

PROPOSITION 39
FACILITY SOLUTIONS AGREEMENT

by and between

LAKE COUNTY OFFICE OF EDUCATION
1152 South Main Street
Lakeport, CA 93239-5956

and

Famand, Inc.
(dba Indoor Environmental Services)

TABLE OF CONTENTS

1. DEFINITIONS.....2

2. CONTRACTOR CERTIFICATIONS2

3. GENERAL.....2

 3.1. Scope of Work2

 3.2. Contract Price.....2

 3.3. Protective Measures.....3

 3.4. Prevailing Wage.....3

 3.5. Insurance4

 3.6. Performance of the Work.....4

 3.7. Hazardous Materials.5

 3.8. Suspension of the Work.....5

 3.9. Taxes.....6

 3.10. Liens.....6

 3.11. Compliance with Applicable Laws.....7

 3.12. Environmental Attributes, Incentives, and Energy Credits.7

 3.13. Subcontractors.....8

 3.14. Performance & Payment Bonds.....8

 3.15. Title; Risk of Loss.....8

4. PRICE AND PAYMENT8

 4.1. Contract Price.....8

 4.2. Payment.....9

5. COMMENCEMENT & COMPLETION10

 5.1. Commencement and Substantial Completion.....10

 5.2. Final Completion.11

5.3.	Inspection.....	11
6.	REPRESENTATIONS & WARRANTIES	11
6.1.	Representations and Warranties of Contractor.	11
6.2.	Representations and Warranties of District.	12
7.	BREACH & TERMINATION	13
7.1.	Termination by District:.....	13
7.2.	Termination by Contractor.....	14
7.3.	Indemnity.	14
7.4.	Limitations of Liability.	15
8.	MISCELLANEOUS	16
8.1.	Representatives.	16
8.2.	Ownership of Plans, Data, Reports and Material.....	16
8.3.	Governing Law.	16
8.4.	Force Majeure.	17
8.5.	Dispute Resolution.....	17
8.6.	Notices and Demands.	18
8.7.	Nondisclosure.	18
8.8.	Time of Essence.....	19
8.9.	Validity.	19
8.10.	Binding Effect.....	19
8.11.	Modifications.....	19
8.12.	Headings.	19
8.13.	Counterparts; Signature Pages.....	19
8.14.	Announcements and Publications.....	20
8.15.	Complete Agreement.	20

8.16.	No Agency.	20
8.17.	Priority of Documents.	20
8.18.	Assignment.	20
8.19.	No Waiver.	21

EXHIBITS

Exhibit A	Definitions
Exhibit B	Certifications
Exhibit B-1	Fingerprinting / Criminal Background Investigation Certification
Exhibit B-2	Drug-Free Workplace / Tobacco-Free Environment Certification
Exhibit C	Work Orders
Exhibit D	Not Used
Exhibit E	Insurance
Exhibit F	Certificate of Substantial / Final Completion and Acceptance

FACILITY SOLUTIONS AGREEMENT

This FACILITY SOLUTIONS AGREEMENT (“Agreement”), dated as of _____, 2016 (“Effective Date”), is by and between LAKE COUNTY OFFICE OF EDUCATION, a school district organized and existing under the laws of the State of California (“District”) and Famand, Inc. (dba Indoor Environmental Services), a California corporation (“Contractor”) (each a “Party” and collectively, the “Parties”).

RECITALS

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

WHEREAS, Proposition 39 (California Clean Jobs Act) and Senate Bill 73 authorizes District to enter into agreements, contracts and related documents with private sector entities for developing energy generation and conservation projects upon review and approval by the California Department of Education and California Energy Commission;

WHEREAS, District has assigned specific areas on school properties (each one, a “Site”) on which the solar and/or energy conservation measures (each one, a "System") will be constructed;

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

WHEREAS, Contractor desires to provide such upgrades, design, supply and installation services, all in accordance with the terms and conditions set forth in this Agreement and this Agreement is contingent on the CEC Proposition 39 submission approval;

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

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

AGREEMENT

1. DEFINITIONS.

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

2. CONTRACTOR CERTIFICATIONS

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

- 2.1. Fingerprinting/Criminal Background Investigation Certification (Exhibit B-1)
- 2.2. Drug-Free Workplace / Tobacco-Free Environment Certification (Exhibit B-2)

3. GENERAL

3.1. Scope of Work

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

3.2. Contract Price

- (a) Contract Price. Subject to adjustments set forth in this Agreement, Contractor agrees to perform the Work for a total fixed price of **\$96,524** ("Contract Price"), including the following amounts detailed in Exhibit C ("Work Order Prices"):
 - (i) Work Order 1 with a total fixed price of **\$57,915**
 - (ii) Work Order 2 with a total fixed price of **\$38,609**
 - (iii) Payment of the Contract Price shall be made in compliance with the process described in Exhibit C.
- (b) Work Order Prices in Exhibit C assume all Work Orders are executed.

3.3. Protective Measures.

- (a) Contractor shall be responsible for all injury or damage to individuals or property that may occur as a result of its fault or negligence, or that of its Subcontractors, in connection with the performance of the Work.
- (b) Contractor shall take all reasonably necessary precautions for the safety of its employees and any and all other individuals present on the Site where the System is located and prevent accidents or injury to individuals on, about, or adjacent to the premises where the Work is being performed.
- (c) Contractor shall keep the relevant part of the Site where the System is located and surrounding areas free from accumulation of waste materials or rubbish caused by the Work, and at the end of each Day that the Contractor performs the Work, Contractor shall remove any debris, store such debris in containers at its sole expense, and leave the Site in a clean and orderly condition. Upon Final Completion, Contractor shall remove from the relevant part of the Site where the System is located all waste materials, rubbish, debris, debris containers, tools, Equipment, machinery and surplus materials from the Site and leave the Site in a clean and orderly condition.
- (d) Contractor shall comply with the provisions of the California Education Code Section 45125.2 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees.

3.4. Prevailing Wage.

- (a) California Labor Code. Contractor shall comply with all applicable provisions of the California Labor Code, Division 2, Part 7, Chapter 1, Articles 1-5, including (without limitation) the payment of the general prevailing per diem wage rates for public work projects in excess of \$1,000. In addition, Contractor and each Subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the California Labor Code, commencing with Section 1720, and including Sections 1735, 1777.5 and 1777.6 forbidding discrimination, and Sections 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Contractor or Subcontractor.
- (b) Davis-Bacon Act. Because the Work under this Agreement is financed partially with federal funds (Qualified Zone Academy Bonds), to the extent required by such financing, Contractor shall also comply with all applicable provisions of the Davis-Bacon Act (40 U.S.C. 3141-48). Specifically those provisions found at Title 29 CFR 5.5 requiring Contractor to pay the laborers and mechanics employed on the Project, on a weekly basis, no less than the wages and benefits that are prevailing in the area as determined by the Secretary of Labor.
- (c) Certified Payroll Records. This Project is subject to the requirements of Subchapter 4.5 of Chapter 8 of Title 8 of the California Code of Regulations. Contractor and all subcontractors must furnish certified payroll records to the Department of Industrial Relations' Compliance Monitoring Unit at least monthly, or within 10 days of any separate request by the Compliance Monitoring Unit, in the manner required by the Compliance Monitoring Unit.
- (d) Payment Withholding. Pursuant to 8 CCR 16463(e), the District may withhold contract payments when payroll records are delinquent or inadequate or as required by the Labor Commissioner. The amount withheld shall be limited to those payments due or estimated to be due to the Contractor or Subcontractor whose payroll records are delinquent or inadequate, plus any additional amount that the Labor Commissioner has reasonable cause to believe may be needed to cover a back wage and penalty assessment against the Contractor or Subcontractor

whose payroll records are delinquent or inadequate; provided that the Contractor shall be required in turn to cease all payments to a Subcontractor whose payroll records are delinquent or inadequate until the Labor Commissioner provides notice that the Subcontractor has cured the delinquency or deficiency.

- (e) Site Access. Contractor shall provide site access to Department of Industrial Relations personnel upon request.
- (f) Prevailing Wage Notice. On each job site that is subject to compliance monitoring and enforcement by the Department of Industrial Relations, the Contractor shall post at appropriate, conspicuous, weatherproof points at the site the Notice of Projects Subject to Requirements of Subchapter provided in Title 8, section 16451(d) of the California Code of Regulations.
- (g) Prevailing Rate Penalty. Contractor shall, as a penalty, forfeit not less than Two Hundred Dollars (\$200.00) to the District for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the Department of Industrial Relations for such work or craft in which such worker is employed for the Work by the Contractor or by any Subcontractor, of any tier, in connection with the Work. Pursuant to California Labor Code §1775, the difference between prevailing wage rates and the amount paid to each worker each calendar day, or portion thereof, for which each worker paid less than the prevailing wage rate, shall be paid to each worker by Contractor.

3.5. Insurance.

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

3.6. Performance of the Work.

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

to Industry Standards and as required by Applicable Law. Contractor further agrees that all licenses, permits, registrations and certificates or other approvals required by Applicable Law or any Governmental Authority will be procured and maintained for such materials and Equipment at all times during the use of the same by Contractor or its Subcontractors in the performance of any of Contractor's obligations under this Agreement.

3.7. Hazardous Materials.

- (a) Contractor hereby specifically agrees to indemnify, defend and hold District, their present and future Board members, administrators, employees, agents, representatives, successors and assigns harmless from and against any and all losses, liabilities, claims, demands, damages, causes of action, fines, penalties, costs and expenses (including, but not limited to, all reasonable consulting, engineering, attorneys' or other professional fees), that they may incur or suffer by reason of:
 - (i) any release of a Hazardous Material brought on to the Site by Contractor, or any pre-existing Hazardous Materials that, through Contractor's sole negligence, are released or disturbed at the Site;
 - (ii) any enforcement or compliance proceeding commenced by or in the name of any Governmental Authority because of an alleged, threatened or actual violation of any Applicable Law by Contractor; and
 - (iii) any action reasonably necessary to abate, remediate or prevent a violation or threatened violation of any Applicable Law by Contractor.

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

3.8. Suspension of the Work.

- (a) If Contractor does not receive payment of any undisputed invoices submitted in accordance with Section 4.2, Contractor shall have the right, upon not less than fifteen (15) days written notice, to suspend the Work under this Agreement. Contractor shall be entitled to compensation for all undisputed amounts under this Agreement. If District issues full payment of the undisputed invoice within fifteen (15) days of written notice of intention to suspend, the notice of intention to suspend shall have no further force or effect and Contractor shall continue to perform the

services hereunder as if the notice of intention to suspend had not been given. In the event of any such suspension, Contractor shall be entitled to request (i) an extension of the deadlines of this Agreement for the same period of the suspension, and (ii) the reimbursement of the additional costs and expenses, if any, reasonably incurred and substantiated by Contractor (provided Contractor undertakes reasonable efforts to mitigate such costs and expenses) in protecting, securing or insuring the Work, the delay resulting from such suspension, and in resumption of the Work. If a suspension of the Work under this Section 3.10(a) continues for more than two (2) months, Contractor shall be entitled to, at its sole discretion, terminate this Agreement.

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

3.9. Taxes.

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

3.10. Liens.

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

3.11. Compliance with Applicable Laws.

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

3.12. Environmental Attributes, Incentives, and Energy Credits.

- (a) Contractor acknowledges that District shall retain all rights and interests to the performance based incentive payments made under the California Solar Initiative.
- (b) District acknowledges that Contractor shall own, and may assign or sell in its sole discretion, all rights, title, and interest associated with or resulting from the development, construction, installation and ownership of the System or the production, sale, purchase or use of the energy output including, without limitation:
 - (i) All Environmental Incentives arising from the Environmental Attributes associated with the System;
 - (ii) The reporting rights and exclusive rights to claim that: (i) the energy output was generated by the System (except as stated in paragraph (a)), (ii) Contractor is responsible for the reductions in emissions of pollution and greenhouse gases resulting from the System, (iii) Contractor is entitled to all credits, certificates, registrations, etc., evidencing or representing any of the foregoing;
 - (iii) All carbon reduction tonnage as defined under the Climate Action Reserve or similar definition as enacted by the State of California or the U.S. Federal Government ("Carbon Credits");
 - (iv) All "renewable energy credits" (as such term is defined in Section 399.12(h)(2) of the California Public Utilities Code);
 - (v) All Environmental Incentives hereafter enacted into law, whether under federal, state or local law, arising from the Environmental Attributes of the System or the energy output or production, sale, purchase, consumption or use of the energy output from the System, expressly excluding, however, any future Environmental Incentives that are or may be dependent on ownership of the System for federal tax purposes.
- (c) The Carbon Credits, renewable energy credits, grants and future Environmental Incentives as described herein shall be referred to collectively as "Energy Credits". The Contractor may assign, sell, transfer or otherwise convey all or any part of its right, title, and interest in and to the Energy Credits from time to time as it may determine to be in its best interest. District shall take such steps as Contractor shall reasonably request to confirm Contractor's ownership of Energy Credits as herein provided and shall cooperate with Contractor, to the extent Contractor reasonably requests and at Contractor's expense, in the sale or other disposition of Energy Credits.
- (d) Independent Contractor. Contractor is acting hereunder as an independent contractor and not as an agent or employee of the District. The Contractor shall not represent or otherwise hold out

itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of the District.

3.13. Subcontractors.

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

3.14. Performance & Payment Bonds.

See individual Work Orders in Exhibit C for bonding requirements.

3.15. Title; Risk of Loss.

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

4. PRICE AND PAYMENT

4.1. Contract Price.

- (a) The Work Order Price is firm and fixed and includes all expenses to be incurred by Contractor including, but not limited to, Equipment and materials, erection, commissioning, inclusive of cost of travel and lodging expenses, Applicable Permits (other than the District Permits) and taxes, related to Contractor's performance of its obligations under this Agreement.
- (b) Any Changes to the System or Work above and beyond code requirements and Industry Standards requested by the District shall be resolved through a Change Order to this Agreement.

- (c) Any additional Work not otherwise specified in Exhibit C shall be resolved through a Change Order to this Agreement.
- (d) District and Contractor may mutually agree to reduce portions of the Work to offset the Change Order request to comply with District budget limits.
- (e) The Work Order Price shall only be changed by Change Order approved by Contractor and District.

4.2. Payment.

- (a) Subject to Section 4.2(e), District shall pay to Contractor the progress payments set forth in Exhibit C when Contractor has completed the Work associated with such payment. Contractor must submit documentation at the time of invoicing for related progress payments.
- (b) District shall pay one hundred percent (100%) of each progress payment when such payment is due.
- (c) Payments will be made by District within fifteen (15) calendar days of receipt of the Contractor invoices. Notwithstanding the immediately preceding sentence, District shall pay one hundred percent (100%) of the Funding Date payment set forth in Exhibit C prior to Commencement of Work. Invoices shall include any partial Lien releases and any other supporting documentation that District may reasonably request. District shall notify Contractor of any missing documentation within five (5) Business Days of receipt of invoice.
- (d) The following minimum content will be contained in, or delivered together with, any payment request from Contractor to District:
 - (i) Contractor address, phone number, and fax
 - (ii) Contractor invoice number and date
 - (iii) Project Site address(es)
 - (iv) Description of completed milestones since the immediately preceding payment request
 - (v) Total invoice amount
 - (vi) "Remit to" details (for wire transfer)
 - (vii) Lien waivers from major Subcontractors (>5% of Work Order Price)
 - (viii) Signature of authorized representative of Contractor, certifying as to the accuracy of the payment request.
- (e) Overdue payment obligations of District hereunder shall bear interest from the date due until the date paid at a rate per annum equal to the rate published by the *Wall Street Journal* as the "prime rate" on the date on which such interest begins to accrue plus two percent (2%).
- (f) District may withhold or, on account of subsequently discovered evidence, nullify and require repayment of the whole or part of any payment to the extent necessary to protect District from loss, including costs and actual attorneys' fees, on account of (1) any breach of this Agreement by Contractor; (2) claims filed or reasonable evidence indicating probable filing of claims; (3) failure of Contractor to make payments properly to its Subcontractors or for material, labor or fringe benefits; (4) a reasonable doubt that the Work to be completed as a condition to a payment has properly been completed; (5) penalties assessed against District for failure of

Contractor to comply with state, federal or local laws and regulations; or (6) any other ground for withholding payment allowed by state or federal law, or as otherwise provided in this Agreement. When the above matters are rectified, such amounts as then due and owing shall be paid or credited to Contractor.

5. COMMENCEMENT & COMPLETION

5.1. Commencement and Substantial Completion.

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

- (e) All punchlist items shall be completed no later than sixty (60) Business Days after Substantial Completion Date unless otherwise delayed by the local utility. Failure of Contractor to fulfill this obligation shall entitle District to complete the pending works on its own. District shall issue final payment to Contractor minus the cost to complete remaining or incomplete punchlist items.
- (f) Any dispute between District and Contractor with respect to the projected achievement of Substantial Completion as contemplated by this Section 5.1(c) shall be resolved in accordance with Section 8.5(b).

5.2. Final Completion.

- (a) Final Completion of the System shall be deemed to have occurred only if:
 - (i) all punchlist items contemplated in Section 5.1(c)(iii) have been completed or waived;
 - (ii) all manuals, drawings and other documents expressly required to be delivered by Contractor hereunder have been delivered to District;
 - (iii) on-site operation and maintenance training as required has occurred;
 - (iv) all final Lien waivers have been obtained;
 - (v) a Certificate of Final Completion in a form similar to Exhibit F is duly signed by District's Representative and the Contractor's Representative; and
 - (vi) the local utility has provided a permission to operate.
- (b) Upon Final Completion, Contractor shall submit to District a Certificate of Final Completion in a form similar to Exhibit F certifying that all of the foregoing conditions have been satisfied. District shall, within five (5) Business Days after the receipt by District of such written certificate, shall execute an acknowledgment of such certificate if Contractor has achieved Final Completion or provide written notice of Contractor's failure to achieve Final Completion. Contractor shall promptly take such action or perform such Work as is required to achieve Final Completion and shall thereupon issue to District another notice as set forth above. This procedure shall be repeated until such time as District has acknowledged Final Completion subject to Section 5.2(c).
- (c) Any dispute between District and Contractor with respect to the projected achievement of Final Completion as contemplated by this Section 5.2(a) shall be resolved in accordance with Section 8.5(b).

5.3. Inspection.

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

6. REPRESENTATIONS & WARRANTIES

6.1. Representations and Warranties of Contractor. Contractor represents and warrants to District that:

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

6.2. Representations and Warranties of District. District represents and warrants to Contractor that:

- (a) District is a California public school district, duly organized, validly existing, and in good standing under the laws of the State of California, and has full legal capacity and standing to pursue its purpose (including the capacity to dispose of and encumber all of its assets) and full power to engage in the business it presently conducts and contemplates conducting.
- (b) The execution, delivery and performance by District of this Agreement will not (i) violate or conflict with any covenant, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected, or its organizational documents or (ii) subject the System or any component part thereof or the Site or any portion thereof to any lien other than as contemplated or permitted by this Agreement.
- (c) There are no undisclosed actions, suits, proceedings, patent or license infringements or investigations pending or, to District's knowledge, threatened against it before any court or arbitrator that individually or in the aggregate could result in any materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of District or in any impairment of its ability to perform its obligations under this Agreement.

- (d) District will exercise commercially reasonable efforts to procure funding for the Project within 365 days of the Effective Date.
- (e) District has proof of funds, to the satisfaction of the Contractor, that are necessary from time to time to pay Contractor the Work Order Price in accordance with the terms of this Agreement.
- (f) The individual executing this Agreement on behalf of District is duly authorized to execute and deliver this Agreement on behalf of District and this Agreement is binding upon District in accordance with its terms.

7. BREACH & TERMINATION

7.1. Termination by District:

- (a) Contractor agrees that District shall be entitled to terminate this Agreement upon the occurrence of any of the following circumstances:
 - (i) Except as otherwise permitted under this Agreement, Contractor abandons the entire Work for more than ninety (90) days or fails to commence the Work within one-hundred and eighty (180) days after receiving the Funding Date payment, and after expiration of said period fails to commence or continue performance of the Work within ten (10) business days of Contractor's written notice from District to commence or continue performance of the Work;
 - (ii) Contractor commits a material breach of this Agreement, and Contractor does not commence the cure of said breach and thereafter diligent pursuant to completion the cure of said breach, within thirty (30) days following Contractor's receipt of written notice thereof from District, or
 - (iii) Contractor makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency, or it becomes the subject of any proceeding commenced under any federal or state insolvency statute or law for the relief of debtors.
- (b) Upon the occurrence of any of the foregoing, District may instruct Contractor to discontinue all or any part of the Work, and Contractor shall thereupon discontinue the Work of such parts thereof. District shall thereupon have the right to continue and complete the Work or any part thereof, by contract or otherwise.
- (c) Upon exercising commercially reasonable efforts, District shall be entitled to terminate this Agreement if it is unable to procure funding for the Project within 365 days of the Effective Date. Upon this occurrence, District shall have no further obligation to Contractor.
- (d) If District elects to terminate this Agreement for any reason other than provided herein, District shall reimburse Contractor for all expenses incurred prior to termination, including but not limited to development and engineering cost and the actual loss of revenue that the Agreement produces for Contractor.
- (e) If any covenant, condition or restriction upon the Site prohibits the installation of the System at the Site, District has the right to terminate this Agreement. Upon such termination, District shall pay to Contractor for all services rendered up to and including the date of termination; plus all costs incurred with respect to equipment or materials ordered (which order cannot be refunded, terminated or such costs otherwise recovered by Contractor) prior to the date of termination; plus, if applicable, amounts payable to Subcontractors arising from costs or expenses reasonably

incurred by such Subcontractor and directly resulting from such termination; plus, if applicable, costs incurred by Contractor in demobilizing its work force from Site; plus all engineering and development cost incurred by Contractor prior to the Effective Date.

7.2. Termination by Contractor.

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

7.3. Indemnity.

- (a) Contractor shall fully indemnify, save harmless and defend District from and against any and all costs, claims, and expenses incurred by District and their successors, assigns, governing board members, administrators, managers, employees, agents, affiliates and partners in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any person (other than Affiliates of District) arising from or relating to Contractor's performance of its obligations under this Agreement, but only to the extent caused by (a) the negligence, gross negligence or willful misconduct of Contractor or its Subcontractors, agents or employees or others under Contractor's control or (b) a breach by Contractor of its obligations hereunder.
- (b) District shall fully indemnify, save harmless and defend Contractor and its successors, assigns, officers, directors, members, managers, employees, agents, affiliates and partners in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any person (other than Affiliates of Contractor or Subcontractors) arising from or relating to this Agreement, but only to the extent caused by (a) the negligence, gross negligence or willful misconduct of District or its agents or employees or others under District's control or (b) a breach by District of its obligations hereunder.
- (c) Each Party shall indemnify, defend and hold the other Party, and its present and future governing board members, administrators, direct and indirect parents, subsidiaries and Affiliates and their directors, officers, shareholders, employees, agents and representatives harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, damages, costs or expenses (including attorneys' fees and disbursements) of any kind whatsoever arising from (a) actual or alleged infringement or misappropriation by such Party (or in the case of Contractor, any Subcontractor) of any patent, copyright, trade secret, trademark, service mark, trade name, or other intellectual property right in connection with the System, including without limitation, any deliverable, (b) such Party's (and in the case of Contractor, any Subcontractor's) violation of any third-party license to use intellectual property in connection with the Work, including, without limitation, any deliverable. District shall indemnify, defend and hold

Contractor and its present and future direct and indirect parents, subsidiaries and Affiliates and their directors, officers, shareholders, employees, agents and representatives harmless from against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, damages, costs or expenses (including attorneys' fees and disbursements) of any kind whatsoever arising from the challenge to the procedures under which this Agreement was approved by the District. Notwithstanding the foregoing, the indemnification obligations of Contractor set forth in this Section 7.3(c) shall not apply when the claim of infringement arises from a particular design, process or product of a particular manufacturer or manufacturers that Contractor is directed by District to use in connection with the Contract Documents, unless the Contractor has reason to believe there is an infringement of such intellectual property right.

- (d) If any claim is brought against a Party (the "Indemnified Party") that gives rise to a potential indemnity claim under this Section 7.3, then the Indemnified Party shall give written notice of said claim to the other Party (the "Indemnifying Party"). Upon receipt of written notice of the claim, the Indemnifying Party shall be entitled to participate in, and, unless in the opinion of counsel for the Indemnifying Party a conflict of interest between the Parties may exist with respect to such claim, assume the defense of such claim, with counsel reasonably acceptable to the Indemnified Party. Where the Indemnifying Party has elected not to assume the defense of a claim that gives rise to a potential indemnity claim under this Section 7.3, the Indemnifying Party shall reimburse the Indemnified Party for its reasonable and necessary defense expenses to the extent said claim is adjudged to be covered under the indemnity obligations. Even if the Indemnifying Party assumes the defense of the Indemnified Party with acceptable counsel, the Indemnified Party, at its sole option, may participate in the defense, at its own expense, with counsel of its own choice without relieving the Indemnifying Party of any of its obligations hereunder.

7.4. Limitations of Liability.

- (a) No Consequential Damages. IN NO CIRCUMSTANCES SHALL THE CONTRACTOR OR DISTRICT OR ANY OF THEIR RESPECTIVE OFFICERS, MEMBERS OR EMPLOYEES BE LIABLE FOR PUNITIVE, CONSEQUENTIAL OR EXEMPLARY DAMAGES OF ANY NATURE INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOST PROFITS OR REVENUES OR THE LOSS OF USE OF SUCH PROFITS OR REVENUE, LOSS BY REASON OF PLANT SHUTDOWN OR INABILITY TO OPERATE AT RATED CAPACITY, COSTS OF REPLACEMENT POWER OR CAPITAL, DEBT SERVICE FEES OR PENALTIES, INVENTORY OR USE CHARGES, DAMAGES TO REPUTATION, DAMAGES FOR LOST OPPORTUNITIES, REGARDLESS OF WHETHER SAID CLAIM IS BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHER THEORY OF LAW. NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS ON PARTIES' LIABILITY FOR CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES IN THIS SECTION 7.4(a) SHALL NOT APPLY TO THE PARTIES' RESPECTIVE INDEMNITY OBLIGATIONS AS SET FORTH IN THIS AGREEMENT FOR SUCH DAMAGES WHEN SUCH DAMAGES ARE SOUGHT BY THIRD PARTIES.
- (b) Maximum Liability. Whether an action or claim is based on warranty, contract, tort or otherwise, under no circumstance shall (i) District's total liability arising out of or related to this Agreement exceed one-hundred percent (100%) of the Contract Price, minus the aggregate amount of any payments or penalties paid by District under this Agreement, and (ii) Contractor's total liability arising out of or related to this Agreement exceed one-hundred percent (100%) of the aggregate amount of any payments to Contractor by District minus any penalties paid by Contractor under this Agreement.

8. MISCELLANEOUS

8.1. Representatives.

- (a) District Representative. District designates, and Contractor agrees to accept, Ryan Mahan Director Human Resources and Operations, as District Representative for all matters relating to Contractor's performance of the Work. The actions taken by District Representative regarding such performance shall be deemed the acts of District and shall be fully binding for District. District may, upon written notice to Contractor, pursuant to Section 8.6 hereof, change the designated District Representative.
- (b) Contractor Representative. Contractor designates, and District agrees to accept, Stan Butts as Contractor Representative for all matters relating to Contractor's performance under this Agreement. The actions taken by Contractor Representative shall be deemed the acts of Contractor and shall be fully binding for Contractor. Contractor may, upon written notice to District, pursuant to Section 8.6 hereof, change the designated Contractor Representative.
- (c) Power of Representatives. The Parties shall vest their Representatives with sufficient powers to enable them to assume the obligations and exercise the rights of Contractor or District, as applicable, under this Agreement.
- (d) Notices to Representative. Notwithstanding Sections 8.1(a) and 8.1(b), all amendments, Change Orders, notices and other communications between Contractor and District contemplated herein shall be delivered in writing and otherwise in accordance with Section 8.6.

8.2. Ownership of Plans, Data, Reports and Material.

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

8.3. Governing Law.

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

8.4. Force Majeure.

Contractor shall promptly notify District in writing of any delay or anticipated delay in Contractor's performance of this Agreement due to a Force Majeure Event, and the reason for and anticipated length of the delay. Contractor shall deliver such notice as soon as reasonably practicable, but in any event within forty-eight (48) hours of Contractor's becoming aware of such delay. Contractor shall be excused for any delays or defaults in the performance of its obligations under this Agreement that are the result of a Force Majeure Event. Contractor shall be entitled to a reasonable extension of time for delays due to a Force Majeure Event; provided that any Work done or materials furnished by Contractor in restoring or rebuilding the System will be paid for by District as an approved Change Order pursuant to Section 3.5.

8.5. Dispute Resolution.

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

8.6. Notices and Demands.

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

District:

Name: LAKE COUNTY OFFICE OF EDUCATION
Attention: Ryan Mahan Director Human Resources and Operations
Address: 1152 South Main Street
Lakeport, CA 93239-5956
Phone: (707) 262-4200
Facsimile: (707) 263-0197
Email: rmahan@lakecoe.org

With a copy to:

Name:
Attention:
Address:

Contractor:

Name: Indoor Environmental Services
Attention: Stan Butts, Vice President
Address: 1512 Silica Avenue
Sacramento, CA 95815
Phone: (916) 888-8808
Facsimile: (916) 348-3020
E-mail: sbutts@ies-hvac.com

8.7. Nondisclosure.

To the extent permitted by law, whichever Party receives confidential information (the "Receiving Party") from the other Party (the "Disclosing Party") shall not use for any purpose other than performing the Work under this Agreement or divulge, disclose, produce, publish, or permit access to, without the prior written consent of the Disclosing Party, any such information of the Disclosing Party. Confidential Information includes, without limitation, all information or materials prepared in connection with the Work performed under this or any related subsequent Agreement, designs, drawings, specifications, techniques, models, data, documentation, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, development or marketing timetables, strategies and development plans, personnel names and other information related to Contractor, Suppliers, personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets. Confidential information does not include (a) information known to the Receiving Party prior to obtaining the same from the Disclosing Party; (b) information in the public domain at the time of disclosure by the Receiving Party; or (c) information obtained by the Receiving Party from a third party who did not receive same, directly or indirectly, from the Disclosing Party. The Receiving Party shall use the higher of the standard of care that the Receiving Party uses to preserve its own confidential information or a reasonable standard of care to prevent unauthorized use or disclosure of such confidential information.

Notwithstanding anything herein to the contrary, the Receiving Party has the right to disclose Confidential Information without the prior written consent of the Disclosing Party: (i) as required by any court or other Governmental Authority, or by any stock exchange upon which the shares of any Party are listed, (ii) as otherwise required by law, (iii) as advisable or required in connection with any government or regulatory filings, including without limitation, filings with any regulating authorities covering the relevant financial markets, (iv) to its attorneys, accountants, financial advisors or other agents, in each case bound by confidentiality obligations, (v) to banks, investors and other financing sources and their advisors, in each case bound by confidentiality obligations; or (vi) in connection with an actual or prospective merger or acquisition or similar transaction where the party receiving the Confidential Information is bound by confidentiality obligations. If a Receiving Party believes that it will be compelled by a court or other Governmental Authority to disclose confidential information of the Disclosing Party, it shall give the Disclosing Party prompt written notice, and in all cases not less than five (5) Business Days' notice in advance of disclosure, so that the Disclosing Party may determine whether to take steps to oppose such disclosure. Notwithstanding the foregoing, Contractor acknowledges that this Agreement, once fully executed and approved by the District's Board of Trustees, is public information, subject to release in response to public information requests under California Government Code § 6250 et seq. (Public Records Act). District shall use reasonable efforts to prevent or limit disclosure of the Confidential Information.

8.8. Time of Essence.

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

8.9. Validity.

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

8.10. Binding Effect.

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

8.11. Modifications.

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

8.12. Headings.

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

8.13. Counterparts; Signature Pages.

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

8.14. Announcements and Publications.

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

8.15. Complete Agreement.

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

8.16. No Agency.

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

8.17. Priority of Documents.

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

8.18. Assignment.

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

8.19. No Waiver.

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

[Signatures on following page]

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

LAKE COUNTY OFFICE OF EDUCATION
a school district organized and existing under the
laws of the State of California

By: _____
Name: Ryan Mahan
Title: Director Human Resources and Operation

Famand, Inc.,
A California corporation, (dba) Indoor
Environmental Services

By: _____
Name: Stan Butts
Title: Vice President
Contractor's License #: 646794

EXHIBIT A DEFINITIONS

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

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

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

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

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

“Business Day” means Mondays to Fridays, except such days on which banks are permitted or required to close in California.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Environmental Incentives” means all rights, credits (including tax credits), grants, rebates, benefits, reductions, offsets and allowances and entitlements of any kind, howsoever entitled or named (including carbon credits and allowances), whether arising under federal, state or local law, international treaty, trade association membership or the like arising from the Environmental Attributes of the System on each Site or the energy output or otherwise from the development, construction, installation or ownership of the System on each Site or the

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

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

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

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

approval or approval of a Governmental Authority or delays caused by changes and/or modifications to the Scope of Work as required by any Governmental Authority having jurisdiction over the Project;

- (i) any equipment or material delays caused by suppliers or vendors;
- (j) adverse changes to regulatory requirements;
- (k) any breach of this Agreement or the Utility Interconnection Agreement or any information provided to the Contractor by District or Utility is inaccurate or incomplete; or
- (l) any other cause outside Contractor's control after Contractor's best efforts to mitigate that delay, to the extent that Contractor is able to mitigate such delay, provided that a failure to perform of Contractor's subcontractors' shall not be an Excusable Delay, unless such subcontractors are unable to perform the Work as a result of any of the events described in this definition of "Excusable Delay".

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

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

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

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

equipment relating to the performance by the affected Party of its obligations under this Agreement;

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

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

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

“Funding Date” shall mean the date that District has received monetary funds necessary to fulfill its obligations under this Agreement.

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

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

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

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

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

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

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

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

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

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

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

“School District” shall have the meaning set forth in preamble.

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

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

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

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

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

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

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

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

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

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

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

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

**EXHIBIT B
CERTIFICATIONS**

- Exhibit B-1 Fingerprinting / Criminal Background Investigation Certification
- Exhibit B-2 Drug-Free Workplace / Tobacco-Free Environment Certification

**FINGERPRINTING / CRIMINAL BACKGROUND INVESTIGATION
CERTIFICATION
(EXHIBIT B-1)**

The undersigned does hereby certify to the governing board of the _____ as follows:

That I am a representative of the Contractor currently under contract ("Contract") with the _____; that I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Contractor.

Contractor certifies that it has taken at least one of the following actions with respect to the construction Project that is the subject of the Contract (check all that apply):

_____ The Contractor has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Contractor's employees and all of its subcontractors' employees who may have contact with _____ pupils in the course of providing Services pursuant to the Contract, and the California Department of Justice has determined that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of Contractor's employees and of all of its subcontractors' employees who may come in contact with _____ pupils during the course and scope of the Contract is attached hereto; and/or

_____ Pursuant to Education Code section 45125.2, Contractor has installed or will install, prior to commencement of Work, a physical barrier at the Work Site, that will limit contact between Contractor's employees and _____ pupils at all times; and/or

_____ Pursuant to Education Code section 45125.2, Contractor certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Contractor who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Contractor's employees and its subcontractors' employees is

Name: _____

Title: _____

_____ The Work on the Contract is at an unoccupied Site and no employee and/or subcontractor or supplier of any tier of Contract shall come in contact with the _____ pupils.

Contractor's responsibility for background clearance extends to all of its employees, Subcontractors, and employees of Subcontractors coming into contact with _____ pupils regardless of whether they are designated as employees or acting as independent contractors of the Contractor.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

DRUG-FREE WORKPLACE / TOBACCO-FREE ENVIRONMENT CERTIFICATION
(EXHIBIT B-2)

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

- 1 Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying actions which will be taken against employees for violations of the prohibition;
- 2 Establishing a drug-free awareness program to inform employees about all of the following:
 - a. The dangers of drug abuse in the workplace.
 - b. The person's or organization's policy of maintaining a drug-free workplace.
 - c. The availability of drug counseling, rehabilitation, and employee-assistance programs.
 - d. The penalties that may be imposed upon employees for drug abuse violations.
- 3 Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required above, and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

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

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

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

Date: _____
Proper Name of Contractor: _____
Signature: _____
Print Name: _____
Title: _____

**EXHIBIT C
WORK ORDERS**

**Work Order #1
Major Equipment Procurement**

**Work Order #2
Lighting Installation**

EXHIBIT C

Work Order #1 Major Equipment Procurement

This scope of work is intended to define the requirements which will form the basis for the procurement of Energy Conservation work at District Facilities that are part of the Agreement.

This Work Order includes the following:

- Lighting Equipment Procurement Scope of Work
- Work Order Milestones
- Fixed Price Amount
- Progress Payment Schedule
- Performance and Payment Bonds

LIGHTING EQUIPMENT PROCUREMENT SCOPE OF WORK

General

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

Procurement

Contractor shall procure the Lighting required for the System under this Work Order. The following shall be procured:

Shipping and Transportation

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

Equipment Documentation

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

WORK ORDER MILESTONES

Estimated Work Order Milestone Schedule	
Milestone	Milestone Date
Contract Execution Date	5/1/17
Major Equipment Ordering	Funding Date + 1 Week

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

FIXED PRICE AMOUNT

The fixed price for this Work Order (“Work Order Price”) is \$57,915, Fifty Seven Thousand Nine Hundred Fifteen dollars.

PROGRESS PAYMENT SCHEDULE

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

Progress Payments Schedule	
Payment Milestone	% of Total Task Order Price
Contract Execution Date	10%
Major Equipment Ordering	90%

PERFORMANCE AND PAYMENT BONDS

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

1. SCHEDULE 2 – SCOPE OF WORK

PROJECT SCOPE OF WORK INDEX

<u>Section 1</u>	Basis of Energy Engineering
<u>Section 2</u>	Lighting Scope of Work
<u>Section 3</u>	Proposed Project Installation Timeline & Coordination

1.0 BASIS OF ENERGY ENGINEERING

Forecasted energy savings are the difference between the pre- and post-retrofit period consumption for the equipment included in the scope of Work. The pre-retrofit (or Baseline) data for this project covers the period from July 2014 through June 2015. The Baseline data takes into consideration the quantity of facilities and size; 2016/2017 building operational schedules; 2016/2017 School Calendar and 2016/2017 individual school Bell Schedules; occupancy factors and utilization; utility usage, costs and utility rates along with the available average ASHRAE weather files for the closest weather station. Except weather files, all this data have been obtained from the CUSTOMER.

Since CONTRACTOR does not control/follow the building operations on a day-by-day basis, it is virtually impossible to track the energy consumption and savings from utility bills due to many dynamic factors that are out of the CONTRACTOR'S control. These factors (permanent or temporary) include, but are not limited to: weather changes; changes in the use of any facility and number of occupants (including, but not limited to, staff, faculty and students); changes to the hours of operation of any facility; changes to the control system scheduling; changes or modifications to the equipment or services provided under this Agreement; changes in utility suppliers, method of utility billing, number of days in the billing cycle, utility rates or method of utility purchasing; improper maintenance of the equipment or of any energy-consuming equipment; changes to the equipment or to any facility required by changes to building codes; additions or deletions of energy-consuming equipment; personal portable heaters; refrigerators and vending machines and/or additions or deletions of any facilities (i.e. portable classroom buildings), etc. It should be also noted, that the weather within last two years was unusually mild and, as a result, heating and cooling energy costs were lower than normal.

Therefore, engineering calculations approach is based on a measure-by-measure (ECM-by-ECM) basis and is to be derived by comparing the specific value of physical parameters after the installation to its value prior to the installations. For example: lighting systems retrofit (see below) will result in lower wattage consumption than Baseline scenario. This measure is not affected by weather changes, HVAC or other unrelated equipment energy consumption that are reflected in the utility bills. Below are some key characteristics and features of the measure-by-measure energy saving calculations method:

- It calculates savings based on CUSTOMER inputs, field measurements, and agreed upon assumptions and stipulations.

- It does not involve utility bill comparisons; however, utility bills may be analyzed to identify energy consuming trends and correlations.
- It is structured so that the individual measure's savings, as described in Scope of Work, shall not be effected by unrelated building modifications.

Additionally, selected energy savings calculations have been performed with the help of the on-line Energy Saving Calculators developed by California Energy Commission (CEC). These on-line calculators are offered by CEC as a part of CA Clean Energy Jobs Act (Proposition 39). CONTRACTOR has no control over engineering methodologies utilized by CEC in on-line Energy Saving Calculators.

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

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

2.0 GENERAL LIGHTING SCOPE OF WORK

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

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

Where,

- Existing Watts* – Wattage rating for the existing (Baseline) light fixture
- New Watts* – New wattage rating for the existing light fixture
- Hours/Year* – Annual number of “burn-hours” (run hours for different areas as reported to CEC)
- Utility Rate* – Actual weighted composite utility rate, \$/kWh
- N* – Number of light fixtures of the particular type (see below for the actual quantities).

Currently the (2) sites have a mixture of lighting technologies. Past modernization and retrofit projects included the upgrading of several sites with first generation electronic ballasts and T8 fluorescent lamps.

This project will provide a significant energy reduction while greatly improving the overall quality and quantity of light. Optical imaging reflectors will be installed where applicable to

maximize overall fixture efficiency. All fixtures presently powered by electronic ballasts will be retrofitted with 4th generation electronic ballasts and High CRI extended performance L.E.D. lamps. In addition to the L.E.D. fixture retrofits all incandescent lamps will be replaced L.E.D. lamps or fixtures.

All discolored or broken lighting diffusers encountered during this project will be replaced as part of this project.

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

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

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

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

Scope of Work presented herein is based on retrofits feasibility, cost effectiveness and maximum energy savings for the different options. The presented retrofits will not affect the usability of the buildings or facilities and therefore are not alterations, additions, new construction or modification of the existing systems. As a result, the scope of work is considered maintenance replacement of the existing outdated lighting system components with like-kind components of higher efficiency and longer useful life. Maintenance related items are not considered lighting alterations and are exempted from the code and Title 24 provisions. Due to the possibility of dissimilar interpretations of regulations, additional cost-incurring system upgrades may be requested. Upon the CUSTOMER requesting changes based on interpretations, the CONTACTOR will provide a written change order to the CUSTOMER for review and approval.

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

Lake County Offices, 1152 South Main Street, Lakeport, CA

ITEMIZED SCOPE OF WORK			
Existing	Proposed		QTY
4L F32T8/32W W/ EB	4-LAMP LED T8		3
4L F32T8/32W W/ EB	4-LAMP LED T8		14
2L F32T8/32W W/ EB	2-LAMP LED T8		124

TWIN26W CF PORCH LIGHT	DECO D402-LED 20W WALL PACK		3
70W HID WALL PACK/ CFL WALLPACK	DECO 410 15W LED WALL PACK		5
100W HID FLOOD	DECO 211-20W LED FLOOD		2
250W HID FLOOD	DECO 211-60W LED FLOOD		2
EXIT CF, (2) 7W LAMP	NEW LED EXIT WITH BBU		1
NEW LENS	WRAP LENS		5
NEW LENS	2X4 PRISMATIC LENS		10
13W CF SCREW IN/ 60W INC	1L LED9A19/DIM		6

Clearlake Creativity School, 2945 Old Highway 53, Clearlake, CA

ITEMIZED SCOPE OF WORK			
Existing	Proposed		QTY
4L F32T8/32W W/ EB	4L LED T8		3
3L F32T8/32W W/ EB	3L LED T8		86
3L F32T8/32W W/ EB	3L LED T8		7
2L F32T8/32W W/ EB	2L LED T8		40
2L FT40 U-LAMP W/ EB	2L PLUG-IN LED		22
CF 26W DRUM	12W DRUM FIXTURE		10
TWIN26W CF PORCH LIGHT	DECO D402-LED 20W WALL PACK		1
70W HID WALL PACK/ CFL WALLPACK	DECO 410 15W LED WALL PACK		5
150W HID POST	DECO 821 40W LED POST TOP		2
250W HID POST	DECO 805 60W LED POST TOP		2
NEW LENS	WRAP LENS		6
NEW LENS	2X4 PRISMATIC LENS		6
32W CF	11W LED PLUG IN		12
1L CF26 6" RECESSED CAN	LED/RT6/1500/HO/840		21

2.1 Lighting System Terms and Definitions

- 2L F32T8/32WW/EB
 - 2 Lamp, Fluorescent Octron, lamp wattage, 8/8” diameter Lamp with electronic ballast.
- QHE2X32T8UNIVISL
 - Quicktronic High Efficiency electronic ballast, number of lamps by lamp wattage, 8/8” diameter Lamp, Universal(120 - 277 watt), Instant Start
- RTK Reflector model
- PRS Prismatic Lense
- PF Precision Fluorescent (Brand Name)
- INC Standard Incandescent style lamp
- LED Light Emitting Diode technology

- EB Electronic Ballast
- ESB Energy Saving Ballast
- ESL Energy Saving Lamp (Fluorescent)
- CF Compact Fluorescent Lamp
- NEW Means a "new" fixture is to be installed, and not retrofitted
- MH Metal Halide
- PS Pulse Start
- HPS High Pressure Sodium lamp
- MP Metalarc Pro-Tech lamp
- MS Super Metalarc Lamp
- PC Photocell
- Flood A type of exterior lighting fixture possessing directional capabilities.

2.2 Lighting Scope of Work Exclusions

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

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

3.0 PROPOSED PROJECT INSTALLATION TIME LINE & COORDINATION

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

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

In order to minimize the disruption of CUSTOMER'S operation, coordination and scheduling items shall include but are not limited to multiple trips to the job site, multiple equipment riggings, temporary relocation of the tenants (students), etc. CONTRACTOR will work with the CUSTOMER to develop a detailed project schedule. Once the project schedule is confirmed, CONTRACTOR will provide the CUSTOMER with a Schedule of Values and a progress payment schedule, which corresponds to the project schedule. The installation of mechanical systems will start upon executing this Agreement and ordering and obtaining all necessary equipment, parts and materials needed for installation. It is anticipated the construction phase of

this project would be performed in the Spring/Summer of 2017.

CUSTOMER and its representatives shall coordinate all the project activities with CONTRACTOR'S Project Manager only.

4. WORK ORDER # 2 MILESTONES

Estimated Work Order Milestone Schedule	
Milestone	Milestone Date
Contract Approval Date	5/1/17
Substantial Completion	Contract Approval Date + 20 weeks
Final Completion	Contract Approval Date + 24 weeks

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

5. FIXED PRICE AMOUNT

The fixed price for this Work Order ("Work Order Price") is **\$38,609 Thirty Eight Thousand, Six Hundred Nine dollars.**

6. PROGRESS PAYMENT SCHEDULE

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

Progress Payments Schedule	
Payment Milestone	% of Total Task Order Price
Progress Payments	85%
Substantial Completion	10%
Final Completion	5%

PERFORMANCE AND PAYMENT BONDS

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

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

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

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

The surety, having provided the Performance and Payment Bonds under this Work Order, shall assume no liability to Contractor, District or any third parties, should Contractor fail, for any reason, to deliver acceptable warranties beyond the one (1) year warranty period following Final Completion.

EXHIBIT E INSURANCE

Contractor Insurance Requirements

1. **Required Coverages.** Contractor shall carry and maintain with carriers or self insurance, as a minimum, the following insurance coverage:
 - i. **Workers Compensation Insurance and Employers Liability.** In accordance with the laws of the state of where work may be done with limits for employers liability in the minimum amount of one million dollars (\$1,000,000) for each

occurrence and one million dollars (\$1,000,000) for each occurrence of bodily injury on a per employee basis;

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

District Insurance Requirements

1. Required Coverage. District shall carry and maintain with carriers or self insurance, as a minimum, the following insurance coverage:
 - i. Workers Compensation Insurance and Employers Liability. In accordance with the laws of the state of where work may be done with limits for employers liability in the minimum amount of one million dollars (\$1,000,000) for each occurrence and one million dollars (\$1,000,000) for each occurrence of bodily injury on a per employee basis;

- ii. Commercial General Liability. One million dollars (\$1,000,000) per occurrence/two million dollars (\$2,000,000) in the aggregate for bodily injury, personal injury and property damage, products and completed operations:
 - iii. Commercial Automobile Liability, Any Auto. One million dollars (\$1,000,000) per accident including owned, non-owned, and hired automobiles.
 - iv. Excess coverage of four million dollars (\$4,000,000) per occurrence and aggregate, or any other equivalent, available insurance coverage of the Contractor.
2. Policy Endorsements. Insurance coverage required to be maintained by District under this Agreement shall provide a severability of interests or cross liability clause for Commercial General Liability Insurance;
3. Certificates. District shall throughout the Agreement Term provide certificate(s) and/or memoranda of insurance evidencing the coverage specified in this Attachment E to Contractor upon Contractor's reasonable request.

EXHIBIT F

CERTIFICATE OF SUBSTANTIAL/FINAL COMPLETION AND ACCEPTANCE

The undersigned, _____ (“the District”), having its office at _____, having entered into the Facility Solutions Agreement (“Agreement”) dated _____, 2013, with _____ (“_____”), does hereby certify as follows:

1. I am authorized to issue this [Substantial][Final] Completion Certificate on behalf of the District.

2. As of the date hereof, all the requirements for achievement of [Substantial][Final] Completion pursuant to the Agreement have been met.

ACCEPTANCE

Contractor:

By: _____

Name: _____

Title: _____

District:

_____ SCHOOL DISTRICT

By: _____

Name: _____

Title: _____