



Energy Services Contract
District and ENGIE Services U.S.

DIR Project Registration # _____
ENGIE Services Project #: CN-001193
ENGIE Services Contract # R 3567

ENERGY SERVICES CONTRACT

This ENERGY SERVICES CONTRACT (this "Contract") is made and entered into as of November 29, 2022 (the "Contract Effective Date") by and between ENGIE Services U.S. Inc., a Delaware corporation, with California State Contractor's License Number 995037 ("ENGIE Services U.S."), and Tulare Local Healthcare District ("District" and together with ENGIE Services U.S. the "Parties" and each of District and ENGIE Services U.S. a "Party").

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CONTRACT RECITALS

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

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

WHEREAS, ENGIE Services U.S. identified potential energy and operational savings opportunities at District's Facilities and estimated program costs to implement certain ECMs and presented an overall potential energy cost and consumption savings for implementing the ECMs; and

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

WHEREAS, pursuant to California Government Code §4217.12, District held a regularly scheduled public hearing on July 27, 2022 (adjourned and continued on August 3, 2022), of which two weeks advance public notice was given regarding this Contract and its subject matter, and

WHEREAS, District has determined that entering into this energy services contract to implement the ECMs is in the best interests of District and that California Government Code §4217.10 *et seq.* allows District to enter into this Contract; and

WHEREAS, by adoption of Resolution No. 912 at the above-referenced meeting, District approved this Contract and authorized its execution.

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

ARTICLE 1. DEFINITIONS

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

"Abnormally Severe Weather Conditions" means typhoons, hurricanes, tornadoes, lightning storms and other climatic and weather conditions that are abnormally severe for the period of time when, and the area where, such storms or conditions occur, in each case occurring at a property, the access roads to a property, or any other location where Work 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.

"Act" is defined in ARTICLE 14.

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"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.

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"Applicable Law" means any statute, law, treaty, building code, rule, regulation, ordinance, code, enactment, injunction, writ, order, decision, authorization, judgment, decree, protocol, procedure or other legal or regulatory

**Energy Services Contract
District and ENGIE Services U.S.**

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, approvals, inspections and certifications 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 19.04(ii).

"Arbitration Rules" is defined in Section 19.04(ii).

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

Attachment A	District's Facilities and Existing Equipment
Attachment B	Not Used
Attachment C	Scope of Work
Attachment D	Scope of Monitoring Installation
Attachment E	M&V Services
Attachment F	Maintenance Services

"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 C.

"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 ENGIE Services U.S. to District and subcontractor(s), which identifies when District 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 ENGIE Services U.S. to District, in accordance with Section 6.03. A Certificate of Final Completion may be executed for an individual subcontract, a specific building, a portion of the Work, or the entire Work.

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

"Change" means any addition to, deletion from, suspension of, or other modification to the quality, function, or intent of the Work 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, but including any change in law imposing new or additional tariffs or import duties).

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

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

"Construction Documents" means the final designs, drawings, specifications and submittals that are 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.

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**Energy Services Contract
District and ENGIE Services U.S.**

“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 Two Million Seven Hundred Seventy-One Thousand Three Hundred Ninety-One Dollars (\$2,771,391.00), which is inclusive of the mobilization payment, as set forth in Section 8.01, but exclusive of any fees for Maintenance Services.

“Contract Bonds” is defined in Section 12.02.

“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 19.02.

“District” is defined in the Preamble.

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

“DOE Guidelines” is defined in Section 13.01.

“ECM” is defined in the Recitals.

“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 2.05.

“ENGIE Services U.S.” is defined in the Preamble.

“ENGIE Services U.S. Warranty” is defined in Section 9.01.

“Event of Default” is defined in ARTICLE 16.

“Excusable Event” means an act, event, occurrence, condition or cause beyond the control of ENGIE Services U.S., including, but not limited to, the following: (i) any act or failure to act of, or other Delay caused by any District 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 ENGIE Services U.S.; (iii) changes in the design, scope or schedule of the Work required by any Governmental Authority or District Person; (iv) undisclosed or unforeseen conditions encountered at the Project Location, including discovery or existence of Hazardous Substances; (v) the failure to obtain, or delay in obtaining, approval of any Governmental Authority for design and installation of any portion of the Work, including any further or subsequent approval required with respect to any Change, other than a failure caused by the action or inaction of ENGIE Services U.S.; (vi) information provided to ENGIE Services U.S. by any District Person or Utility is later found to be inaccurate or incomplete; (vii) any Change in Law; (viii) Delay caused by pending arbitration; (ix) acts of God; (x) acts of the public enemy or terrorist acts; (xi) relocation or construction of transmission facilities or the shutdown of such facilities for the purpose of necessary repairs; (xii) work by Utility; (xiii) flood, earthquake, tornado, storm, fire, explosions, lightning, landslide or similar cataclysmic occurrence; (xiv) sabotage, vandalism, riots or civil disobedience; (xv) labor disputes or strikes; (xvi) labor or material shortages, delay in manufacturing and deliveries of equipment; (xvii) Abnormally Severe Weather Conditions; (xviii) 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; (xix) requirement by Utility that any Generating Facility discontinue operation; (xx) 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); (xxi) any Utility power outage at a Facility; or (xxii) regional epidemic or global pandemic.

“Facilities” is defined in the Recitals.

“Final Completion” means the stage in the progress of the Work at which the Construction Work as identified in the Scope of Work, or a designated portion thereof, has been completed and commissioned, including completion of all Punch List items, completion of all required training, and delivery to District of the final documentation (as-built drawings, operation and maintenance manuals, warranty documentation and final submittals).

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**Energy Services Contract
District and ENGIE Services U.S.**

"Generating Facility" means each of the photovoltaic, solar powered generating facilities located at the sites listed in [Attachment E](#), 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](#).

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"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](#).

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"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\(c\)](#).

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

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"Interconnection Facilities" is defined in [Section 18.02](#).

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"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](#).

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"M&V Commencement Date" means the first day of the month immediately following the later of (i) ENGIE Services U.S.'s receipt of the fully signed Certificate of Final Completion, and (ii) ENGIE Services U.S.'s receipt of the full Contract Amount.

"M&V Services" (if any) are defined in [Attachment E](#).

"Maintenance Services" (if any) are defined in [Attachment E](#).

"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 2.04](#).

"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 (such as Maintenance Services and M&V Services, if any) provided by ENGIE Services U.S. to District under this Contract.

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

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

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

"Retention" is defined in [Section 8.03](#).

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"Schedule of Values" is defined in [Section 8.01](#).

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**Energy Services Contract
District and ENGIE Services U.S.**

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

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

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

“**Utility**” is defined in Section 18.02.

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

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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 on which Professional Services are provided, 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. ENGIE Services U.S. will perform its obligations under this Contract (i) using the degree of skill and care that is required by current, good and sound professional procedures and practices, and (ii) in conformance with (x) generally accepted professional standards prevailing at the time the Work is performed, (y) the covenants, terms and conditions of this Contract, and (z) applicable laws, codes, rules and regulations, including, without limitation, the applicable provisions of the California Building Code. ENGIE Services U.S. 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. The Work completed herein will be subject to District’s general right of inspection and supervision to secure the satisfactory completion thereof in accordance with this Contract.

Section 2.03 Scope of Work.

- (a) The Scope of Work may not exceed that set forth in Attachments C and D, except pursuant to a Change Order.
- (b) The Professional Services may not exceed those set forth in Attachments E, F and G, except pursuant to a Change Order.

Section 2.04 Notice to Proceed. Within ten (10) days after District has closed the financing referenced in Section 2.07, District will issue to ENGIE Services U.S. a written Notice to Proceed (“Notice to Proceed”). ENGIE Services U.S. will begin Work within thirty (30) calendar days after ENGIE Services U.S.’s receipt of the Notice to Proceed. If District fails to issue the Notice to Proceed within twenty (20) calendar days after the financing has closed, ENGIE Services U.S. will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount as a result of such delay.

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Section 2.05 Project Schedule. After receipt of the Notice to Proceed, ENGIE Services U.S. will develop, with input from District, a master project schedule using Microsoft Project®. ENGIE Services U.S. will establish a weekly construction meeting at which time the Work of the previous week will be reviewed and a two-week look ahead will be coordinated. The project schedule will be updated monthly.

Section 2.06 District’s Energy and Operational Records and Data. If ENGIE Services U.S. requests, District will provide to ENGIE Services U.S., within thirty (30) calendar days after such request, District’s Energy Usage Data for the twelve (12) months preceding the Contract Effective Date, and will make commercially reasonable efforts to provide the Energy Usage Data for the thirty-six (36) months preceding the Contract Effective Date. “Energy Usage Data” means all of District’s records and 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. District agrees that ENGIE Services U.S. may rely on the foregoing data as being accurate in all respects. If ENGIE Services U.S. requests, District will also provide to ENGIE Services U.S., within thirty (30) calendar days after such request, any prior energy audits of the Facilities, and copies of District’s financial statements and records related to energy usage and operational costs for said time period at the Facilities, and will authorize its agents and employees to provide and freely discuss such records and to make themselves available for consultations and discussions with authorized representatives, employees, subcontractors, and agents of ENGIE Services U.S.

**Energy Services Contract
District and ENGIE Services U.S.**

Section 2.07 Finance Contingency. It is acknowledged and agreed by the Parties that the continued existence of this Contract, and the District's obligations set forth herein, are expressly contingent upon District closing financing with an investor of District's choosing, subject to terms agreeable to District, in its sole and absolute discretion, that will allow it to make the payments to ENGIE Services U.S. required by this Contract. District will have ~~thirty (30)~~ calendar days after the Contract Effective Date 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; *provided* that District may not declare this Contract to be null and void after it has issued the Notice to Proceed. It is acknowledged and agreed that ENGIE Services U.S. will have no obligation to commence performance of the Work unless and until the financing has been closed. Notwithstanding the foregoing, ENGIE Services U.S. reserves the right to refresh the pricing for the Project thirty (30) days prior to the estimated financing close date. In the event the Contract Amount is timely adjusted by ENGIE Services U.S. as a result of the repricing, District may elect to terminate the Contract by providing written notice to ENGIE Services U.S. any time prior to District's issuance of its Notice to Proceed. In such event, the Contract will be null and void as of ENGIE Services U.S.'s receipt of such notice. In addition to the foregoing, each Party acknowledges that the investor chosen by District for the Project may require that certain revisions be made to this Agreement as a precondition of its willingness to provide financing for the Project. ENGIE Services U.S. hereby agrees to make a good faith effort to accommodate all such revisions. In the event ENGIE Services U.S. is unable or unwilling to make any of the requested revisions, 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.

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

ARTICLE 3. PROJECT IMPLEMENTATION - GENERAL

Section 3.01 Registrations, Permits and Approvals.

- (a) Prior to issuing the Notice to Proceed, District must register the Project with the California Department of Industrial Relations, using Form PWC-100.
- (b) ENGIE Services U.S. is responsible for obtaining all Applicable Permits required under this Contract. District will cooperate fully with and assist ENGIE Services U.S. in obtaining Applicable Permits.
- (c) District is responsible for paying for all inspections and certifications costs, including any additional work that may be required by the Authority(ies) Having Jurisdiction as part of the permitting process.
- (d) District is responsible for hiring and paying for all inspectors, site testing (including geotechnical observations) and laboratory testing.
- (e) District is responsible for paying for all utility interconnection(s) costs, including any additional work that may be required by the Utility(ies) as part of the Interconnection Agreement(s).
- (f) District is responsible for obtaining and paying for any annual operating permits and approvals or exemptions required by CEQA, as applicable.

Section 3.02 Coordination. District will be responsible for coordinating the activities of ENGIE Services U.S. and ENGIE Services U.S.'s subcontractors and suppliers with those of District Persons.

Section 3.03 Project Meetings/Status Updates. During the course of the Work, ENGIE Services U.S. will periodically meet with District to report on the general status and progress of the Work. ENGIE Services U.S. may (but is not required to) make food and beverage items of nominal value available to District and District'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. District hereby grants to ENGIE Services U.S., without cost to ENGIE Services U.S., all rights of ingress and egress at the Project Location, necessary for ENGIE Services U.S. to perform the Work and provide all services contemplated by this Contract. ENGIE Services U.S. will provide twenty-four-hour advance notice to District for access to any District Facilities. All persons entering the Project Location, including District and its employees and agents, must follow ENGIE Services U.S.'s safety procedures. ENGIE Services U.S. may

**Energy Services Contract
District and ENGIE Services U.S.**

(but is not required to) make transportation available to District and District'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 ENGIE Services U.S., and any agents and employees of ENGIE Services U.S., 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 District for purposes of conflict of interest laws or any other Applicable Law.

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

Section 4.01 General Provisions.

- (a) After receipt of the Notice to Proceed, ENGIE Services U.S. will proceed with the preparation of any necessary designs, drawings, and specifications related to the Scope of Work.
- (b) After completion of the design phase and approval of the final plans and specifications by District, ENGIE Services U.S. will order the equipment identified in the Scope of Work, and any other necessary materials and supplies in order to meet the project schedule.
- (c) District will designate a single-point representative with whom ENGIE Services U.S. may consult on a reasonable, regular basis and who is authorized to act on District's behalf with respect to the Project design. District's representative will render decisions in a timely manner with regard to any documents submitted by ENGIE Services U.S. and to other requests made by ENGIE Services U.S. in order to avoid delay in the orderly and sequential progress of ENGIE Services U.S.'s design services.
- (d) Within ten (10) Business Days after ENGIE Services U.S.'s request, District will:
 - (i) furnish all surveys or other information in District's possession that describe the physical characteristics, legal limitations, and utility locations in and around the Project Location;
 - (ii) disclose any prior environmental review documentation and all information in its possession concerning subsurface conditions, including without limitation the existence of any known Hazardous Substances, in or around the general area of the Project Location;
 - (iii) supply ENGIE Services U.S. with all relevant information in District's possession, including any as-built drawings and photographs, of prior construction undertaken at the Project Location;
 - (iv) obtain any and all 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
 - (v) obtain any and all title reports for those Project Locations reasonably requested by ENGIE Services U.S.
- (e) All information furnished pursuant to this Section 4.01 will be supplied at District's expense, and ENGIE Services U.S. will be entitled to rely upon the accuracy and completeness of all information provided. If ENGIE Services U.S. is adversely affected by any failure to provide, or delay in providing, the information specified in Section 4.01(d), ENGIE Services U.S. will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount.
- (f) If any information disclosed under this Section 4.01 gives rise to a Change to the Work or an Excusable Event, ENGIE Services U.S. will notify District. The Parties will meet and confer with respect to those Changes, and ENGIE Services U.S. will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount. If the Parties, however, are unable to agree on whether District's disclosed information gives rise to a Change to the Work or an Excusable Event, those disputes are to be resolved in accordance with ARTICLE 19.
- (g) ENGIE Services U.S. contemplates that it will not encounter any Hazardous Substances at the Project Location, except as has been disclosed as a pre-existing condition by District prior to the Contract Effective Date. However, any disclosure of Hazardous Substances that will affect the performance of the Work after the Contract Effective Date will constitute a valid basis for a Change Order.

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**Energy Services Contract
District and ENGIE Services U.S.**

Section 4.02 Review of Construction Documents. ENGIE Services U.S. will prepare and submit all drawings and specifications to District for review. District will review the documents and provide any comments in writing to ENGIE Services U.S. within ten (10) Business Days after receipt of the documents. ENGIE Services U.S. will incorporate appropriate District comments into the applicable drawings and specifications. ENGIE Services U.S. reserves the right to issue the drawings and specifications in phases to allow Construction to be performed in phases. If District fails to provide written comments within the ten (10) Business Day period, District will be deemed to have no comments regarding the documents.

Section 4.03 Permits. The respective obligations of the Parties in obtaining inspections and permits are as specified in Section 3.01. District will agree to any nonmaterial changes to the designs, drawings, and specifications required by any Governmental Authority. The Contract Amount must be increased by any additional cost incurred by ENGIE Services U.S. due to a Change required by a Governmental Authority and the time required to complete the Work must be increased by the number of additional days required to complete the Work because of a Change imposed by a Governmental Authority.

Section 4.04 Changes During Final Design Phase. If during the design phase any District Person requests Changes and/or modifications to the Work and/or an Excusable Event occurs, ENGIE Services U.S. will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount. Valid bases for additional compensation and/or time extension include, but are not limited to: (i) any District Person requests changes and/or modifications to the Project Scope of Work during the Project design phase; (ii) any District Person causes delays during ENGIE Services U.S.'s design work; (iii) the discovery of subsurface or other site conditions that were not reasonably anticipated or disclosed as of the Contract Effective Date; (iv) the discovery of Hazardous Substances at or impacting the Project Location; (v) changes to the Scope of Work required to obtain Applicable Permits; (vi) damage to any equipment or other Work installed by ENGIE Services U.S. caused by the act or omission of any District Person; (vii) changes and/or modifications to Scope of Work ordered by any Governmental Authority; and (viii) any other condition that would not reasonably have been anticipated by ENGIE Services U.S., that modifies and/or changes the Scope of Work, that increases the agreed-upon Contract Amount or increases the time needed to complete the Work.

ARTICLE 5. CONSTRUCTION PHASE

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

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

- (a) As an independent contractor to District, ENGIE Services U.S. will provide, or cause to be provided by its subcontractor(s), all labor, materials, equipment, tools, transportation, and other facilities and services necessary for the proper execution, construction, and completion of the Work. ENGIE Services U.S. will purchase in advance all necessary materials and supplies for the construction of the Project in order to assure the prompt and timely delivery of the completed Work pursuant to the project schedule. ENGIE Services U.S. will also be responsible for all means, methods, techniques, sequences, and procedures required by the Construction Documents.
- (b) ENGIE Services U.S. will make commercially reasonable efforts to coordinate construction activities and perform the Work to minimize disruption to District's operations at the Project Location. ENGIE Services U.S. will provide at least fifteen (15) calendar days' written notice to District of any planned power outages that will be necessary for the construction. ENGIE Services U.S. will cooperate with District in scheduling such outages, and District agrees to provide its reasonable approval of any scheduled outage.
- (c) ENGIE Services U.S. will initiate and maintain a safety program in connection with its Construction of the Project. ENGIE Services U.S. will take reasonable precautions for the safety of, and will provide reasonable protection to prevent damage, injury, or loss to: (i) employees of ENGIE Services U.S. and subcontractors performing Work under this Contract; (ii) ENGIE Services U.S.'s property and other materials to be incorporated into the Project, under the care, custody, and control of ENGIE Services U.S. or its subcontractors; and (iii) other property at or adjacent to the Project Location not designated for removal, relocation, or replacement during the course of construction. ENGIE Services U.S. will not be responsible for District's employees' safety unless ENGIE Services U.S.'s negligence in the performance of its Work is the proximate cause of the employee's injury.
- (d) ENGIE Services U.S. will provide notice to District of scheduled test(s) of installed equipment, if any, and District and/or its designees will have the right to be present at any or all such tests conducted by ENGIE Services U.S., any subcontractor, and/or manufacturers of the equipment.

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**Energy Services Contract
District and ENGIE Services U.S.**

- (e) Pursuant to California Labor Code §6705, if the Work is a public work involving an estimated expenditure in excess of \$25,000 and includes the excavation of any trench or trenches five (5) feet or more in depth, ENGIE Services U.S. will, in advance of excavation, submit to District and/or a registered civil or structural engineer, employed by District, to whom authority to accept has been delegated, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches, which provisions will be no less effective than the current and applicable CAL-OSHA Construction Safety Orders. No excavation of such trench or trenches may be commenced until this detailed plan has been accepted by District or by the person to whom authority to accept has been delegated by District. Pursuant to California Labor Code §6705, nothing in this [Section 5.02\(e\)](#) imposes tort liability on District or any of its employees.
- (f) Pursuant to California Public Contract Code §7104, if the Work is a public work involving digging trenches or other excavations that extend deeper than four (4) feet below the surface of the ground:
- (i) ENGIE Services U.S. will promptly, and before the following conditions are disturbed, notify District, in writing, of any:
 - 1) Material that ENGIE Services U.S. believes may be material that is hazardous waste, as defined in California Health and Safety Code §25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law;
 - 2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to ENGIE Services U.S. before the Contract Effective Date;
 - 3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.
 - (ii) District will promptly investigate the conditions and, if it finds that the conditions do materially so differ or do involve hazardous waste, and cause a decrease or increase in ENGIE Services U.S.'s cost of, or the time required for, performance of any part of the Work will issue a Change Order under the procedures described in this Contract.
 - (iii) If a dispute arises between District and ENGIE Services U.S., whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in ENGIE Services U.S.'s cost of, or time required for, performance of any part of the Work, ENGIE Services U.S. will not be excused from any scheduled completion date provided for by this Contract but will proceed with all Work to be performed under this Contract. ENGIE Services U.S. will retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the Parties.

Section 5.03 District's Responsibilities during Construction Phase.

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

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**Energy Services Contract
District and ENGIE Services U.S.**

- (e) District will prepare the Project Location for construction, including, but not limited to, clearance of all above and below ground obstructions, such as vegetation, buildings, appurtenances, and utilities. Subsurface conditions and obstacles (buried pipe, utilities, etc.) that are not otherwise previously and accurately documented by District and such documentation made available to ENGIE Services U.S. are the responsibility of District. If ENGIE Services U.S. encounters such unforeseen conditions in the performance of the Work, ENGIE Services U.S. will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount.
- (f) District will remove any Hazardous Substances either known to District prior to the commencement of the Work or encountered by ENGIE Services U.S. during the construction of the Project, if necessary in order for the Work to progress safely, that were not knowingly released or brought to the site by ENGIE Services U.S. ENGIE Services U.S. will respond to the discovery of Hazardous Substances at or around the Project Location during the course of ENGIE Services U.S.'s construction in accordance with Section 5.06.
- (g) District will coordinate the Work to be performed by ENGIE Services U.S. with its own operations and with any other construction project that is ongoing at or around the Project Location, with the exception that ENGIE Services U.S. will coordinate the Interconnection Facilities work, if any, which will be performed by the local utility.
- (h) District will, and will cause District Persons to, allow ENGIE Services U.S. and its subcontractors access to and reasonable use of necessary quantities of District's water and other utilities, including electrical power, as needed for the construction of the Work, at no cost to ENGIE Services U.S.
- (i) District will, and will cause District Persons to, provide ENGIE Services U.S. and/or its subcontractors with reasonable access to the Project Location to perform the Work, including without limitation and at no extra cost to ENGIE Services U.S., access to perform Work on Saturdays, Sundays, legal holidays, and non-regular working hours.
- (j) District will also do the following:
 - (i) Attend the regularly scheduled progress meetings. Participate as needed regarding scheduling of the Work.
 - (ii) When requested by ENGIE Services U.S., participate in the job inspection walk-through with ENGIE Services U.S. to determine Substantial Completion or Beneficial Use of major equipment, and will sign the Certificate(s) of Substantial Completion.
 - (iii) Perform a final walk-through of the Project and, upon receipt of the operation and maintenance manuals and as-built drawings, sign the Certificate of Final Completion for the related Work.
 - (iv) Upon the completion of the entire Scope of Work listed in Attachment C, including training, if any, and submission of close-out documents, sign a Certificate of Final Completion for the entire Project.

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. ENGIE Services U.S. may, at its election, suspend performance of that portion of the Work affected by any proposed Change until a written Change Order with respect to the Changed or modified Work has been signed by both District and ENGIE Services U.S. ENGIE Services U.S. will use its reasonable efforts to continue other portions of the Work not affected or impacted by such proposed Change until such time as the applicable Change Order is resolved. In addition, if any District Person requests a proposal from ENGIE Services U.S. for a Change and District subsequently elects to not proceed with such Change, District agrees that a Change Order will be issued to reimburse ENGIE Services U.S. for any costs reasonably incurred for estimating services, design services, and/or preparation of the proposal requested by such District Person.
- (b) Change Orders Requiring Additional Compensation. If during construction any District Person requests changes and/or modifications to the Work, and/or there are Excusable Events, District will pay the extra costs caused by such modifications and/or changes and/or Excusable Event and ENGIE Services U.S. will be entitled to additional compensation for the following reasons, that include, but are not limited to: (i) any District Person requests changes and/or modifications to the Scope of Work during the construction phase of the Project; (ii) any District Person causes delays during ENGIE Services U.S.'s construction work; (iii) discovery of subsurface or other site conditions that were not reasonably anticipated or disclosed prior to the commencement of the Work; (iv) discovery of Hazardous Substances at or impacting the Project Location; (v) changes and/or modifications to the Scope of Work required to obtain required permits and approvals as required by any Governmental Authority; (vi) damage to any equipment or other Work installed by ENGIE Services U.S. caused by the act or omission of any District Person; (vii) changes and/or modifications to Scope of Work ordered by

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**Energy Services Contract
District and ENGIE Services U.S.**

any Governmental Authority; and (viii) any other condition that would not reasonably have been anticipated by ENGIE Services U.S., that modifies and/or changes the Scope of Work or the Contract Amount.

- (c) Change Orders Requiring Additional Time. If during construction any District Person requests changes and/or modifications to the Scope of Work and/or an Excusable Event occurs, the Parties agree that an equitable extension of time to complete the Work may be necessary. Prior to any extension of time, ENGIE Services U.S. will use commercially reasonable efforts to make up such delays, including authorizing overtime payments; *provided* that District has issued a Change Order authorizing any such overtime payment and has specifically agreed to pay all costs, including administrative charges and expenses, associated therewith.
- (d) Method for Adjustment. An increase or decrease in the Contract Amount and/or time resulting from a Change in the Work and/or Excusable Event must be determined by one or more of the following methods:
- (i) unit prices set forth in this Contract or as subsequently agreed;
 - (ii) a mutually accepted, itemized lump sum; or
 - (iii) costs calculated on a basis agreed upon by District and ENGIE Services U.S. plus a fee (either a lump sum or a fee based on a percentage of cost) to which the Parties agree.
- (e) Disagreements. If there is a disagreement between District and ENGIE Services U.S. as to whether ENGIE Services U.S. is entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount, those disputes are to be resolved in accordance with the provisions of ARTICLE 19. Pending the resolution of any such dispute, ENGIE Services U.S. may suspend Work.

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

Section 5.06 Hazardous Substances.

- (a) ENGIE Services U.S. will promptly provide written notice to District if ENGIE Services U.S. observes any Hazardous Substance, as defined herein, at or around the Facilities during the course of construction or installation of any equipment which have not been addressed as part of the Scope of Work. ENGIE Services U.S. will have no obligation to investigate the Facilities for the presence of Hazardous Substances prior to commencement of the Work unless otherwise specified in the Scope of Work. District will be solely responsible for investigating Hazardous Substances and determining the appropriate removal and remediation measures with respect to the Hazardous Substances. District will comply with all Applicable Laws with respect to the identification, removal and proper disposal of any Hazardous Substances known or discovered at or around the Facilities, and in such connection will execute all generator manifests with respect thereto. ENGIE Services U.S. will comply with all Applicable Laws in connection with the use, handling, and disposal of any Hazardous Substances in the performance of its Work. In connection with the foregoing, District will provide ENGIE Services U.S., within ten (10) Business Days after the Contract Effective Date, a written statement that represents and warrants (i) whether or not, to its knowledge, there are Hazardous Substances either on or within the walls, ceiling or other structural components, or otherwise located in the Project Location, including, but not limited to, asbestos-containing materials; (ii) whether or not, to its knowledge, conditions or situations exist at the Facilities which are subject to special precautions or equipment required by federal, state, or local health or safety regulations; and (iii) whether or not, to its knowledge, there are unsafe working conditions at the Facilities.
- (b) District will indemnify, defend, and hold ENGIE Services U.S. harmless from and against any and all Losses that in any way result from, or arise under, such District owned or generated Hazardous Substances, except for liabilities to the extent due to the negligence or willful misconduct of ENGIE Services U.S., or its subcontractors, agents or representatives, in the handling, disturbance or release of Hazardous Substances. This indemnification will survive any termination of this Contract.

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

**Energy Services Contract
District and ENGIE Services U.S.**

ARTICLE 6. PROJECT COMPLETION

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

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

Section 6.03 Final Completion. When ENGIE Services U.S. considers the entirety of the Work to be Finally Complete, ENGIE Services U.S. will notify District that the Work is fully complete and ready for final inspection. District will inspect the Work to verify the status of Final Completion within ten (10) Business Days after its receipt of ENGIE Services U.S.'s certification that the Work is complete. If District does not verify the Final Completion of the Work within this period, the Work will be deemed fully completed. When District agrees that the Work is fully completed, ENGIE Services U.S. will issue a Certificate of Final Completion, which District must sign. District agrees that its signing of the Certificate of Final Completion will not be unreasonably withheld, delayed or conditioned. At that time, District will pay ENGIE Services U.S. any remaining Contract Amount due and any outstanding Retention being withheld by District, in accordance with Section 8.03. District may give ENGIE Services U.S. written notice of acceptance of the Work and will promptly record a notice of completion or notice of acceptance in the office of the county recorder in accordance with California Civil Code §9204.

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

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ARTICLE 7. SUBCONTRACTORS

Section 7.01 Authority to Subcontract. ENGIE Services U.S. may delegate its duties and performance under this Contract, and has the right to enter into agreements with any subcontractors and other service or material providers as ENGIE Services U.S. may select in its discretion to perform the Work. ENGIE Services U.S. will not be required to enter into any subcontracts with parties whom ENGIE Services U.S. has not selected or subcontractors whom ENGIE Services U.S. has objection to using.

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

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

Section 7.04 Prevailing Wages. To the extent required by California Labor Code §1771 or other Applicable Law, all employees of ENGIE Services U.S. and ENGIE Services U.S.'s subcontractors performing Work at the Project Location will be paid the per diem prevailing wages for the employee's job classification in the locality in which the Work is performed. In accordance with California Labor Code §§1773 and 1773.2, District will obtain from the Director of

**Energy Services Contract
District and ENGIE Services U.S.**

Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work, in the locality in which the Work is to be performed, for each craft, classification or type of worker needed to execute the Work at the Project Location, and will cause copies of such determinations to be kept on file at its principal office and posted at each Project Location. District will promptly notify ENGIE Services U.S. of any changes to any such prevailing wage determination.

ARTICLE 8. PAYMENTS

Section 8.01 Monthly Progress Payments. Promptly after the Contract Effective Date, ENGIE Services U.S. will invoice District for a mobilization payment in the amount of Five Hundred Fifty-Four Thousand Two Hundred Seventy-Eight Dollars (\$554,278.00). This amount must be paid to ENGIE Services U.S. within thirty (30) calendar days after District's receipt of an invoice for those amounts. In addition, as the Work progresses, ENGIE Services U.S. will submit to District its applications for monthly payments based on the progress made on the Project through the date on which ENGIE Services U.S. submits such Application for Payment. Within twenty-one (21) calendar days from the Contract Effective Date, ENGIE Services U.S. will prepare and submit to District 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, ENGIE Services U.S. may invoice District for materials purchased in advance and not stored at the Project Location. Each such Application for Payment will be accompanied by proof of off-site material purchases, evidence that the materials have been delivered to a warehouse reasonably acceptable to District and evidence of appropriate insurance coverage. ENGIE Services U.S. will furnish to District written consent from the Surety approving the advance payment for materials stored off site. District will pre-pay one hundred percent (100%) of ENGIE Services U.S.'s Application for Payment for the materials delivered, less Retention as indicated in Section 8.03, ENGIE Services U.S. will protect stored materials from damage. Damaged materials, even though paid for, will not be incorporated into the Work.

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Section 8.03 Retention. District, or its designee, must approve and pay each Application for Payment, less a retention amount ("Retention") of five percent (5%) in accordance with California Public Contract Code §7201, within thirty (30) calendar days after its receipt of the Application for Payment; *provided, however*, that there is to be no Retention with respect to the mobilization payment and any fee for the Recommendations. A failure to approve and pay an Application for Payment in a timely manner is a material default by District under this Contract. District may make progress payments in full without Retention at any time after fifty percent (50%) of the Work has been completed, as permitted pursuant to California Public Contract Code §9203. Upon Substantial Completion, the Retention must be reduced to two percent (2%) of the Contract Amount, and ENGIE Services U.S. may invoice and District will pay this amount. District will pay ENGIE Services U.S. the remaining two percent (2%) Retention amount upon achieving Final Completion. In lieu of Retention being held by District, ENGIE Services U.S. may request that securities be substituted or Retention be held in an escrow account pursuant to California Public Contract Code §22300.

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

Section 8.05 Disputed Invoices/Late Payments. District may in good faith dispute any Application for Payment, or part thereof, within fifteen (15) calendar days after the date the Application for Payment was received by District. If District disputes all or a portion of any Application for Payment, District will pay the undisputed portion when due and provide ENGIE Services U.S. a written notice and explanation of the basis for the dispute and the amount of the Application for Payment being withheld related to the dispute. District will be deemed to have waived and released any dispute known to it with respect to an Application for Payment if such notice and written explanation is not provided within fifteen (15) calendar days after the date the Application for Payment was received by District. If any amount disputed by District is finally determined to be due to ENGIE Services U.S., either by agreement between the Parties or as a result of dispute resolution pursuant to ARTICLE 19 below, it will be paid to ENGIE Services U.S. within ten (10) Business Days after such final determination, plus Interest from the date billed or claimed until such amount is paid.

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Section 8.06 Rebate Programs. ENGIE Services U.S. will assist District in the preparation and submission to the applicable agencies of applications and documentation necessary for the following energy efficiency rebate, incentive, and/or loan program(s): Self Generation Incentive Program. ENGIE Services U.S. makes no guarantee that District will receive funding from any energy efficiency rebate, incentive, and/or loan program(s), including those listed above (collectively, "Incentive Funds"), or any portion thereof; ENGIE Services U.S. expressly disclaims any liability for District's failure to receive any portion of the Incentive Funds, and District acknowledges and agrees that ENGIE Services U.S. will have no liability for any failure to receive all or any portion of the Incentive Funds. 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.

**Energy Services Contract
District and ENGIE Services U.S.**

ARTICLE 9. WARRANTY / LIMITATION OF LIABILITY

EXCEPT FOR THE WARRANTIES PROVIDED IN THIS ARTICLE 9, ENGIE SERVICES U.S. MAKES NO WARRANTIES IN CONNECTION WITH THE WORK PROVIDED UNDER THIS CONTRACT, WHETHER EXPRESS OR IMPLIED IN LAW, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES AGAINST INTELLECTUAL PROPERTY INFRINGEMENT. District WILL HAVE NO REMEDIES AGAINST EITHER ENGIE SERVICES U.S. OR ANY ENGIE SERVICES U.S. SUBCONTRACTOR OR VENDOR FOR ANY DEFECTIVE MATERIALS OR EQUIPMENT INSTALLED, EXCEPT FOR THE REPAIR OR REPLACEMENT OF SUCH MATERIALS OR EQUIPMENT IN ACCORDANCE WITH THE WARRANTIES INDICATED BELOW. SPECIFICALLY, NEITHER ENGIE SERVICES U.S., NOR ENGIE SERVICES U.S.'s SUBCONTRACTORS OR VENDORS, WILL BE LIABLE TO District 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 ENGIE Services U.S. warrants to District that material and equipment furnished under this Contract will be of good quality and new, unless otherwise specifically required or permitted by this Contract. ENGIE Services U.S. further warrants that its workmanship provided hereunder, including its subcontractors' workmanship, will be free of material defects for a period of one (1) year from the date of Substantial Completion as indicated on the executed Certificate of Substantial Completion, or the date of Beneficial Use as indicated on the executed Certificate of Beneficial Use ("ENGIE Services U.S. Warranty"). Notwithstanding the preceding sentence, the date the ENGIE Services U.S. Warranty commences with respect to a specific piece or pieces of equipment may be further defined in Attachment C.

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

Section 9.03 The warranties in this ARTICLE 9 expressly exclude any remedy for damage or defect caused by improper or inadequate maintenance of the installed equipment by service providers other than ENGIE Services U.S. or its subcontractors, corrosion, erosion, deterioration, abuse, modifications or repairs not performed by an authorized ENGIE Services U.S. subcontractor, improper use or operation, or normal wear and tear under normal usage. ENGIE Services U.S. shall not be responsible for the cost of correcting a breach of warranty or defect to the extent that the manufacturer of the equipment that is the subject of a warranty hereunder does not honor its equipment warranty as a result of its termination of operations, insolvency, liquidation, bankruptcy or similar occurrence. Unless otherwise specified, all warranties hereunder, including without limitation those for defects, whether latent or patent, in design, engineering, or construction, will terminate one (1) year from the date of Substantial Completion or Beneficial Use; and thereafter, ENGIE Services U.S. will have no liability for breach of any warranty or for any latent or patent defect of any kind pursuant to California Code of Civil Procedure §§337.1 and 337.15.

Section 9.04 District and ENGIE Services U.S. have discussed the risks and rewards associated with this Project, as well as the Contract Amount to be paid to ENGIE Services U.S. for performance of the Work. District and ENGIE Services U.S. agree to allocate certain of the risks so that, to the fullest extent permitted by Applicable Law, ENGIE Services U.S.'s total aggregate liability to District and all third parties is limited to 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, District will not acquire, by virtue of this Contract, any rights or interest in any formulas, patterns, devices, software, inventions or processes, copyrights, patents, trade secrets, other intellectual property rights, or similar items of property which are or may be used in connection with the Work. ENGIE Services U.S. will own all inventions, improvements, technical data, models, processes, methods, and information and all other work products developed or used in connection with the Work, including all intellectual property rights therein.

**Energy Services Contract
District and ENGIE Services U.S.**

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

Section 10.02 Ownership of any Existing Equipment. Ownership of any equipment and materials presently existing at the Facilities on the Contract Effective Date will remain the property of District even if such equipment or materials are replaced or their operation made unnecessary by work performed by ENGIE Services U.S. If applicable, ENGIE Services U.S. will advise District in writing of all equipment and materials that will be replaced at the Facilities and District will, within five (5) Business Days of ENGIE Services U.S.'s notice, designate in writing to ENGIE Services U.S. which replaced equipment and materials should not be disposed of off-site by ENGIE Services U.S. (the "Retained Items"). District will be responsible for and designate the location and storage for the Retained Items. ENGIE Services U.S. will be responsible for the disposal of replaced equipment and materials, except for the Retained Items. ENGIE Services U.S. will use commercially reasonable efforts to remove the Retained Items in such a manner as to avoid damage thereto, or if it is unreasonable to avoid damage altogether, to minimize the damage done. ENGIE Services U.S. will not be responsible for the removal and/or disposal of any Hazardous Substances except as required by the Scope of Work.

ARTICLE 11. INDEMNIFICATION / LIMITATION ON LIABILITY

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

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

ARTICLE 12. INSURANCE / BONDS

Section 12.01 ENGIE Services U.S. Insurance. ENGIE Services U.S. will maintain, or cause to be maintained, for the duration of this Contract, the insurance coverage outlined in (a) through (f) below, and all such other insurance as required by Applicable Law. Evidence of coverage will be provided to District via an insurance certificate.

- (a) Workers' Compensation/Employers Liability for states in which ENGIE Services U.S. is not a qualified self-insured. Limits as follows:
- * Workers' Compensation: Statutory
 - * Employers Liability: Bodily Injury by accident \$1,000,000 each accident
Bodily Injury by disease \$1,000,000 each employee
Bodily Injury by disease \$1,000,000 policy limit
- (b) Commercial General Liability insurance with limits of:
- * \$2,000,000 each occurrence for Bodily Injury and Property Damage
 - * \$4,000,000 General Aggregate - other than Products/Completed Operations

**Energy Services Contract
District and ENGIE Services U.S.**

- * \$2,000,000 Products/Completed Operations Aggregate
- * \$2,000,000 Personal and Advertising Injury
- * \$ 100,000 Damage to premises rented to ENGIE Services U.S.

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

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

(d) Professional Liability insurance with limits of:

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

Coverage to be written on a claims-made form.

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

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

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

(f) Policy Endorsements.

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

Section 12.02 District's Insurance. District will maintain, or cause to be maintained, for the duration of this Contract, the insurance coverage outlined below, and all such other insurance as required by Applicable Law. Evidence of coverage will be provided to ENGIE Services U.S. via an insurance certificate.

(a) Commercial General Liability insurance, written on an occurrence form, with limits of:

- * \$2,000,000 each occurrence for Bodily Injury and Property Damage; and
- * \$4,000,000 General Aggregate

(b) The insurance provided for above will contain waivers of subrogation rights against ENGIE Services U.S., will include ENGIE Services U.S. as an additional insured, and will provide that the insurance is primary coverage with respect to all insureds.

Section 12.03 Waivers of Subrogation. The Parties waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this ARTICLE 12 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance. The Parties and their respective property damage insurers also waive all rights of subrogation against the other Party, its directors, officers, agents and employees. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

Section 12.04 Performance and Payment Bonds. Prior to commencing Work under this Contract, ENGIE Services U.S. will furnish a performance bond, in an amount equal to one hundred percent (100%) of the Contract Amount, and a payment bond to guarantee payment of all claims for labor and materials furnished, in an amount equal to one hundred percent (100%) of the Contract Amount (collectively, the "Contract Bonds"). The Contract Bonds shall be maintained in full force and effect until Final Completion; provided that upon the achievement of Substantial Completion, the value of the Contract Bonds shall be reduced to the value of the Retainage being withheld by District. The Contract Bonds are not being furnished to cover the performance of any Professional Services, including any energy guaranty or

**Energy Services Contract
District and ENGIE Services U.S.**

guaranteed savings under this Contract, nor to cover any equipment and/or material manufacturer's warranty or other third-party warranty being assigned to District. District agrees that upon Final Completion and expiration of the ENGIE Services U.S. Warranty period set forth in Article 9 herein, the Contract Bonds shall be returned to ENGIE Services U.S., and all obligations arising thereunder are terminated and the surety company that issued the bond is forever discharged from any and all liabilities of whatever nature arising in connection with the Contract Bonds.

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. District hereby assigns and transfers to ENGIE Services U.S., and its Affiliates and assigns, any Greenhouse Gas emission reduction credits that result from the Work.

ARTICLE 14. MUNICIPAL ADVISOR

Section 14.01 THE PARTIES ACKNOWLEDGE AND AGREE THAT ENGIE SERVICES U.S. IS NOT A MUNICIPAL ADVISOR AND CANNOT GIVE ADVICE TO District WITH RESPECT TO MUNICIPAL SECURITIES OR MUNICIPAL FINANCIAL PRODUCTS ABSENT District BEING REPRESENTED BY, AND RELYING UPON THE ADVICE OF, AN INDEPENDENT REGISTERED MUNICIPAL ADVISOR. ENGIE SERVICES U.S. IS NOT SUBJECT TO A FIDUCIARY DUTY WITH REGARD TO District OR THE PROVISION OF INFORMATION TO District. District WILL CONSULT WITH AN INDEPENDENT REGISTERED MUNICIPAL ADVISOR ABOUT THE FINANCING OPTION APPROPRIATE FOR District'S SITUATION.

ARTICLE 15. TRADE SECRETS

If any materials or information provided by ENGIE Services U.S. to District under this Contract are designated by ENGIE Services U.S. as a "trade secret" or otherwise exempt from disclosure under the Public Records Act (California Government Code §6250 *et seq.*, the "Act") and if a third party makes a request for disclosure of the materials under the Act, as soon as practical (but not later than five (5) calendar days) after receipt of such request, District will notify ENGIE Services U.S. of such request and advise ENGIE Services U.S. whether District believes that there is a reasonable possibility that the materials may not be exempt from disclosure. Within ten (10) calendar days after a third party's request for disclosure of materials under the Act, ENGIE Services U.S. will (i) authorize District to release the documents or information sought; or (ii) if ENGIE Services U.S. reasonably believes that the information is exempt from disclosure, advise District not to release the materials.

ARTICLE 16. EVENTS OF DEFAULT

Section 16.01 Events of Default by ENGIE Services U.S. Each of the following events or conditions will constitute an "Event of Default" by ENGIE Services U.S.:

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

Section 16.02 Events of Default by District. Each of the following events or conditions will constitute an "Event of Default" by District:

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

**Energy Services Contract
District and ENGIE Services U.S.**

- (iii) any failure by District to pay any amount to ENGIE Services U.S. which is not paid within ten (10) calendar days after written notice from ENGIE Services U.S. that the amount is past due.

ARTICLE 17. REMEDIES UPON DEFAULT

Section 17.01 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 16, the non-defaulting Party may terminate this Contract by providing three (3) Business Days' written notice to the defaulting Party in the case of a monetary default and ten (10) Business Days' written notice to the defaulting Party in the case of a non-monetary default. Upon termination of this Contract, each Party will promptly return to the other all papers, materials, and property of the other held by such Party in connection with this Contract. Each Party will also assist the other in the orderly termination of this Contract and the transfer of all aspects hereof, tangible and intangible, as may be necessary for the orderly, non-disrupted business continuation of each Party. If this Contract is so terminated, ENGIE Services U.S. will be entitled to payment for Work satisfactorily performed, earned profit and overhead, and costs incurred in accordance with this Contract up to the date of termination.

Section 17.02 Remedies Upon Default by ENGIE Services U.S. If an Event of Default by ENGIE Services U.S. occurs, District will be entitled to obtain any available legal or equitable remedies through arbitration proceedings instituted pursuant to ARTICLE 19, including, without limitation, terminating this Contract, or recovering amounts due and unpaid by ENGIE Services U.S. and/or damages, which will include District's reasonable, actual, direct out-of-pocket losses incurred by reason of such Event of Default and any cost of funding; loss of anticipated payment obligations; and any payment or delivery required to have been made on or before the date of the Event of Default and not made, including interest on any sums due, and losses and costs incurred as a result of terminating this Contract and all costs and expenses reasonably incurred in exercising the foregoing remedies.

Section 17.03 Remedies upon Default by District. If an Event of Default by District occurs, ENGIE Services U.S. will be entitled to obtain any available legal or equitable remedies through arbitration proceedings instituted pursuant to ARTICLE 19, including, without limitation, terminating this Contract or recovering amounts due and unpaid by District, and/or damages which will include ENGIE Services U.S.'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.

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ARTICLE 18. CONDITIONS BEYOND CONTROL OF THE PARTIES

Section 18.01 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. Notwithstanding the foregoing, no Party will be excused from any payment obligations under this Contract as a result of an Excusable Event.

Section 18.02 Utility Work. District expressly understands and agrees that Excusable Events may occur due to Interconnection Facilities work that may need to be performed by the local electric utility ("Utility") in order for ENGIE Services U.S. 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 19. GOVERNING LAW AND RESOLUTION OF DISPUTES

Section 19.01 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 19.02 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 19 by giving notice to the other Party. The Parties will endeavor to settle the Dispute as follows:

- (i) *Field Representatives' Meeting*: Within fifteen (15) Business Days after notice of the Dispute, ENGIE Services U.S.'s senior project management personnel will meet with District's project representative in a good faith attempt to resolve the Dispute.
- (ii) *Management Representatives' Meeting*: If ENGIE Services U.S.'s and District's project representatives fail to meet, or if they are unable to resolve the Dispute, senior executives for ENGIE Services U.S. and for District, neither of whom have had day-to-day management

**Energy Services Contract
District and ENGIE Services U.S.**

responsibilities for the Project, will meet, within thirty (30) calendar days after notice of the Dispute, in an attempt to resolve the Dispute and any other identified disputes or any unresolved issues that may lead to a dispute. If the senior executives of ENGIE Services U.S. and District are unable to resolve a Dispute or if a senior management conference is not held within the time provided herein, either Party may submit the Dispute to mediation in accordance with [Section 19.03](#).

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Section 19.03 **Mediation.** If the Dispute is not settled pursuant to [Section 19.02](#), the Parties will endeavor to settle the Dispute by mediation under the Commercial Mediation Procedures of the American Arbitration Association. Mediation is a condition precedent to arbitration or the institution of legal or equitable proceedings by either Party. Once one Party files a request for mediation with the other Party and with the American Arbitration Association, the Parties agree to conclude the mediation within sixty (60) calendar days after filing the request. Either Party may terminate the mediation at any time after the first session, but the decision to terminate must be delivered in person by the Party's representative to the other Party's representative and the mediator. If the Dispute is not resolved by mediation within sixty (60) calendar days after the date of filing of the request for mediation, then the exclusive means to resolve the Dispute is final and binding arbitration, as described in [Section 19.04](#). Either Party may initiate arbitration proceedings by notice to the other Party and the American Arbitration Association.

Section 19.04 **Arbitration Proceedings.** The following provisions apply to all arbitration proceedings pursuant to this **ARTICLE 19**:

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

Field Code Changed

Section 19.05 **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.

Section 19.06 **Lien Rights.** Nothing in this **ARTICLE 19** limits any rights or remedies not expressly waived by ENGIE Services U.S. that ENGIE Services U.S. may have under any lien laws or stop notice laws.

ARTICLE 20. REPRESENTATIONS AND WARRANTIES

Section 20.01 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

**Energy Services Contract
District and ENGIE Services U.S.**

- (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 21. 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 ENGIE SERVICES U.S.: ENGIE Services U.S. Inc.
150 East Colorado Boulevard, Suite 360
Pasadena, CA 91105-3711
Tel: 909-810-0697
Attention: Jacob Goering, Project Manager

With a COPY TO: Legal Department
ENGIE Services U.S. Inc.
150 East Colorado Boulevard, Suite 360
Pasadena, CA 91105-3711
Tel: 626-377-4948
Attention: Contract Administrator

TO District: Tulare Local Healthcare District
869 North Cherry Street
Tulare, CA 93274
Tel:
Attention:

With a COPY TO: Office of _____

Street Address
City, State, Zip
Tel:
Attention:

ARTICLE 22. 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 23. CHOICE OF LAW

THE INTERPRETATION, VALIDITY AND ENFORCEMENT OF THIS CONTRACT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

ARTICLE 24. 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 25. NO WAIVER

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

ARTICLE 26. SEVERABILITY

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

ARTICLE 27. 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 28. 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. This Contract cannot be amended, modified, or terminated except by a written instrument, executed by both Parties hereto. Delivery of an executed counterpart of a signature page of this Contract by email will be effective as delivery of a manually executed counterpart of this Contract.

[the Parties' signatures appear on the following page]

DRAFT

**Energy Services Contract
District and ENGIE Services U.S.**

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

ENGIE SERVICES U.S.:

ENGIE Services U.S. Inc.

District:

Tulare Local Healthcare District

By: _____
Name:
Title:

By: _____
Name:
Title:

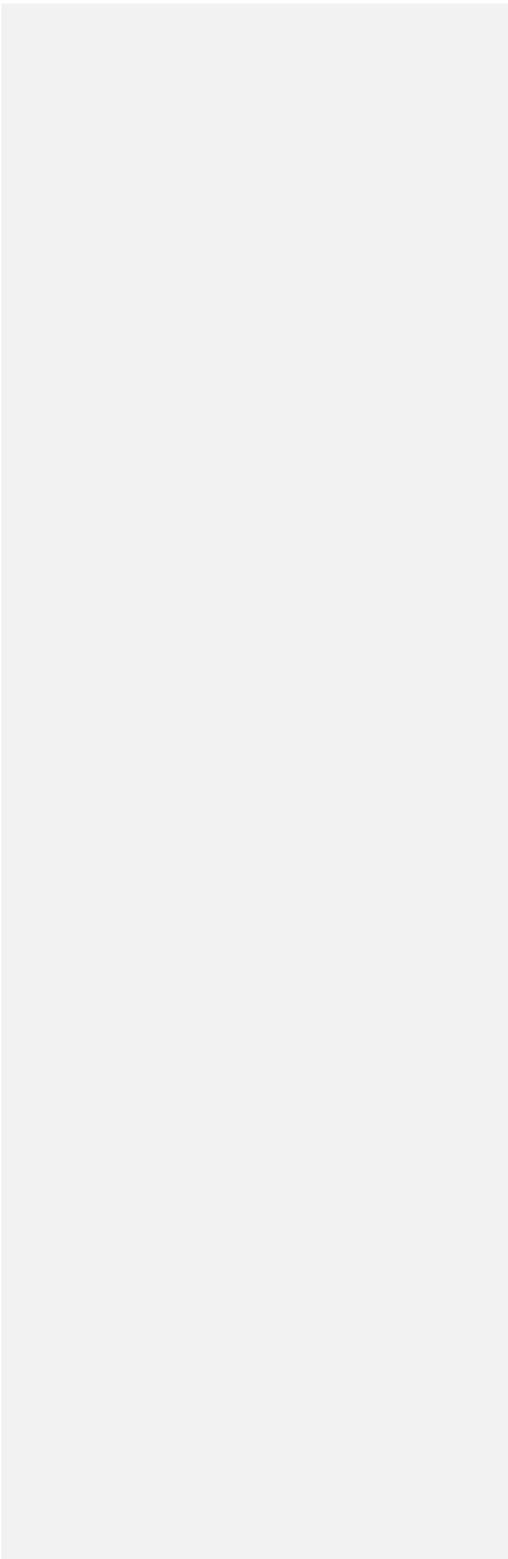
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ATTACHMENT A
FACILITIES and EXISTING EQUIPMENT

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

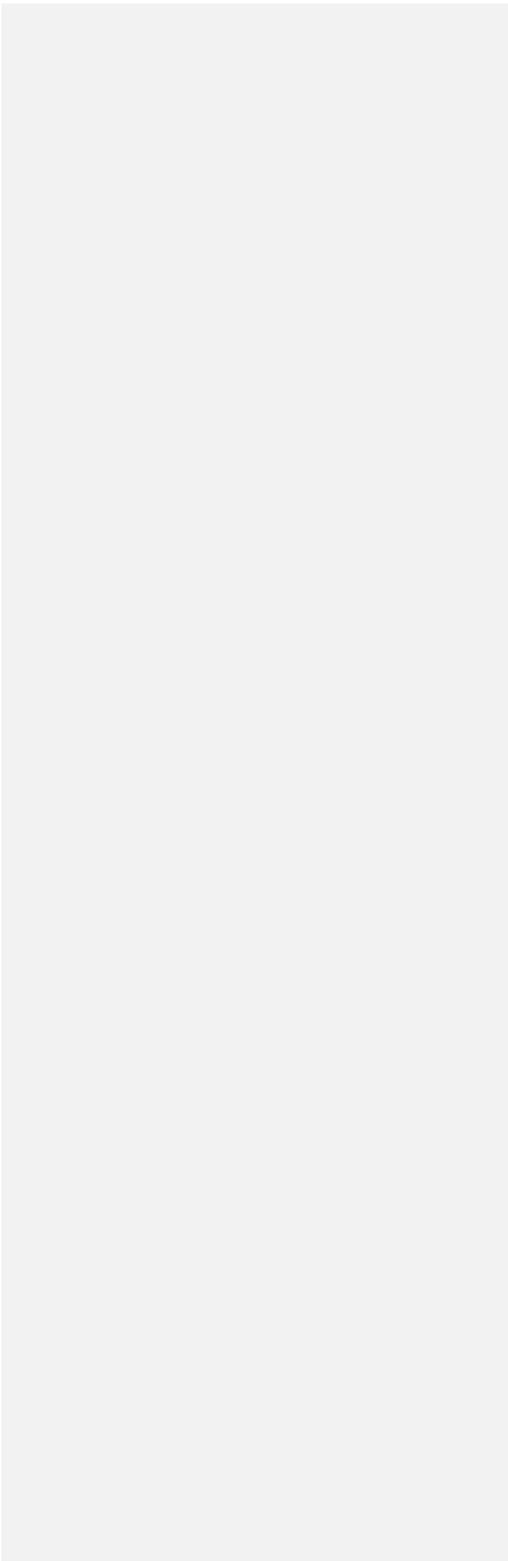
Facility	Address	Square Feet
Evolutions Gym	1425 E Prosperity Ave, Tulare, CA	57,470

DRAFT



**Energy Services Contract
District and ENGIE Services U.S.**

**ATTACHMENT B
NOT USED**



ATTACHMENT C

SCOPE OF WORK

California State Contractor's License Number 995037
California Public Works Contractor Registration Number 1000001498

Energy Conservation Measures to Be Implemented

ECM #	Description
1	Interior and Exterior Lighting Upgrades
2	Photovoltaic (PV) System

Appendices

Appendix	Description
A	Lighting Retrofit Schedule

1. Interior and Exterior Lighting Upgrades

- 1.1. Scope Summary
 - 1.1.1. ENGIE is proposing LED lighting upgrades throughout the facility. For detailed descriptions of each interior and exterior lighting retrofit, refer to "Appendix A – Lighting Retrofit Schedule".
- 1.2. Interior and Exterior Scope of Work
 - 1.2.1. Prepare and submit to Customer final revisions to "Appendix A – Lighting Retrofit Schedule".
 - 1.2.2. Provide and install new lighting fixtures or retrofit kits as identified in "Appendix A – Lighting Retrofit Schedule" including final revisions.
 - 1.2.3. Lighting scope is assumed to fall under the 2019 Title 24 – Alterations subcategory.
 - 1.2.4. Interior lighting retrofit include:
 - 1.2.4.1. High efficiency Linear Emitting Diode (LED) Upgrades: Where indicated, replace 32-34 watt T8 and T12 lamps and ballast with new LED lamps and drivers, new troffer kits or new LED fixtures per "Appendix A – Lighting Retrofit Schedule".
 - 1.2.4.1.1. When using retrofit kits, existing ballasts are to be removed from old housing.
 - 1.2.4.2. High Efficiency Compact Light Emitting Diode (LED) Upgrades: Where indicated, replace compact fluorescent, halogen and high intensity discharge lamps with new compact LED lamps and recessed down-light kits per "Appendix A – Lighting Retrofit Schedule".
 - 1.2.5. Interior lighting controls include:
 - 1.2.5.1. Provide and install lighting occupancy/vacancy controls per "Appendix A – Lighting Retrofit Schedule"
 - 1.2.5.2. Provide and install fixtures and commission fixtures with integrated sensors in certain large open work areas per "Appendix A – Lighting Retrofit Schedule".
 - 1.2.6. Exterior lighting retrofit include:
 - 1.2.6.1. LED Lighting for Exterior Applications – where indicated, replace high pressure sodium (HPS), low pressure sodium or metal halide fixtures with new LED fixtures per "Appendix A – Lighting Retrofit Schedule".
 - 1.2.6.2. Exterior Lighting Controls – Provide and install motion sensors, photocells and bi-level (step-dim) control in locations per "Appendix A – Lighting Retrofit Schedule".
 - 1.2.7. Lenses:
 - 1.2.7.1. A maximum of 1% of lenses will be replaced if cracked or damaged.
 - 1.2.7.2. All lenses will be cleaned of dust and other particles. Any staining or deeper soiling will not be removed.
- 1.3. Training:
 - 1.3.1. Provide up to 4 hours of training of control system to designated District staff.
- 1.4. Schedule:
 - 1.4.1. Work will be completed in a continuous manner such that the lighting crews will move throughout the building without delays or restrictions. District will support workflow to ensure buildings are available for the work, based upon pre-agreed schedule.
 - 1.4.2. Schedule change requests for work currently in progress will be provided by either party with a minimum of forty-eight (48) hours' notice prior to requested change in schedule.
- 1.5. Inclusions
 - 1.5.1. Provide all tools, equipment, lifts, storage, on-site supervision, labor, materials, and transportation necessary to complete the installation.

**Energy Services Contract
District and ENGIE Services U.S.**

- 1.5.2. Coordinate receiving, unloading, handling, securing, and storing of all equipment necessary to complete the scope of work.
- 1.5.3. Provide submittals for District review and approval, prior to release of equipment.

1.6. Exclusions

- 1.6.1. Development of any Title 24 design drawings.
- 1.6.2. Any hazardous abatement, minor disturbance, lead abatement of any kind.
- 1.6.3. Any replacement for any seismic supports for new fixtures.
- 1.6.4. Repair or replacement of any existing fixtures including tombstones or fixture lens frames.
- 1.6.5. Any troubleshooting, repair or upgrade to emergency lighting or egress systems unless specified
- 1.6.6. Replacement or retrofit of existing light fixtures located in building Tenant spaces.
- 1.6.7. Except where specifically noted in "Appendix A – Lighting Retrofit Schedule", replacement or repair of ceiling tiles, ceiling track system, or other ceiling surfaces except where damage was directly caused by ENGIE Services U.S.
- 1.6.8. New fixture attachment points will meet manufacturer's requirements and not exceed those requirements.
- 1.6.9. All existing wiring is assumed to meet local and state building codes, repairing existing wiring including grounding is excluded.
- 1.6.10. With respect to installation of new lighting fixture installations, prior to commencement of the lighting fixture installation, The District will provide an existing or new grounding conductor or solidly grounded raceway with listed fittings at the lighting fixture junction box that is properly connected to the facility grounding electrode system in compliance with the latest NEC requirements adopted by the authority having jurisdiction. This Scope of Work includes, if applicable, properly terminating the lighting fixtures to the existing grounding conductor or to the existing solidly grounded raceway with listed fittings at the lighting fixture junction box.
- 1.6.11. Where this Scope of Work includes pulling new wiring for lighting fixtures from an existing lighting panel, a grounding conductor must be included in the lighting circuits. The District is responsible for providing an existing or new grounding conductor terminal bar at the lighting panel that is properly connected to the Facility grounding electrode system in compliance with the latest NEC adopted by the authority having jurisdiction.

2. PHOTOVOLTAIC (PV) SYSTEMS

2.1. Scope Summary

- 2.1.1. The table below lists the location, estimated system sizing, and structure type for the PV systems. As part of this scope, the existing site parking lot will be replaced with a new asphalt parking lot.

Building Name	Est. kW dc	Structure Type
Evolutions Gym	513.36	Parking Canopy

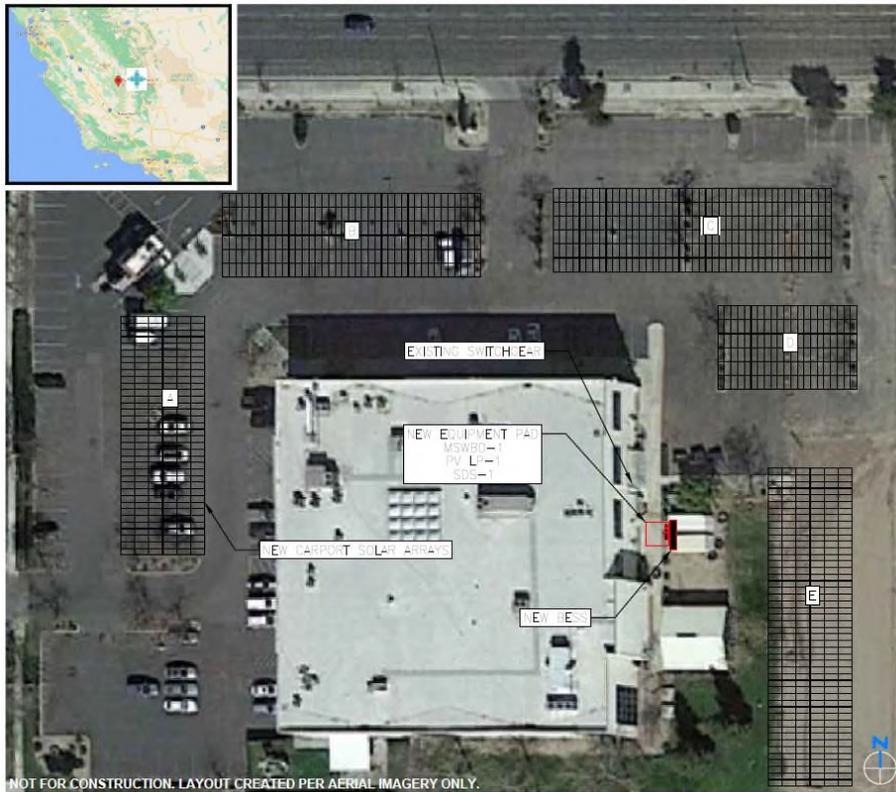
2.2. General Scope of Work

- 2.2.1. Prepare and submit design drawings to Authority Having Jurisdiction (AHJ) for approval and to local Utility for interconnection permits.
- 2.2.2. Provide geotechnical evaluations necessary for design requirements.
- 2.2.3. Procure materials and equipment necessary for construction.
- 2.2.4. Provide lighting fixture and bollard removal, as required.
- 2.2.5. All project management and construction management necessary for a full and complete installation.
- 2.2.6. Provide and install solar canopy structure. The canopy structure design will include a painted canopy structure 10' in minimum clearance as specified in Section 3.3 – Site Specific Scopes and a pier depth of 10' and assumes no de-watering, benching, shoring, or casing.
- 2.2.7. Provide labor, supervision, and coordination with the District for the installation of photovoltaic modules and supporting structures, electrical distribution, control systems, and parking lot improvements.
- 2.2.8. Provide and install solar PV modules and all necessary mounting hardware for each system.
- 2.2.9. Provide and install Chint Power Systems, or similar, string inverters and necessary electrical equipment and conduits to connect system to the electrical switchgear or meter.
- 2.2.10. Electrical shutdowns are anticipated at the site. The time of shutdown will be coordinated with the District and Utility and may include weekends.
- 2.2.11. Provide and install new utility approved AC disconnect switch for each solar installation.
- 2.2.12. DC wiring and AC wiring within the solar canopies shall be copper wire. Aluminum wire shall be used from each system's AC combiner to the main point of connection at the site's electrical switchgear.
- 2.2.13. Provide and install new LED lighting fixtures (RAB PRT42N or equivalent) across canopy sites.

**Energy Services Contract
District and ENGIE Services U.S.**

- 2.2.14. All canopy structures will be tilted 5 degrees from horizontal.
- 2.2.15. Provide and install new data acquisition system (DAS) including all necessary communication conduit and wiring.
- 2.2.16. Provide and coordinate installation of the net generation output meter (NGOM) and net energy meter (NEM) metering to monitor PV production and facility usage.
- 2.2.17. Secure the Project Location and provide traffic redirection during rigging operations, and during the move-in and move-out of large equipment. The District will assist with the foregoing site logistics by coordinating access and scheduling with ENGIE Services U.S.
- 2.2.18. The parking canopy structure will be built in phases to coincide with the installation of the new parking lot. Detailed schedule of activities will be provided after final drawings are completed.
- 2.2.19. Provide as-built drawings and Operations & Maintenance manuals in electronic format upon Project completion.
- 2.2.20. Provide miscellaneous backfill and restoration of landscaping in areas of work.
- 2.2.21. The PV shade structures are not weather tight and will not provide shelter from rain.
- 2.2.22. Installation of water hose bibs for washing the panels are excluded.
- 2.2.23. Decorative fascia along the perimeter of the panels and decorative covering underneath the panels are excluded.
- 2.2.24. Start-up, test, and commission the PV systems in accordance with design plan and applicable industry standards.
- 2.2.25. The images below in Section 3.3 are schematic engineering layouts and are subject to change due to field conditions and upon completion of final engineering.

2.3. Site Specific Scope
2.3.1. PV Installation



**Energy Services Contract
District and ENGIE Services U.S.**

- 2.3.1.1. Install 513.36 kWdc parking canopy PV structures.
- 2.3.1.2. Remove all trees and shrubs in the area where the solar PV arrays will be located.
- 2.3.1.3. Ten (10) foot minimum clearance on the low end for all arrays.
- 2.3.1.4. Under canopy lighting to be installed and connected to existing parking lot lighting circuits.
- 2.3.1.5. Installation of future EV spare conduits

- 2.4. Exclusions:
 - 2.4.1. Cameras or other security measures.
 - 2.4.2. Foundations depths assumed to be 10 feet. Any additional required footing depth will result in increased cost.
 - 2.4.3. Unsuitable soil conditions including but not limited to water intrusion, liquefaction, caving, sandy/rocky soils etc.
 - 2.4.4. Permanent fencing.
 - 2.4.5. Ongoing landscaping maintenance.
 - 2.4.6. Electrical upgrades on the District's or Utility side of the electrical gear. If utility upgrades are required, additional costs will be incurred. This includes costs associated with extended Utility review times or delays.
 - 2.4.7. Corrections or upgrades to existing equipment, systems, or other improvements not associated with the specific scope of work above.
 - 2.4.8. Temporary power during facility shutdowns.
 - 2.4.9. Temporary parking during parking lot work.
 - 2.4.10. Haul off or removal of contaminated soils. If contaminated soils are found during final engineering and haul off is required, ENGIE will notify the District and provide a change order to remove the soils.

3. General Project Clarifications Applicable to All Scopes

- 3.1. ENGIE Services U.S. will be responsible for obtaining permits and scheduling inspections for the following scopes:
 - 3.1.1. PV Installation
- 3.2. Engineering and work shall comply with the latest applicable Codes and per AHJ.
- 3.3. ENGIE Services U.S. assumes one mobilization per site, which includes free access to the entire mobilized portion of the construction area for the full scope of work.
- 3.4. All work will be scheduled Monday through Friday, 7am to 5pm unless otherwise noted in the scope of work above. Lighting scope can be scheduled for swing shift as needed.
- 3.5. ENGIE Services U.S. will perform underground utility survey to locate any existing utilities that are in the path of horizontal boring, vertical boring or trenching.
- 3.6. Perform horizontal boring and/or trenching of existing concrete, hardscape or asphalt areas as required to route conduits.
- 3.7. Repair any concrete, hardscape, landscape or asphalt damaged by subcontractor to extent required.
- 3.8. All electrical equipment shall be new, UL listed material and equipment that carry the manufacturers' original warranties.
- 3.9. Shutdowns will be coordinated with Utility and District to minimize impact on facility.
- 3.10. ENGIE Services U.S. has assumed Construction will be allowed to proceed smoothly and in a continuous flow. No allowance has been made to demobilize and remobilize resources due to schedule interruptions.
- 3.11. Temporary utilities are to be provided by the District at no cost to ENGIE Services U.S. (including, without limitation, trailer power, phone lines, water and construction power).
- 3.12. ENGIE Services U.S. will require the assistance of the District personnel to secure the project location and to provide traffic redirection during rigging operations, and during the move-in and move-out of large equipment.
- 3.13. ENGIE Services U.S. standard construction means and methods will be used.
- 3.14. Provide as-built drawings and Operations & Maintenance manuals upon project completion.
- 3.15. The District will provide access to the Facilities, laydown areas at the work sites, and a reasonable number of parking spaces for ENGIE Services U.S. and ENGIE Services U.S.'s subcontractor vehicles in parking lots at the Facility.

4. General Project Exclusions Applicable to All Scopes

- 7.1. Bringing existing systems up to code.
- 7.2. Any ongoing landscaping maintenance.
- 7.3. Removal and disposal of hazardous substances, including asbestos containing materials. If ENGIE Services U.S. encounters material suspected to be hazardous, ENGIE Services U.S. will notify the District representative and stop further work in the area until the material is removed.
- 7.4. Contaminated soils, for their handling or disposal.
- 7.5. Additional costs related to underground obstructions or unsuitable soil conditions encountered during trenching or other excavation.

**Energy Services Contract
District and ENGIE Services U.S.**

- 7.6. Structural upgrades to existing structures.
 - 7.7. Screening of new or existing equipment.
 - 7.8. Temporary heating, cooling or pumping services.
 - 7.9. Repair or replacement of damaged or inoperable existing equipment that is not specifically being replaced under the Scope of Work. When such items are discovered, ENGIE Services U.S. will immediately notify a District representative.
 - 7.10. Smoke detectors, fire alarm system work, or fire life safety work.
 - 7.11. Repair or replacement of existing housekeeping pads, concrete pads, or base repair of existing walkway lighting are excluded.
 - 7.12. Painting, unless specified in Scope of Work, is excluded, including any patch painting, where a new fixture's footprint does not match footprint of existing fixture and wall color differences show.
 - 7.13. With respect to Projects with new equipment connecting to the Building's existing electrical distribution system, ENGIE Services U.S. 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. The County is responsible for providing and maintaining the building's electrical distribution system that meets the latest NEC and guidelines adopted by the authority having jurisdiction.
 - 7.14. Americans with Disabilities Act (ADA) regulation requirements except as stated in the scope of work above.
- 5. ENGIE Services U.S. Beneficial Use and Warranty criteria for specific pieces of equipment:**
- 5.1. LED LIGHTING UPGRADES – The ENGIE Services U.S. Warranty commences immediately upon uninterrupted operation of 95% of retrofits for a duration of 2 weeks. ENGIE Services U.S. will provide written notice to the County of the date the ENGIE Services U.S. Warranty commences. Lighting products will be provided with at least a 5-year manufacturer warranty.
 - 5.2. SOLAR SYSTEM - The ENGIE Services U.S. Warranty commences immediately when the Generating Facility is capable of generating expected energy and the Utility is ready to issue the permission-to-operate letter.

6. Tentative work scopes to receive Substantial and Final Completion:

Scope of Work	Total Qty of SC	Total Qty of FC
Lighting	1	1
Solar PV	1	1

ATTACHMENT D
MONITORING INSTALLATION SCOPE OF WORK

Overview of DAS Network Installation and Equipment Requirements

ENGIE Services U.S. 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.

ENGIE Services U.S. 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 District's specifications.
- Test and verify District/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 District/Facility maintenance staff.

**Energy Services Contract
District and ENGIE Services U.S.**

**ATTACHMENT E
M&V SERVICES**

EQUIPMENT AND FACILITIES COVERED

ENGIE Services U.S. will perform measurement and verification services ("M&V Services") as set forth in this Attachment E with respect to District's property at the following Project Locations:

Facility	Address	Square Feet
Evolutions Gym	1425 E Prosperity Ave, Tulare, CA	57,470

I. Definitions:

Capitalized terms used in this Attachment E 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 ENGIE Services U.S. using actual utility billing information supplied by District for that Measurement Period.

"Annual M&V Fee" means a fee payable annually in advance by District to ENGIE Services U.S., in consideration of the provision of up to twenty (20) years of M&V Services. The Annual M&V Fee for the first Measurement Period will be Three Thousand Four Hundred Seven Dollars (\$3,407.00). The Annual 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.

"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 E, Section (III), and used by ENGIE Services U.S. to calculate the EC Savings.

"Baseline" means the energy use established by ENGIE Services U.S. 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 ENGIE Services U.S. in the manner set forth in this Attachment E, Section (III), achieved through the reduction in consumption or demand through implementation of the Work.

"Energy Rate Factors" means factors identified by ENGIE Services U.S. which may affect utility rates from the local utility companies.

"Energy Savings Report" is defined in this Attachment E, 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 (20th) anniversary of the M&V Commencement Date; (ii) the termination of the Contract; (iii) the termination by District of the M&V Services in accordance with this Attachment E, Section (II)(G); or (iv) the failure by District to pay the Annual M&V Fee in accordance with this Attachment E, Section (II)(H)(i).

"Energy Unit Savings" means the savings in units of energy, power, water, etc., calculated by ENGIE Services U.S. in the manner set forth in this Attachment E, Section (III), achieved through the reduction in consumption or demand through implementation of the Work.

"Energy Use Factors" means factors identified by ENGIE Services U.S. 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.

**Energy Services Contract
District and ENGIE Services U.S.**

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

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

“**Guarantee Shortfall**” means an amount calculated in accordance with this Attachment E, 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 ENGIE Services U.S. for changes in Energy Rate Factors, Energy Use Factors and consequential revisions to the relevant Baseline:

Measurement Period	Guaranteed Savings
1	\$135,833
2	\$146,086
3	\$157,114
4	\$168,975
5	\$181,732
6	\$195,453
7	\$210,211
8	\$226,083
9	\$243,155
10	\$261,517
11	\$281,267
12	\$302,509
13	\$325,357
14	\$349,931
15	\$376,363
16	\$404,793
17	\$435,372
18	\$468,263
19	\$503,641
20	\$541,693

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

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

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

II. Terms and Conditions

A. Guaranteed Savings.

- i. Savings Guarantee. In consideration of the payment of the Annual M&V Fee, and upon the terms and subject to the conditions set forth herein, ENGIE Services U.S. warrants that District 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, ENGIE Services U.S. will pay to District, within thirty (30) calendar days after the acceptance by District 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 District, District would benefit from additional energy services or energy saving retrofits, District and ENGIE Services U.S. may

**Energy Services Contract
District and ENGIE Services U.S.**

mutually agree that ENGIE Services U.S. 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, District will repay to ENGIE Services U.S., to the extent of such Excess Savings, any Guarantee Payments previously paid by ENGIE Services U.S. to District and not previously repaid to ENGIE Services U.S. by District, and the Excess Savings for such Measurement Period will be reduced by the amount of such repayment. If ENGIE Services U.S. 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 District, then in lieu of such repayment Excess Savings will be increased by the deemed value of such services or retrofits.
- v. Excusable Events. If ENGIE Services U.S. is delayed in, or prevented from, accurately calculating the actual EC Savings for any day of any Measurement Period by reason of any Excusable Event, such circumstance will not constitute a default, and ENGIE Services U.S. will be excused from performing the M&V Services while such event is continuing. During such event, Projected Energy Savings for the month(s) in which such 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.

B. Changes in Energy Use Factors.

- i. Adjustments to Baselines. District will notify ENGIE Services U.S. in writing within ten (10) Business Days of any change in any Energy Use Factor. In addition, data collected by ENGIE Services U.S. 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. ENGIE Services U.S. will determine the effect that any such change will have on EC Savings and present to District a written analysis of the effects of such changes. ENGIE Services U.S. will also make corresponding revisions to the Baselines and/or EC Savings that it deems appropriate in its reasonable discretion.
- 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. ENGIE Services U.S. will notify District, in writing, of all such changes.
- iii. Changes to Facilities. District or ENGIE Services U.S. 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 E, Section (II)(B)(iii).
- iv. Baseline Adjustment. If ENGIE Services U.S. proposes changes to the Facilities that would not unreasonably interfere with the conduct of District's business or cause District to incur additional costs, and District does not consent to the changes, then ENGIE Services U.S. 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 ENGIE Services U.S.
- vi. Assessment Work. ENGIE Services U.S. has the right to charge District for Assessment Work, which will be billed at current ENGIE Services U.S. engineering rates and will be paid by District within thirty (30) calendar days after receiving ENGIE Services U.S.'s invoice. Before initiating Assessment Work, ENGIE Services U.S. will notify District in writing of the intent and estimated cost associated with the Assessment Work. District will, within forty-five (45) calendar days, give ENGIE Services U.S. written permission to proceed or, alternatively at no charge to ENGIE Services U.S., 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 ENGIE Services U.S. does not receive written notice within forty-five (45) calendar days, the Projected Energy Savings for the portion of the Facility in question will be used until such time as District approves the Assessment Work.
- vii. Changes in Energy Use Factors. If District fails to notify ENGIE Services U.S. of changes in Energy Use Factors or fails to supply ENGIE Services U.S. in a timely manner with information that is requested by ENGIE Services U.S. 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

**Energy Services Contract
District and ENGIE Services U.S.**

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. ENGIE Services U.S. will calculate the energy impact of any Change Orders.
- ix. Changes in Savings Calculations. Any changes made by ENGIE Services U.S. to the savings calculations will be presented to District in advance. District will have thirty (30) calendar days to challenge or question the changes in writing.
- x. Inspection of Facilities. District agrees that ENGIE Services U.S. will have the right, with or without prior notice, to inspect the Facilities to determine if District has consistently complied with its obligations as set forth above. If any inspection discloses that District 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. District 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, District will promptly notify ENGIE Services U.S. If an unforeseeable overshadowing or shading condition not caused by ENGIE Services U.S. or its subcontractors exists and continues for five (5) Business Days or more, District agrees that the Guaranteed Savings for such Generating Facility will be reduced based upon such shading condition, and ENGIE Services U.S. may present District with a proposed reduction to the Guaranteed Savings reflecting such overshadowing, shading or other interference.

C. District Maintenance. Beginning at Beneficial Use or Substantial Completion for any portion of the Work, District will maintain such portion of the Work and upon Final Completion will maintain the Project, in accordance with the maintenance schedules and procedures recommended by ENGIE Services U.S. and by the manufacturers of the relevant equipment, such maintenance to include maintaining all landscaping (including tree trimming) in and around the Generating Facilities.

D. Energy Savings Report. Annually during the Energy Savings Term, ENGIE Services U.S. will submit to District an energy savings report containing a precise calculation of the EC Savings during the applicable Measurement Period (an “Energy Savings Report”). ENGIE Services U.S. will use its best efforts to submit such Energy Savings Report within ninety (90) calendar 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 District will be notified of such a situation within the ninety (90) calendar-day period.

E. On-Site Measurements. District irrevocably grants to ENGIE Services U.S. 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. ENGIE Services U.S. will not exercise such right in a manner that unreasonably interferes with the business of District as conducted at the Facilities as of the date hereof. District will cooperate fully with the exercise of such right by ENGIE Services U.S. pursuant to this Attachment E, Section (II)(E). District will further cooperate with ENGIE Services U.S.’s performance of the M&V Services by providing utility information, changes in Energy Use Factors, and/or additional information as reasonably requested by ENGIE Services U.S.

F. Not Used.

G. Termination of Guaranteed Savings. If (i) District notifies ENGIE Services U.S. in writing of its intent to terminate the M&V Services, (ii) the Contract is terminated by ENGIE Services U.S. for default by District or by District for any reason permitted by the Contract, (iii) ENGIE Services U.S. is no longer the provider of the Maintenance Services set forth in Attachment F, or (iv) District fails to maintain the Project in accordance with this Attachment E, Section (II)(C), or is in default of any of its other obligations under this Attachment E, the obligation of ENGIE Services U.S. 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, ENGIE Services U.S. will have no obligation to make a Guarantee Payment or prepare and deliver an Energy Savings Report for such Measurement Period.

H. Annual M&V Fee.

- i. Invoicing and Payment. The Annual M&V Fee for the first Measurement Period will be invoiced by ENGIE Services U.S. to District in a lump sum on the M&V Commencement Date. All subsequent Annual M&V Fees will be invoiced by ENGIE Services U.S. on the first day of the corresponding Measurement Period. District, or its designee, will pay ENGIE Services U.S. such Annual M&V Fee, without any retention amount withheld, within thirty (30) calendar days after its receipt of the

**Energy Services Contract
District and ENGIE Services U.S.**

corresponding invoice. Unless District gives ENGIE Services U.S. prior written notice of its intent to terminate the M&V Services, any failure to timely pay the Annual M&V Fee in accordance with this Attachment E, Section (II)(H) will be a material default by District under the Contract, and ENGIE Services U.S., in addition to any other legal, contractual and equitable remedies available to it, will have no obligation thereafter to perform M&V Services or to make Guarantee Payments.

- 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.
- iii. Not Refundable. The Annual M&V Fee is not refundable for any reason.

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, for such Measurement Period, the Energy Use Savings 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 ENGIE Services U.S. 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 ENGIE Services U.S. 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 ENGIE Services U.S. in the manner set forth in this Attachment E, 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 ENGIE Services U.S. 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 and Calculations

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

Table E-1: Measurement and Verification Methods

ECM	ECM Description	M&V Method		
		Electric Usage	Electric Demand	Gas Usage
1	Interior & Exterior Lighting Upgrades	Option A	N/A	N/A
2	Solar Photovoltaic (PV) System	Option B	N/A	N/A

- 1. M&V Option A: This option allows for the energy savings to be predicted, measured, and agreed upon between District and ENGIE Services U.S. One-time measurements and stipulated parameters are used to quantify savings that are stipulated for the term of the Contract.
 - a. ENGIE Services U.S. will supply a one-time report to District detailing the measurements and calculation of savings. If the calculated savings fall short of those expected, ENGIE Services U.S. will have the opportunity to remedy the short fall and re-measure and calculate the results. Such work will be done at ENGIE Services U.S.'s expense and will not be unreasonably denied by District, as long as such work does not interfere with District's use of the Facilities. These calculated savings will be defined as Energy Unit Savings and will be agreed to occur each Measurement Period. During the Construction Period, the Energy Unit Savings will be calculated by adding the savings measured for

**Energy Services Contract
District and ENGIE Services U.S.**

the whole months between Substantial Completion or Beneficial Use of the ECM and the M&V Commencement Date.

b. Scope of Work

- i. The reduction in units of electric demand (kW) from the installation of the lighting ECMs is to be measured directly using a calibrated true-RMS watt meter or stipulated based on the following parameters. Existing and to-be-installed fixture types will be grouped project-wide, based on the type of fixture (i.e., type of lamp, number of lamps and ballast type) and the assumed wattage. All lamps without ballasts (incandescent), along with exit signs and exterior fixtures, will be stipulated at their manufacturer's rated wattage. Groups of fixtures with ballasts will be measured in the following manner.
 - a. For groups with 1,000 or more fixtures, ten (10) or more instantaneous measurements of single fixtures or circuits containing only one type of fixture will be taken. The average wattage per fixture will be calculated and be the measured wattage for that fixture type.
 - b. For groups with 500 or more fixtures but fewer than 1,000, seven (7) or more instantaneous measurements of single fixtures or circuits containing only one type of fixture will be taken. The average wattage per fixture will be calculated and be the measured wattage for that fixture type.
 - c. For groups with 100 or more fixtures but fewer than 500, four (4) or more instantaneous measurements of single fixtures or circuits containing only one type of fixture will be taken. The average wattage per fixture will be calculated and be the measured wattage for that fixture type.
 - d. For groups with 99 or fewer fixtures or where measurements are not physically possible, the measured wattage will be stipulated for that group to equal the wattage defined in "Appendix A – Lighting Retrofit Schedule", showing the existing fixture codes, quantities, and manufacturer's rated wattage for these type fixtures.
- ii. Assumptions: The annual unit consumption savings (kWh) for each retrofit will be calculated by multiplying the demand savings as calculated above by the Occupied Annual Hours, where the Occupied Annual Hours have been agreed upon and stipulated to by the District and are presented in *Table E-2* below. The Energy Unit Savings (kWh) will be the sum of the calculated annual unit consumption savings for each retrofit.

Table E-2 Annual Lighting Hours by Room Type – Stipulated

Area Type	Annual Hours
Interior Lighting	7,200
Exterior Lighting	4,260
* 15% reduction in the hours shown above will be calculated for spaces with existing or retrofit occupancy sensors.	

- iii. Post-retrofit measurements will be performed one time, after the retrofit is complete. Post-retrofit ECM performance is assumed to be consistent for the duration of the Energy Savings Term.
- iv. EC Savings achieved from the lighting ECMs are calculated by the following equation:

$$\text{EC Savings} = \text{Energy Unit Savings} \times \text{Base Energy Rate}$$

Table E-3: Lighting Annual Savings by Site (ECM-1)

Location/ECM	Projected Annual Savings (kWh)
Tulare LHD	139,101

- 2. 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.

**Energy Services Contract
District and ENGIE Services U.S.**

- a. ENGIE Services U.S. will supply a one-time report to District 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 EC Measure and the M&V Commencement Date.
- b. Scope of Work

ECM – 2: Solar Photovoltaic (PV) System

- i. 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. Measured interval production kilowatt-hours will be compared against production shown on the monthly utility bills and any differences will be reconciled. Projected kWh production is shown in *Table E-3* below and is projected to degrade by 0.5% per year.

Table E-4: First Year Solar PV Production

ECM Description	Projected Energy Savings (kWh)
Tulare LHD	775,787

- ii. Assumptions: Once Work is Substantially Complete, these savings will be measured and verified monthly for the Energy Savings Term.
 - iii. 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.
4. **Base Energy Rates**: EC Savings will be calculated using the Base Energy Rates or Actual Energy Rates for that meter, whichever results in greater EC Savings. Actual Energy Rates will be calculated at the end of each Measurement Period using utility billing information for that Measurement Period and using the same methodology as was employed to determine the base energy rate in the Recommendations.

The Base Energy Rates listed here are to be increased each Measurement Period on a cumulative basis by eight percent (8%) for electricity and three percent (3%) for gas, beginning on the first anniversary of the M&V Commencement Date and continuing on the first day of each Measurement Period thereafter.

Table E-7: Base Energy Rates

ECM	Location	Electricity Rate (\$/kWh)	Gas Rate (\$/Therm)
1	Tulare LHD	0.1602	-
2	Tulare LHD	0.1464	-

**Energy Services Contract
District and ENGIE Services U.S.**

**ATTACHMENT F
MAINTENANCE SERVICES**

EQUIPMENT AND FACILITIES COVERED

ENGIE Services U.S. will perform preventive maintenance services ("Maintenance Services") as set forth in this Attachment F with respect to Generating Facilities being constructed on District's property at the following Project Locations:

Site Name	Site Address	City	County	State	Zip Code
Evolutions Gym	1425 E Prosperity Ave	Tulare	Tulare	CA	93274

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

I. Definitions

"**Annual Maintenance Fee**" means a fee payable annually in advance by District to ENGIE Services U.S., in consideration of the provision of up to twenty-five (25) years of Maintenance Services. The Annual Maintenance Fee for the first Measurement Period will be Ten Thousand Nine Hundred Fifty-Two Dollars (\$10,952.00). The Annual Maintenance Fee will be increased annually thereafter at the rate of three percent (3%) per annum for the first twenty-five (25) Measurement Periods, each increase to be effective on the first day of the corresponding Measurement Period.

II. Term

So long as District pays to ENGIE Services U.S. the Annual Maintenance Fee, ENGIE Services U.S. will provide the Maintenance Services, as described herein, up to twenty-five (25) years from the M&V Commencement Date on an annualized basis. At the end of this term, District may:

- a. Enter into another agreement with ENGIE Services U.S. to perform Maintenance Services
- b. Enter into an agreement with another service provider
- c. Self-perform preventive maintenance

III. Annual Maintenance Fee; Reporting

The Annual Maintenance Fee for the first Measurement Period will be invoiced by ENGIE Services U.S. to District in a lump sum on the M&V Commencement Date. All subsequent Annual Maintenance Fees will be invoiced by ENGIE Services U.S. on the first day of the corresponding Measurement Period. District, or its designee, will pay ENGIE Services U.S. such Annual Maintenance Fee, without any retention amount withheld, within thirty (30) calendar days after its receipt of the corresponding invoice. Any failure to timely pay the Annual Maintenance Fee in accordance with this Attachment F will be a material default by District, and ENGIE Services U.S., 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.

The Annual Maintenance Fee is not refundable for any reason.

Upon completion of any maintenance or repair work, ENGIE Services U.S. 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 District on a quarterly basis.

If ENGIE Services U.S. is no longer the provider of Maintenance Services, District's new provider will maintain similar service logs. ENGIE Services U.S. will have reasonable access to inspect service logs to determine that adequate Maintenance Services are being performed.

IV. Preventive Maintenance Services Provided

ENGIE Services U.S. will provide the following Maintenance Services during the term:

**Energy Services Contract
District and ENGIE Services U.S.**

- 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 an 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 a semi-annual basis.

V. Repair Services

If a Generating Facility is damaged and requires safe-off, repair, demolition and/or reconstruction, or otherwise requires repairs outside of warranty, Customer must contact the ENGIE Services U.S. PV Operations & Maintenance Manager. In the event of damage, any component of the Generating Facility installed by ENGIE Services U.S. can be repaired or reconstructed by ENGIE Services U.S. at Customer's request. Customer must submit a request for quotation to the ENGIE Services U.S. PV Operations & Maintenance Manager. ENGIE Services U.S. will inspect the damage and provide a written quotation and complete scope of work to Customer to restore the Generating Facility to normal operational condition. Before proceeding with repairs, ENGIE Services U.S. and Customer must execute a work order, on ENGIE Services U.S.'s form, for the agreed scope of work and quotation amount. Repair work is done on a time and materials basis. Standard Business Hours are M-F, 7am to 5pm. Non-business Hours & Saturdays Equals 1.5x Rates. Sundays & Holidays Equals 2.0x Rates.

Labor Category		Straight Time
Hourly Rate – PV Electrical Journeyman Technician ¹	\$/hr.	County Labor Rate
Hourly Rate – PV Electrical Apprentice Technician ¹	\$/hr.	County Labor Rate
Hourly Rate – Engineering ²	\$/hr.	\$ 170.00
Hourly Rate – Administrative ²	\$/hr.	\$ 65.00
Service call-out - Daily minimum fee	\$	\$ 550.00
Mileage	\$	IRS Rate
Material mark-up %	%	15.00
Lift rental fee	\$	Current Market Price

¹Trade Hourly rate will be adjusted based on the current year of the local prevailing wage determination plus Burden, requirement for either travel or subsistence and lodging, and markup for services being requested.

²Escalated according to an inflation rate to the year in which service will occur.

VI. Warranty Services

The ENGIE Services U.S. PV Operations & Maintenance Manager will also be District's point of contact for all issues related to the ENGIE Services U.S. Warranty set forth in Section 9.01 of the Contract. District should refer to Section 9.02 of the Contract for services provided by ENGIE Services U.S. to District in relation to manufacturer's warranties. The terms and conditions of the relevant manufacturer's warranties can be found in the operation and maintenance manuals delivered to District at Final Completion.

VII. Services and Equipment to Be Covered by District

ENGIE Services U.S.'s obligations under this Attachment F are expressly conditioned upon District's payment of the Annual Maintenance Fee and providing and being responsible for the following, without cost to ENGIE Services U.S.:

- a. Making the Generating Facilities described herein available to ENGIE Services U.S. as of the Contract Effective Date.
- b. Operating and maintaining security systems associated with the Generating Facilities.
- c. **[For RES-BCT projects]** Managing the benefitting accounts designated to receive generation credits in regard to the Utility's RES-BCT tariff to ensure that generation is credited at the preferred rate.]

**Energy Services Contract
District and ENGIE Services U.S.**

- d. Maintaining all landscaping in and around Generating Facilities including tree trimming.
- e. Allowing ENGIE Services U.S. 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.
- f. Allowing ENGIE Services U.S. and its personnel to access electrical power and other utilities then existing at the Generating Facilities as necessary for ENGIE Services U.S. to satisfy its obligations under the Contract.
- g. Remediating, pursuant to Applicable Law, any known Hazardous Substances encountered by ENGIE Services U.S. during the performance of the Maintenance Services which Hazardous Substances were not deposited by ENGIE Services U.S., including any backfill with clean soil as may be reasonably required.
- h. Insuring the Generating Facilities against loss due to acts of God and the public enemy; flood, earthquake, tornado, storm, fire; civil disobedience, sabotage, and vandalism.

ENGIE Services U.S. will have no obligation to provide the Maintenance Services to the extent such provision of Maintenance Services is materially adversely affected by District's failure to satisfy the conditions set forth in this Attachment F.