

TO: MEMBERS, BOARD OF EDUCATION **AMENDED**
FROM: DR. ANTHONY W. KNIGHT, SUPERINTENDENT
DATE: AUGUST 19, 2014
SUBJECT: APPROVE AMENDMENT NO. 1 TO SOLAR POWER DESIGN/BUILD CONTRACT WITH SK SOLAR INC. (PROJECT 14-29F)

ACTION

ISSUE: Shall the Board approve Amendment No. 1 to the solar power design/build contract with SK Solar, Inc., Project 14-29F at Oak Park High School?

BACKGROUND: At its meeting on June 17, 2014 the Board adopted Resolution 14-13, approving a solar power design/build contract with SK Solar, Inc., now designated Project 14-29F. The Board’s approval was contingent upon an amendment to the contract that incorporated the findings presented by Solar Gnosis, the independent third-party project evaluator. Amendment No. 1 to the agreement has been reviewed by the respective legal counsels for the parties, and is attached for the Board’s information and posted on the District’s website in advance of this evenings meeting.

ALTERNATIVES:

1. Approve Amendment No. 1 to the solar power design/build contract with SK Solar, Inc. as presented.
2. Do not approve Amendment No. 1 to the solar power design/build contract.

RECOMMENDATION: Alternative No. 1

Prepared by: Martin Klauss, Assistant Superintendent, Business and Administrative Services

Respectfully submitted,

 Anthony W. Knight, Ed.D.
 Superintendent

Board Action: On motion of _____, seconded by _____, the Board of Education:

VOTE:	AYES	NOES	ABSTAIN	ABSENT
Hazelton	_____	_____	_____	_____
Laifman	_____	_____	_____	_____
Pallant	_____	_____	_____	_____
Rosen	_____	_____	_____	_____
Yeoh	_____	_____	_____	_____
Student Rep	_____	_____	_____	_____

**FIRST AMENDMENT TO SOLAR ENERGY
ENGINEERING PROCUREMENT AND CONSTRUCTION AGREEMENT**
(Oak Park Unified School District/SK Solar, Inc.)

This First Amendment to Solar Energy: Engineering Procurement and Construction Agreement ("First Amendment") is entered into effective as of July 16, 2014, between **OAK PARK UNIFIED SCHOOL DISTRICT**, a public school district organized and existing under the laws of the State of California ("District"), and **SK SOLAR, INC.**, a California Corporation ("Contractor"). District and Contractor may be referred to in this First Amendment individually as a "Party" or collectively as "Parties."

District and Contractor entered into that certain Solar Energy: Engineering Procurement and Construction Agreement dated June 16, 2014 ("Original Agreement"), pursuant to which Contractor agreed to provide solar energy design and construction services to District, as more particularly described in the Original Agreement. District is the owner of certain real property known as Oak Park High School, located at 899 North Kanan Road, Oak Park, CA 91377, a portion of which will be used for construction and installation of the solar energy facilities ("Site"). District and Contractor have agreed to amend the Original Agreement as set forth in this First Amendment.

For valuable consideration, the receipt of which is acknowledged, the Parties agree that the Original Agreement is amended as follows:

1. Section 1. Contractor's Obligations. Section 1.3 is amended to read:

Contractor shall not commence the Work until it has provided to the District a **Payment (Labor and Material) Bond in an amount equal to fifty percent (50%) of the Contract Price** (as defined in Section 3.1) issued by a California admitted surety **as defined in California Code of Civil Procedure Section 995.120. Contractor shall keep the Payment Bond in effect for an additional six (6) months after the period in which stop notices may be filed as set forth in Civil Code Section 3184.**

2. Section 2. Contractor's Obligations Regarding the Work. Section 2.1(h) is amended to read:

"Contractor shall deliver to District an owner's manual, operator's manual and as-built drawings for the System no later than thirty (30) days after Substantial Completion occurs. **Delivery of the foregoing documents to the District shall be a condition precedent to Final Completion and included as such on the Final Completion Certificate.**"

3. Section 2. Contractor's Obligations Regarding the Work. Section 2.1(i) is amended to read:

"Scheduling of training will be coordinated between Contractor and District; provided that the operation and maintenance manuals and such

training will be provided within the thirty (30) days following the Substantial Completion Date **and the training shall be completed prior to Final Completion.**"

4. Section 2. Contractor's Obligations Regarding the Work. Section 2.5 Unanticipated Conditions is amended to read:

"Prior to commencement of the Work, Contractor, at its own expense, shall complete a site survey of the Site. If Contractor discovers or becomes aware of existing site conditions or other considerations which would preclude Contractor from installing the proposed system, (such conditions include, but are not limited to toxic or other hazardous materials, flooding considerations, the presence of rare or endangered species, permitting and/or zoning requirements, and liens or other legal considerations), then Contractor will notify District of such conditions and the costs associated with correcting such conditions. The ability of the structure to support the System and current structural loading capacity of the proposed installation location are specifically excluded from such unanticipated conditions. **If the Parties cannot come to mutually agreeable terms to resolve the unanticipated conditions, this Agreement shall be terminated and the Parties shall have no further obligations to each other except as specifically set forth in the Agreement."**

5. Section 2. Contractor's Obligations Regarding the Work. Section 2.12 Warranty is amended to add the following subsection (c):

"c. Contractor shall "stand behind" all manufacturer's warranties by procuring, installing and certifying any equipment that is replaced under any manufacturer's warranty, at no cost to the District."

6. Section 4. Commencement and Completion. Section 4.1(a) is amended to read:

"Contractor shall perform the Work in accordance with Exhibits A and C."

7. Section 4. Commencement and Completion. Section 4.2 (Final Completion) is amended to add the following subsections after subsection (d):

"(e) Sign-off by Ventura County on building/electrical permit, if required;

(f) Receipt of any "as built" corrections approved by Ventura County and/or Division of State Architect ("DSA");

(g) Approval by Southern California Edison ("SCE") of Interconnection Agreement;

(h) Receipt of SCE "Permit to Operate";

- (i) **Delivery of Commissioning Report;**
- (j) **Delivery of "Owner Manual" containing documentation of all major equipment items, operation and maintenance manuals for all major equipment items, warranties, details of connection of monitoring system to local area network, web hosting and functionality of monitoring system.**
- (k) **Delivery of DSA "Close with Certification" document, closing out the project."**

8. Section 7. Miscellaneous. Section 7.16 (Underground Utilities) is amended to read:

"Provided that Contractor takes reasonable precautions consistent with industry standards, **including the site survey referenced in Section 2.5 to determine location of underground utilities**, Contractor is not responsible for damage it causes to any underground utility including but not limited to electric, sewer, gas, or cable lines."

9. Exhibit C. Scope of Work. Exhibit C shall be replaced by the revised Exhibit C attached to this First Amendment.

10. Exhibit E. Schedule of Values (Milestones and Progress Payments). Exhibit E shall be replaced by the revised Exhibit E attached to this First Amendment.

11. Exhibit H. Warranty. Exhibit H shall be replaced by the revised Exhibit H attached to this First Amendment.

12. Exhibit K. Final Completion Certificate (Form). Exhibit K shall be replaced by the revised Exhibit K attached to this First Amendment.

13. Full Force. Except as modified by this First Amendment, the Original Agreement remains in full force and effect. Any reference in the Original Agreement to the "Agreement" shall refer to the Original Agreement, as modified by this First Amendment.

14. Incorporation of Defined Terms. All terms not otherwise defined in this First Amendment shall have the meaning set forth in the Original Agreement.

15. Applicable Law. This First Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California.

16. Successors and Assigns. This First Amendment shall inure to the benefit of District, Contractor and each of their successors and assigns.

17. Entire Agreement. This First Amendment, together with the Exhibits attached hereto and incorporated herein by reference, and the other documents referred to herein constitute the entire agreement among the Parties.

18. Amendments. This First Amendment may not be modified or otherwise altered without the written consent of District and Contractor.

[Signatures on following page.]

IN WITNESS WHEREOF, District and Contractor have executed this First Amendment effective as of the date first above written.

DISTRICT

OAK PARK UNIFIED SCHOOL DISTRICT

Martin Klauss, Assistant Superintendent
Business and Administrative Services

Date: _____

CONTRACTOR

SK SOLAR, INC.

Boris von Bormann, CEO

Date: _____

EXHIBIT C (Revised)
SCOPE OF WORK

Solar

Includes:

- 60kw Design / Build, Turnkey PV installation District on rooftop of new classroom buildings
- 95kw Design / Build, Turnkey PV shade structure installation
- Installation Design based pre-site analysis performed by Contractor, including site survey, at Contractor's expense, to:
 - ensure adequate roof space to accommodate Roof Mount System;
 - ensure most appropriate PV module tilt angle for both Roof Mount and Ground Mount Systems;
 - include shade analysis to determine impact on energy production and PBI rebate.
- Solar Panels – Solarworld Sunmodule
- Inverters – to be defined
- Prevailing Wages
- Bonding (Payment Bond for 50% of total price)
- Racking system optimized for each roof PV System
- Shade structure optimized for location and PV System
- Miscellaneous electrical equipment as needed
- Design and Plans for PV Solar System
- Engineering and single line drawings
- Permits for PV System
- DSA Permits
- Inspector of Record
- Site prep, safety measures, material handling and crane lifting
- All labor for complete racking, panel installation, electrical
- Interconnection Agreement with Southern California Electric (SCE) and Permit to Operate
- Coordination and management of all necessary inspections, including Division of State Architect (DSA)
- Full installation of mechanical, structural and electrical components of PV system
- Installation of system monitor, acceptable to District, which is:
 - web hosted;
 - reports system AC power, total and for each inverter, with no more than 15 minutes latency;
 - stores and is able to display system energy production each hour for any day, each week, each month and each year;
 - stores all information for each of the Solectria inverters, including fault conditions and error codes; and
 - includes notification system (messaging, cell call or email) in case of out-of-specification operation or system faults.
- Full commissioning

Excludes:

- Alterations or deviations from the above unless mutually agreed to by the Parties in writing.
- Assumes readily Internet access available

EXHIBIT E (Revised)

Schedule of Values

(includes sales tax, bonding and required certificates)

Progress payments (percentage of total cost of project, \$526,078.00) shall be made to Contractor at specified milestones listed below:

Phase 1: Execution of Contract (20%): Twenty percent (20%) or One Hundred Five Thousand Two Hundred Fifteen Dollars and Sixty Cents (\$105,215.60) shall be payable upon full execution of this Agreement.

Phase 2: Delivery of Final Built-To Plans – DSA Approved (10%): Ten percent (10%) or Fifty Two Thousand Six Hundred Seven Dollars and Eighty Cents (\$52,607.80) shall be payable upon delivery of final build-to plans, approved by DSA, to District and District approval of same.

Phase 3: Building Permits/Interconnection Agreement for the Project Received (15%): Fifteen percent (15%) or Seventy Eight Thousand Nine Hundred Eleven Dollars and Seventy Cents (\$78,911.70) shall be payable upon receipt of building permits, if required, for this project, securing Ventura County building/electrical permit, if required, and SCE Interconnection Agreement.

Phase 4: Delivery of Substantially all Equipment and Materials (30%): Thirty percent (30%) or One Hundred Fifty Seven Thousand Eight Hundred Twenty Three and Forty Cents (\$157,823.40) shall be payable upon delivery of solar modules and inverters.

Phase 5: Substantial Completion (15%): Fifteen percent (15%) or Seventy Eight Thousand Nine Hundred Eleven Dollars and Seventy Cents (\$78,911.70) shall be payable upon Substantial Completion, documented by delivery and acceptance of Notice of Substantial Completion to District.

Phase 6: Final Completion Certificate (10%): Ten percent (10%) or Fifty Two Thousand Six Hundred Seven Dollars and Eighty Cents (\$52,607.80) shall be payable upon delivery and acceptance of Final Completion Certificate to District.

Total system cost: \$526,078.00

EXHIBIT H (Revised)**Warranty**1. Contractor System Warranty

Commencing on the Substantial Completion Date for a System, and for a period of ten (10) years following the Final Completion Date, Contractor warrants that such System will be free from defects in design, materials, construction and workmanship under normal operating conditions and shall conform to the requirements of the Agreement to which this Exhibit H is attached, including the Design Submittal, as defined in the Scope of Work, which shall be made available and approved by District before the Financial Completion Date (the "Warranty"). Contractor shall commence performance of timely diagnosis, repair and replacement of any defects in workmanship no later than 72 hours after District's written notification to Contractor.

Notwithstanding the foregoing, this Warranty shall not include any warranty statements provided by Other Manufacturers as described in Section 2.12. If such System, or any component thereof, fails to conform to any of the above warranties, Contractor will, at its sole cost and expense, promptly either (i) repair the defective work; or, (ii) replace any defective parts. Contractor shall choose either (i) or (ii) at its option. All repaired or replaced parts shall have a warranty equal to the longer of (a) the unexpired term of the warranty or (b) one (1) year. Unless this warranty is extended by written agreement or a Manufacturer Warranty applies, as between District and Contractor, District shall pay for any repair costs incurred by Contractor after the ten (10) year Warranty expires.

2. Manufacturer Warranties

Contractor assigns to District the applicable pass-through warranties from Contractor's manufacturers, including photovoltaic modules and inverters ("Other Manufacturers") if those materials are procured by the Contractor. Contractor shall, at its sole expense, procure, install and certify any equipment replaced under warranties by the Other Manufacturers. The Other Manufacturers used for the Systems shall be stated in Design Submittal. Contractor makes no representation or warranty, and District shall seek no recourse from Contractor, regarding the warranties of Other Manufacturers, including, without limitation, the power output of the PV modules. Contractor agrees that the warranty on modules shall be at least for ten (10) years with a performance guarantee of twenty-five (25) years and that warranty on inverters shall be for at least ten (10) years.

The above is subject to terms and conditions of manufacturer's warranty.

3. Warranty Exceptions

This Warranty shall be void in the event of any of the following:

- a. Alterations or repairs made to the applicable System's supporting structure, or to any part of such System or associated wiring and parts without Contractor's prior written approval;
- b. Use of such System beyond the scope contemplated in its operating manuals or Technical Specifications;

- c. A change in usage of the applicable Site, which may affect building or site permits and related requirements, without the written approval of Contractor; and
 - d. Damage, malfunction or degradation of electrical output caused by third-party abuse, negligence, improper use or vandalism.
4. Disclaimer
- Neither this Agreement nor any document furnished under it, unless explicitly stated, is intended to express or imply any warranty or guarantee with regard to the performance of the System with respect to (i) reduction in energy costs or environmental savings, (ii) financial savings or return on investment and (iii) public recognition.

EXHIBIT K (Revised)
Final Completion Certificate (Form)

Date: _____

SK Solar, Inc.
2658 Griffith Park Blvd. # 410
Los Angeles, CA 90039

Oak Park Unified School District
5801 East Conifer Street
Oak Park, CA 91377
Attention: Martin Klauss, Assistant Superintendent, Business and Administrative Services

Re: FINAL COMPLETION CERTIFICATE

This certificate is issued pursuant to Section 4.2 of that certain Solar Energy: Engineering Procurement And Construction Agreement dated as of June 16, 2014 (the "Agreement") by and between SK Solar, Inc., a California Corporation, ("Contractor") and Oak Park Unified School District, a public school district organized and operating under the laws of the state of California (the "District"). Capitalized terms used but not defined herein have the meanings set forth in the Agreement.

According to Section 4.2 of the Agreement, the following items are conditions precedent to Final Completion:

- All punch list items have been completed or waived;
- All manuals, drawings and other documents expressly required to be delivered by Contractor hereunder have been delivered to District;
- All final lien waivers have been obtained;
- Sign-off by Ventura County on building/electrical permit, if required
- Receipt of any "as built" corrections approved by Ventura County and/or DSA
- Approval by SCE of Interconnection Agreement
- Receipt of SCE "Permit to Operate"
- Delivery of Commissioning Report
- Delivery of "Owner Manual" containing documentation of all major equipment items, operation and maintenance manuals for all major equipment items, warranties, details of connection of monitoring system to local area network, web hosting and functionality of monitoring system.
- Receipt of DSA "Close with Certification," closing out the project.

The Contractor is certifying that all of the foregoing conditions of Final Completion have been satisfied.

The District shall, within ten (10) business days after the receipt by District of this written certificate, execute the below acknowledgment if Contractor has achieved Final Completion.

Execution of the below acknowledgment or failure of District to provide written notice of Contractor's failure to achieve Final Completion within ten (10) business days shall constitute acceptance of this Contractor's Final Completion Certificate.

Acknowledged and Confirmed

District:
OAK PARK UNIFIED SCHOOL DISTRICT
Date: _____
By: _____
Name: _____
Title: _____

Contractor:
SK SOLAR, INC.
Date: _____
By: _____
Name: Boris von Bormann
Title: CEO