**Addendum**

**SDG&E’s Energy Storage System (“ESS”)**

2016

Energy storage

Request for PROPOSALS (“RFp”)

**SCHEDULE D1**

**EXHIBITS**

**EXHIBIT A**

**STATEMENT OF WORK**

(*See attached pages*)

[TO BE DEVELOPED]

**EXHIBIT B**

**CONTRACTOR DELIVERABLES**

[TO BE DEVELOPED]

**EXHIBIT C**

**OWNER-ACQUIRED PERMITS**

[TO BE DEVELOPED]

**EXHIBIT D-1**

**SAFETY AND SITE SECURITY REQUIREMENTS**

Owner is committed to the principle of “Safety First.” Nothing is more important than safety.

Contractors working for Owner must comply with all applicable federal, state, regional, municipal, and local laws, ordinances, rules, codes, regulations, and executive orders, including all laws, ordinances, rules, codes, regulations, and executive orders applicable to health and safety (“Applicable H&S Laws”), this Contractor Safety Manual (“Manual”), and all contract terms as set forth in the contract entered into with the Owner. Contractors must provide a safe working environment for their employees and subcontractors and ensure that their operations do not adversely impact the safety of Owner employees or the public. The personal safety of a Contractor’s employees and subcontractors is the Contractor’s responsibility.

It is the Owner’s policy to maintain an independent contractor relationship with all Contractors providing labor and other services to the Owner. This Manual does not intend to create or imply an employer-employee relationship between the Owner and the Contractor, its subcontractors, or employees.

The Owner reserves the right to take action, including, but not limited to, issue warnings, withhold payment, suspend work, notify enforcement agencies, and terminate the contract if the Contractor does not comply with Applicable H&S Laws, all site and system-related safety requirements, this Manual, and all terms and conditions required by the contract entered into with the Owner.

Contractor’s Safety and Security Assurance Plan: Contractor shall submit a Work specific Safety and Security Assurance Plan to Owner for review and acceptance prior to starting the Work. The Safety and Security Assurance Program shall include, at a minimum, Contractor’s Injury and Illness Prevention Program (IIPP), Contractor’s Code of Safe Work Practices for all types of work anticipated, Contractors Site Specific Safety Plan with JSAs, Contractor’s Fire Prevention Plan, Contractor’s Site Security Plan, Contractor’s Communication Plan, and Contractor’s on-site safety organization, including an organization chart, roles and responsibilities, and resumes of Key Personnel proposed for the Work. Any deficiencies identified by Owner shall be remedied by Contractor prior to commencement of Work. Owner acceptance of Contractor’s Safety and Security Assurance Program does not relieve Contractor of any responsibility for compliance with any and all applicable laws, rules, and regulations nor shall such review be construed as limiting in any manner Contractor’s obligation to undertake any action which may be necessary or required to establish and maintain safe working conditions with respect to the Work.

Contractor Safety Representative: Contractor shall have an onsite experienced safety and health representative for the project that is acceptable to the Owner. The safety and health representative shall attend and participate fully in all designated safety and health meetings. Contractor’s Safety and Health Representative shall have the authority to (1) have unsafe conditions corrected and (2) direct that the work be stopped in the area of the unsafe condition if deemed necessary.

Owner oversight: Owner designated representatives will regularly review Contractor’s compliance with safety and health measures throughout the performance of the project. Failure to comply with safety provisions outlined herein may result in Back Charges to Contractor, work stoppage or withholding of payment until safety violations or inadequacies are abated or corrected. Failure of Owner Project Representative to enforce any requirements shall not relieve Contractor of any responsibility or obligation to perform in accordance with Applicable Law, rules, regulations and with all requirements set forth herein.

Unsafe conditions: Contractor shall immediately correct any unsafe conditions identified by Project Representative. In the event that Contractor fails to immediately correct such unsafe conditions, Project Representative may (1) have the unsafe condition corrected at the Contractors expense, (2) direct that the Work be stopped in the area of the unsafe condition until the unsafe condition is corrected and/or (3) withhold payment until unsafe condition is corrected.

Communications: Contractor shall establish effective communications with Owner’s Distribution Operations Department (Switching Center) whenever the Work involves activity on or near existing energized distribution lines and with Owner’s Grid Operations Department whenever the Work involves activity on or near existing energized transmission lines.

Incident Notification: Contractor shall immediately notify Owner, by the most effective means, of all safety incidents including near misses, vehicle incidents, first-aids, OSHA recordable events, hospitalization, property damage in excess of $25,000, or any serious incident resulting in death. A written summary of the incident shall be submitted to Owner within 24 hours and a complete incident investigation report shall be submitted to Owner within 10 calendar days of the incident. Contractor shall cooperate with Owner and responsible Governmental Authorities with respect to their independent investigations of the incident.

Record Keeping: The project safety goal is to complete construction without any serious or potentially serious injuries or any significant property damage. Contractor and Subcontractors shall strive to attain this goal. The Contractor shall provide the designated Project Representative with a monthly report of all contractor and subcontractor craft and management personnel hours worked, Contractor shall maintain accurate incident and injury reports and furnish Project Representative a monthly summary of injuries and man-hours lost due to injuries no later than ten (10) working days following the end of the month. Contractor incident rates will be calculated monthly in accordance with the Bureau of Labor Statistics TRIR incident rate. If Contractor’s incident rates reflect deficiencies in Contractor’s safety program, Contractor shall take immediate corrective action. Contractor shall submit to Project Representative a written recovery plan, within ten (10) business days from the date the plan is requested by Owner, detailing what corrective actions Contractor will use to meet the Contractor’s goal. Corrective action shall include additions or modifications to Contractor safety programs already in place, increasing the amount of safety and health training for all employees on the Work, increasing the number of qualified employees to perform the work, replacing defective equipment with equipment suitable for the work, and any other measures deemed necessary and appropriate. Corrective action may include the addition of an onsite qualified safety representative acceptable to the Owner and or removal from the work any supervisor or employee not implementing or following the required safety and health measures established for the work. Costs associated with any corrective action shall be borne by Contractor.

Project Safety Meetings: Contractor shall schedule and hold a monthly meeting to discuss project safety and health concerns. At a minimum, Contractor Safety Manager, Project Manager, and Project Representative shall attend.

Project Orientation: All Contractor employees and Subcontractors shall attend Safe Worker and Environmental Awareness Program which, at a minimum, ensures employees are familiar with the hazards and specific requirements of the Work including Environmental Mitigation Measures required for all personnel involved with the Work. The subjects, date, time and attendance shall be documented for these orientation meetings and made available to Owner upon request.

Weekly Safety Meetings: Contractor shall conduct weekly safety training of its employees. Training shall include discussion of any jobsite hazards identified by employees. The subject, date, time, and attendance shall be documented for these safety meetings with copies made available to Owner upon request.

Daily Tailgate Meetings: Contractor shall conduct and document daily tailgate meetings with each crew to clarify the work planned for the day and potential hazards to consider.

Training: Personal Protective Equipment (PPE), and proper clothing: Contractor shall furnish safety and health training and all required personal protective equipment. Contractor shall enforce the use of personal protective equipment with their employees and the employees of their Subcontractors. All Contractor and Subcontractor employees shall be properly dressed with long sleeve shirts, long pants, and appropriate work boots when in the vicinity of the Work. Only shirts compliant with ASTM 1507 rated HRC 2 or greater will be permitted when entering an energized substation, unless otherwise authorized by Project Representative.

Owner Energized Facilities: Contractor shall have appropriate personnel trained and qualified to accept Owner’s Line Authorizations when working on or near any of Owner’s energized electric transmission or distribution facilities. When working inside substations the Contractor and Subcontractors shall comply with all Owner substation entry procedures, including but not limited to, working around energized conductors and substation equipment. Contractor is responsible for coordinating and scheduling Work inside the substation and must accommodate substation construction activities, operational requirements and outage restrictions.

Fire Prevention and Fire Protection: Contractor shall adhere to Owner’s Fire Plan, the Wildland Fire Prevention and Fire Safety Guide throughout performance of the Work. Only Work procedures which minimize fire hazards to the extent practicable shall be used. Combustible debris and waste materials shall be collected and removed from the Work each day. Fuels, solvents, and other volatile or flammable materials shall be stored away from the construction and storage areas in well-marked, safe containers. Good housekeeping is essential to fire prevention and shall be practiced by Contractor throughout the Work. Contractor alone shall be responsible for providing adequate fire protection in the immediate area of the Work.

The Contractor may be required to provide additional documentation such as, but not limited to:

Employee and Operations Documentation such as required documentation for its employees and operations, including, but not limited to, training documentation, certifications, medical certificates, and Safety Data Sheets (SDS).

Specialized Safety or Health Program(s): If additional agency-mandated programs or procedures are not addressed in the Contractor’s written safety programs (e.g., confined spaces, respiratory protection, crane/hoist lifting, naturally occurring radioactive materials NORM), separate written programs must be prepared and implemented by the Contractor. Any such additional specialized safety and health programs must be provided to the Owner upon request.

Crane Inspections: All cranes in use on the Work shall be inspected on a monthly basis by a competent person, as defined by Cal-OSHA. Inspection results shall be recorded on a monthly crane inspection report form which shall be submitted to Project Representative by the fifth working day of each month. Inspection report forms can be obtained from Project Representative. Additionally, Contractor shall submit a current annual crane inspection report to Project Representative for each crane used on the Work. Annual certified crane inspection reports shall be submitted prior to placing the crane in service. The annual inspection shall be performed by a third party certified inspection service.

Shoring: Contractor shall install bracing and shoring necessary and as required for safety purposes and to conform to all Applicable Laws. Contractor shall use appropriate temporary shoring, bracing, or liners at all excavations where personnel may be required to work in the open excavation for any reason.

Fall Protection Plan: Prior to starting Work operations that require fall protection, Contractor shall submit to the Project Representative a fall protection plan. The fall protection plan shall include, but not be limited to, the following:

1. Name of qualified person in charge of the operation
2. Description of work operation
3. List of fall exposures
4. Description of fall protection methods used to eliminate the fall exposures
5. Training and enforcement methods used to ensure employee compliance with the plan.

Hazardous Materials: Contractor shall provide to Project Representative, for approval, a proposed plan for handling Hazardous Material, training, and communication. As required under Federal Hazardous Communications Standards and Applicable Law, Contractor shall provide Material Safety Data Sheets covering all Hazardous Materials furnished under or otherwise associated with the Work. Contractor shall provide the Project Representative with copies of the applicable Material Safety Data Sheets upon request.

Hazardous Materials are defined in Applicable Laws which may use the terminology “toxic substances” instead of “Hazardous Materials.” Contractor is responsible for determining if any substance or material furnished, used, applied, or stored in the prosecution of the Work is within the provisions of any Applicable Laws.

Contractor shall provide labeling of Hazardous Materials in secondary containers and training of employees in the safe usage of such materials as required under any Applicable Laws. This includes, but is not limited to, the used oils, greases, or solvents from any flushing or cleaning operations under this Contract. The labeling of Hazardous Material containers shall also include Contractor’s name.

Contractor shall provide to Project Representative a proposed plan for Hazardous Material communication procedures prior to commencing the Work. Such plan shall include a list of Hazardous Materials, and their corresponding Material Safety Data Sheets. The information submitted by Contractor will be used by Owner to inform its personnel of the presence of Hazardous Materials.

Contractor shall also provide written notice of the presence of Hazardous Materials to local fire, medical, and law enforcement agencies as required with a copy of such notice to Owner.

Material Handling: All materials shall be stored in a safe manner. Any and all unsafe conditions shall be immediately corrected by Contractor. Contractor may be requested by Project Representative to take immediate action to re-stack any material stored in an unsafe manner.

**EXHIBIT D-2 - SAFETY NOTICE FOR CONTRACTORS**

Project/ Service: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_

Job Location(s): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Facility Location: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Job Duration – from: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Date) (Date)

**Owner Contact List**

|  |  |  |  |
| --- | --- | --- | --- |
| **Contact Identification (include Name of Individual)** | **Telephones** | **Contact Identification (include Name of Individual)** | **Telephones** |
| Owner Representative | Office:  Cell: | Facility Service Main Number | Office:  Cell: |
| Security | Office:  Cell: | Contractor Administrator | Office:  Cell: |
| Facility Manager | Office:  Cell: | Environmental Representative | Office:  Cell: |
| Facility Maintenance | Office:  Cell: | Safety Representative | Office:  Cell: |

**Contractor/Subcontractor Personnel and Contact Information**

|  |  |  |  |
| --- | --- | --- | --- |
| **Title and Name** | **Telephones** | **Title and Name** | **Telephones** |
| Contractor Owner/General Manager | Office:  Cell: | Foreman |  |
| Manager/Supervisor | Office:  Cell: | Safety/Environmental Representative |  |
| Other | Office:  Cell: | | |

This notice is to be issued to each Contractor at a pre–work meeting or other pre–work conference or the safety tailgate meeting before commencing work on the first day of the project. One notice may be used for multiple projects if the projects present similar hazards or risks as determined by the Owner Representative. Specific safety issues shall be discussed. The Contractor will initial that he/she understands each section and sign the completed notice. The notice is to be discussed by the Contractor with each employee who will be working on the job. The Contractor will receive a copy of the notice, with the original being filed in the appropriate facility office**.**

1. **Emergency Notification System.** The emergency notification system at this facility or property includes: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

and will be used to announce serious or life threatening conditions on site (i.e., fire, earthquake, or emergency evacuation). The competent employee making the announcement will give necessary information regarding type and location of the emergency. Contractors are required to follow instructions given.

In the event of an emergency evacuation, contractors are required to move in an orderly fashion to the Emergency Staging Area located at: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attached is a facility map that shows emergency exits and staging area. Contractors are required to account for all personnel, report personnel count, and report any missing persons with last known location, injuries, or other issues to the site emergency coordinator. Contractors are not to leave the emergency staging area until instructed to do so.

*Applicable  Not Applicable*

Initials: \_\_\_\_\_\_\_\_

1. **Facility Phones.** Outside phones lines can be accessed by dialing “9” or \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and the number you desire including area code if outside of calling area. *If it becomes necessary to secure site phone lines, the Contractor will notify Owner’s Representative*. Note: Owner phone usage by the Contractor is limited to urgent or emergency needs. Cell phone usage is prohibited in many areas of Storage Fields and Compressor Stations.

*Applicable  Not Applicable*

Initials: \_\_\_\_\_\_\_\_

1. **Personal Protective Equipment.** The Contractor is responsible for providing its employees with all the required personal protective equipment (e.g., hard hats, safety glasses, gloves, hearing protection, personal fall protection, etc.).

Initials: \_\_\_\_\_\_\_\_

1. **No Smoking.** Smoking is not permitted in any Owner building or vehicle. Designated smoking areas are: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Initials: \_\_\_\_\_\_\_\_

1. **Non–English Speaking Personnel.** Non–English speaking personnel are the Contractor’s responsibility and must have an English speaking / English–reading interpreter with them at all times.

Initials: \_\_\_\_\_\_\_

1. **Contractors’ Injury and Illness Prevention Program.** Contractors when required shall have a written Injury and Illness Prevention Program per Title 8, California Code of Regulations, General Industry Safety Orders, Section 3203. Owner reserves the right to request proof (at any time) of the Injury and Illness Prevention Program.

Initials: \_\_\_\_\_\_\_\_

**NOTE:** Receipt of the Contractor's Injury and Illness Prevention Plan and/or the safety and health plan only signifies that the plans generally conform to the requirements of the contract and **NOT** Owner’s approval of the plans. It does not relieve the Contractor of the responsibility for providing employees with a safe and healthful work environment.

1. **Registration with Veriforce LLC**. Prior to commencement of DOT–covered work, the Contractor must register with Veriforce LLC (Owner’s DOT Drug and Alcohol program and OpQual compliance review agent) and complete an OpQual and Drug & Alcohol Program Compliance Review.

*Applicable  Not Applicable*

Initials: \_\_\_\_\_\_\_\_

1. **Anti–Drug and Alcohol Misuse Prevention Program.** The Contractor shall have a written Anti–Drug and Alcohol Misuse Prevention Program that meets the requirements of all applicable regulations, including but not limited to Title 49, Code of Federal Regulations, Part 40, Part 199, and Part 382, as it may apply. The Contractor shall ensure it, or its agent(s), i.e., Third Party Consortiums, comply with and conduct random drug and/or alcohol testing in accordance with Part 40, Part 199, and Part 382, as it may apply. In addition, proper review, reporting, and enforcement of drugs and/or alcohol testing of incidents meeting the post–accident criteria of CFR Title 49, Part 40, Part 199, and Part 382 has been discussed. The Contractor shall notify Owner’s Safety Compliance Manager of any and all incidents requiring Post Accident Testing and reports compliance.

*Applicable  Not Applicable*

Initials: \_\_\_\_\_\_\_\_

1. **Operator Qualification Program.** The Contractor shall have a written and accepted Operator Qualification Plan on file that meets the requirements of all applicable regulations, including but not limited to Title 49, Code of Federal Regulation Part 192.801 through 192.809. Contractors must identify the scope of work and covered services/tasks they will provide to Owner prior to commencement of DOT–covered tasks. Contractors must contact the Operator Qualification Department ([OpsQual–Admin@semprautilities.com](mailto:OpsQual-Admin@semprautilities.com)) and register with Veriforce, LLC, Owner’s Contractor Compliance Review Agent, to initiate a DOT compliance review. Contact the Operator Qualification Department for additional information.

*Applicable  Not Applicable*

Initials: \_\_\_\_\_\_\_\_

1. **Hazardous Materials**. Safety Data Sheets are available for hazardous substances used at the Owner’s facilities. Contact the Owner Representative for assistance for copies of SDS if necessary.

* Proposition 65 chemicals may be present when working on Owner facilities and signs may be posted stating “WARNING: This area contains chemicals known to the State of California to cause cancer, and birth defects or other reproductive harm.”
* Naturally Occurring Radioactive Materials (NORM) may be present in the gas and associated sludge and liquids in the pipelines.
* TheContractor must have prior approval from the Owner’s Environmental and Safety departments before bringing on site any hazardous substances that might create an exposure to Owner employees or an impact to the environment.
* Prior to the start of a job or project, the Contractor will disclose any and all hazardous materials use with the Owner Representative.

**NOTE 1**: Within 5 working days prior to use, Contractor must notify in advance of planned uses of any odor–producing substances (e.g., petroleum or chemical–based building materials, solvents or cleaners) and dust or smoke–producing activities that may cause Owner employee or public concerns or discomfort. An action plan must be coordinated with Owner Representatives, including Safety and Health, Owner Field Environmental Representatives and affected site management to ensure employee or public exposure and unplanned interruption of work is avoided.

**NOTE 2**: Within 5 working days prior to use, where there is the potential for Owner employees to be exposed to hazardous materials used by contractor, Owner Representative shall contact Safety and Health for a product review to ensure the safety of Owner employees and the public.

**NOTE 3**: In cases where Owner purchases hazardous materials for contractors to use, these products must go through the [SEPA – Safety & Environmental Product Approval Process](http://safety.sempra.com/product_approval.cfm).

**NOTE 4:** In cases where the Contractor will be storing hazardous materials at Owner facilities or project locations, it is the Owner Representative’s responsibility to inspect that area for proper storage of compatible materials.

*Applicable  Not Applicable*

Initials: \_\_\_\_\_\_\_\_

1. **Asbestos–Containing Construction Materials.** No asbestos–containing construction materials (ACCM) shall be used for construction or left at Owner sites.

*Applicable  Not Applicable*

Initials: \_\_\_\_\_\_\_\_

1. **Asbestos Containing Materials (ACM)**.  If the facility where the Contractor will work has ACM, the Contractor understands the asbestos notification letter and [applicable list of ACM](http://utilinet.sempra.com/departments/safety/documents/asbestosListSCG.pdf) and/or asbestos sample results provided by the Owner Representative, and understands not to disturb ACM or any material without asbestos content determined and documented unless specifically contracted and authorized by Owner for that work.

*Applicable  Not Applicable*

Initials: \_\_\_\_\_\_\_\_

1. **Surface Coatings containing Lead or Other Metals.** Any potential lead (Pb) exposure hazards and lead and other metals in surface coating exposure hazards must be identified. All painted surfaces shall be assumed to contain lead and other metals unless shown otherwise by sampling and analysis. If lead or other metals are encountered, Contractor and Owner will determine who will be responsible for removing them in compliance with applicable regulations. The Contractor may, at the discretion of the Owner, disturb/remove less than 100 square feet of surface coatings containing lead, arsenic, cadmium, hexavalent chromium and/or mercury, providing the Contractor (a) submits their written Cal/OSHA compliant lead safety program to the Owner Representative prior to work on lead–containing materials, (b) generates no visible dust emissions, and (c) manages waste in accordance with regulations and requirements (if any) of SDG&E Environmental Services.

Below is a listing of potential lead containing materials or lead and other metals in surface–coatings: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The Contractor shall be provided with the following notice (including lead or other metal concentrations when known):

*Lead, as well as other metals including but not limited to arsenic, cadmium hexavalent chromium and mercury, are commonly present in paint at varying concentrations in painted surfaces. Therefore, as an employer, you are expected to comply with all applicable regulations for protection of the workers and the environment, including but not limited to Cal/OSHA, prior to and during disturbance or removal of lead or other metal containing paint. Lead, arsenic, cadmium and chromium VI are substances known to the State of California to cause cancer /or birth defects and other reproductive harm.*

*Applicable  Not Applicable*

*Initials: \_\_\_\_\_\_\_\_*

1. **Proposition 65 Chemicals**. The Contractor shall not create at the work site an environmental or occupational exposure to Proposition 65 listed chemicals unless the Contractor provides the required Proposition 65 warning to Owner and other persons who may be exposed. If the work site creates occupational exposure to Proposition 65 chemicals, contact the Field Environmental Representative or Safety Department Hazard Communication Administrator for instructions on attaching information on Proposition 65 chemicals to this notice.

*Applicable  Not Applicable*

Initials: \_\_\_\_\_\_\_\_

1. **Handling and Disposal of Contractor’s Hazardous Materials.** Proper handling and disposal of hazardous materials that the Contractor brings on–site, including primary and secondary chemical labeling, location of the Contractor’s SDS, is required by the Contractor.

*Applicable  Not Applicable*

Initials: \_\_\_\_\_\_\_\_

1. **Confined Space Program.** The Contractor understands the requirement of working in permit required confined spaces and will comply with all applicable laws and regulations involving confined spaces. The Contractor will verify to the Owner Representative they have a permit required confined space program and have received information on Owner permit–required confined spaces that may be entered (including hazards, precautions) and will debrief after the entry with the Owner Representative regarding hazards of the entry.

*Applicable  Not Applicable*

Initials: \_\_\_\_\_\_\_\_

1. **Hot Work Permit.** The Contractor understands the requirements to obtain a hot work permit or to issue a hot work permit after Owner Representative approval, and to comply with any permit requirements use of open flame, torch or welding equipment. The Contractor will comply with all the applicable laws and regulations required with these permits.

*Applicable  Not Applicable*

Initials: \_\_\_\_\_\_\_\_

1. **Crane Lifting Plan.** The Contractor has lifting plan for cranes, including side booms if applicable, and will comply with all applicable laws and regulations involving cranes.

*Applicable  Not Applicable*

Initials: \_\_\_\_\_\_\_\_

1. **Naturally Occurring Radioactive Materials – NORM.**  The Contractor understands the requirement/guidelines of working with NORMs and will comply with all applicable laws and regulations dealing with safety and radiation.

*Applicable  Not Applicable*

Initials: \_\_\_\_\_\_\_\_

1. **Safety Rules.** The Contractor acknowledges that its employees must follow applicable safety rules while on Owner facilities and properties. If an unsafe work condition or activity is identified– anyone working onsite has the authority to stop the job. It is also the expectation that the Contractor’s employees will abide by the Contractor’s safety rules at all times. Known potential hazards at Owner facilities and properties that have the potential to impact the Contractor’s employees have been communicated to the Contractor. Such items may include but not limited to, equipment operations, energized electrical systems, fall hazards, etc.

*Applicable  Not Applicable*

Initials: \_\_\_\_\_\_\_\_

1. **Reporting of Incidents.** Contractor will immediately report to the Owner Representative any project–related incidents resulting in fires, hazardous situations, hazardous substance releases, OSHA recordable occupational injuries and illness, serious near misses, any injury or property damage involving the public. A preliminary written report will be submitted within 10 working days followed with a final report within a reasonable time frame to the Owner Representative.

*Applicable  Not Applicable*

Initials: \_\_\_\_\_\_\_\_

1. **Agency Inspections.** Contractor will immediately notify the Owner Representative of any governmental agency (Cal/OSHA, Health Dept. etc.) incident, complaint, inspection and any “Notice of Violation” or “Notice to Comply” issued by a government agency at the Contractor’s job site. Any environmental related issue must be reported to the Environmental Representative. Contractor shall not provide any information to the government representative, unless otherwise instructed to by the Owner representative.

*Applicable  Not Applicable*

Initials: \_\_\_\_\_\_\_\_

1. **Special Safety Concerns and Hazard Assessment** (Related to the specific job).

Specific Job Location: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Special Safety Concern: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Specific Job Location: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Special Safety Concern: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Special Job Location: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Special Safety Concern: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Special Job Location: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Special Safety Concern: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*Note: Contractors are responsible for obtaining all needed permits prior to working, such as applicable shoring, trenching permits. For confined space entry, any potential hazards, testing and evaluation procedure, elimination or control of hazards, entry requirements, entry permits and plans for emergencies must be discussed prior to work beginning. Who will be responsible for testing and evaluation procedures must be determined prior to any job beginning (i.e., Contractor or Owner). Owner reserves the right to review or request proof of the Contractor’s confined space training and compliance program.*

Initials: \_\_\_\_\_\_\_\_\_

**Emergency Telephone Numbers and Address:**

The nearest hospital address and number is: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The Owner facility address is: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**For medical and fire emergencies, please contact 911.** TheContractor understands the proper reporting of fires, hazardous situations, hazardous substance releases, incidents, OSHA recordable occupational injuries and illnesses, and serious near misses. The Contractor also understands the proper review, reporting and enforcement of drug and/or alcohol testing of incidents meeting the post–accident criteria of CFR Title 49, Part 40, Part 199 and Part 382.

*By signing this Safety Notice for Contractors, Contractor agrees to follow the applicable requirements as outlined in this document. Failure to do so may result in work stoppage and/or termination of contract.*

|  |  |
| --- | --- |
| Contractor Representative’s Name: | Owner Representative’s Name: |
| Contractor Representative ‘s Phone Number: | Owner Representative’s Phone Number: |
| Signature of Contractor’s Representative: | Signature of Owner Representative: |
| Date Form Completed: | Date Form Signed: |

**EXHIBIT E**

**OPERATING PERSONNEL TRAINING PROGRAM**

[TO BE DEVELOPED]

**EXHIBIT F**

**FORM OF CONTRACTOR’S INVOICE**

**[Date]**

**[Name of Contractor]**

**[Address]**

Attention:

Gentlemen:

**[\_\_\_\_\_\_\_\_\_\_\_]**, a **[\_\_\_\_\_\_\_\_\_\_\_\_]** **[\_\_\_\_\_\_\_\_\_]** (“Contractor”), submits this application for payment (“Certificate”) pursuant to Article 6 of the Engineering, Procurement and Construction Agreement, dated as of **[\_\_\_\_\_\_\_\_\_\_]**, 20**[\_\_\_]** (the “Agreement”), by and between Contractor, and San Diego Gas & Electric Company, a California corporation(“Owner”).

Unless otherwise defined herein, all capitalized terms used in this Certificate shall have the meanings specified for such terms in the Agreement.

1. The undersigned is a duly authorized representative of Contractor, authorized to execute and deliver this Certificate on behalf of Contractor.

2. The following is a summary of the current status of the Agreement account:

Original Contract Price: $

Adjustments to Contract Price: $

Contract Price to Date: $

Amount of Payments that Contractor Has Received to Date: $

3. The information in all material documents and supporting papers prepared or signed by Contractor or any of its officers or employees and submitted to Owner and in direct support of this Certificate and in connection with the Work, taken as a whole, is in all material respects, true, correct, and complete.

4. The Work is being performed in accordance with the Agreement, except .

5. That portion of the Work, as particularly set forth in Attachment 1 hereto ***[Attachment 1 shall include all necessary documentary evidence]***, was completed through the end of the month of \_\_\_\_\_\_\_\_\_\_, 20\_\_. The aggregate amount of the Milestone Payments for such Work is $\_\_\_\_\_. The aggregate amount of the Milestone Payments for which Contractor has previously received payments is $\_\_\_\_\_. The aggregate amount of Milestone Payments for which Contractor is entitled to be paid is $\_\_\_\_\_. The Retainage, calculated in accordance with Section 6.4 of the Agreement, is $\_\_\_\_\_.

6. The amount of this Invoice set forth above, is not (in part or otherwise) attributable to Work which has been rejected by Owner or Contractor or which otherwise constitutes or relates to a Subcontractor’s application for payment, billings or invoices which Contractor disputes or for any other reason does not intend to pay.

7. There are no known mechanics’ or materialmen’s liens outstanding at the date of this Contractor’s Invoice, all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application, and, except for such bills not paid but so included, there is no known basis for the filing of any mechanics’ or materialmen’s liens on the Project or the Work except as described below, and all required releases required to be obtained pursuant to the terms of the Agreement have been obtained in such form as to constitute an effective release of lien (corresponding to payments received by them) under the laws of the State of California (copies of which are attached hereto and incorporated herein by this reference). Contractor, or a Subcontractor, has actually performed and Contractor has not been paid for the Work covered by this Contractor’s Invoice.

8. Contractor has paid all sales and use taxes due and owing to any Governmental Authority related to all Equipment and Materials incorporated into the Project.

9. Attached as Attachment 2 hereto are all applicable Conditional Waivers and Releases Upon Progress Payment and Unconditional Waivers and Releases Upon Progress Payment prepared by Contractor and all applicable Conditional Waivers and Releases Upon Progress Payment and all Unconditional Waivers and Releases Upon Progress Payment from each Subcontractor in accordance with Sections 6.1-6.5 of the Agreement, as applicable.

10. Work uncertified from the Contractor’s Invoice dated \_\_\_\_\_\_\_\_\_\_\_, 20\_\_ has been completed (except as set forth in the last sentence of this paragraph), and any disputes concerning less than full certification have been resolved by written agreement among Owner and Contractor, a copy of which resolution is attached as Attachment 3 hereto, and Contractor is entitled to a payment which includes:

11. Contractor has delivered the Monthly Progress Report prepared pursuant to Section 7.4 of the Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Certificate on the date first above written.

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

Project Manager

**EXHIBIT F**

**ATTACHMENT 1**

TO

CONTRACTOR’S INVOICE

DOCUMENTARY EVIDENCE OF COMPLETED WORK

1. Contractor to describe the completion of the Milestones accomplished under the Agreement through the applicable month as described in the Agreement.

2. Contractor to set forth other amounts payable by Owner under Article 16 of the Agreement or any other provision thereof.

3. Contractor to attach to this Exhibit documentary evidence of the completion of each Milestone set forth in Paragraph 1 of this Attachment 1 to Exhibit F.

**EXHIBIT F**

**ATTACHMENT 2**

TO

CONTRACTOR’S INVOICE

WAIVERS AND RELEASES UPON PROGRESS PAYMENT

Attached hereto are all applicable Conditional Waivers and Releases Upon Progress Payment and Unconditional Waivers and Releases Upon Progress Payment prepared by Contractor and all applicable Conditional Waivers and Releases Upon Progress Payment and all Unconditional Waivers and Releases Upon Progress Payment from each Subcontractor in accordance with Sections 6.1-6.5 of the Agreement.

**EXHIBIT F**

**ATTACHMENT 3**

TO

CONTRACTOR’S INVOICE

DOCUMENTARY RESOLUTION OF PREVIOUSLY UNCERTIFIED WORK

Attached hereto are resolutions of disputes (if any) regarding previous Contractor’s Invoices.

**EXHIBIT F-1**

FORM OF CONDITIONAL WAIVER  
AND RELEASE UPON FINAL PAYMENT

|  |
| --- |
| CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT |
|  |
| NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT’S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT. |
|  |
| **Identifying Information** |
|  |
| Name of Claimant: |
| Name of Customer: |
| Job Location: |
| Owner: |
|  |
| **Conditional Waiver and Release** |
|  |
| This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant’s receipt of payment from the financial institution on which the following check is drawn: |
|  |
| Maker of Check: |
| Amount of Check: $ |
| Check Payable to: |
|  |
| **Exceptions** |
|  |
| This document does not affect any of the following: |
|  |
| Disputed claims for extras in the amount of: $ |
|  |
| **Signature** |
|  |
| Claimant’s Signature: |
| Claimant’s Title: |
| Date of Signature: |

**EXHIBIT F-2**

FORM OF UNCONDITIONAL WAIVER  
AND RELEASE UPON FINAL PAYMENT

|  |
| --- |
| UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT |
|  |
| NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM. |
|  |
| **Identifying Information** |
|  |
| Name of Claimant: |
| Name of Customer: |
| Job Location: |
| Owner: |
|  |
| **Unconditional Waiver and Release** |
|  |
| This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has been paid in full. |
|  |
| **Exceptions** |
|  |
| This document does not affect the following: |
|  |
| Disputed claims for extras in the amount of: $ |
|  |
| **Signature** |
|  |
| Claimant’s Signature: |
| Claimant’s Title: |
| Date of Signature: |

**EXHIBIT F-3**

FORM OF CONDITIONAL WAIVER AND RELEASE   
UPON PROGRESS PAYMENT

|  |
| --- |
| CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT |
|  |
| NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT’S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT. |
|  |
| **Identifying Information** |
|  |
| Name of Claimant: |
| Name of Customer: |
| Job Location: |
| Owner: |
| Through Date: |
|  |
|  |
| **Conditional Waiver and Release** |
|  |
|  |
| This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant’s receipt of payment from the financial institution on which the following check is drawn: |
|  |
| Maker of Check: |
| Amount of Check: $ |
| Check Payable to: |
|  |
| **Exceptions** |
|  |
| This document does not affect any of the following: |
|  |
| (1) Retentions. |
|  |
| (2) Extras for which the claimant has not received payment. |
|  |
| (3) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment: |
|  |
| Date(s) of waiver and release: |
| Amount(s) of unpaid progress payment(s): $ |
| (4) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment. |
|  |
| **Signature** |
|  |
| Claimant’s Signature: |
| Claimant’s Title: |
| Date of Signature: |

EXHIBIT F-4

FORM OF UNCONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

|  |
| --- |
| UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT |
|  |
| NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM. |
|  |
| **Identifying Information** |
|  |
| Name of Claimant: |
| Name of Customer: |
| Job Location: |
| Owner: |
| Through Date: |
|  |
| **Unconditional Waiver and Release** |
|  |
| This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has received the following progress payment: $ |
|  |
| **Exceptions** |
|  |
| This document does not affect any of the following: |
|  |
| (1) Retentions. |
|  |
| (2) Extras for which the claimant has not received payment. |
|  |
| (3) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment. |
|  |
| **Signature** |
|  |
| Claimant’s Signature: |
| Claimant’s Title: |
| Date of Signature: |

**EXHIBIT G**

**PROJECT SCHEDULE REQUIREMENTS**

The Critical Path Schedule shall be a time-scaled critical path method logic diagram schedule of all design, equipment procurement, and construction for the Project and all material Work activities so that Substantial Completion occurs on the Substantial Completion Guaranteed Date and Final Completion occurs on the Final Completion Guaranteed Date. The Critical Path Schedule shall include allowance for normal delays and difficulties that may be encountered in work of this nature including weather and holidays, etc. The Critical Path Schedule, as a minimum, must show an orderly array of activities in support of all the dates established in the Key Date Schedule, and shall be sufficiently detailed so that each of the following are included and will be readily apparent:

(a) the engineering and detailed design activities necessary to complete design, procurement and construction;

(b) materials and equipment purchases and deliveries;

(c) Subcontractor interfaces and requirements;

(d) construction;

(e) Dates for the completion of Key Date Items, including completion dates for the Owner Provided Facilities and Services;

(f) Contractor, Subcontractor, and Vendor data cycles, and Owner’s review cycles; and

(g) Construction Testing, Start-Up and Commissions Testing and Acceptance Testing.

(h) a schedule for completion of post-Substantial Completion Date items including as built drawings and specific Non-Critical Deficiencies listed on the Punchlist costing more than $100,000 to complete.

The Critical Path Schedule shall identify Contractor’s plan of execution for the erection, Start-Up and Commissioning Testing and Acceptance Testing for the Work. The Critical Path Schedule shall be delivered both in digitalized form as a [**name of software**] file (on a CD Rom) and in hard copy. The construction/start-up schedule must be coded in such a way as to provide individual test systems progress and schedules in accordance with an agreed upon start-up and testing plan.

**Key Date Schedule:**

|  |  |  |
| --- | --- | --- |
| **Event** | **Date** | **Responsible**  **Party** |
| Access to Site | [NUMBER] days after Full Notice to Proceed | Owner |
| [CONTRACTOR TO PROPOSE OTHER KEY DATES FOR CONTRACTOR] | [NUMBER] days after Full Notice to Proceed | Contractor |
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| Mechanical Completion | [NUMBER] days after Full Notice to Proceed | Contractor |
| Substantial Completion | [NUMBER] days after Full Notice to Proceed | Contractor |
| Final Completion | [NUMBER] days after Full Notice to Proceed | Contractor |

**EXHIBIT H**

**ACCEPTANCE TESTS AND PERFORMANCE GUARANTEES**

[TO BE DEVELOPED]

**EXHIBIT I**

**MILESTONE PAYMENT SCHEDULE**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **[Month] No.** | **MILESTONES DESIGNATION** | **REQUIRED DOCUMENTS** | **EXPECTED MILESTONE VALUE** | **PAYMENT %** |
| 1 |  |  |  |  |
| 2 |  |  |  |  |
| 3 |  |  |  |  |
| 4 |  |  |  |  |
| 5 |  |  |  |  |
| 6 |  |  |  |  |
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| 8 |  |  |  |  |
| 9 |  |  |  |  |
| 10 |  |  |  |  |
| Etc. |  |  |  |  |
|  |  |  |  | **100%** |

**EXHIBIT J**

**FORM OF MONTHLY PROGRESS REPORT**

Each Monthly Progress Report shall be a written statement of project status prepared by Contractor for review by project participants. The following items shall be included in monthly reports to be submitted by Contractor.

TABLE OF CONTENTS FOR MONTHLY PROGRESS REPORT

1.0 EXECUTIVE SUMMARY – (CURRENT MONTH)

A synopsis of project status addressing specific aspects of the Project to include construction, engineering, procurement, and start-up.

2.0 SAFETY

A summary of all written accident reports for lost time accidents that occur at the Site during such month, prepared in accordance with the safety and security assurance program.

3.0 ENVIRONMENTAL AND PERMITTING

3.1. Environmental Summary. A summary of overall environmental compliance with project mitigation measures and related plans, permits and local jurisdictional ordinances. Environmental item description and related statistics shall be provided including, but not limited to: variances, project notices (project memorandum, non-compliance, stop work order), and applicable permits.

3.2 Contractor Acquired Permits. A listing of all Contractor Acquired Permits including current status and the date the permit is to be obtained.

4.0 SUMMARY OF PROGRESS AND STATUS OF ENGINEERING, PROCUREMENT AND CONSTRUCTION

4.1 Current Month. A synopsis of the Project progress completed as of the current month. Reporting format shall be based on completion of Milestones and construction, engineering (organized by discipline), procurement (issuance of purchase orders), shipment of materials and equipment to the Site, training and start-up.

4.2 Next Month. The expected progress for the Project in the next thirty days shall be provided in outline form based on construction, engineering, procurement, shipment, training and start-up.

5.0 MEETING STATUS

A summary of major meetings for the current month identifying the date and the attendees, and a schedule of meeting dates for the next month, including a one or two-sentence summary of anticipated topics of discussion for the next month and schedule for next month meeting date.

6.0 PRIORITIES/ISSUES/CONCERNS

Identification and evaluation of problem areas that are anticipated to have a material effect on either Project Schedule or that may, in the opinion of Contractor, require a modification of Exhibit A to the Agreement.

7.0 SCHEDULE UPDATE

Report important items and events, such as date of arrival of major equipment components, and completion of Milestones, Key Date Items, and Critical Path Items in the Project Schedule.

The reports shall be presented in a format used by the Contractor and reasonably acceptable to Owner. An updated copy of the working schedule shall be attached to the Monthly Progress Report with a written analysis of schedule status, including actual versus planned progress, with reference to the Key Date Schedule and Critical Path Schedule. The schedule shall indicate early, late, and actual curves.

8.0 CHANGE IN WORK

This Section shall describe each event including events of Force Majeure that provides the basis on which Contractor can claim that the Contract Price should be increased (except for an event of Force Majeure) or that either of the [Project Guaranteed Dates] should be extended and with respect to each such event, specifies the amount of such proposed increase in the Contract Price (except for an event of Force Majeure) and the duration of each such proposed extension.

9.0 DRAWING AND PROCUREMENT STATUS

Provide the updated engineering drawing list, engineering and procurement schedule, and current status as compared to overall schedule.

10.0 PROJECT FINANCIAL STATUS

The Section shall include the billing breakdown for the current month, a comparison of the Milestone Payment Schedule with the actual progress payments to date, and financial review of the Project to date.

11.0 PROGRESS PHOTOGRAPHS

Contractor shall supply color photographs to document progress and to record significant completed elements of work. Also provide photographs of fabrication of major equipment and site progress. All photographs shall be dated, captioned and securely fixed to 8½ x 11 sheets of paper Electronic format is acceptable. Photographs should be chosen carefully to illustrate progress.

**EXHIBIT K**

**LEGAL DESCRIPTION OF SITE**

[TO BE DEVELOPED]

**EXHIBIT L-1**

**UNIT RATES FOR CHANGES IN WORK**

In accordance with Section 16 – **CHANGES IN THE WORK**, the following rate schedules shall be utilized as the basis of for the calculation of any changes in the Work:

**[BELOW IS AN ILLUSTRATIVE EXAMPLE OF RATE SCHEDULES]**

| **Classification** | **Salary**  **Minimum**  **(USD / HR)** | **Salary**  **Maximum**  **(USD / HR)** | **Overtime**  **Status** |
| --- | --- | --- | --- |
| **Project Management** |  |  |  |
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| **Engineering** |  |  |  |
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| **Design and Drafting** |  |  |  |
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| **Procurement** |  |  |  |
| Purchasing Manager |  |  |  |
| Procurement Supervisor |  |  |  |
| Senior Material Coordinator |  |  |  |
| Material Coordinator |  |  |  |
| Vendor Quality Inspector |  |  |  |
| Vendor Inspection Coordinator |  |  |  |
| Senior Buyer |  |  |  |
| Buyer |  |  |  |
| Expediter |  |  |  |
| Vendor Data Coordinator |  |  |  |
| **Project Controls** |  |  |  |
| Project Controls Manager |  |  |  |
| Senior Principal Project Controls Spec. |  |  |  |
| Principal Project Controls Specialist |  |  |  |
| Senior Project Controls Specialist |  |  |  |
| Project Controls Specialist |  |  |  |
| Associate Project Controls Specialist |  |  |  |
| **Estimating** |  |  |  |
| Estimating Manager |  |  |  |
| Senior Estimator |  |  |  |
| Estimator |  |  |  |
| **Management Information Systems** |  |  |  |
| Senior Systems Analyst |  |  |  |
| Systems Analyst |  |  |  |
| **Project Admin. & General Services** |  |  |  |
| Document Control Supervisor |  |  |  |
| Document Control Clerk |  |  |  |
| Administrative Assistant |  |  |  |
| Senior Secretary |  |  |  |
| Secretary |  |  |  |
| Clerk |  |  |  |

|  |  |
| --- | --- |
| **Computer Services** | **Rate per Hour (USD)** |
| CAD Workstation (to be invoiced at the same number of hours as CAD personnel) |  |

| **Personnel** | **HOURLY RATES** | | |
| --- | --- | --- | --- |
| **Description** | **Straight Time Rate  (USD$/hr)** | **Double Time Rate  (USD$/hr)** | **Triple Time Rate  (USD$/hr)** |
| General Foreman |  |  |  |
| Foreman |  |  |  |
| Boilermaker |  |  |  |
| Pipefitter |  |  |  |
| Rigger |  |  |  |
| Carbon Steel Welder |  |  |  |
| Millwright |  |  |  |
| Electrician |  |  |  |
| Instrumentation Journeyman |  |  |  |
| Helper |  |  |  |
| Civil works Foreman |  |  |  |
| Cement Mason |  |  |  |
| Carpenter |  |  |  |
| Rodman |  |  |  |
| Insulator |  |  |  |
| Laborer |  |  |  |
| Driver |  |  |  |
| Bending Engineering |  |  |  |
| Clerical |  |  |  |
| Concrete Worker |  |  |  |
| Equipment Operator |  |  |  |
| Field Superintendent |  |  |  |
| Instrument Filter |  |  |  |
| Iron Worker |  |  |  |
| Materialman |  |  |  |
| Painter |  |  |  |
| Purchaser |  |  |  |
| QC Inspector |  |  |  |
| Time Keeper |  |  |  |
| Welder Helper |  |  |  |

| **Equipment Classification - MODEL.** | | **Hourly Rate**  **(USD)** | **Daily**  **Rate**  **(USD)** | **Weekly**  **Rate**  **(USD)** |
| --- | --- | --- | --- | --- |
| **BULL DOZERS** | |  |  |  |
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| **EXCAVATORS (STANDARD CONFIG. R BOOM / MEDIUM STICK)** | | | | |
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| **ATTACHMENTS TO EXCAVATORS - HYDRAULIC HAMMERS** | | | | |
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| **WHEEL LOADERS** |  |  |  |  |
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| **MOTOGRADERS** |  |  |  |  |
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| **CRANE ALL TERRAIN** |  |  |  |  |
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| **COMPACTACION EQUIPMENT** |  |  |  |  |
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| **COMPRESSORS** | |  |  |  |
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| **PUMPS** |  |  |  |  |
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| **WELDING MACHINES AND GENERATORS** |  |  |  |  |
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| **BACKHOES** |  |  |  |  |
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| **ATTACHMENTS TO BACKHOES** |  |  |  |  |
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| **LIGHT TOWER** |  |  |  |  |
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| **CONCRETE EQUIPMENT** |  |  |  |  |
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|  | |  |  |  |
| **OFFICE TRAILER** |  |  |  |  |
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| **METAL DETECTORS** |  |  |  |  |
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| **COATING TICKNESS DETECTOR** |  |  |  |  |
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| **HAULING EQUIPMENT** |  |  |  |  |
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| **VEHICLES** |  |  |  |  |
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| --- |
| GENERAL NOTES REGARDING EQUIPMENT BILLING RATES: |
|  |
| \* INCLUDES FUEL AND MINOR MAINTENANCE |
| \* EXCLUDES OPERATION AND TRANSPORTATION |
| \* PORTAL TO PORTAL FOR ANY THIRD PARTY EQUIPMENT RENTALS |

**[ALL BILLING RATES FOR LABOR AND EQUIPMENT IN THIS EXHIBIT ARE ‘LOADED’ RATES AND INCLUDE ALL OVERHEADS AND PROFIT AND ANY CONTINGENCY OF CONTRACTOR.]**

**EXHIBIT L-2**

**CHANGE IN WORK FORM**

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Contract No.** | | **Change No.** | | | | **Date** | | | | **Contractor** | | | | | | | | | |
|  | |  | | | |  | | | |  | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | |
| **Contractor is hereby authorized to make the following changes in the Work:** | | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | |
| **1.** | **Description and Reason for Change:** | | | | | |  | | | | | | | | | | | |  |
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| **2.** | **Applicable Drawings:** | |  | | | | | | | | | | | | | | | |  |
|  |  | | | | | | | | | | | | | | | | | **Attachment** | |
|  | | | | | | | | | | | | | | | | | | | |
| **3.** | **Cost of Change in Work:** | | | **Lump-Sum Price:** | | | | | | | **$** | |  | | | | |  | |
|  |  | | | **Time & Expense Estimate:** | | | | | | | **$** | |  | | | | | **Attachment** | |
|  | **Revised Contract Price** | | | | | | | | | | **$** | |  | | | | |  | |
|  | | | | |  | | |  | | | |  | | | |  | | | |
| **4.** | **Commence Work on:** | | |  | | | | | **Complete Work by:** | | | | | |  | | | |  |
|  | | | | |  | | |  | | | |  | | | |  | | | |
| **5.** | **Impact on Critical Path Schedule, Guaranteed Dates:** | | | | **None** | | |  | | | |  | | | |  | | | |
|  | | | | | **Yes:** | | | **Amount of Extension:** | | | | | |  | | | | |  |
|  | | | | |  | | |  | | | |  | | | |  | | | |
| **6.** | **Other Impacts on Agreement:** | | | | **None** | | |  | | | |  | | | |  | | | |
|  |  | | | | **Yes:** | | |  | | | | | | | | | | |  |
|  |  | | | | | | | | | | | | | | | | | |  |
|  |  | | | | | | | | | | | | | | | | | |  |
| Contractor hereby acknowledges that any adjustment to the Contract Price and/or Project Schedule set forth above includes compensation for all costs and all Project Schedule impacts associated with the subject matter of this Change in Work, including, but not limited to, any impact on the Project Schedule, the original Scope of Work, inefficiencies created hereby, lost productivity, (if any) and overhead associated with the Change in Work. This Change In Work constitutes a final settlement of, and waiver by, Contractor of the right to assert (a) any further claim based on or arising out of the subject matter of such Change In Work; or (b) any further claim in any way addressed by the items set forth in this Change In Work. No other monetary compensation or adjustment to the Project Schedule shall be permitted and the relief specified herein shall constitute Contractor’s sole relief for the subject matter of this Change In Work. | | | | | | | | | | | | | | | | | | | |
| **RECEIVED AND ACKNOWLEDGED** **AUTHORIZED SIGNATURES** | | | | | | | | | | | | | | | | | **DATE** | | |
| OWNER REPRESENTATIVE: | | | | | | | | | | | | | | | | |  | | |
| OWNER EXECUTIVE MANAGEMENT: | | | | | | | | | | | | | | | | |  | | |
| CONTRACTOR REPRESENTATIVE: | | | | | | | | | | | | | | | | |  | | |

**EXHIBIT M**

FORM OF [\_\_\_\_\_\_\_\_\_\_\_\_] LETTER OF CREDIT

[DATE]

To: San Diego Gas & Electric Company

555 W. Fifth Street

Mail Code: ML 18A3

Los Angeles, CA 90013

Re: Our Irrevocable Standby Letter of Credit No.\_\_\_\_\_

In the Amount of US\_\_\_\_\_\_\_\_\_\_\_\_\_

Ladies and Gentlemen:

We hereby open our irrevocable standby Letter of Credit Number \_\_\_\_\_\_ in favor of [name of Beneficiary] (“Beneficiary”), by order and for account of [name of Applicant] (“Applicant”), [address of Applicant], available at sight upon demand at our counters, at [location] for an amount of US$ \_\_\_\_\_\_\_\_\_\_\_\_\_ [amount spelled out and xx/100 U.S. Dollars] against presentation of a statement signed by a person purported to be an authorized representative of Beneficiary stating that: :

1. “[name of Applicant] (“Applicant”) is in default under the Engineering, Procurement, and Construction Agreement between Beneficiary and Applicant dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ or under any transaction contemplated thereby (whether by failure to perform or pay any obligation thereunder or by occurrence of a “default”, “event of default” or similar term as defined in such agreement, any other agreement between Beneficiary and Applicant, or otherwise). The amount due to Beneficiary is U.S. $\_\_\_\_\_\_\_\_\_\_.”

or

1. “[name of Applicant] (“Applicant”) has forfeited all or part of its [Performance Security] as set forth and defined in the Engineering, Procurement, and Construction Agreement between Beneficiary and Applicant dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The amount due to Beneficiary, whether or not a default has occurred, is U.S. $\_\_\_\_\_\_\_\_\_\_.”

or

1. “As of the close of business on [insert date, which is less than 60 days prior to the expiration date of the Letter of Credit] you have provided written notice to us indicating your election not to permit extension of this Letter of Credit beyond its current expiry date. The amount due to Beneficiary, whether or not a default has occurred, is U.S. $\_\_\_\_\_\_\_\_\_\_.”

Special Conditions:

- All costs and banking charges pertaining to this Letter of Credit are for the account of Applicant.

- Partial and multiple drawings are permitted.

- Fax of Document 1 or 2 or 3 above is acceptable. Notwithstanding anything to the contrary herein, any drawing hereunder may be requested by transmitting the requisite documents as described above to us by facsimile at \_\_\_\_\_\_\_\_\_\_\_\_\_\_ or such other number as specified from time to time by us. The facsimile transmittal shall be deemed delivered when received. It is understood that drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

This Letter of Credit expires on \_\_\_\_\_\_\_\_\_\_\_\_\_ at our counters.

We hereby engage with Beneficiary that upon presentation of a document as specified under and in compliance with the terms of this Letter of Credit, this Letter of Credit will be duly honored in the amount stated in Document 1, 2, or 3 above. If a document is so presented by 1:00 pm on any New York banking day, we will honor the same in full in immediately available New York funds on that day and, if so presented after 1:00 pm on a New York banking day, we will honor the same in full in immediately available New York funds by noon on the following New York banking day.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary of such date, unless at least ninety (90) days prior to any such expiry date we have sent you written notice by regular and registered mail or courier service that we elect not to permit this Letter of Credit to be so extended beyond, and will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored.

We agree that if this Letter of Credit would otherwise expire during, or within 30 days after, an interruption of our business caused by an act of god, riot, civil commotion, insurrection, act of terrorism, war or any other cause beyond our control or by any strike or lockout, then this Letter of Credit shall expire on the 30th day following the day on which we resume our business after the cause of such interruption has been removed or eliminated and any drawing on this Letter of Credit which could properly have been made but for such interruption shall be permitted during such extended period.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce, Publication No. 600 (“UCP”), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. Matters not covered by the UCP shall be governed and construed in accordance with the laws of the State of California.

[Name of Bank]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Signature(s)

**EXHIBIT N**

**MAJOR SUBCONTRACTORS**

|  |  |
| --- | --- |
| **SERVICES, EQUIPMENT, MATERIALS** | **APPROVED SUBCONTRACTOR** |
|  | 1.  2.  3. |
|  | 1.  2.  3. |
|  | 1.  2.  3. |

**EXHIBIT O**

**COMMISSIONING PROCEDURES**

[TO BE DEVELOPED]

**EXHIBIT P**

**KEY PERSONNEL**

[TO BE DEVELOPED]

The Key Personnel for the Project are as follows:

|  |  |
| --- | --- |
| **NAME** | **TITLE** |
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**EXHIBIT Q**

LABOR AGREEMENTS

[TO BE DEVELOPED]

**EXHIBIT R**

**LIQUIDATED DAMAGES**

[TO BE DEVELOPED]

**Delay Liquidated Damages:**

**[\_\_\_\_\_\_\_\_\_\_] Performance Liquidated Damages:**

**[\_\_\_\_\_\_\_\_\_\_] Buy Down Amounts:**

**EXHIBIT S**

**FORM OF CONTRACTOR PARENT GUARANTY**

THIS GUARANTEE (“Guarantee”), effective as of [\_\_\_\_\_\_\_], 201[\_], by **[Name of Guarantor]**, a **[State of Jurisdiction and Type of Entity]** (“Guarantor”), to and for the benefit of San Diego Gas & Electric Company, a California corporation, (hereinafter “Owner”). Capitalized terms not otherwise defined herein shall have the meaning given such terms in the Agreement (as such term is defined below).

W I T N E S S E T H:

WHEREAS, Owner proposes to develop, finance, construct, own and operate an energy storage project located at [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] (the “Project”).

WHEREAS, Owner and [Name of Contractor], a [type of entity] organized under the laws of [state of jurisdiction] (hereafter, “Contractor”), propose to enter into that certain Engineering, Procurement, and Construction Agreement dated as of [\_\_\_\_\_\_\_\_\_\_\_\_], 201[\_] (as such agreement may be amended, modified or supplemented from time to time, the “Agreement”);

WHEREAS, Contractor is a wholly owned subsidiary of Guarantor; and

WHEREAS, the Agreement requires that this Guarantee be executed and delivered by Guarantor concurrently with the execution of the Agreement;

NOW THEREFORE, for valuable consideration and as an inducement to Owner to enter into the Agreement, Guarantor covenants with Owner as follows:

1. Guarantor hereby unconditionally guarantees to Owner the full and timely performance when due and observance when due of all covenants, terms and agreements to be performed and observed by Contractor under the Agreement and all other present or future agreements and instruments between Owner and Contractor in connection with the performance of the Agreement (such obligations of Contractor collectively the “Obligations”). Notwithstanding any other provisions of this Guarantee to the contrary, this Guarantee shall not modify the Obligations under the Agreement or require Guarantor, when performing or causing work to be performed on Contractor’s behalf, to expand the obligations of Contractor under the Agreement.

2. Guarantor covenants to Owner that if at any time Contractor should default in the performance when due and observance when due of, or should commit a breach of, any of the covenants, terms or agreements set forth in the Agreement, Guarantor shall, promptly upon written notice by Owner, perform in Contractor’s stead, or cause to the performance of, such covenants, terms or agreements.

3. It is expressly understood and agreed by Guarantor that to the extent Guarantor’s obligations hereunder relate to obligations of Contractor which require performance other than the payment of money, Owner may proceed against Guarantor to effect specific performance thereof (to the extent such relief is available) or for payment of damages (as limited by the Agreement) resulting from Contractor’s nonperformance. Guarantor hereby covenants to perform or cause to be performed all of the terms and conditions thereunder for the balance of the term thereof. Should the Agreement be disaffirmed by the trustee in bankruptcy for Contractor, or at the option of Owner, Guarantor shall, in the event of Contractor’s bankruptcy, make and enter into a new Agreement performing or causing to be performed the balance of the Agreement, which said new agreement shall be in form and substance identical to the Agreement.

4. All payments by Guarantor to Owner shall be made in the United States in United States Dollars and shall be paid within thirty (30) days after receipt by Guarantor from Owner of written demand for such payment and shall not be the subject of any offset against any amounts which may be owed by Owner to Guarantor for any reason unrelated to the Project. Each and every default or failure by Contractor in making a payment or otherwise discharging or performing any of the covenants, terms or agreements set forth in the Agreement shall give rise to a separate liability of Contractor to Owner and a separate cause of action hereunder and a separate suit may be brought hereunder as each liability or cause of action arises.

5. Guarantor agrees to pay all costs, expenses and fees, including all reasonable attorneys’ fees (including, without limitation, reasonably allocated costs and fees of in-house counsel), which may be incurred by Owner in enforcing this Guarantee, whether by suit or otherwise, to the extent Owner is the prevailing party.

6. The obligations of Guarantor under this Guarantee shall be irrevocable, absolute and unconditional, except to the extent that Contractor’s performance would be excused by Owner’s failure to fulfill its obligations under the Agreement and shall remain in full force and effect until such time as all the covenants, terms and agreements of any kind or nature whatsoever set forth in the Agreement shall have been absolutely and completely discharged and performed. The obligations of Guarantor shall not be affected, modified or impaired or prejudiced (i) by any other security now or hereafter held by Owner as security for the obligations of Contractor under the Agreement; or (ii) upon the happening from time to time of any one or more of the following whether or not with notice to or consent of Contractor (except to the extent that Contractor’s consent may be required to effectuate a modification of the Agreement) or Guarantor:

(a) the compromise, settlement, release, change, modification, waiver, release or termination of any of the covenants, terms or agreements of Contractor set forth in the Agreement;

(b) the waiver by Owner of the payment, performance or observance of any of the covenants, terms or agreements of Contractor set forth in the Agreement;

(c) the extension of time for payment of any amounts due or of the time for performance of any of the covenants, terms or agreements of Contractor set forth in the Agreement;

(d) the modification or amendment (whether material or otherwise) of any covenants, terms and agreements set forth in the Agreement;

(e) the failure, omission, delay or lack on the part of Owner to enforce, ascertain or exercise any right, power or remedy under or pursuant to the terms of the Agreement or this Guarantee;

(f) the fact that Guarantor may at any time in the future dispose of all or any part of its interest in Contractor, or otherwise alter its investment in Contractor in any manner;

(g) the bankruptcy, insolvency, winding up, dissolution, liquidation, administrations, reorganization or other similar or dissimilar failure or financial disability of Contractor or Guarantor or any legal limitation, disability, incapacity or other circumstances relating to the Contractor or Guarantor;

(h) the addition, substitution or partial or entire release of any guarantor, maker or other party (including Contractor) primarily or secondarily liable or responsible for the performance and observance of any of the covenants, terms or agreements set forth in the Agreement or by any extension, waiver, amendment or thing whatsoever which may release a guarantor (other than performance);

(i) the invalidity, nonbinding effect or unenforceability of any covenant, term or agreement set forth herein or in the Agreement (other than with respect solely to such covenant, term or agreement);

(j) the taking, variation, renewal, addition, substitution, subordination, or partial or entire release of any security for the performance and observancy of any of the covenants, terms or agreements set forth in the Agreement or the enforcement or neglect to perfect or enforce any such security.

7. Guarantor irrevocably and absolutely waives any and all right of subrogation, contribution, indemnification, reimbursement or similar rights against Contractor with respect to the Guarantee, whether such rights arise under an express or implied contract or by operation of law, it being the intention of Guarantor and Owner that Guarantor shall not be deemed to be a “creditor”(as defined in Section 101 of the U.S. Bankruptcy Code or any other applicable law) of Contractor by reason of the existence of this Guarantee in the event that Contractor becomes a debtor in any proceeding under the U.S. Bankruptcy Code or any other applicable law. In addition, Guarantor will not exercise any rights which it may acquire by way of subrogation under this Guarantee by any payment made hereunder or otherwise, until all of the liabilities and obligations of Contractor to Owner under the Agreement shall have indefeasibly been paid in full. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when all such liabilities and obligations shall not have been indefeasibly paid in full, such amount shall be held in trust for the benefit of Owner and shall forthwith be paid to Owner and applied to such liabilities and obligations, whether matured or unmatured.

8. Owner shall have the right, in its sole judgment and discretion, from time to time, to make demand for payment or performance and to proceed against Guarantor for recovery of the total of any and all amounts due, or for the performance of any nonmonetary obligation owed, to Owner pursuant to this Guarantee, or to proceed from time to time against Guarantor for such portion of any and all such amounts, or for the performance of any and all such nonmonetary obligations, as Owner may determine.

9. So long as any Obligations are owed to Owner, Guarantor shall not, without the prior written consent of Owner, commence, or join with any other Person in commencing, any bankruptcy, reorganization, or insolvency proceeding against Contractor. The obligations of Guarantor under this Guarantee shall not be altered, limited or affected by any proceeding, voluntary or involuntary, involving the winding up, dissolution, administration, bankruptcy, reorganization, insolvency, receivership, liquidation or arrangement or similar proceeding of Contractor, or by any defense which Contractor may have by reason of any order, decree or decision of any court or administrative body resulting from any such proceeding.

10. Guarantor hereby waives and relinquishes all rights and remedies accorded by applicable law to sureties or guarantors and agrees not to assert or take advantage of any such rights or remedies, including without limitation:

(a) any right to require Owner to proceed against Contractor or any other person or to proceed against or exhaust any security held by Owner at any time or to pursue any other remedy in Owner’s power before proceeding against Guarantor;

(b) Intentionally Omitted:

(c) any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other person or the failure of Owner to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person;

(d) demand, presentment, protest and notice of any kind, including without limitation notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of Contractor, Owner, any creditor of Contractor or Guarantor or on the part of any other person under this or any other instrument in connection with any obligation or evidence of indebtedness held by Owner as collateral or in connection with any Obligations hereby guaranteed;

(e) any defense based upon an election of remedies by Owner which destroys or otherwise impairs the subrogation rights of Guarantor, the right of Guarantor to proceed against Contractor for reimbursement, or both;

(f) any duty on the part of Owner to disclose to Guarantor any facts Owner may now or hereafter know about Contractor, regardless of whether Owner has reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume, or has reason to believe that such facts are unknown to Guarantor, or has a reasonable opportunity to communicate such facts to Guarantor, since Guarantor acknowledges that Guarantor is fully responsible for being and keeping informed of the financial condition of Contractor and of all circumstances bearing on the risk of non-payment of any Obligations hereby guaranteed;

(g) any defense arising because of Owner’s election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy code; and

(h) any defense based upon any borrowing or grant of a security interest under Section 364 of the Federal Bankruptcy Code.

Notwithstanding any other provision of this Section 10 to the contrary, Guarantor hereby reserves all rights and remedies accorded by applicable law to sureties or guarantors based on the defense of the statute of limitations related to the enforceability of this Guarantee in any action hereunder or in any action for the collection or performance of any Obligations hereby guaranteed. Without limiting the generality of the foregoing, Guarantor hereby expressly waives any and all benefits which might otherwise be available to Guarantor under California Civil Code Sections 2809, 2810, 2819, 2839, 2845 through 2847, 2849, 2850, 2899 and 3433.

11. This Guarantee shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns, provided, however, that Guarantor may not make an assignment or other transfer of this Guarantee or any interest herein by operation of law or otherwise unless it has obtained the prior written consent of Owner to such assignment or other transfer.

12. All notices to Guarantor required to be served under this Guarantee shall be in writing and shall be served by registered mail and shall be addressed as follows:

**[Name of Guarantor]**

Attn: **[Name]**

Chief Financial Officer

**[Address]**

or at such other address Guarantor may from time to time designate in writing.

13. This Guarantee shall in all respects be interpreted, and construed and governed by and in accordance with, the internal, substantive laws of the State of California and the United States of America. All agreements, instruments and notices referred to herein or supplementary hereto shall be prepared, furnished in, and governed, and controlled by the English language. Guarantor irrevocably consents that any action, suit or proceeding by or among Owner and Guarantor may be brought in whichever of the Superior or Municipal Courts of the State of California, San Diego County, or the Federal Court in the Southern District of California, has subject matter jurisdiction over the dispute and waives any objection which Guarantor may now or hereafter have regarding the choice of forum whether on personal jurisdiction, venue, forum non conveniens or on any other ground. Guarantor irrevocably consents to the service of process outside of the territorial jurisdiction of such courts by mailing copies thereof by registered or certified United States mail, postage prepaid, to Guarantor’s last known address as shown in the records of Owner with the same effect as if Guarantor were a resident of the State of California and had been lawfully served in such state. Nothing in this Guarantee shall affect the right to service of process in any other manner permitted by law. Guarantor further agrees that final judgment against it in any action or proceeding shall be conclusive and may be enforced in any other jurisdiction within or outside the State of California by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and the amount of such judgment.

14. Guarantor represents, covenants and agrees to and with Owner that:

(a) the execution and delivery of this Guarantee and its performance have been duly authorized by all necessary corporate action on the part of Guarantor;

(b) this Guarantee is the legal, valid and binding obligation of Guarantor, enforceable against it in accordance with its terms, subject to the application of bankruptcy and similar laws and of general equitable principles;

(c) the execution, delivery and performance of this Guarantee will not violate any law or any provision of any security issued by the Guarantor or of any agreement, instrument or undertaking to which the Guarantor is a party or by which it or any of its property is bound, and do not require any license, consent or approval of any governmental authority;

(d) no litigation, investigation or proceeding of or before any arbitrator or governmental authority is pending or, to the undersigned’s knowledge, threatened by or against the Guarantor or any of its subsidiaries or against any of such parties’ properties or revenues which, if adversely determined, would be reasonably likely to have a material adverse effect on the ability on the Guarantor to perform its obligations hereunder; and

(e) it has established adequate means of obtaining financial and other information pertaining to the business, operations and condition (financial or otherwise) of Contractor and its respective properties on a continuing basis, and Guarantor is and hereafter will be completely familiar with the business, operations and condition (financial and otherwise) of Contractor and its respective properties.

15. Guarantor agrees that:

(a) It will maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Guarantee and will obtain any that may become necessary in the future;

(b) It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Guarantee;

(c) From time to time, Guarantor shall deliver such information or documents (financial or otherwise) regarding the financial condition of Guarantor as Owner may reasonably request and as may be available to Guarantor without undue cost or effort; provided, however, that Guarantor may impose reasonable confidentiality requirements in connection with the disclosure of such information and documents in the nature of those set forth in Article [24] of the Agreement.

16. Termination; Reinstatement of Guarantee.

(a) Subject to the provisions of Section 16(b), this Guarantee shall terminate upon termination of the Agreement, other than a termination resulting from Contractor’s breach of the Agreement.

(b) Notwithstanding the provisions of Section 16(a), this Guarantee shall be reinstated if at any time following the termination of this Guarantee under Section 16(a), any payment by Guarantor or Contractor under this Guarantee or pursuant hereto is rescinded or must otherwise be returned by Owner or other Person upon the insolvency, bankruptcy, reorganization, dissolution or liquidation of Contractor, Guarantor or otherwise, and is so rescinded or returned to the party or parties making such payment, all as though such payment had not been made. Such period of reinstatement shall continue until satisfaction of the conditions contained in, and shall continue to be subject to, the provisions of this Article 16.

(c) Subject to Section 16(a), this Guarantee shall remain in effect notwithstanding any assignment of the Agreement to any Person. Upon request by the Counterparty after any such assignment, Guarantor shall acknowledge the continuing effectiveness of this Guarantee notwithstanding such assignment.

17. Any invalid or unenforceable provisions in this Guarantee shall be deemed severed herefrom, and such whole or partial invalidity shall not affect the enforceability or validity of the balance of this Guarantee.

18. Any capitalized terms used herein and not herein defined shall have the meanings given to them in the Agreement.

19. No failure on the part of the Owner to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the Owner of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power. Each and every right, remedy and power hereby granted to the Owner or allowed it by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by the Owner at any time or from time to time.

20. This Guarantee may be executed in counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

21. This Guarantee constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, between Guarantor and Owner with respect to the subject matter hereof. Neither this Guarantee nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, except by an instrument in writing signed by the party against which the enforcement of this termination, amendment, supplement, waiver or modification shall be sought.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, Guarantor has caused this Guarantee to be executed as of the date first above written.

**[Name of Guarantor]**

a **[State of jurisdiction and type of entity]**

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

Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT T**

**LONG-TERM SERVICES AGREEMENT**

[TO BE DEVELOPED]