION APPROPRIATE FOR RIVERSIDE COUNTY’S SITUATION.

**ARTICLE 16. TRADE SECRETS**

If any materials or information provided by OpTerra Energy Services to Riverside County under this Contract are designated by OpTerra Energy Services as a “trade secret” or otherwise designated by OpTerra Energy Services as exempt from disclosure under the Public Records Act (California Government Code §6250 *et seq.*), and in the event a third party makes a request for disclosure of the materials under the Public Records Act, as soon as practical (but not later than five (5) Business Days) after receipt of such request, Riverside County will notify OpTerra Energy Services of such request. To the extent consistent with Riverside County’s statutory obligations under the Public Records Act, the materials or information requested shall be released unless OpTerra Energy Services takes action to suppress the request. If OpTerra Energy Services chooses not to take affirmative action to protect requested materials or information, then Riverside County shall have no liability for disclosure of the requested material or information.

**ARTICLE 17. DATA PRIVACY**

OpTerra Energy Services and Riverside County agree that it is not anticipated that any personal data will be processed by Riverside County on behalf of OpTerra Energy Services under or as a result of this Contract (other than as contained within the terms of the Contract). If Riverside County begins to process personal data on behalf of OpTerra Energy Services, Riverside County will immediately notify OpTerra Energy Services and the Parties will incorporate appropriate data protection provisions into this Contract.

**ARTICLE 18. EVENTS OF DEFAULT**

Section 18.01 Events of Default by OpTerra Energy Services. Each of the following events or conditions will constitute an “Event of Default” by OpTerra Energy Services:

- (i) any substantial failure by OpTerra Energy Services to perform or comply with this Contract, including a material breach of any covenant contained herein, and such failure continues for twenty (20) Business Days after notice to OpTerra Energy Services 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 twenty (20) Business Days, OpTerra Energy Services will be deemed to have cured the default upon the commencement of a cure within twenty (20) Business Days and diligent subsequent completion thereof; or

- (ii) any material representation or warranty furnished by OpTerra Energy Services in this Contract which was false or misleading in any material respect when made.

Section 18.02 Events of Default by Riverside County. Each of the following events or conditions will constitute an "Event of Default" by Riverside County:

- (i) any substantial failure by Riverside County to perform or comply with this Contract, including a material breach of any covenant contained herein, and such failure continues for twenty (20) Business Days after notice to Riverside County 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 twenty (20) Business Days, Riverside County will be deemed to have cured the default upon the commencement of a cure within twenty (20) Business Days and diligent subsequent completion thereof; or
- (ii) any material representation or warranty furnished by Riverside County in this Contract which was false or misleading in any material respect when made; or
- (iii) any failure by Riverside County to pay any amount to OpTerra Energy Services which is not paid within twenty (20) Business Days after written notice from OpTerra Energy Services that the amount is past due, except as provided in Section 8.05.

#### **ARTICLE 19. REMEDIES UPON DEFAULT**

Section 19.01 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 18, the non-defaulting Party may terminate this Contract by providing ten (10) Business Days' written notice to the defaulting Party. 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.

Section 19.02 Remedies upon Default by OpTerra Energy Services. If an Event of Default by OpTerra Energy Services occurs, Riverside County will be entitled to obtain any available legal or equitable remedies through dispute resolution proceedings instituted pursuant to ARTICLE 21, including, without limitation, terminating this Contract, and/or recovering amounts due and unpaid by OpTerra Energy Services and/or damages, which will include Riverside County'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 19.03 Remedies upon Default by Riverside County. If an Event of Default by Riverside County occurs, OpTerra Energy Services will be entitled to obtain any available legal or equitable remedies through dispute resolution proceedings instituted pursuant to ARTICLE 21 including, without limitation, terminating this Contract, and/or recovering amounts due and unpaid by Riverside County, and/or damages which will include OpTerra Energy Services' reasonable, actual, direct out-of-pocket losses incurred by reason of such Event of Default and any cost of funding; payment for Work satisfactorily performed, earned profit and overhead, and costs incurred in accordance with this Contract up to the date of termination; loss of anticipated profit; 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, losses and costs incurred as a result of terminating this Contract, and all costs and expenses reasonably incurred in exercising the foregoing remedies.

#### **ARTICLE 20. CONDITIONS BEYOND CONTROL OF THE PARTIES**

Section 20.01 Excusable Events. If any Party is delayed in, or prevented from, performing or carrying out its obligations under this Contract by reason of any Excusable Event, such circumstance will not constitute an Event of Default, and such Party will be excused from performance hereunder and will not be liable to the other Party for or on account of any loss, damage, injury or expense resulting from, or arising out of, such delay or prevention.

Section 20.02 Utility Work. Riverside County expressly understands and agrees that an Excusable Event may occur due to Interconnection Facilities work that may need to be performed by the local electric utility ("Utility") in order for OpTerra Energy Services to fully implement the Project. "Interconnection Facilities" means any distribution or transmission lines and other facilities that may be required to connect equipment supplied under this Contract to an electrical distribution/transmission system owned and maintained by the Utility. Any Interconnection Facilities work that may be required will be performed by the Utility under the Interconnection Agreement.

#### **ARTICLE 21. GOVERNING LAW AND RESOLUTION OF DISPUTES**

Section 21.01 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 21.02 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 ARTICLE 21 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, OpTerra Energy Services' senior project management personnel will meet with Riverside County's project representative in a good faith attempt to resolve the Dispute.
- (ii) *Management Representatives' Meeting*: If OpTerra Energy Services' and Riverside County's project representatives fail to meet, or if they are unable to resolve the Dispute, senior executives for OpTerra Energy Services and for Riverside County, neither of whom have had day-to-day management responsibilities for the Project, will meet, within twenty (20) Business 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 OpTerra Energy Services and Riverside County 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 21.03.

Section 21.03 Mediation. If the Dispute is not settled pursuant to Section 21.02, 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 forty (40) Business 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 forty (40) Business Days after the date of filing of the request for mediation, then the exclusive means to resolve the Dispute is a final and binding arbitration proceeding, as described Section 21.04.

Section 21.04 Arbitration Proceedings. The following provisions apply to all arbitration proceedings.

- (i) The place of arbitration will be Riverside, California.
- (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.
- (iv) The Arbitral Panel does not have the power to award, and may not award, any punitive, indirect or consequential damages (however denominated). All arbitration fees and costs are to be shared equally by the parties, regardless of which Party prevails. Each Party will pay its own costs of legal representation and witness expenses.
- (v) The award must be in the form of a reasoned award.
- (vi) The Dispute will be resolved as quickly as possible. The Arbitral Panel will endeavor to issue the arbitration award within six (6) months after the date on which the arbitration proceedings were commenced.

- (vii) The award will be final and binding and subject to confirmation and enforcement proceedings in any court of competent jurisdiction.

Section 21.05 Multiparty Proceeding. Either Party may join third parties whose joinder would facilitate complete resolution of the Dispute and matters arising from the resolution of the Dispute.

**ARTICLE 22. REPRESENTATIONS AND WARRANTIES**

Each Party warrants and represents to the other that:

- (i) it has all requisite power and authority to enter into this Contract, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (ii) the execution, delivery, and performance of this Contract have been duly authorized by its governing body, or are in accordance with its organizational documents, and this Contract has been duly executed and delivered for it by the signatories so authorized, and constitutes its legal, valid, and binding obligation;
- (iii) the execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under, its organizational documents or any contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected; and
- (iv) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any Applicable Laws, awards or permits which would materially and adversely affect its ability to perform hereunder.

**ARTICLE 23. ASSIGNMENT**

Except as provided in this ARTICLE 23, this Contract may not be assigned by either Party in whole or in part without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. This Contract will be binding on, enforceable by, and inure to the benefit of, the Parties and their respective successors and permitted assigns. Any assignment made in contravention of this clause will be void and unenforceable.

**ARTICLE 24. NOTICE**

Any notice required or permitted hereunder will be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice.

TO OPTERRA ENERGY SERVICES:      OpTerra Energy Services  
150 East Colorado Boulevard, Suite 360  
Pasadena, CA 91105-3711  
Tel: 626-377-4948  
Attention: Jonathan Brown, Senior Project Manager

With a COPY TO:                              Legal Department  
OpTerra Energy Services  
150 East Colorado Boulevard, Suite 360  
Pasadena, CA 91105-3711  
Tel: 626-377-4948  
Attention: Contract Administrator

TO RIVERSIDE COUNTY:                      Riverside County  
3403 Tenth Street  
Riverside, CA 92501  
Tel: 951-955-4898  
Fax: 951-955-8405  
Attention: Janet Purchase

With a COPY TO:

Riverside County Counsel  
3960 Orange Street, Fifth Floor  
Riverside, CA 92501  
Tel: 951-955-6300  
Fax: 951-955-6322  
Attn: Public Works/Contract Div.

**ARTICLE 25. 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 26. 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 27. NO WAIVER**

The failure of OpTerra Energy Services or Riverside County 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 OpTerra Energy Services or Riverside County.

**ARTICLE 28. SEVERABILITY**

In the event that 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 29. 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 30. 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]*

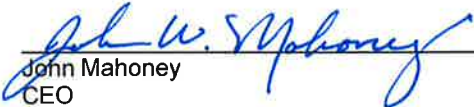


**Energy Services Contract  
Riverside County and OpTerra Energy Services**

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.

**OPTERRA ENERGY SERVICES:**  
OpTerra Energy Services, Inc.

**RIVERSIDE COUNTY:**  
County of Riverside

By:   
John Mahoney  
CEO

By: \_\_\_\_\_  
Jeff Stone  
Chairman, Board of Supervisors

ATTEST:  
Kecia Harper-Ihem  
Clerk of the Board

By: \_\_\_\_\_

APPROVED AS TO FORM:  
Gregory Priamos  
County Counsel

By:  10/20/14  
Marsha Victor  
Principal Deputy County Counsel

ATTACHMENT A  
FORM OF PERFORMANCE BOND  
**PERFORMANCE BOND**

(Public Work – Public Contract Code Section 20129 (b))

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the County of Riverside ("County") by action of the Board of Supervisors on \_\_\_\_\_, 20\_\_, has awarded Construction Contract Number \_\_\_\_\_ ("Contract") to the undersigned \_\_\_\_\_ as Principal ("Principal") to perform the work ("Work") for the following project: text, which Contract is by this reference hereby incorporated herein and made a part hereof;

AND, WHEREAS, said Principal is required by the Contract and/or by California Public Contract Code, Section 20129 (b) to furnish a performance bond for the faithful performance of the Contract;

NOW THEREFORE, we, the Principal and \_\_\_\_\_ ("Surety"), an admitted surety insurer pursuant to Code of Civil Procedure, Section 995.120, are held and firmly bound unto County in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), this amount being not less than one hundred percent (100%) of the total sum payable by County under the Contract at the time the Contract is awarded by County to the Principal, lawful money of the United States of America, for the payment of which sum well and truly to be made, we, Principal and Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if Principal, its heirs, executors, administrators, successors or assigns approved by County, shall in all things stand to and abide by and well and truly keep and perform all the undertakings, terms, covenants, conditions and agreements in the Contract, including, without limitation, all obligations during the original term and any extensions thereof as may be granted by County, with or without notice to Surety thereof (including, without limitation, the obligation for Principal to pay liquidated damages), all obligations during the period of any warranties and guarantees required under the Contract and all other obligations otherwise arising under the terms of the Contract (such as, but not limited to, obligations of indemnification), all within the time and in the manner therein designated in all respects according to their true intent and meaning, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

Whenever Principal shall be, and is declared by County to be, in default under the Contract, the Surety shall promptly either remedy the default, or, if the Contract is terminated by County or the Principal's performance of the Work is discontinued, Surety shall promptly complete the Contract through its agents or independent contractors, subject to acceptance of such agents or independent contractors by County as hereinafter set forth, in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract (including, without limitation, all obligations with respect to payment of liquidated damages) less the "Balance of the Contract Price" (as hereinafter defined); subject to the penal amount of this bond as set forth above. The term "Balance of the Contract Price," as used in this paragraph, shall mean the total amount payable to Principal by County under the Contract and any modifications thereto, less the amount previously paid by County to the Principal and less amounts that County is authorized to withhold under the terms of the Contract.

If County determines that completion of the Contract by Surety or its agents or independent contractors must be performed by a lowest responsible bidder selected pursuant to a competitive bidding process, then Surety shall comply with such processes in accordance with the requirements of County and applicable laws. Unless otherwise approved by District, in the exercise of its sole and absolute discretion, Surety shall not utilize Principal in completing performance of the Work.

No right of action shall accrue on this bond to or for the use of any person or entity other than County or its successors or assigns.

In the event any legal proceeding or arbitration is brought upon this bond by County and judgment or award is entered in favor of County as the prevailing party, Surety shall pay all costs and attorney's fees incurred by the County.

Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

**Energy Services Contract  
Riverside County and OpTerra Energy Services**

Surety, for value received, agrees that no change, extension of time, alteration or addition to the terms of the Contract, or to the work to be performed thereunder, shall in any way impair or affect Surety's obligation under this bond, and Surety does hereby waive notice of any such changes, extensions of time, alterations or additions.

Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Contract, and suit may be brought against Surety and such other sureties, joint and severally, or against any one or more of them or against less than all of them, without impairing County's rights against the others.

Affix Seal if Corporation

\_\_\_\_\_  
(Firm Name – Principal)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Business Address)

By \_\_\_\_\_  
(Original Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Corporation Name – Surety)

Affix Corporate Seal

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Business Address)

By \_\_\_\_\_  
(Signature – Attached Notary's Acknowledgment)

\_\_\_\_\_  
ATTORNEY-IN-FACT  
(Title-Attach Power of Attorney)

Note: Notary acknowledgment of signatures of Bidder and Surety, and Surety's Power of Attorney, must be included or attached

ATTACHMENT B

FORM OF PAYMENT BOND

**LABOR AND MATERIAL PAYMENT BOND**

(Public Work - Civil Code Sections 3247 et seq.)

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the County of Riverside ("County") by action of the Board of Supervisors on \_\_\_\_\_, 20\_\_, has awarded Construction Contract Number \_\_\_\_\_ ("Contract") to the undersigned \_\_\_\_\_ as Principal ("Principal") to perform the work ("Work") for the following project text;

AND, WHEREAS, said Principal is required by the Contract and/or by Division 3, Part IV, Title XV, Chapter 7 (commencing at Section 9550) of the California Civil Code to furnish a payment bond in connection with the Contract;

NOW THEREFORE, we, the Principal and \_\_\_\_\_ ("Surety"), an admitted surety insurer pursuant to Code of Civil Procedure, Section 995.120, are held and firmly bound unto County in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), this amount being not less than one hundred percent (100%) of the total sum payable by County under the Contract at the time the Contract is awarded by County to the Principal, lawful money of the United States of America, for the payment of which sum well and truly to be made, we, Principal and Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if Principal, its heirs, executors, administrators, successors, or assigns approved by County, or its subcontractors, of any contracting tier, shall fail to pay any person or persons named in California Civil Code, Section 9554, then Surety will pay for the same, in or to an amount not exceeding the penal amount hereinabove set forth, and also will pay to the prevailing party if suit is brought upon this bond, reasonable attorney's fees as provided in California Civil Code, Section 9564.

Surety, for value received, agrees that no change, extension of time, alteration or addition to the terms of the Contract, or to the Work to be performed thereunder, nor any rescission or attempted rescission of the Contract or this bond, nor any conditions precedent or subsequent in the bond or Contract attempting to limit the right of recovery of any claimant otherwise entitled to recover under the Contract or this bond shall in any way impair or affect Surety's obligation under this bond, and Surety does hereby waive notice of any such changes, extensions of time, alterations or additions.

Surety is not released from liability to those for whose benefit this bond has been given, by reason of any breach of the Contract by County or Principal.

Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Contract, and suit may be brought against Surety and such other sureties, joint and severally, or against any one or more of them or against less than all of them, without impairing County's rights against the others.

Affix Seal if Corporation

\_\_\_\_\_  
(Firm Name – Principal)

\_\_\_\_\_  
(Business Address)

By \_\_\_\_\_  
(Original Signature)

\_\_\_\_\_  
(Title)

**Energy Services Contract  
Riverside County and OpTerra Energy Services**

\_\_\_\_\_  
(Corporation Name – Surety)

Affix Corporate Seal

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Business Address)

By

\_\_\_\_\_  
(Signature – Attached Notary's Acknowledgment)

\_\_\_\_\_  
ATTORNEY-IN-FACT

(Title-Attach Power of Attorney)

Note: Notary acknowledgment of signatures of Bidder and Surety, and Surety's Power of Attorney, must be included or attached



**ATTACHMENT C**  
**LIST OF INCENTIVES**

1. California Solar Initiative:

<http://www.sce.com/solarleadership/gosolar/california-solar-initiative/default.htm>

**ATTACHMENT D**

**RIVERSIDE COUNTY'S FACILITIES & EXISTING EQUIPMENT**

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

Site Number	Facility	Address
01	County Administration Center	41002 County Center Drive Temecula, CA 92591
02	Sheriff Campus	308 E. San Jacinto Avenue Perris, CA 92570
03	County Coroner	800 S. Redlands Avenue Perris, Ca 92570
04	Riverside Animal Shelter	6851 Van Buren Boulevard Riverside, CA 92509
05	Sheriff Station	73700 Gerald Ford Drive Palm Desert, CA 92211
06	Ben Clark Training Center	16791 Davis Avenue Riverside, CA 92518
07	San Jacinto Valley Animal Campus	581 S Grand Avenue San Jacinto, CA 92582
08	Riverside County Regional Medical Center	26520 Cactus Road Moreno Valley, CA 92555
09	Transportation Center	Harvill Avenue and Placentia Street Perris, CA 92570
10	Brookside Material Yard	10901 Hannon Road Beaumont, CA 92223

**ATTACHMENT E**

**Not Included**



**ATTACHMENT F**  
**SCOPE OF WORK**

California State Contractor's License Number 813797

Table F-1: Energy Conservation Measure to Be Implemented

ECM No.	Description
RE-01	Renewable Energy: On-site Power Generation (Photovoltaic)

Table F-2: Solar Generating Facilities to be installed

Facility	Est. kW <sub>p</sub>
County Administration Center	187.0
Sheriff Campus	738.0
County Coroner	252.0
Riverside Animal Shelter	547.0
Sheriff Station	655.0
Ben Clark Training Center	Array No. 01 1,123.0
	Array No. 02 1,166.0
San Jacinto Valley Animal Campus	Array No. 1 144.0
	Array No. 2 1,040.0
Riverside County Regional Medical Center	1,195.0
Transportation Center	536.0
Brookside Material Yard	Array No. 01 43.0
	Array No. 02 4,500.0

**General Conditions Scope of Work provided by OpTerra Energy Services:**

- Project management and engineering.
- Construction management and supervision. An OpTerra Energy Services 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 portable toilets.
- Provide temporary fencing as required for access control in the areas of and for the duration of work.
- Provide cranes, lifts (including helicopter) and rigging necessary for scope of work.
- Provide startup, acceptance testing, commissioning, training and Operation & Maintenance manuals as needed on systems provided.
- Record (as-builts) plans and equipment data sheets will be provided. Three (3) sets of printed record and equipment data sheets will be provided as well as one copy in electronic format.

**General Engineering Scope of Work provided by OpTerra Energy Services:**

- Prepare plans to be submitted for Riverside County plan check and approval.
- Provide equipment submittals for Riverside County's acceptance of the ECM.
- Provide shop drawings, as appropriate for the work.
- Interface with Utility for rate tariff changes and interconnect applications and approvals.

The Facilities will require the following Utility tariff changes:

Table F-3 Utility Rate Changes

Facility	New Edison Utility Tariff
County Administration Center	TOU-GS3-A
Sheriff Campus	TOU-GS3-A
County Coroner	TOU-GS3-A
Riverside Animal Shelter	TOU-GS3-A
Sheriff Station	TOU-GS3-A
Ben Clark Training Center	RES-BCT / TOU-GS3-A
San Jacinto Valley Animal Campus	RES-BCT / TOU-GS3-A
Riverside County Regional Medical Center	RES-BCT / TOU-GS2A
Transportation Center	TOU-GS3-A
Brookside Material Yard	RES-BCT / TOU-GS2-A

- Interface with Utility for California Solar Initiative/Incentive to achieve incentive program milestones and file incentive claim forms.

**ECM RE-01: Renewable Energy: On-site Power Generation (Photovoltaic)**

OpTerra Energy Services will design, engineer, and install photovoltaic power generating systems on parking lot canopy shade structures and ground mounted structures at the following sites.

**County Administration Center, Temecula – Solar Parking Lot Shade Structure System:**

OpTerra Energy Services will design-build a photovoltaic system consisting of three arrays, having a total nominal capacity of 187.0 kW<sub>p</sub>. The precise quantity and arrangement of free standing structures will be determined by OpTerra Energy Services during final engineering. The structures will be double cantilever providing coverage for two rows of parking. The shade structures will have a minimum clear height of nine (9) feet and a maximum slope of five (5) degrees. The width of the structure will be approximately thirty-nine (39) feet. The length of the structure will be determined by the area required for the system capacity and site characteristics. The structure's only painted surfaces are the vertical steel columns. The precise quantity, installation and arrangement of the inverters will be determined by OpTerra Energy Services during final engineering. The inverters will be mounted to the vertical columns of the shade structure or placed on a concrete equipment pad on the ground. The solar system will be connected to the existing electrical infrastructure at a location to maximize electrical efficiency and minimize trenching and/or directional boring. The precise point of electrical connection will be determined by OpTerra Energy Services during final engineering. Trenching and/or directional boring may be used to run conduit below grade between arrays, the inverter(s) and point of utility connections. Asphalt and concrete patch will be provided where existing hardscape was removed or damaged during construction. Under canopy lighting powered from an existing lighting circuit will be installed in a staggered layout (one lighting fixture between columns). Existing parking lot lighting (fixture, pole, and base) in conflict of the shade structure will be removed. Bollards are not included.

**Sheriff Campus, Perris – Solar Parking Lot Shade Structure System:**

OpTerra Energy Services will design-build a photovoltaic system, consisting of multiple arrays, having a total nominal capacity of 738.0 kW<sub>p</sub>. The array will be located in the Sheriff's secured parking lot and the public parking lot. The precise quantity and arrangement of free standing structures will be determined by OpTerra Energy Services during final engineering. The structures will be double cantilever providing coverage for two rows of parking. The shade structures will have a minimum clear height of nine (9) feet and a maximum slope of five (5) degrees. The width of the structure will be approximately thirty-nine (39) feet. The length of the structure will be determined by the area required for the system capacity and site characteristics. The structure's only painted surfaces are the vertical steel columns. The precise quantity, installation and arrangement of the inverters will be determined by OpTerra Energy Services during final engineering. The inverters will be mounted to the vertical columns of the shade structure or placed on a concrete equipment pad on the ground. The solar system will be connected to the existing electrical infrastructure at a location to maximize electrical efficiency and minimize trenching and/or directional boring. The precise point of electrical connection will be determined by OpTerra Energy Services during final engineering. Trenching and/or directional boring may be used to run conduit below grade between arrays, the inverter(s) and point of utility connections. Asphalt and concrete patch will be provided where existing hardscape was removed or damaged during construction. Under canopy lighting powered from an existing lighting circuit will be installed in a staggered layout (one lighting fixture between columns). Existing parking lot lighting (fixture, pole, and base) in conflict of the shade structure will be removed. Bollards are not included.

**County Coroner, Perris – Solar Parking Lot Shade Structure System:**

OpTerra Energy Services will design-build a photovoltaic system consisting of multiple arrays, having a total nominal capacity of 252.0 kW<sub>p</sub>. The array will be located throughout the parking area around the building. The precise quantity and arrangement of free standing structures will be determined by OpTerra Energy Services during final engineering. The structures will be double cantilever providing coverage for two rows of parking. The shade structures will have a minimum clear height of nine (9) feet and a maximum slope of five (5) degrees. The width of the structure will be approximately thirty-nine (39) feet. The length of the structure will be determined by the area required for the system capacity and site characteristics. The structure's only painted surfaces are the vertical steel columns. The precise quantity, installation and arrangement of the inverters will be determined by OpTerra Energy Services during final engineering. The inverters will be mounted to the vertical columns of the shade structure or placed on a concrete equipment pad on the ground. The solar system will be connected to the existing electrical infrastructure at a location to maximize electrical efficiency and minimize trenching and/or directional boring. The precise point of electrical connection will be determined by OpTerra Energy Services during final engineering. Trenching and/or directional boring may be used to run conduit below grade between arrays, the inverter(s) and point of utility connections. Asphalt and concrete patch will be provided where existing hardscape was removed or damaged during construction. Under canopy lighting powered from an existing lighting circuit will be installed in a staggered layout (one lighting fixture between columns). Existing parking lot lighting (fixture, pole, and base) in conflict of the shade structure will be removed. Bollards are not included.

**Riverside Animal Shelter, Riverside – Solar Parking Lot and Yard Shade Structure Systems:**

OpTerra Energy Services will design-build a photovoltaic system consisting of multiple arrays having a total nominal capacity of 547.0 kW<sub>p</sub>. The arrays will be located throughout the parking area and in the animal yard to provide shade. The precise quantity and arrangement of free standing structures and arrays will be determined by OpTerra Energy Services during final engineering. The shade structures will have a minimum clear height of nine (9) feet and a maximum slope of five (5) degrees. The width of the single cantilever structures will be approximately twenty (20) feet. The width of the double cantilever structures will be approximately thirty-nine (39) feet. The length of the structure will be determined by the area required for the system capacity and site characteristics. The structure's only painted surfaces are the vertical steel columns. The precise quantity, installation and arrangement of the inverters will be determined by OpTerra Energy Services during final engineering. The inverters will be mounted to the vertical columns of the shade structure or placed on a concrete equipment pad on the ground. The solar system will be connected to the existing electrical infrastructure at a location to maximize electrical efficiency and minimize trenching and/or directional boring. The precise point of electrical connection will be determined by OpTerra Energy Services during final engineering. Trenching and/or directional boring may be used to run conduit below grade between arrays, the inverter(s) and point of utility connections. Asphalt and concrete patch will be provided where existing hardscape was removed or damaged during construction. Under canopy lighting powered from an existing

lighting circuit will be installed in a staggered layout (one lighting fixture between columns). Existing parking lot lighting (fixture, pole, and base) in conflict of the shade structure will be removed. Bollards are not included.

**Sheriff Station, Palm Desert – Solar Parking Lot Shade Structure System:**

OpTerra Energy Services will design-build a photovoltaic system consisting of multiple arrays, having a total nominal capacity of 655.0 kW<sub>p</sub>. The arrays will be located in the secured rear parking lot. The precise quantity and arrangement of free standing structures and arrays will be determined by OpTerra Energy Services during final engineering. The structures will be double cantilever providing coverage for two adjoining rows of parking. The shade structures will have a minimum clear height of nine (9) feet and a maximum slope of five (5) degrees. The width of the structure will be approximately thirty-nine (39) feet. The length of the structure will be determined by the area required for the system capacity and site characteristics. The structure's only painted surfaces are the vertical steel columns. The precise quantity, installation and arrangement of the inverters will be determined by OpTerra Energy Services during final engineering. The inverters will be mounted to the vertical columns of the shade structure or placed on a concrete equipment pad on the ground. The solar system will be connected to the existing electrical infrastructure at a location to maximize electrical efficiency and minimize trenching and/or directional boring. The precise point of electrical connection will be determined by OpTerra Energy Services during final engineering. Trenching and/or directional boring may be used to run conduit below grade between arrays, the inverter(s) and point of utility connections. Asphalt and concrete patch will be provided where existing hardscape was removed or damaged during construction. Under canopy lighting powered from an existing lighting circuit will be installed in a staggered layout (one lighting fixture between columns). Existing parking lot lighting (fixture, pole, and base) in conflict of the shade structure will be removed. Bollards are not included.

**Ben Clark Training Center, Perris – Solar Parking Lot Shade Structure System:**

Array No. 01: 1,123 kW<sub>p</sub> (Net Metering)

Array No. 02: 1,166 kW<sub>p</sub> (Renewable Energy Self-Generation – Bill Credit Program)

OpTerra Energy Services will design-build two (2) separate photovoltaic systems consisting of multiple arrays, having a total nominal capacity of 2,289.0 kW<sub>p</sub>. The arrays will be located in the central parking lots. The precise quantity and arrangement of free standing structures and arrays will be determined by OpTerra Energy Services during final engineering. The structures will be double cantilever providing coverage for two rows of parking. The shade structures will have a minimum clear height of nine (9) feet and a maximum slope of five (5) degrees. The width of the structure will be approximately thirty-nine (39) feet. The length of the structure will be determined by the area required for the system capacity and site characteristics. The structure's only painted surfaces are the vertical steel columns. The precise quantity, installation and arrangement of the inverters will be determined by OpTerra Energy Services during final engineering. The inverters will be mounted to the vertical columns of the shade structure or placed on a concrete equipment pad on the ground. The solar system will be connected to the existing electrical infrastructure at a location to maximize electrical efficiency and minimize trenching and/or directional boring. The precise point of electrical connection will be determined by OpTerra Energy Services during final engineering. Trenching and/or directional boring may be used to run conduit below grade between arrays, the inverter(s) and point of utility connections. Asphalt and concrete patch will be provided where existing hardscape was removed or damaged during construction. Under canopy lighting powered from an existing lighting circuit will be installed in a staggered layout (one lighting fixture between columns). Existing parking lot lighting (fixture, pole, and base) in conflict of the shade structure will be removed. Bollards are not included.

**San Jacinto Valley Animal Campus, San Jacinto – Solar Parking Lot Shade Structure System and Ground-mounted Solar System:**

Solar Parking Lot Shade Structure System – 144.0 kW<sub>p</sub>:

OpTerra Energy Services will design-build a photovoltaic system consisting of multiple arrays, having a total nominal capacity of 144.0 kW<sub>p</sub>. The arrays will be located in the main parking lot. The precise quantity and arrangement of free standing structures and arrays will be determined by OpTerra Energy Services during final engineering. The shade structures will have a minimum clear height of nine (9) feet and a maximum slope of five (5) degrees. The width of the structure will be approximately thirty-nine (39) feet. The length of the structure will be determined by the area required for the system capacity and site characteristics. The structure's only painted surfaces are the vertical steel columns. The precise quantity, installation and arrangement of the inverters will be determined by OpTerra Energy Services during final engineering. The inverters will be mounted to the vertical columns of the shade structure or placed on a concrete equipment pad on the ground. The solar system will be connected to the existing electrical infrastructure at a location to maximize electrical efficiency and minimize trenching and/or directional boring. The precise point of electrical connection will be determined by OpTerra Energy Services during final engineering. Trenching and/or directional boring may be used to run conduit below grade between arrays, the inverter(s) and point of utility connections. Asphalt and concrete patch will be provided where existing hardscape was removed or damaged during construction. Under canopy lighting powered from an existing lighting circuit will be installed in a staggered layout (one lighting fixture between columns). Existing parking lot lighting (fixture, pole, and base) in conflict of the shade structure will be removed. Bollards are not included.

Ground-mounted Solar System – 1,040.0 kW<sub>p</sub> (Renewable Energy Self-Generation – Bill Credit Program):

OpTerra Energy Services will design-build a ground mounted photovoltaic system consisting of multiple arrays, having a total nominal capacity of 1,040.0 kW<sub>p</sub>. The arrays will be located on the vacant County-owned lot, adjacent to the San Jacinto Animal Campus. The precise quantity, installation and arrangement of the inverter system will be determined by OpTerra Energy Services during final engineering. The inverter(s) and associated concrete equipment pad will be located adjacent to the arrays. The solar system will be connected to the existing electrical infrastructure at a location to maximize electrical efficiency and minimize trenching and/or directional boring. The precise point of electrical connection will be determined by OpTerra Energy Services during final engineering. Trenching and/or directional boring may be used to run conduit below grade between arrays, the inverter(s) and point of utility connections. The array will be enclosed by a six (6) foot high chain link fence topped with three strands of barbed wire. A service road constructed from native onsite material will provide access to the inverter(s) and arrays. Altering the overall grade or drainage of this site is excluded. New site lighting is not included. The area set aside for the drainage basin will not be disturbed.

**Riverside County Regional Medical Center, Moreno Valley – Solar Parking Lot Shade Structure System:**

OpTerra Energy Services will design-build a photovoltaic system consisting of multiple arrays, having a total nominal capacity of 1,195.0 kW<sub>P</sub>. The array will be located in the parking lot adjacent to Cactus Avenue. The precise quantity and arrangement of free standing structures and arrays will be determined by OpTerra Energy Services during final engineering. The structures will be double cantilever providing coverage for two adjoining rows of parking. The shade structures will have a minimum clear height of nine (9) feet and a maximum slope of five (5) degrees. The width of the structure will be approximately thirty-nine (39) feet. The length of the structure will be determined by the area required for the system capacity and site characteristics. The structure's only painted surfaces are the vertical steel columns. The precise quantity, installation and arrangement of the inverters will be determined by OpTerra Energy Services during final engineering. The inverters will be mounted to the vertical columns of the shade structure or placed on a concrete equipment pad on the ground. The solar system will be connected to the existing electrical infrastructure at a location to maximize electrical efficiency and minimize trenching and/or directional boring. The precise point of electrical connection will be determined by OpTerra Energy Services during final engineering. Trenching and/or directional boring may be used to run conduit below grade between arrays, the inverter(s) and point of utility connections. Asphalt and concrete patch will be provided where existing hardscape was removed or damaged during construction. Under canopy lighting powered from an existing lighting circuit will be installed in a staggered layout (one lighting fixture between columns). Existing parking lot lighting (fixture, pole, and base) in conflict of the shade structure will be removed. Bollards are not included.

**Transportation Center, Perris – Solar Parking Lot Shade Structure System:**

OpTerra Energy Services will design-build a photovoltaic system consisting of multiple arrays, having a total nominal capacity of 536.0 kW<sub>P</sub>. The arrays will be located in the main parking lot. The precise quantity and arrangement of free standing structures and arrays will be determined by OpTerra Energy Services during final engineering. The structures will be double cantilever providing coverage for two adjoining rows of parking. The shade structures will have a minimum clear height of nine (9) feet and a maximum slope of five (5) degrees. The width of the structure will be approximately thirty-nine (39) feet. The structure's only painted surfaces are the vertical steel columns. The length of the structure will be determined by the area required for the system capacity and site characteristics. The precise quantity, installation and arrangement of the inverters will be determined by OpTerra Energy Services during final engineering. The inverters will be mounted to the vertical columns of the shade structure or be placed on a concrete equipment pad on the ground. The solar system will be connected to the existing electrical infrastructure at a location to maximize electrical efficiency and minimize trenching and/or directional boring. The precise point of electrical connection will be determined by OpTerra Energy Services during final engineering. Trenching and/or directional boring may be used to run conduit below grade between arrays, the inverter(s) and point of utility connections. Asphalt and concrete patch will be provided where existing hardscape was removed or damaged during construction. Under canopy lighting powered from an existing lighting circuit will be installed in a staggered layout (one lighting fixture between columns). Existing parking lot lighting (fixture, pole, and base) in conflict of the shade structure will be removed. Bollards are not included.

**Brookside Material Yard, Beaumont – Solar Parking Lot Shade Structure System and Ground-mounted Solar System:**

**Solar Parking Lot Shade Structure System – 43.0 kW<sub>P</sub>:**

OpTerra Energy Services will design-build a photovoltaic system consisting of multiple arrays, having a total nominal capacity of 43.0 kW<sub>P</sub>. The arrays will be located in the gravel parking area. The precise quantity and arrangement of free standing structures and arrays will be determined by OpTerra Energy Services during final engineering. The shade structures will have a minimum clear height of nine (9) feet and a maximum slope of five (5) degrees. The width of the structure will be approximately thirty-nine (39) feet. The length of the structure will be determined by the area required for the system capacity and site characteristics. The structure's only painted surfaces are the vertical steel columns. The precise quantity, installation and arrangement of the inverters will be determined by OpTerra Energy Services during final engineering. The inverters will be mounted to the vertical columns of the shade structure or placed on a concrete equipment pad on the ground. The solar system will be connected to the existing electrical infrastructure at a location to maximize electrical efficiency and minimize trenching and/or directional boring. The precise point of electrical connection will be determined by OpTerra Energy Services during final engineering. Trenching and/or directional boring may be used to run conduit below grade between arrays, the inverter(s) and point of utility connections. Asphalt and concrete patch will be provided where existing hardscape was removed or damaged during construction. Under canopy lighting powered from an existing lighting circuit will be installed in a staggered layout (one lighting fixture between columns). Existing parking lot lighting (fixture, pole, and base) in conflict of the shade structure will be removed. Bollards are not included.

**Array No. 02: Ground-mounted Solar System – 4,500.0 kW<sub>P</sub> (Renewable Energy Self-Generation – Bill Credit Program):**

OpTerra Energy Services will design-build a ground mounted photovoltaic system consisting of multiple arrays, having a total nominal capacity of 4,500.0 kW<sub>P</sub>. The arrays will be located on the vacant County-owned land, adjacent to the Brookside Material Yard. The array will be located to maintain the required environmental setback from the existing freshwater stream. The precise quantity, installation and arrangement of the inverter system will be determined by OpTerra Energy Services during final engineering. The inverter(s) and associated concrete equipment pad will be located adjacent to the arrays. The solar system will be connected to the existing electrical infrastructure at a location to maximize electrical efficiency and minimize trenching and/or directional boring. The precise point of electrical connection will be determined by OpTerra Energy Services during final engineering. Trenching and/or directional boring may be used to run conduit below grade between arrays, the inverter(s) and point of utility connections. The array will be enclosed by a six (6) foot high chain link fence topped with three strands of barbed wire. A service road constructed from native onsite material will provide access to the inverter(s) and arrays. Altering the overall grade or drainage of this site is excluded. New site lighting is not included. The area set aside for the drainage basin will not be disturbed.

**General Project Exclusions and Clarifications**

- Plan check fees are excluded.
- Inspector costs are excluded.

**Energy Services Contract  
Riverside County and OpTerra Energy Services**

- Preparation and submission to Authority Having Jurisdiction for review and approval of plans and specifications is included. Plan check fees shall not be charged to OpTerra Energy Services for this scope of work. Riverside County will be responsible for paying for required Building, Mechanical, and Electrical Permits.
- OpTerra Energy Services has assumed project construction will be allowed to proceed smoothly and in a continuous flow. Demobilization and remobilization of resources due to schedule interruptions are excluded.
- Temporary utilities to be provided by Riverside County at no cost to OpTerra Energy Services (trailer power, construction power, etc.).
- Removal and disposal of hazardous materials, including asbestos containing materials, to be by Riverside County (except as noted above). If OpTerra Energy Services encounters material suspected to be hazardous, OpTerra Energy Services will notify Riverside County representative and stop further work in this area until the material is removed.
- OpTerra Energy Services will require the assistance of Riverside County personnel to secure the area and to provide reasonable traffic redirection during rigging operations and during the move-in and move-out of large equipment.
- Structural upgrades to existing structures are excluded, except as noted.
- Screening of new or existing equipment is excluded, unless specifically noted above.
- OpTerra Energy Services standard construction means & methods will be used.
- Riverside County will provide access to the facilities, laydown areas at the work sites, and a reasonable number of parking spaces for OpTerra Energy Services and OpTerra Energy Services' subcontractor vehicles in parking lots at the respective facilities.
- Work will be performed during normal work hours where permissible. Overtime, evening or weekend hours will be considered to meet the project schedule.
- The Scope of Work assumes that, unless specifically identified otherwise, all existing systems are functioning properly and are up to current codes. Repairs or upgrades to existing systems (such as bringing existing systems up to code) are excluded, other than those specifically identified herein.
- Repair or replacement of damaged or inoperable existing equipment that is not specifically being replaced under the Scope of Work is excluded. When such items are discovered, OpTerra Energy Services will immediately notify Riverside County representative.
- Changes to the work due to underground obstructions or unsuitable soil conditions encountered during trenching or other excavation are excluded.
- Smoke detectors and fire alarm system work, unless specified, are excluded. Connecting new smoke detectors to existing fire alarm system is excluded. Upgrading the existing Fire Alarm Control Panel(s) is excluded.
- The PV shade structure is not weather tight and will not provide shelter from rain.
- Two (2) single-axle trailers with a 500 gallon water plastic tank, 3½ hp gasoline driven motor/pump for cleaning panels are included. Riverside County to license the trailers with the Department of Motor Vehicles.
- Decorative fascia (along the perimeter of the panels) or any decorative covering (underneath the panels) are excluded.
- Repair or replacement of existing housekeeping pads, concrete pads, or base repair of existing walkway lighting is excluded, except as noted.
- Painting, unless specified, is excluded.
- With respect to Projects with new equipment connecting to the Facility's existing electrical distribution system, OpTerra Energy Services will not be responsible for the electrical integrity of the existing electrical system, e.g., the condition and proper termination of current-carrying, grounded, and grounding conductors, bus taps, protective elements, the proper protection of existing wire through knockouts, or missing components.

**Warranty Criteria for Specific Pieces of Equipment:**

*Photovoltaic Systems*

Uninterrupted operation for the duration necessary, with a maximum of 2 weeks after receipt of Utility Authorization to interconnect, to determine proper operation.

**ATTACHMENT G**  
**MONITORING INSTALLATION SCOPE OF WORK**

Overview of DAS Network Installation and Equipment Requirements

OpTerra Energy Services will provide a revenue-grade billing, data acquisition system (DAS). This will provide readily available access to various internal and external information collected on the distributive generation (i.e., solar PV) plant.

**OpTerra Energy Services DAS Monitoring Installation:**

- Supply and install hardware specific to the DAS system.
- Supply and install, terminate, label, and test all Data Point of Connection (DPOC) communication cabling from each DAS node to the predetermined and respective DPOC(s); in accordance with Riverside County's specifications.
- Test and verify Riverside County/Facility network connectivity.
  - a. TCP/IP internal addressing and verification
- Supply, install, and configure a Modbus based digital Net Energy Meter (NEM).
- Connect the data portion of digital NEM(s) to their respective DPOC(s).
- Supply, install, and configure a Modbus based digital Net Generation Output Meter (NGOM).
- Perform the physical installation, labeling, testing and certification testing of each data circuit from the digital NEM(s) to their respective DPOC(s).
- Provide basic system training to designated Riverside County/Facility maintenance staff.

**Riverside County/Facility Responsibilities:**

- Provide four (4) external static IP addresses, subnet mask default gateway, and DNS-information to allow remote access to DAS panel(s).
- Provide network connectivity to each DAS panel location.
- Provide OpTerra Energy Services five (5) Business Days prior notification of any IP addressing scheme changes or changes made to restrict network access to ensure maximum uptime is maintained.

ATTACHMENT H  
M&V SERVICES

**EQUIPMENT AND FACILITIES COVERED**

OpTerra Energy Services will perform measurement and verification services (“M&V Services”) as set forth in this Attachment H with respect to Riverside County’s property at the following Project Locations:

- |   |   |
|---|---|
| <input type="checkbox"/> County Administration Center | <input type="checkbox"/> Ben Clark Training Center                |
| <input type="checkbox"/> Sheriff Campus               | <input type="checkbox"/> San Jacinto Valley Animal Campus         |
| <input type="checkbox"/> County Coroner               | <input type="checkbox"/> Riverside County Regional Medical Center |
| <input type="checkbox"/> Riverside Animal Shelter     | <input type="checkbox"/> Transportation Center                    |
| <input type="checkbox"/> Sheriff Station              | <input type="checkbox"/> Brookside Material Yard                  |

**I. Definitions:**

Capitalized terms used in this Attachment H and not defined in the Contract, have the meanings set forth below:

“**Accumulated Savings**” means, as of any date of determination, the cumulative total of Excess Savings.

“**Actual Energy Rate**” means, for any Measurement Period, utility rates calculated by OpTerra Energy Services using actual utility billing information supplied by Riverside County for that Measurement Period.

“**Assessment Work**” means work required to assess the effect on EC Savings for any significant changes to the Facilities (including, but not limited to, building additions, new buildings, and new or changed HVAC equipment).

“**Average Energy Unit Savings**” means, with respect to any number of consecutive Measurement Periods, the arithmetic mean of the Energy Unit Savings for such number of Measurement Periods.

“**Base Energy Rate**” means the dollars per energy unit for each building and/or each ECM, set forth in this Attachment H, Section (III), and used by OpTerra Energy Services to calculate the EC Savings.

“**Baseline**” means the energy use established by OpTerra Energy Services from time to time for each building in the Facilities, taking into consideration Energy Use Factors for such buildings.

“**EC Savings**” means the savings in units of dollars (\$) calculated by OpTerra Energy Services in the manner set forth in this Attachment H, Section (III), achieved through the reduction in consumption or demand through implementation of the Work.

“**Energy Rate Factors**” means factors identified by OpTerra Energy Services which may affect utility rates from the local utility companies.

“**Energy Savings Report**” is defined in this Attachment H, Section (II)(D).

“**Energy Savings Term**” means the period beginning on the first day of the Construction Period and ending on the earlier of: (i) the day immediately preceding the twentieth (20<sup>th</sup>) anniversary of the M&V Commencement Date; (ii) the termination of the Contract; (iii) the termination by Riverside County of the M&V Services in accordance with this Attachment H, Section (II)(G); or (iv) the failure by Riverside County to pay the Quarterly M&V Fee in accordance with this Attachment H, Section (II)(H)(i).

“**Energy Unit Savings**” means the savings in units of energy, power, water, etc., calculated by OpTerra Energy Services in the manner set forth in this Attachment H, Section (III), achieved through the reduction in consumption or demand through implementation of the Work.

“**Energy Use Factors**” means factors identified by OpTerra Energy Services which may affect the Baselines or energy use for the Facilities, including but not limited to: hours and levels of occupancy; adjustments in labor force; building use and operational procedures; temperature, humidification, and ventilation levels; installed lighting and scheduled use; building construction and size; general level of repair and efficiency of heating and air conditioning equipment and other energy-using equipment; and amount of heating and air conditioning and other energy-using equipment.

“**Energy Use Savings**” means, for any Measurement Period, those savings, having units of dollars (\$), achieved for such Measurement Period through reductions in energy use, energy demand, water use, and the use of other commodities.

“**Excess Savings**” means the excess of EC Savings over Guaranteed Savings, calculated in the manner set forth in this Attachment H, Section (II)(I)(iv).

**“Guarantee Payment”** means, for any Measurement Period, either: (i) a cash payment by OpTerra Energy Services to Riverside County in an amount equal to the Guarantee Shortfall for that Measurement Period pursuant to this Attachment H, Section (II)(A)(ii); or (ii) additional energy services or energy saving retrofits requested by Riverside County with an agreed value equal to the Guarantee Shortfall for that Measurement Period pursuant to this Attachment H, Section (II)(A)(iii).

**“Guarantee Shortfall”** means an amount calculated in accordance with this Attachment H, Section (II)(I)(v).

**“Guaranteed Savings”** means, for any Measurement Period, the dollar amount set forth below for such Measurement Period, as the same may be adjusted from time to time by OpTerra Energy Services for changes in Energy Rate Factors, Energy Use Factors and consequential revisions to the relevant Baseline:

**Table H-1: Guaranteed Annual Savings**

Measurement Period	Guaranteed Savings
1	\$ 2,452,151
2	\$ 2,598,485
3	\$ 2,753,550
4	\$ 2,917,867
5	\$ 3,091,990
6	\$ 3,276,505
7	\$ 3,472,030
8	\$ 3,679,224
9	\$ 3,898,781
10	\$ 4,131,441
11	\$ 4,377,984
12	\$ 4,639,243
13	\$ 4,916,086
14	\$ 5,209,457
15	\$ 5,520,328
16	\$ 5,849,755
17	\$ 6,198,839
18	\$ 6,568,753
19	\$ 6,960,746
20	\$ 7,376,129

**“IPMVP”** means the International Performance Measurement and Verification Protocol prepared by Efficiency Valuation Organization.

**“Projected Energy Savings”** means those Energy Unit Savings which OpTerra Energy Services anticipates will be realized from the installation and continued operation of the Work, as set forth in this Attachment H, Section (III).

**“Savings Guarantee”** is defined in this Attachment H, Section (II)(A)(i).

**II. Terms & Conditions**

**A. Guaranteed Savings.**

- i. **Savings Guarantee.** In consideration of the payment of the Quarterly M&V Fee, and upon the terms and subject to the conditions set forth herein, OpTerra Energy Services warrants that Riverside County will realize total EC Savings during the Energy Savings Term of not less than the total Guaranteed Savings (the “Savings Guarantee”), as the same may be adjusted from time to time for changes in Energy Rate Factors, Energy Use Factors and consequential revisions to the relevant Baseline.
- ii. **Guarantee Payment.** For any Measurement Period in which there is a Guarantee Shortfall, OpTerra Energy Services will pay to Riverside County, within twenty (20) Business Days after the acceptance by Riverside County of the Energy Savings Report for such Measurement Period, the Guarantee Payment for that Measurement Period.
- iii. **Services or Retrofits in Lieu of Guarantee Payment.** If in the judgment of Riverside County, Riverside County would benefit from additional energy services or energy saving retrofits, Riverside County and OpTerra Energy Services may mutually agree that OpTerra Energy Services will provide such services or retrofits in lieu of the Guarantee Payment for such Measurement Period. For the purposes of this Contract, such services or retrofits will have a deemed value equal to the Guarantee Shortfall for that Measurement Period.
- iv. **Excess Savings.** For any Measurement Period in which there are Excess Savings, Riverside County will repay to OpTerra Energy Services, to the extent of such Excess Savings, any Guarantee Payments previously paid by OpTerra Energy Services to Riverside County and not previously repaid



to OpTerra Energy Services by Riverside County, and the Excess Savings for such Measurement Period will be reduced by the amount of such repayment. If OpTerra Energy Services has provided services or retrofits in lieu of the Guarantee Payment for a prior Measurement Period, such that the Guarantee Payment for such Measurement Period cannot be repaid by Riverside County, then in lieu of such repayment Excess Savings will be increased by the deemed value of such services or retrofits.

- v. Excusable Events. If OpTerra Energy Services is delayed in, or prevented from, accurately calculating the actual EC Savings for any day of any Measurement Period by reason of an Excusable Event, such circumstance will not constitute a default, and OpTerra Energy Services will be excused from performing the M&V Services while such Excusable Event is continuing. During such Excusable Event, Projected Energy Savings for the month(s) in which such Excusable Event is continuing will be used in lieu of actual data; *provided* that if three (3) or more years of post M&V Commencement Date data are available for such month(s), the historical average of such data for such month(s) will be used in lieu of Projected Energy Savings.
- vi. Average Energy Unit Savings. For any Measurement Period beginning with the fifth (5<sup>th</sup>) Measurement Period, upon completion of that Measurement Period's Energy Savings Report, OpTerra Energy Services has the right to calculate the Average Energy Unit Savings which have occurred over all previous Measurement Periods. The Average Energy Unit Savings will be applied to all subsequent Measurement Periods to determine the Energy Unit Savings for each remaining Measurement Period. After applying such Average Energy Unit Savings for each subsequent Measurement Period and calculating the resulting EC Savings, if the *sum* of (i) such calculated EC Savings for any future Measurement Period *plus* (ii) the Quarterly M&V Fees for such Measurement Period is greater than the Guaranteed Savings for that Measurement Period, then such excess will be Excess Savings and the Savings Guarantee will have been met for that Measurement Period. If such *sum* of (i) calculated EC Savings for any future Measurement Period *plus* (ii) the Quarterly M&V Fees for such Measurement Period is less than the Guaranteed Savings for that Measurement Period, then OpTerra Energy Services will apply Accumulated Savings then outstanding to determine whether there is a Guarantee Shortfall for that Measurement Period. If a Guarantee Shortfall is calculated to exist for a future Measurement Period, OpTerra Energy Services may, in its sole discretion, pay to Riverside County, not later than the ninetieth (90<sup>th</sup>) day of such future Measurement Period, the net present value of the Guarantee Shortfall for any or all of such future Measurement Period(s). Net present value will be determined using a discount rate of ten percent (10%).

**B. Changes in Energy Use Factors.**

- i. Adjustments to Baselines. Riverside County will notify OpTerra Energy Services in writing within ten (10) Business Days of any change in any Energy Use Factor. In addition, data collected by OpTerra Energy Services during or before the Energy Savings Term may indicate a change in the energy use pattern at the Facilities or any portion thereof and require a change to one or more Baselines. OpTerra Energy Services will determine the effect that any such change will have on EC Savings and present to Riverside County a written analysis of the effects of such changes. OpTerra Energy Services will also make corresponding revisions to the Baselines and/or EC Savings upon agreement by Riverside County.
- ii. Adjustments to Guaranteed Savings. If a change in any Energy Rate Factor or Energy Use Factor results in a reduction of EC Savings, then the Guaranteed Savings for the corresponding Measurement Period(s) will be decreased by the same amount. OpTerra Energy Services will notify Riverside County, in writing, of all such changes.
- iii. Changes to Facilities. Riverside County or OpTerra Energy Services may from time to time propose to make changes to the Facilities for the express purpose of increasing EC Savings or addressing events beyond its control. It is agreed that these changes will only be made with the written consent of both Parties, which will not be unreasonably withheld. The Baseline will not be adjusted to reflect any changes agreed to under this Attachment H, Section (I)(B)(iii).
- iv. Baseline Adjustment. If OpTerra Energy Services proposes changes to the Facilities that would not unreasonably interfere with the conduct of Riverside County's business or cause Riverside County to incur additional costs, and Riverside County does not consent to the changes, then OpTerra Energy Services will adjust the Baselines upward by the amount of savings projected from the changes.
- v. Projected Energy Savings. During the Energy Savings Term, when the ultimate effect of the Work on EC Savings cannot be accurately determined due to pending construction or changes to the Scope of Work, Projected Energy Savings for the Facilities will be used until the effect of the changes can be determined by OpTerra Energy Services.

- vi. Assessment Work. OpTerra Energy Services has the right to charge Riverside County for Assessment Work, which will be billed at current OpTerra Energy Services engineering rates and will be paid by Riverside County within twenty (20) Business Days after receiving OpTerra Energy Services' invoice. Before initiating Assessment Work, OpTerra Energy Services will notify Riverside County in writing of the intent and estimated cost associated with the Assessment Work. Riverside County will, within thirty (30) Business Days, give OpTerra Energy Services written permission to proceed or, alternatively at no charge to OpTerra Energy Services, to stipulate that the Projected Energy Savings for the portion of the Facility in question be used for the purpose of meeting the Savings Guarantee for such Measurement Period and thereafter. If OpTerra Energy Services does not receive written notice within thirty (30) Business Days, the Projected Energy Savings for the portion of the Facility in question will be used until such time as Riverside County approves the Assessment Work.
  - vii. Changes in Energy Use Factors. If Riverside County fails to notify OpTerra Energy Services of changes in Energy Use Factors or fails to supply OpTerra Energy Services in a timely manner with information that is requested by OpTerra Energy Services for the calculation of EC Savings, the Energy Unit Savings for the relevant Measurement Period will be deemed equal to the corresponding Projected Energy Savings for such period. If information for the relevant Measurement Period is supplied at a later date, the Energy Unit Savings will be modified only if and to the extent that the calculated savings for such period exceed the Projected Energy Savings for such period.
  - viii. Change Order – Savings Effect. OpTerra Energy Services will calculate the energy impact of any Change Orders.
  - ix. Changes in Savings Calculations. Any changes made by OpTerra Energy Services to the savings calculations will be presented to Riverside County in advance. Riverside County will have twenty (20) Business Days to challenge or question the changes in writing.
  - x. Inspection of Facilities. Riverside County agrees that OpTerra Energy Services will have the right, with or without prior notice, to inspect the Facilities to determine if Riverside County has consistently complied with its obligations as set forth above. In the event that any inspection discloses that Riverside County has failed, on or prior to the date of such inspection, to be in compliance with any of its obligations, then the Guaranteed Savings will be assumed to have been achieved for the portion of the Energy Savings Term during which such failure will have existed.
  - xi. Interference. Riverside County may not cause, and will take all commercially reasonable steps to prevent any third party from causing, any overshadowing, shading or other interference with the solar insolation that falls on the Generating Facility. Upon discovering, or otherwise becoming aware of, any actual or potential overshadowing, shading or other interference with insolation, Riverside County will promptly notify OpTerra Energy Services. In the event an unforeseeable overshadowing or shading condition not caused by OpTerra Energy Services or its subcontractors exists and continues for five (5) Business Days or more, Riverside County agrees that the Guaranteed Savings for such Generating Facility will be reduced based upon such shading condition, and OpTerra Energy Services may present Riverside County with a proposed reduction to the Guaranteed Savings reflecting such overshadowing, shading or other interference.
- C. Riverside County Maintenance. Beginning at Beneficial Use or Substantial Completion for any portion of the Work, Riverside County will, directly or through a contract with OpTerra Energy Services or an alternative provider, maintain such portion of the Work and upon Final Completion will, directly or through a contract with OpTerra Energy Services or an alternative provider, maintain the Project, in accordance with the maintenance schedules and procedures recommended by OpTerra Energy Services and by the manufacturers of the relevant equipment.
- D. Energy Savings Report. Annually during the first five (5) Measurement Periods of the Energy Savings Term, OpTerra Energy Services will submit to Riverside County an energy savings report containing a precise calculation of the EC Savings during the applicable Measurement Period (an "Energy Savings Report"). OpTerra Energy Services will use its best efforts to submit such Energy Savings Report within sixty (60) Business Days after receipt of all needed information for a Measurement Period, unless additional information is needed to accurately calculate the EC Savings, in which case Riverside County will be notified of such a situation within the sixty (60) Business-Day period.
- E. On-Site Measurements. Riverside County irrevocably grants to OpTerra Energy Services the right, during the Energy Savings Term, to monitor EC Savings and energy management performance by conducting on-site measurements, including, but not limited to, reading meters and installing and observing on-site monitoring equipment. OpTerra Energy Services will not exercise such right in a manner that unreasonably interferes with the business of Riverside County as conducted at the Facilities as of the date hereof. Riverside County will cooperate fully with the exercise of such right by OpTerra Energy Services pursuant to this Attachment H, Section (II)(E). Riverside County will further cooperate with OpTerra Energy Services'

performance of the M&V Services by providing utility information, changes in Energy Use Factors, and/or additional information as reasonably requested by OpTerra Energy Services.

- F. Internet Communication Path. At OpTerra Energy Services' request, to facilitate OpTerra Energy Services' monitoring of the Work, Riverside County will open an internet communication path between Riverside County's energy management system(s) and OpTerra Energy Services' office in Overland Park, Kansas. Riverside County will provide, at Riverside County's expense, networking and telecommunication hardware and/or software for OpTerra Energy Services to achieve such communication path at OpTerra Energy Services' office. OpTerra Energy Services will provide Riverside County with the precise locations for network communication ports within Riverside County's Facilities. Riverside County agrees not to charge OpTerra Energy Services to install or maintain such communication paths.
- G. Termination of Guaranteed Savings. If (i) Riverside County notifies OpTerra Energy Services in writing of its intent to terminate the M&V Services, (ii) the Contract is terminated by OpTerra Energy Services for default by Riverside County or by Riverside County for any reason permitted by the Contract or (iii) Riverside County fails to maintain the Project in accordance with this Attachment H, Section (II)(C), or is in default of any of its other obligations under this Attachment H, the obligation of OpTerra Energy Services to prepare and deliver the Energy Savings Report and to make a Guarantee Payment will also be terminated. If such termination occurs on a date other than the last day of a Measurement Period, OpTerra Energy Services will prorate any Guarantee Payment for the corresponding portion of such Measurement Period.
- H. Quarterly M&V Fee.
- i. Invoicing and Payment. The Quarterly M&V Fee for the initial quarter of the first Measurement Period will be invoiced by OpTerra Energy Services to Riverside County in a lump sum on the last day of such initial quarter. All subsequent Quarterly M&V Fees will be invoiced by OpTerra Energy Services on the last day of the last month of each quarter of the corresponding Measurement Period. Riverside County, or its designee, will pay OpTerra Energy Services such Quarterly M&V Fee, without any retention amount withheld, within twenty (20) Business Days after its receipt of the corresponding invoice. Unless Riverside County gives OpTerra Energy Services prior written notice of its intent to terminate the M&V Services, failure to pay the Quarterly M&V will be a default by Riverside County under the Contract, and OpTerra Energy Services will have no obligations with respect to quarters for which the Quarterly M&V Fee has not been paid.
  - ii. Any amount not paid when due will, from and after the due date, bear Interest. Accrued and unpaid Interest on past due amounts (including Interest on past due Interest) will be due and payable upon demand.
- I. Calculations.
- i. Calculation of Accumulated Savings. Accumulated Savings will be increased, for any Measurement Period, by the amount of Excess Savings during such Measurement Period, and will be decreased, for any Measurement Period, by the *difference*, to the extent positive, between (i) the Guaranteed Savings for such Measurement Period *minus* (ii) the EC Savings for such Measurement Period. For the avoidance of doubt, Accumulated Savings will not be reduced below zero.
  - ii. Calculation of EC Savings. EC Savings for any Measurement Period will be equal to the Energy Use Savings for such Measurement Period, as adjusted for changes in Energy Use Factors during such Measurement Period. EC Savings achieved during the Construction Period will be included in the EC Savings for the first Measurement Period.
  - iii. Calculation of Energy Use Savings. Energy Use Savings will be calculated by OpTerra Energy Services as the *product* of (i) the Energy Unit Savings *multiplied by* (ii) the greater of (a) the applicable Base Energy Rate or (b) the applicable Actual Energy Rate.
  - iv. Calculation of Excess Savings. From and after the M&V Commencement Date, Excess Savings will be calculated by OpTerra Energy Services as the *difference*, to the extent positive, between (i) the EC Savings for the relevant Measurement Period *minus* (ii) the Guaranteed Savings for such Measurement Period. During the Construction Period, Excess Savings will be calculated by OpTerra Energy Services in the manner set forth in this Attachment H, Section (III). For the avoidance of doubt, Excess Savings will not be reduced below zero.
  - v. Calculation of Guarantee Shortfall. The Guarantee Shortfall, for any Measurement Period, will be calculated by OpTerra Energy Services as the *difference*, to the extent positive, between (i) the Guaranteed Savings for such Measurement Period, *minus* (ii) the sum of (a) EC Savings for such Measurement Period plus (b) Accumulated Savings then outstanding.

### III. Methodologies & Calculations

The following details the methodologies and calculations to be used in determining the Energy Unit Savings under this Contract.

**Table H-2: Measurement and Verification Methodology**

ECM #	Description	Facilities	M&V Method
RE-01	On-Site Power Generation (Photovoltaic)	County Administration Center Sheriff Campus County Coroner Riverside Animal Shelter Sheriff Station Transportation Center Brookside Material Yard (Array No. 01) Brookside Material Yard (Array No. 02) San Jacinto Valley Animal Campus Riverside County Regional Medical Center Ben Clark Training Center (Array No. 01) Ben Clark Training Center (Array No. 02)	Option B

M&V Option B: Energy savings performance of Scope of Work are measured and verified at the end-use site. Option B techniques are designed for projects where long-term continuous measurement of performance is desired and warranted. Under Option B, while some parameter may be stipulated or measured once then stipulated, some individual loads are continuously monitored to determine performance; and this measured performance is compared with an equipment-use Baseline to determine the Energy Unit Savings.

- a. OpTerra Energy Services will supply a one-time report to Riverside County detailing any initial measurements taken to establish usage Baselines or other parameters. Ongoing post-retrofit measurements will be compared to the Baselines, and the quantified Energy Unit Savings will be calculated and presented in ongoing reports. During the Construction Period, the Energy Unit Savings will be calculated by adding the savings measured for the whole months between Substantial Completion or Beneficial Use of the ECM and the M&V Commencement Date.
- b. Scope of Work: No baseline measurements are necessary because pre-retrofit PV production is zero. Kilowatt-hours produced by the PV system will be measured using automated metering. Projected kWh production is shown in Table H-3 below and is projected to degrade by 0.5% per year.
- c. Assumptions: Once Work is Substantially Complete, these savings will be measured and verified monthly for the Energy Savings Term.

Baselines and Projected Savings: EC Savings will be determined by multiplying the Energy Unit savings by the applicable Base Energy Rate. EC Savings will be calculated and presented in ongoing reports. During the construction period, the EC Savings will be calculated by adding the production measured for the period between Substantial Completion of the ECM and the M&V Commencement Date.

**Table H-3: Projected 1<sup>st</sup> Year Annual Electricity Production for ECM RE-01**

Facility	Projected Annual Electricity Production (kWh)
County Administration Center	284,542
Sheriff Campus	1,137,067
County Coroner	375,379
Riverside Animal Shelter	819,788
Sheriff Station	1,016,447
Transportation Center	814,309
Brookside Material Yard (Array No. 01)	66,321
Brookside Material Yard (Array No. 02)	7,382,925
San Jacinto Valley Animal Campus	1,888,052
Riverside County Regional Medical Center	1,819,608
Ben Clark Training Center (Array No. 01)	1,676,320
Ben Clark Training Center (Array No. 02)	1,741,902

Base Energy Rates: EC Savings will be calculated using the Base Energy Rates.

The Base Energy Rates listed in Table H-4 are to be increased each Measurement Period on a cumulative basis by six and one-half percent (6.5%) beginning on the first anniversary of the M&V Commencement Date and continuing on the first day of each Measurement Period thereafter.

**Table H-4: Base Electricity Rates for ECM RE-01**

Facility	Electricity Rate <i>(Dollars per kWh)</i>
County Administration Center	\$0.1508
Sheriff Campus,	\$0.1532
County Coroner	\$0.1552
Riverside Animal Shelter	\$0.1486
Sheriff Station	\$0.1461
Transportation Center, Perris	\$0.1491
Brookside Material Yard (Array No. 01)	\$0.1385
Brookside Material Yard (Array No. 02)	\$0.1147
San Jacinto Valley Animal Campus	\$0.1294
Riverside County Regional Medical Center	\$0.1279
Ben Clark Training Center (Array No. 01)	\$0.1491
Ben Clark Training Center (Array No. 02)	\$0.1160

ATTACHMENT I  
MAINTENANCE SERVICES

**EQUIPMENT AND FACILITIES COVERED**

OpTerra Energy Services will perform preventive maintenance services ("Maintenance Services") as set forth in this Attachment I with respect to Generating Facilities being constructed on Riverside County's property at the following Project Locations:

- |   |   |
|---|---|
| <input type="checkbox"/> County Administration Center | <input type="checkbox"/> Ben Clark Training Center                |
| <input type="checkbox"/> Sheriff Campus               | <input type="checkbox"/> San Jacinto Valley Animal Campus         |
| <input type="checkbox"/> County Coroner               | <input type="checkbox"/> Riverside County Regional Medical Center |
| <input type="checkbox"/> Riverside Animal Shelter     | <input type="checkbox"/> Transportation Center                    |
| <input type="checkbox"/> Sheriff Station              | <input type="checkbox"/> Brookside Material Yard                  |

**I. Term**

So long as Riverside County pays to OpTerra Energy Services the Quarterly Maintenance Fee, OpTerra Energy Services will provide the Maintenance Services, as described herein, up to five (5) years from the M&V Commencement Date on an annualized basis. At the end of this term, Riverside County may:

- a. Enter into another agreement with OpTerra Energy Services to perform Maintenance Services for another five (5) years
- b. Enter into an agreement with another service provider
- c. Self-perform preventive maintenance

**II. Quarterly Maintenance Fee; Reporting**

The Quarterly Maintenance Fee for the initial quarter of the first Measurement Period will be invoiced by OpTerra Energy Services to Riverside County in a lump sum on the M&V Commencement Date. All subsequent Quarterly Maintenance Fees will be invoiced by OpTerra Energy Services on the last day of the first month of each quarter of the corresponding Measurement Period. Riverside County, or its designee, will pay OpTerra Energy Services such Quarterly Maintenance Fee, without any retention amount withheld, within twenty (20) Business Days after its receipt of the corresponding invoice. Any failure to timely pay the Quarterly Maintenance Fee in accordance with this Attachment I will be a material default by Riverside County, and OpTerra Energy Services, in addition to any other legal, contractual and equitable remedies available to it, will have no obligation thereafter to provide Maintenance Services.

Any amount not paid when due will, from and after the due date, bear Interest. Accrued and unpaid Interest on past due amounts (including Interest on past due Interest) will be due and payable upon demand.

Upon completion of any maintenance or repair work, OpTerra Energy Services will update service logs detailing the work performed, location and any notes relevant to safe and efficient operations. These service logs will be compiled and submitted to Riverside County on a quarterly basis.

If OpTerra Energy Services is no longer the provider of Maintenance Services, Riverside County's new provider will maintain similar service logs. OpTerra Energy Services will have reasonable access to inspect service logs to determine that adequate Maintenance Services are being performed.

**III. Preventive Maintenance Services Provided**

OpTerra Energy Services will provide the following Maintenance Services during the term:

- a. Inspection: Inspect PV modules, combiner boxes, inverters, isolation transformers, and PV service roof penetrations and support structure on an annual basis.
- b. Testing: Perform voltage testing, amperage testing, and infrared scans of inverters, combiner boxes, disconnects and switchgear on a semi-annual basis.
- c. Monitoring: Monitor system performance on a daily basis.
- d. Cleaning:
  - i. Remove dust, dirt, and debris from outside cabinets of combiner boxes, inverters, transformers, and disconnect switches on an annual basis.

- ii. Wash PV modules and remove accumulated dust and debris on an annual basis.
- e. Weed Abatement: Abate weeds on a semi-annual basis at the Generating Facilities located at the San Jacinto Valley Animal Campus and the Brookside Material Yard.

**IV. Repair Services**

- a. Covered Equipment: Components of the Generating Facilities installed under this Attachment I include:
  - 1. Inverters
  - 2. Photovoltaic Panels
  - 3. Combiner Boxes
  - 4. Disconnect Switches
  - 5. AC and DC Power Wire
  - 6. Meters integral with Inverters
- b. Exclusions:
  - 1. Array structure
  - 2. Lighting
  - 3. Roofing
  - 4. Paint or finish
  - 5. Concrete
  - 6. Asphalt
  - 7. Bollards
  - 8. Conduit
  - 9. Data acquisition systems
  - 10. Meters
  - 11. Data acquisition communication wire
- c. If a Generating Facility is damaged due to an Excusable Event, Riverside County's negligence, or any other event beyond the control of OpTerra Energy Services, OpTerra Energy Services will provide repairs as required to restore the Generating Facilities to normal operating parameters or to replace deteriorated, damaged, parts and equipment. Riverside County will compensate OpTerra Energy Services for such repairs/replacement on a time and material basis, with OpTerra Energy Services providing back-up cost detail for actual, reasonable costs including reimbursable expenses, multiplied by 1.15.
- d. "Repairs" will include any of the following as necessary: Procuring parts or materials, removing damaged or out-of-specifications parts or materials, installing repaired or replacement parts or materials, and testing.

**V. Services And Equipment To Be Covered By Riverside County**

OpTerra Energy Services' obligations under this Attachment I are expressly conditioned upon Riverside County's payment of the Quarterly Maintenance Fee and providing and being responsible for the following, without cost to OpTerra Energy Services:

- a. The Generating Facilities described herein will be made available to OpTerra Energy Services as of the Effective Date of the Contract.
- b. Operate and maintain security systems associated with Generating Facilities.
- c. Riverside County will be responsible for maintenance of all landscaping in and around Generating Facilities including tree trimming.
- d. Allowing OpTerra Energy Services and its personnel access as necessary to the Generating Facilities, and any related areas that may be reasonably necessary for performance of the Maintenance Services, including reasonable work, parking, and equipment staging areas.
- e. Allowing OpTerra Energy Services and its personnel to access electrical power and other utilities then existing at the Generating Facilities as necessary for OpTerra Energy Services to satisfy its obligations under the Contract, all free of charge to OpTerra Energy Services.
- f. Riverside County will be responsible pursuant to Applicable Law for the remediation of any known Hazardous Substances encountered by OpTerra Energy Services during the performance of the Maintenance Services which Hazardous Substances were not deposited by OpTerra Energy Services, including any backfill with clean soil as may be reasonably required.
- g. Riverside County will insure the Generating Facilities against loss due to acts of God and the public enemy; flood, earthquake, tornado, storm, fire; civil disobedience, sabotage, and vandalism.
- h. OpTerra Energy Services will have no obligation to provide the Maintenance Services to the extent such provision of Maintenance Services is materially adversely affected by Riverside County's failure to satisfy the conditions set forth in this Attachment I.

**ATTACHMENT J**

**Iran Contracting Act  
(Public Contract Code sections 2200-2208)**

In accordance with Public Contract Code Section 2204(a), prior to bidding on, submitting a proposal or executing a contract or renewal for a County of Riverside contract for goods or services of \$1,000,000 or more, a Contractor must either:

- a) Certify it is not on the current list of persons engaged in investment activities in Iran created by the California Department of General Services ("DGS") pursuant to Public Contract Code section 2203(b) and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS; or
- b) Demonstrate it has been exempted from the certification requirement for that solicitation or contract pursuant to Public Contract Code section 2203(c) or (d).

To comply with this requirement, please insert your Contractor or financial institution name and Federal ID Number (if available) and complete one of the options below. Please note: California law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts. (Public Contract Code section 2205.)

**Option #1 – Certification**

I, the official named below, certify I am duly authorized to execute this certification on behalf of the Contractor/financial institution identified below, and the Contractor/financial institution identified below is **not** on the current list of persons engaged in investment activities in Iran created by DGS and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person/vendor, for 45 days or more, if that other person/vendor will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

<i>Contractor Name/Financial Institution (Printed)</i>		<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in</i>	

**Option #2 – Exemption**

Pursuant to Public Contract Code sections 2203(c) and (d), a public entity may permit a Contractor/financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or enters into or renews, a contract for goods and services.

If you have obtained an exemption from the certification requirement under the Iran Contracting Act, please fill out the information below, and attach documentation demonstrating the exemption approval.

<i>Contractor Name/Financial Institution (Printed)</i>		<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in</i>	