

SHORT FORM CONSTRUCTION CONTRACT

This CONTRACT made and entered into this 14th day of June, 2019, by and between **FRESNO COUNTY FIRE PROTECTION DISTRICT**, sometimes hereinafter called "District," and **KUYKENDALL SOLAR** hereinafter referred to as "Contractor." District and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Contract.

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other, as follows:

1. Contract Documents. The complete contract includes all the Contract Documents, to wit:
 - A. Contract;
 - B. Payment and Performance Bond(s) To Be Provided Upon Request
 - C. Scope of Work
 - D. Certificate(s) of Insurance;
 - E. All official papers and documents relating to the work to be performed hereunder

2. Scope of Work. Contractor agrees to perform the work and to furnish all tools, equipment, apparatus, facilities, labor and material necessary to perform and complete in a good workmanlike manner, all parts of the work as called for in a manner designated in and in strict conformance with the scope of work set forth as attached hereto and incorporated herein ("Scope of Work") and the Contract Documents. It is understood and agreed that said tools, equipment, apparatus, facilities, labor and material shall be furnished and said work performed and completed as required in said Scope of Work under the direction and supervision of, and subject to the approval of the District's authorized representative. Contractor's Work shall also be consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Work. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Work, including a Business License, and that such licenses and approvals shall be maintained throughout the term of this Contract. As provided for in the indemnification provisions of this Contract, Contractor shall perform, at its own cost and expense and without reimbursement from the District, any work necessary to correct errors or omissions which are caused by Contractor's failure to comply with the standard of care provided for herein. Any employee who is determined by the District to be uncooperative, incompetent, a threat to the safety of persons or the

Work, or any employee who fails or refuses to perform the Work in a manner acceptable to the District, shall be promptly removed from the Project by Contractor and shall not be re-employed on the Work.

3. Compensation. As consideration for performance of the Work required herein, District agrees to pay Contractor on a lump sum basis as set forth herein, a not-to-exceed amount of **SEVEN HUNDRED SIXTY FOUR THOUSAND TWO HUNDRED AND EIGHTY DOLLARS AND NO CENTS (\$764,280.00)** (“Total Contract Price”) provided that such amount shall be subject to adjustment pursuant to the applicable terms of this Contract or written change orders approved and signed in advance by the District.
 - A. Periodic payments shall be made by the District to Contractor within thirty (30) days of District's receipt of an application for payment from Contractor for services rendered. Payments to Contractor for work performed will be made on a monthly billing basis. The application shall include all information required by the District and shall be in a format approved by the District. This application shall be supported by evidence which is required by this Contract and such other documentation as the District may require. The Contractor shall certify that the Work for which payment is requested has been done and that any materials listed are stored where indicated. District shall review and pay the payment request in accordance with the provisions set forth in Section 20104.50 of the California Public Contract Code.
 - B. Labor and Material Releases. Contractor shall furnish District with labor and material releases from all subcontractors performing work on, or furnishing materials for, the Work governed by this Contract prior to final payment by District.
4. Retention. For contracts greater than Five Thousand dollars (\$5,000), Public Contract Code section 9203 requires progress payments and retention based on the percentage of actual work completed plus a like percentage of the value of material delivered and unused. Therefore, District will withhold as retention five percent (5%) of all billings and the Total Contract Price until final completion for projects exceeding \$5,000 and acceptance of the project. District, at its sole discretion, shall release retention proceeds withheld from any payment within sixty (60) days after the date of “completion” of the work as defined in the Public Contract Code section 7107. If a dispute arises between the contractor and District, District may withhold an amount from the final payment not to exceed one hundred and fifty percent (150%) of the disputed amount, as well as any other amounts permissible under this Agreement and/or California law.

5. Other Retentions. In addition to Contract retentions, the District may deduct from each progress payment an amount necessary to protect District from loss because of: (1) liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by the District in performing any of Contractor's obligations under the Contract which Contractor has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop notices as allowed by state law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the Total Contract Price or within the scheduled completion date; (6) unsatisfactory prosecution of the Work by Contractor; (7) unauthorized deviations from the Contract; (8) failure of Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by District during the prosecution of the Work; (9) erroneous or false estimates by Contractor of the value of the Work performed; (10) any sums representing expenses, losses, or damages as determined by the District, incurred by the District for which Contractor is liable under the Contract; and (11) any other sums which the District is entitled to recover from Contractor under the terms of the Contract or pursuant to state law, including Section 1727 of the California Labor Code. The failure by the District to deduct any of these sums from a progress payment shall not constitute a waiver of the District's right to such sums.

6. Substitution of Securities. Pursuant to California Public Contract Code section 22300, Contractor may substitute securities for any money withheld by District to ensure the performance under the Contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the District, with the State or federally chartered bank as the escrow agent, who shall return such securities to the Contractor upon satisfactory completion of the contract. Deposit of securities with an escrow agent shall be subject to a written agreement between the escrow agent and the District, which provides that no portion of the securities shall be paid to the Contractor until the District has certified to the escrow agent, in writing, that the contract has been satisfactorily completed. District shall certify that the contract has been satisfactorily completed within sixty (60) days of work "completion" as defined in Section 7107(c) of the California Public Contract Code. Securities eligible for investment under this section shall be limited to those listed in Section 16430 of the Government Code, bank or savings & loan certificates of deposit, interest-bearing demand deposit accounts, stand-by letters of credit, or any other security mutually agreed to by the Contractor.

7. Time for Completion/Liquidated Damages. Work shall commence on or about **July 23, 2019** and shall be completed by Contractor and usable by the District on or before **December 31, 2019**. If the Work is not completed and usable by the District, it is understood that the District will suffer damage. In accordance with Government Code section 53069.85, being impractical and infeasible to determine to determine the amount of actual damage, it is agreed that Contractor shall pay to the District as fixed and

liquidated damages, and not as a penalty, the sum of **\$1000.00** for each and every calendar day of delay beyond the time prescribed in the Agreement for finishing the Work. In the event this is not paid, the Contractor agrees that the District may deduct that amount from any money due or that may become due the Contractor under the Contract.

8. Insurance. Without limiting Contractor's indemnification, it is agreed that Contractor shall secure and maintain in force during the term of this Contract a Commercial General Liability and Property Damage Insurance (including automobile insurance) which provides limits of not less than:

- 1) Per occurrence (combined single limit) \$1,000,000.00
- 2) Project Specific Aggregate (for this project only) \$2,000,000.00
- 3) Products/Completed Operations (included in Comm. Gen. Liability)

The District shall be named as an additional insured on the policies by endorsements. The policy shall provide that it is primary, such that insurance maintained by the District, if any, shall be excess and not co-primary. A copy of the declarations page of Contractor's insurance policies shall be attached to this Contract as proof of insurance. Except for worker's compensation insurance, the policy shall not be amended or modified and the coverage amounts shall not be reduced without the District's prior written consent, and, the District shall be named as an additional insured and be furnished thirty (30) days' written notice prior to cancellation. The Contractor shall not allow any subcontractor employee or agent to commence work on this Contract, or any subcontract until the insurance required of the Contractor and subcontractor or agent has been obtained. The policy or policies required by this Contract shall be issued by an insurer admitted in the State of California.

9. Hold Harmless for Payroll Issues. Contractor hereby agrees to accept exclusive liability for, and shall hold District, District's officers, directors, employees and agents harmless from, all payroll taxes for contributions to unemployment insurance or old age pensions, or annuities, measured by wages, salaries or other remuneration paid to employees of said Contractor or Subcontractors.
10. Subcontractors. Contractor shall use due diligence in the requirement and confirmation of insurance coverage similar to the foregoing on behalf of his subcontractors. Contractor agrees to include with all subcontractors in their subcontract the same requirements and provisions of this Contract including the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by Contractor agree to be bound to Contractor and District in the same manner and to the

same extent as Contractor is bound to District under this Contract and any other applicable contract documents. Subcontractor further agrees to include these same provisions with any sub-subcontractor. A copy of the Indemnity and Insurance provisions in this Contract will be furnished to the subcontractor upon request. The Contractor shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in the Contract prior to commencement of any work and will provide proof of compliance to the District.

11. Professional Liability Insurance. All architects, engineers, consultants or design professionals retained by Contractor shall also procure and maintain, for a period of five (5) years following completion of the Contract, errors and omissions liability insurance with a limit of not less than \$1,000,000 per occurrence. This insurance shall name the District, its directors, officials, officers, employees, agents and volunteers as additional and insureds with respect to Work performed, and shall otherwise comply with all requirements of this Section.

12. Workers Compensation Certification. Pursuant to Section 1861 of the Labor Code, by signing this Contract the Contractor certifies that:

A. I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

13. Bonds. The Contractor shall be required at the time of the execution of the Contract to furnish Payment and Faithful Performance Bonds in amounts not less than one hundred percent (100%) of the Total Contract Price. These bonds shall be secured from a surety company satisfactory to District, shall be submitted on the District's prescribed bond forms if provided, and the Contractor thereon shall pay the premiums. The District shall reimburse the Contractor for the actual cost of the bonds, not to exceed 3% of the contract value. The bonds must be executed by an admitted Surety approved to conduct business in the State of California, pursuant to California Code of Civil Procedure Section 995.120. In addition, to the extent required by law, the bonds must be accompanied by a certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner of the State of California, a certificate from the Clerk of the County of Fresno that the certificate of authority of the insurer has not been surrendered, revoked, cancelled, annulled, or suspended, or if it has that it has been renewed, and four copies of the insurer's most recent annual statement and quarterly statement filed with the Department of Insurance of the State of California. Failure to submit acceptable bonds

will be cause of rejection of the contract. Said bonds shall be furnished within ten (10) days after award of the Contract and before commencement of construction.

14. Assignment of Contract. Contractor shall not assign, transfer, convey, sub-contract, or otherwise dispose of this Contract, or of his/her right, title of interest in or to the same or any part thereof without prior written consent in writing from District's authorized representative, which may be withheld for any reason. In the event of any such assignment or other transfer of this Contract, all of its provisions shall apply to and bind the successors and assigns of the parties hereto.

15. Suspension/Termination of Contract.
 - A. District has the right to terminate or abandon any portion or all of the work under this Contract by giving ten (10) calendar days written notice to Contractor. In such event, District shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. District shall pay Contractor the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Work for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by District and Contractor of the portion of such task completed but not paid prior to said termination. District shall not be liable for any costs other than the charges or portions thereof which are specified herein. Contractor shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

 - B. Contractor may terminate its obligation to provide further services under this Contract upon thirty (30) calendar days' written notice to District only in the event of substantial failure by District to perform in accordance with the terms of this Contract through no fault of Contractor.

16. Subcontracts. Subcontractors employed by Contractor on the execution of the Work covered in this Contract shall be only those given prior written permission from District, and that otherwise comply with Sections 4100 to 4113 inclusive of the Public Contract Code of California, if applicable.

17. Control and Payment of Subordinates; Contractual Relationship. District retains Contractor on an independent contractor basis and Contractor is not an employee of District. Any additional personnel performing the work governed by this Contract on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance under this Contract and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.
18. Permits and Licenses. Contractor shall comply with all laws, ordinances, rules and regulations relating to the work and to the preservation of public health and safety, obtaining all necessary permits and licenses for the construction of the project, pay all fees and post all deposits or bonds required by law. For the work to be performed hereunder, Contractor shall possess the following classification of State contractor's license throughout the duration of the Contract: C10. During the performance of the work, Contractor shall take over all the necessary precautions and place proper guards for the prevention of accidents.
19. Trenching Work. If the Total Contract Price exceeds \$25,000 and if the Work governed by this Contract entails excavation of any trench or trenches five (5) feet or more in depth, Contractor shall comply with all applicable provisions of the California Labor Code, including Section 6705. To this end, Contractor shall submit for District's review and approval a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.
20. Hazardous Materials and Differing Conditions. As required by California Public Contract Code Section 7104, if this Contract involves digging trenches or other excavations that extend deeper than four (4) feet below the surface, Contractor shall promptly, and prior to disturbance of any conditions, notify District of: (1) any material discovered in excavation that Contractor believes to be a hazardous waste that is required to be removed to a Class I, Class II or Class III disposal site; (2) subsurface or latent physical conditions at the site differing from those indicated by District; and (3) unknown physical conditions of an unusual nature at the site, significantly different from those ordinarily encountered in such contract work. Upon notification, District shall promptly investigate the conditions to determine whether a change order is appropriate. In the event of a dispute, Contractor shall not be excused from any scheduled completion date and shall proceed with all Work to be performed under the Contract, but shall retain all rights provided by the Contract or by law for making protests and resolving the dispute

21. Underground Utility Facilities. To the extent required by Section 4215 of the California Government Code, District shall compensate Contractor for the costs of: (1) locating and repairing damage to underground utility facilities not caused by the failure of Contractor to exercise reasonable care; (2) removing or relocating underground utility facilities not indicated in the construction drawings; and (3) equipment necessarily idled during such work. Contractor shall not be assessed liquidated damages for delay caused by failure of District to provide for removal or relocation of such utility facilities.
22. Air Quality. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the San Joaquin Valley Air Pollution Control District (SJVAPCD) and/or California Air Resources Board (CARB). Although the SJVAPCD and CARB limits and requirements are more broad, Contractor shall specifically be aware of their application to "portable equipment", which definition is considered by SJVAPCD and CARB to include any item of equipment with a fuel-powered engine. Contractor shall indemnify District against any fines or penalties imposed by SJVAPCD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Agreement.
23. Completion of Work. When Contractor determines that it has completed the Work required herein, Contractor shall so notify District in writing and shall furnish all labor and material releases required by this Contract. District shall thereupon inspect the Work. If the Work is not acceptable to the District, the District shall indicate to Contractor in writing the specific portions or items of Work which are unsatisfactory or incomplete. Once Contractor determines that it has completed the incomplete or unsatisfactory Work, Contractor may request a re-inspection by the District. Once the Work is acceptable to District, District shall pay to Contractor the Total Contract Price remaining to be paid, less any amount which District may be authorized or directed bylaw to retain. Payment of retention proceeds due to Contractor shall be made in accordance with Section 7107 of the California Public Contract Code. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda or other written documents or materials prepared by Contractor pursuant to this Contract shall become the property of District upon completion of the work to be performed hereunder or upon termination of this Contract.
24. Changes in the Scope of Work. In the event District orders changes in the Work, the Total Contract Price and the Contract Time will be adjusted accordingly. If a change is of an item not covered by the Contract, District and Contractor shall mutually agree upon the value of the work based on labor, materials and equipment involved. Regardless of

ownership, equipment rates shall not exceed the listed prevailing rates at local equipment rental agencies, or distributors, at the time the work is performed. All changes in work shall be in writing and Contractor shall be responsible for any and all work done without District's prior written approval.

25. Brand Name or Equal. Contractor may, unless otherwise stated, offer any material, process or article which shall be substantially equal or better for any material, process or article is identified by grade, patent or proprietary name or by name of manufacturer. Contractor bears the burden of proof as to the equality of any material, process or article and District may require Contractor to furnish the material, and article or process specified if it decides that Contractor has not met his or her burden.
26. Discrepancies and Omissions. Any discrepancies or omissions found in the Scope of Work shall be reported to District immediately. District will clarify discrepancies or omissions, in writing, within a reasonable time.
27. Labor Code Provisions. It shall be mandatory upon the Contractor herein and upon all subcontractors under Contractor to comply with all provisions of the Labor Code of the State of California relative to contracts for public works.
 - A. Prevailing Wages. District has copies of the general prevailing wage rate per diem wages in the locality in which the work is to be performed for each craft or type of worker needed to execute the Contract which shall be posted at each job site and will be on file at the principal office of the District. Contractor shall, as a penalty to District, forfeit not more than the maximum applicable statutory rate for each calendar day, or portion thereof, for each worker paid less than the specified prevailing rates for such work or craft in which such worker is employed, whether paid by Contractor or by any subcontractors under Contractor. The difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by Contractor.
 - B. Eight Hour Law. Eight hours labor shall constitute a legal day's hours per day, and forty hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. Contractor shall forfeit as a penalty to District the maximum statutory rate for each calendar day during which such worker is required, or permitted to work more than eight hours in any one

day or forty hours in any one calendar week in violation of the provisions of said Labor Code.

- C. Payroll Records. Contractor and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journey man, apprentice, worker, or other employee employed by him or her in connection with the public work. The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor in the manner provided in Labor Code section 1776. In the event of noncompliance with the requirements of this section, Contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects such Contractor must comply with this section. Should noncompliance still be evident after such 10-day period, the Contractor shall, as a penalty to District, forfeit not more than the maximum statutory rate for each calendar day or portion thereof, for each worker, until strict compliance is effectuated. The amount of the forfeiture is to be determined by the Labor Commissioner. A contractor who is found to have violated the provisions of law regarding wages on Public Works with the intent to defraud shall be ineligible to bid on Public Works contracts for a period of one to three years as determined by the Labor Commissioner. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due. The responsibility for compliance with this section is on the Contractor.

- D. Ineligible Contractors/Subcontractors/Debarment. A Contractor or subcontractor may not perform work who is ineligible pursuant to Labor Code Sections 1777.1 and 1777.7.

- E. Apprentice. Attention is called to the provisions in Section 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor under Contractor.

- F. DIR Registration. Pursuant to Labor Code section 1771.1, Contractor shall, at all times, ensure that it, and all of its subcontractors, regardless of tier, are appropriately registered with the Department of Industrial Relations (“DIR”). Contractor shall provide evidence of such registration information upon request of the District.

- G. Labor Compliance. The Contractor acknowledges that pursuant to recently enacted Senate Bill 854, all labor compliance monitoring required for the Project by the Education Code or Labor Code, shall be provided by DIR . The Contractor shall, at no additional cost to the District, be required to comply with all the requirements of DIR for such compliance monitoring and all applicable provisions of the California Labor Code, including but not limited to the standard provisions requiring payment of prevailing wages, more further explained below, maintenance and submission of certified weekly payrolls, and hiring of apprenticeship as appropriate for all workers for which a prevailing wage classification is listed by or may be obtained from the DIR. Contractor shall work with the District, and DIR to ensure the full compliance applicable labor law and all applicable labor compliance requirements of the DIR. The Contractor shall include the requirements of this provision in all subcontracts and require subcontractors to comply with these provisions at no additional cost to the District.
- H. Discrimination Prohibited. During the performance of this Contract, Contractor and its sub-consultants or subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, religious creed, marital status, denial of family and medical care leave, ancestry, national origin, medical condition (cancer/genetic characteristics), age (40 and above), disability (mental and physical) including HIV and AIDS, denial of pregnancy disability leave or reasonable accommodation. Contractor and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
28. Assignment of Anti-Trust Claims. Contractor offers and agrees to assign to the District all rights, title and interest in and to all causes of action as it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700 of Part 2 of Division 7 of Business and Professions Code), and any other applicable laws, arising from purchase of goods, services, or materials, pursuant to this Contract. This assignment shall become effective at the time that District tenders final payment to Contractor, without further acknowledgment by the parties.
29. Procedure for Resolving Disputes. The parties to this Contract are subject to the provisions of Article 1.5 (commencing with section 20104) of Chapter 1 of Part 3 of the Public Contract Code, which requires compliance with the procedures set forth therein to resolve any claim by the Contractor of \$375,000 or less regarding an extension of time, a change order, extra work, or any other disputed amount. If after the procedures set forth

in Article 1.5 (commencing with section 20104) of Chapter 1 of Part 3 of the Public Contract Code are completed and a civil action is filed, the action shall be subject to the mediation and arbitration provisions required by Section 20104.4 of the Public Contract Code.

30. Notice of Third-Party Claims. Pursuant to Public Contract Code Section 9201, the District shall provide the Contractor with timely notification of the receipt of any third-party claim, relating to the Contract. The District is entitled to recover its reasonable costs incurred in providing such notification.
31. Indemnification. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless District against any and all claims involving any type of property damage or personal injury, including death, that may be asserted by any person or type of entity, arising out of or in connection with the performance of work, both on and off the job site, and will pay all costs and expenses, including attorney fees in connection therewith; provided however, Contractor shall not be liable for the sole established negligence, willful misconduct or active negligence of District. Contractor will defend, with counsel of the District's choosing, any action filed in connection with any of said claims, damages, penalties, obligations or liabilities Contractor will promptly pay any judgment rendered against Contractor or District arising out of or in connection with such work, operation or activities of Contractor hereunder and Contractor agrees to save and hold District harmless therefrom. District may retain to the extent it deems necessary, the money due to Contractor under and by virtue of the Contract until disposition has been made of such actions or claims for damages as specified hereinabove. Contractor shall reimburse District and its officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the District, its directors, officials, officers, employees, agents, or volunteers. The responsibility of Contractor and any subcontractor for such defense and indemnity obligations shall survive the termination or completion of this Contract for the full period of time allowed by law.
32. Warranty. Contractor warrants all Work under the Contract (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Contract or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final

acceptance, Contractor shall within ten (10) days after being notified in writing by the District of any defect in the Work or non-conformance of the Work to the Contract, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act sooner as requested by the District in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one-year period, commencing with the date of acceptance of such corrected Work. Contractor shall perform such tests as the District may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the District, regardless of whether or not such warranties and guarantees have been transferred or assigned to the District by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the District. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Contract, to the reasonable satisfaction of the District, the District shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the District for any expenses incurred hereunder upon demand.

33. Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. Contractor shall comply with the requirements of the specifications relating to safety measures applicable in particular operations or kinds of work. In carrying out its Work, Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the Work and the conditions under which the Work is to be performed. Safety precautions as applicable shall include, but shall not be limited to, adequate life protection and lifesaving equipment; adequate illumination for underground and night operations; instructions in accident prevention for all employees, such as machinery guards, safe walkways, scaffolds, ladders, bridges, gang planks, confined space procedures, trenching and shoring, fall protection and other safety devices, equipment and wearing apparel as

are necessary or lawfully required to prevent accidents or injuries; and adequate facilities for the proper inspection and maintenance of all safety measures. Furthermore, Contractor shall prominently display the names and telephone numbers of at least two medical doctors practicing in the vicinity of the Project, as well as the telephone number of the local ambulance service, adjacent to all telephones at the Project site

34. Applicable Law and Venue. This Contract shall be governed by the laws of the State of California as effective and in force on the date of this Contract. This Contract shall be deemed to have been made in Fresno County, California, regardless of the order of the signatures of the Parties affixed hereto. The venue for any legal action in State court filed by a party to this Contract for the purpose of interpreting or enforcing any provision of this Contract shall be in the Superior Court of California, County of Fresno. If any term or provision of this Contract shall, to any extent, be held invalid or unenforceable, the remainder of this Contract shall not be affected. In the event any legal action is commenced to interpret or enforce this Contract, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.
35. Modifications. No terms or conditions contained in any writing, purchase order, acknowledgment, or form shall be of any effect unless agreed to in a written amendment or modification to this Contract which has been executed by the designated representative of both parties.
36. Waiver. No claim or right arising out of a breach of this Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless such waiver is in writing.
37. Notice. All notices shall be given to the other party at the address set forth herein. Notice shall be effective upon receipt or five (5) days after being sent by first class mail, whichever is earlier. Notice given by facsimile shall not be effective unless acknowledged by the receiving party.

Contractor

Kuykendall Solar

**28420 Yosemite Springs PKWY St. E
Coarsegold CA 93614**

Attn: Liz Kuykendall

District

Fresno County Fire Protection District

**201 South Academy Ave.
Sanger CA 93653**

Attn: Chris Bump

38. Drafting of Contract. The Parties agree that this Contract shall not be construed in favor of, or against, any party by reason of the extent to which any party or its counsel participated in the drafting of this Contract. The Parties represent that they have consulted legal counsel prior to the execution of this Contract and have executed this Contract with full knowledge of its meaning and effect.
39. Severability. It is intended that each paragraph of this Contract shall be treated as separate and divisible, and in the event that any paragraphs are deemed unenforceable, the remainder shall continue to be in full force and effect so long as the primary purpose of this Contract is unaffected.
40. Laws and Regulations; Provisions Required by Law Deemed Inserted. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Contract or the Work, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Work. If the Contractor observes that the drawings or specifications are at variance with any law, rule or regulation, it shall promptly notify the District in writing. Any necessary changes shall be made by written change order. Each and every provision or clause required by law to be inserted in this Contract shall be deemed to be inserted, and this Contract shall be read and enforced as though it were included. If through mistake or otherwise, any provision is not inserted or is not correctly inserted, then upon application of either party this Contract shall be amended to make the insertion or correction. All references to statutes, rules or regulations shall include all amendments, replacements and enactments on the subject which are in effect as of the date of this Contract, as well as any later changes which do not materially and substantially alter the rights or obligations of the parties.
41. Drug/Smoke-Free Workplace. The District and all District projects are “drug-free” and “smoke-free” workplaces and, as such, require that the Contractor be subject to the requirements mandated by California Government Code Sections 8350, et seq., when on the Project site. The Drug-Free Workplace Act of 1990 requires that every person or entity awarded a contract or grant for the procurement of any property or service from a State agency certify that it will provide a drug-free workplace and, in that respect, comply with certain obligations set forth in that Act. In addition, the Drug-Free Workplace Act provides that each contract or grant awarded by the State agency may be subject to suspension of payments or termination for failure to comply with such Act. It is the sole responsibility of the Contractor to police and oversee its personnel on the Project. If the Contractor fails to comply with the Drug-Free Workplace Act or the smoke-free workplace policy of the District, the District may enforce its lawful rights to suspend

pending or subsequent payments and to terminate this Contract and may pursue all other rights and remedies it may have against the Contractor at law and/or in equity.

42. Compliance with State Storm Water Permit:

- A. Contractor shall be required to comply with all aspects of the State Water Resources Control Board (“State Board”) Water Quality Order No. 2009-0009-DWQ, National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity (“Permit”), as may be amended, for all projects that involve construction on or disturbance of one acre or more of land or which are part of a larger common area of development.
- B. Contractor shall be responsible for all costs associated with filing the Notice of Intent (“NOI”) and for obtaining coverage under the Permit. This includes preparing and implementing a Storm Water Pollution Prevention Plan (“SWPPP”) for the Project site, and coordinating all submittals with the District’s Legally Responsible Person as that term is defined in the Permit. Before any NOI, SWPPP, or other Permit related document may be submitted to the State Board or implemented on the Project site, it must first be reviewed and approved by the District. Contractor shall include all costs of compliance with specified requirements in the Contract amount.
- C. The District retains the right to procure and maintain coverage under the Permit for the Project site if the Contractor fails to draft a satisfactory NOI or SWPPP or proceed in a manner that is satisfactory to the District. Any costs incurred by the District in procuring and maintaining coverage under the Permit, or drafting an NOI or SWPPP shall be paid by the Contractor.
- D. Contractor shall be responsible for maintaining compliance with all aspects of the Permit during the course of the Project. Contractor shall provide copies of all reports and monitoring information to the District Representative. If the Contractor has failed or is unable to maintain compliance with the Permit, the District reserves the right to implement its own SWPPP at the Project site, and hire additional contractors to maintain compliance. Whether Contractor has adequately maintained compliance with the Permit shall be the District’s sole determination. Any costs incurred by the District in drafting and implementing a SWPPP, or otherwise maintaining compliance with the Construction General Permit shall be paid by the Contractor.

- E. In bidding on this Contract, it shall be Contractor's responsibility to evaluate and include in the contract amount the cost of procuring coverage under the Permit, preparing a SWPPP that is acceptable to the District, and complying with the SWPPP and any revisions to the SWPPP that become necessary during the course of construction.
 - F. In addition to compliance with the Permit, Contractor shall comply with the lawful requirements of any applicable municipality, the District, drainage district, and other local agencies regarding discharges of storm water to the storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.
 - G. Storm, surface, nuisance, or other waters may be encountered at various times during construction of the Work. The Contractor, by submitting a Bid, hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Bid accordingly, and assumes any and all risks and liabilities arising therefrom.
 - H. Failure to comply with the Permit is a violation of federal and state law. Contractor hereby agrees to indemnify and hold harmless District, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which District, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the District, its officials, officers, agents, employees or authorized volunteers. District may seek damages from Contractor for delay in completing the Contract in accordance with the Contract Documents, caused by Contractor's failure to comply with the Permit.
43. Counterparts. This Contract may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one in the same Agreement. The individuals executing this Contract represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Contract on behalf of the respective legal entities of Contractor and District.
44. Inspection of Books and Records. During regular office hours, each of the parties hereto shall have the right to inspect and make copies of any books, records, or reports of the other party pertaining to this Contract or matters related hereto.

Each of the parties hereto shall maintain and make available for such inspection accurate records of all of its costs, disbursements and receipts with respect to its activities under this Contract.

- 45. Exhibits and Recitals. All Exhibits and Recitals referenced in this Contract and attached hereto are hereby incorporated by this reference into this Contract.
- 46. Entire Agreement. This Contract, including all exhibits and documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the subject matter described herein.
- 47. Time of Essence. Time is of the essence for each and every provision of this Contract.

IN WITNESS WHEREOF, this Contract is executed by the District's authorized representative.

Kuykendall Solar

Fresno County Fire Protection District

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Fed. Tax I.D. # _____

DIR Registration # _____