



Rev. 6-12-14

**Oak Park Unified School District**

**Oak Park High School**

**155kw**

**SOLAR ENERGY  
ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT**

**Between**

**SK Solar, Inc.**

**and**

**Oak Park Unified School District**

**June 17, 2014**



## SOLAR ENERGY

### ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

This ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT is made and entered into as of June 17, 2014 ("Agreement"), by and between Oak Park Unified School District, a public school district organized and operating under the laws of the State of California ("District") and SK Solar, Inc. a California Corporation ("Contractor"), collectively referred to herein as the "Parties".

#### RECITALS

**WHEREAS**, District desires to reduce energy consumption and operational expenses through the construction and installation of solar facilities owned by the District;

**WHEREAS**, the California legislature encourages the implementation of energy projects at public facilities through legislation designed to provide the greatest possible flexibility to public agencies in structuring agreements for alternative energy projects (Government Code sections 4217.10 *et seq.* and 5659.4 *et seq.*);

**WHEREAS**, Section 4217.13 of the California Government Code authorizes the District to enter into a contract for design and construction of solar facilities on terms the Board determines are in the best interests of the District if the Board finds that the funds for repayment of the cost of the solar facilities are projected to be available from revenues resulting from money that otherwise would have been used for the purchase of electrical energy required by the District in the absence of such solar facilities;

**WHEREAS**, pursuant to California Government Code Section 4217.13, District's governing board ("Board") heard public comment at a regularly scheduled Board meeting on June 17, 2014, made the statutorily required findings and approved this Agreement;

**WHEREAS**, District is developing an approximately 60 kw rooftop project and a 95 kw shade structure (the "System") to be located at Oak Park High School, 899 North Kanan Road, Oak Park, CA 91377 (the "Site");

**WHEREAS**, Contractor designs, constructs and installs photovoltaic systems and as such is able to engineer and construct the System and all the necessary ancillary systems;

**WHEREAS**, District desires to engage Contractor to supply and install the System at the Site; and

**WHEREAS**, Contractor desires to provide such supply and installation services, all in accordance with the terms and conditions set forth in this Agreement;

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

#### AGREEMENT

##### 1. CONTRACTOR'S OBLIGATIONS.

###### 1.1 Scope.

Contractor shall provide, on a turnkey basis, all professional design and engineering services, Equipment procurement, supervision, labor, materials, Equipment, tools, construction Equipment and machinery, utilities, transportation, and procurement of the Contractor Acquired Permits for the System, and other facilities, items and services, in each case to the extent necessary for the design, engineering, proper execution and completion of each System, in accordance with the Contract Documents, which are each made a part hereof. Contractor will work closely with District during the drawing of a detailed set of engineering drawings and specifications for the system. Upon completion of the drawings and specifications the Contractor shall submit them to District for final review and approval. Contractor shall have sole control over the engineering, design and construction means, methods, techniques, sequences, and procedures and for coordination of all portions of the Work under this Agreement subject to requirements of the Division of State Architect ("DSA") and all statutory requirements applicable to construction on public school sites.



1.2 **Contractor Certifications.** This Agreement includes the following Contractor certifications, the forms of which are available from the District and must be completed by Contractor prior to commencement of the work on the System:

- (a) Prevailing Wage Certification
- (b) Workers' Compensation Certification
- (c) Fingerprinting/Criminal Background Investigation Certification
- (d) Drug-Free Workplace / Tobacco-Free Environment Certification
- (e) Asbestos & Other Hazardous Materials Certification
- (f) Lead-Product(s) Certification
- (g) Insurance Certificates and Endorsements
- (h) Performance & Payment Bonds.

1.3 **Commencement of Work.** Contractor shall not commence the Work until it has provided to the District a Payment (Labor and Material) Bond and a Performance Bond, each in an amount equivalent to the construction portion of the Contract Price (as defined in Section 3.1) issued by a surety admitted to issue bonds in the State of California and otherwise acceptable to the District. The payment bond liability will cease at the termination of any time required by law.

## 2. **CONTRACTOR'S OBLIGATIONS REGARDING THE WORK**

### 2.1 **The Work.**

- (a) Contractor shall perform the Work in accordance with the express description thereof in the attached Exhibit C, made a part of the Agreement by this reference. Contractor shall perform all Work in accordance with Industry Standards, Applicable Law and Applicable Permits.
- (b) Contractor shall perform engineering and design services, using qualified architects, engineers and other professionals selected and paid for by Contractor, in each case as are necessary to prepare all Contract Documents and submit the Contract Documents to District for its review and approval, provided that approval by the District shall not excuse the Contractor from performance of any of its duties under this Agreement.
- (c) Contractor shall obtain, at its expense, and shall file on a timely basis any documents required to obtain all Applicable Permits. Contractor shall pay for all taxes, fees and costs required of Contractor in order to obtain all Applicable Permits. Contractor shall file any documents required to obtain any necessary Applicable Permits and obtain all such Applicable Permits. District shall provide, on a timely basis, Contractor-required support documents and information in order to facilitate the process of securing Applicable Permits.
- (d) Contractor, at its expense, shall purchase, transport, deliver, inspect to the extent it deems necessary, and construct and install all Equipment necessary or useful in order to complete the System. Contractor shall use best efforts to maintain standard manufacturer's and supplier's warranties for the Equipment and to cause such warranties to be pass-through or freely assignable to District. With respect to the System, Contractor shall assign to District all of Contractor's right, title and interest in each component of the System upon Final Completion. In addition, upon Final Completion of the System, Contractor shall assign to District all related manufacturer's and/or supplier's warranties.



- (e) Contractor shall construct the System, and perform the Performance Tests as per the attached Exhibit B, made a part of the Agreement by this reference, for the System. District shall provide such electricity and consumables as may be required to carry out the Performance Tests. The Contractor's technical personnel (or, when applicable, the installer and/or manufacturer's personnel, with Contractor's supervision) shall operate the System during the Performance Tests, although District (and District's personnel) shall be entitled to be present during any Performance Test. Any third party entrusted with the supervision, oversight or quality control of Contractor shall be entitled to observe the Performance Tests.
- (f) District shall be solely responsible for soliciting and obtaining any subsidies, rebates or other incentives that may be available from any Governmental Authority pursuant to or in connection with the purchase or operation of the System or otherwise, and Contractor makes no representation or warranty to District as to the availability of any of such subsidies, rebates or incentives. [District owns environmental incentives.] Contractor shall provide District reasonable assistance in obtaining such subsidies, rebates or incentives; however, in the event that District fails to qualify for any such subsidies, rebates or incentives, District is still liable to Contractor for the entire contract price. IN NO CASE SHALL CONTRACTOR HAVE ANY LIABILITY TO DISTRICT FOR ANY FAILURE BY ANY OF ITS INVESTORS TO OBTAIN ANY OR ALL OF THE BENEFIT OF ANY INVESTMENT TAX CREDIT OR DEPRECIATION.
- (g) Contractor shall provide District's personnel with up to one (1) day of on-site operation and maintenance training in respect of the System. District's personnel shall have the qualifications necessary to perform their activities and will be hired by District.
- (h) Contractor shall deliver 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.
- (i) 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.
- (j) Prevailing Wage. Contractor shall comply with all applicable provisions of the California Labor Code, Division 2, Part 7, Chapter 1, Articles 1-5, including (without limitation) the payment of the general prevailing per diem wage rates for public work projects in excess of \$1,000. In addition, Contractor and each Subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the California Labor Code, commencing with Section 1720, and including Sections 1735, 1777.5 and 1777.6 forbidding discrimination, and Sections 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Contractor or Subcontractor.

## 2.2 Exclusions.

Contractor shall not perform any work or activity beyond the Scope of Work as defined in this Agreement. In particular, the following shall not be included in the Work and therefore shall be performed by District:

- (a) As between District and Contractor, District shall provide the Site for the Work and commercially reasonable and suitable access thereto so that Contractor may gain access to the Site to perform the Work as soon as any necessary work permits, licenses and authorizations are obtained;
- (b) District shall select its own personnel so that it is present at the Performance Tests prior to the date of Substantial Completion and entry into commercial operation;
- (c) District shall be solely responsible for securing and paying for all asset management services relating to the System and will not require any such services from Contractor; and
- (d) Contractor shall not be responsible for any environmental liabilities relating to the Site, except for those that are caused by Contractor; provided, however, that Contractor shall be required to comply with all applicable environmental laws and regulations during construction of the System.



2.3 **Changes and Extra Work.**

- (a) Without invalidating this Agreement, District may initiate a change in the Work on the System by advising Contractor in writing of the change believed to be necessary, using the Contract Change Request form found in Exhibit D. As soon as practicable after notice, Contractor shall prepare and forward to District in writing the price for the extra or changed Work in accordance with Exhibit C and any required adjustment to the Construction Schedule in Exhibit A or any other term or condition of this Agreement. Except for minor modifications in the Work not involving extra cost and not inconsistent with the purposes of the Work, and except in an emergency endangering life or property, all authorized extra Work or changes, and the agreed to price, shall be confirmed through a Change Order to this Agreement. No change or extra Work shall be effective without a Change Order accepted in writing by both Parties. The price shall include all costs associated with performing the extra Work or changes, including the impact on the Work, inefficiencies created by the extra Work or changes, and overhead associated with the extra Work or changes.
- (b) All extra Work and changes shall be performed in accordance with the provisions and conditions of this Agreement, except as provided in the Change Order.
- (c) If Contractor's price or time adjustment is not accepted, Contractor shall provide District Representative with the details of and backup for its price or time estimate. If the Parties fail to agree on a price, District Representative may authorize the extra or changed Work to be performed on a time and material basis in accordance with the rates specified in the attached Exhibit E, made a part of the Agreement by this reference.
- (d) Contractor may propose Change Orders to District, using the same Contract Change Request form in Exhibit D, if those Change Orders improve the System or are otherwise advisable for the Work. District will not be required to accept such a proposal.
- (e) Any changes to the System or the Work required by any Governmental Authority as a condition to issue an Applicable Permit shall entitle Contractor to request a Change Order in accordance with this Section 2.3.

2.4 **Protective Measures.**

- (a) Contractor shall be responsible for all injury or damage to individuals or property that may occur as a result of its fault or negligence or that of its Subcontractors in connection with the performance of the Work. Contractor shall be responsible for the proper care and protection of all Equipment and materials furnished by Contractor and the Work performed until Final Completion of the Work.
- (b) Contractor shall take all necessary precautions for the safety of its employees on the relevant part of the Site where the System is located and prevent accidents or injury to individuals on, about, or adjacent to the premises where the Work is being performed.
- (c) Contractor shall keep the relevant part of the Site where the System is located and surrounding areas free from accumulation of waste materials or rubbish caused by the Work, and upon Final Completion, shall remove from the relevant part of the Site where the System is located all waste materials, rubbish, tools, Equipment, machinery and surplus materials.
- (d) Contractor shall at all times enforce strict discipline and good order among its employees and the employees of its subcontractors and shall not employ any unfit person or anyone not skilled in work assigned to him or her. Any person in the employ of the Contractor or a subcontractor whom the District may deem incompetent or unfit shall be dismissed from the District Site and shall not again be employed at any District Site without written consent from District.



2.5 **Unanticipated Conditions.**

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. Contractor shall request a Change Order in accordance with Section 2.4. In no case shall Contractor be under any obligation to install the System if the Parties cannot come to mutually agreeable terms to resolve the unanticipated conditions.

2.6 **Labor.**

Contractor shall minimize the risk of labor-related delays or disruption of the progress of the Work. Contractor shall promptly take any and all reasonable steps that may be available in connection with the resolution of violations of collective bargaining agreements or labor jurisdictional disputes. Contractor shall advise District promptly in writing of any actual or threatened labor dispute of which Contractor has knowledge that might materially affect the performance of the Work by Contractor or by any of its Subcontractors. Notwithstanding the foregoing, the settlement of strikes, walkouts, lockouts or other labor disputes shall be at the discretion of the Party having the difficulty.

2.7 **Insurance.**

- (a) Contractor, at its expense, shall procure or cause to be procured and maintain or cause to be maintained in full force and effect at all times commencing no later than commencement of the work at the Site and until Final Completion, insurance coverages as specified in Part I of Exhibit G, which are agreed by the Parties to be sufficient for construction of the System. All insurance coverage shall be in accordance with the terms of this Section 2.7 and Part I of Exhibit G.
- (b) District, at District's expense, shall procure or cause to be procured and maintain or cause to be maintained in full force and effect at all times during the period commencing no later than Final Completion, all insurance coverages specified in Part II of Exhibit G. All insurance coverages shall be in accordance with this Section 2.7 and Part II of Exhibit G. Subject to the prior agreement of the Parties, such insurance coverages can be included, at District's cost and responsibility, under Contractor's insurance policies under Section 2.7(a) above.

2.8 **Performance of the Work.**

- (a) Contractor agrees to use, and agrees that it shall require each of its Subcontractors to use, only personnel who are qualified and properly trained and who possess every license, permit, registration, certificate or other approval required by Applicable Law or any Governmental Authority to enable such Persons to perform their Work involving any part of Contractor's obligations under this Agreement.
- (b) Contractor agrees that all materials and Equipment to be supplied or used by Contractor or its Subcontractors in the performance of its obligations under this Agreement shall be in good condition and fit for the use(s) for which they are employed by Contractor or its Subcontractors. Such materials and Equipment shall at all times be maintained, inspected and operated as required by Applicable Law. Contractor further agrees that all licenses, permits, registrations and certificates or other approvals required by Applicable Law or any Governmental Authority will be procured and maintained for such materials and Equipment at all times during the use of the same by Contractor or its Subcontractors in the performance of any of Contractor's obligations under this Agreement.



- (c) Contractor shall perform, at its own cost and expense and without reimbursement from District, any work necessary to correct errors or omissions which are caused by Contractor's failure to comply with the Contract requirements and the standard of care required herein.

## 2.9 **Hazardous Materials.**

- (a) Subject to Section 2.15(a), Contractor hereby specifically agrees to indemnify, defend and hold District, its present and future direct or indirect parents, subsidiaries, Affiliates, divisions, and their respective directors, officers, employees, shareholders, agents, representatives, successors and assigns harmless from and against any and all losses, liabilities, claims, demands, damages, causes of action, fines, penalties, costs and expenses (including, but not limited to, all reasonable consulting, engineering, attorneys' or other professional fees), that they may incur or suffer by reason of:
  - (i) Any unauthorized release of a Hazardous Material by Contractor;
  - (ii) Any enforcement or compliance proceeding commenced by or in the name of any Governmental Authority because of an alleged, threatened or actual violation of any Applicable Law by Contractor; and
  - (iii) Any action reasonably necessary to abate, remediate or prevent a violation or threatened violation of any Applicable Law by Contractor.
- (b) District hereby specifically agrees to indemnify, defend and hold Contractor, its present and future direct or indirect parents, subsidiaries, affiliates, divisions, and their respective directors, officers, employees, shareholders, agents, representatives, successors and assigns harmless from and against any and all losses, liabilities, claims, demands, damages, causes of action, fines, penalties, costs and expenses (including, but not limited to, all reasonable consulting, engineering, attorneys' or other professional fees), that they may incur or suffer by reason of:
  - (i) Any unauthorized release of a Hazardous Material by District;
  - (ii) Any enforcement or compliance proceeding commenced by or in the name of any Governmental Authority because of an alleged, threatened or actual violation of any Applicable Law by District; and
  - (iii) Any action reasonably necessary to abate, remediate or prevent a violation or threatened violation of any Applicable Law by District.

## 2.10 **Suspension of the Work.**

- (a) Contractor may suspend the Work temporarily if District fails to make any payment within fifteen (15) days after the date on which such payment is required to be made hereunder. Contractor shall be entitled to request (i) an extension of the deadlines of this Agreement for the same period of the suspension, and (ii) the reimbursement of the additional costs and expenses, if any, reasonably incurred and substantiated by Contractor in protecting, securing or insuring the Work, and in resumption of the Work.
- (b) In the event that the Work is totally or partially suspended by reason of an order from a Governmental Authority, the Party that has caused the issuance of such order (whether by reason of an act, omission or default) shall bear all the damages, costs and expenses caused by the suspension, subject to the limitations provided under Section 6.2(d) of this Agreement. If the suspension is not due to an act, omission or default of any of the Parties, then the deadlines of this Agreement will be extended for the same period of the suspension, or for such other period that the Parties deem reasonable in view of the circumstances, and Contractor shall assume any costs arising under the effects of the suspension on the obligations of the Parties under this Agreement. Notwithstanding the occurrence or continuation of any Force Majeure Event, the provisions of this Section 2.10(b) shall apply.



- (c) After the resumption of the performance of the Work, Contractor shall, after due notice to District, examine the Work affected by the suspension. Contractor shall make good any defect, deterioration or loss of the construction or the Work affected that may have occurred during the suspension period. Costs properly incurred by Contractor (including mobilization costs, insurance fees and others) shall be added to the Contract Price, so long as the suspension did not arise due to any act, omission or default on the part of Contractor.

**2.11 Title; Risk of Loss.**

- (a) From the Effective Date and until the date of Final Completion, and subject to Sections 2.11(b) and 2.11(c), Contractor assumes risk of loss and full responsibility for the cost of replacing or repairing any damage to the System and all materials, Equipment, supplies and maintenance equipment (including temporary materials, equipment and supplies) that are purchased by Contractor for permanent installation in or for use during construction of the System.
- (b) District shall bear the risk of loss and full responsibility in respect of the System from and after the date of Final Completion of the System, and if any component of the System is lost or damaged for whatever reason after the date of Final Completion of the System, then Contractor shall restore or rebuild any such loss or damage and complete the Work in accordance with this Agreement at the sole cost and expense of District.
- (c) Notwithstanding anything herein to the contrary, District shall bear the risk of loss and full responsibility for the cost of replacing or repairing any damage to the System and all materials, Equipment, supplies and maintenance equipment (including temporary materials, equipment and supplies) that are purchased by Contractor or District for permanent installation in or for use during construction of the System to the extent caused by the grossly negligent or willful acts of District or its agents, employees or representatives.
- (d) Title to all materials, Equipment, supplies and maintenance equipment (including temporary materials, equipment and supplies) that are purchased by Contractor or District for permanent installation in or for use during construction of the System shall pass to the District upon Final Completion.

**2.12 Warranty.**

- (a) Contractor shall bear the full cost of diagnosis, repair and replacement of any failed system component, at no cost to the District, for ten (10) years following the Final Completion date. Contractor's warranty hereunder shall be the comprehensive warranty, as set forth in Exhibit H, and, except as set forth in such Exhibit, Contractor does not make (and hereby expressly disclaims) any other warranties of any kind whatsoever. Contractor shall not be liable for any defect or deficiency to the extent that the same results from the specific written direction of District relating to the Work and/or the Systems; provided that any such defect or deficiency is not the result of Contractor's failure to properly implement the Work in accordance with this Agreement. The warranty will not include damage, malfunction, or degradation of electrical output caused by failure to properly operate or maintain the system in accordance with printed instructions provided with the system. The warranty will not include damage, malfunction, or degradation of electrical output caused by any repair or replacement using a part or service not provided or authorized in writing by the Contractor. The warranty will not include damage, malfunction, or degradation of electrical output resulting from District or third party abuse, alteration, improper use, or vandalism, or from earthquake, fire, flood, or other acts of God. The scope of such warranty will not include the warranty statements provided under the warranties referenced in Section 2.12(b) below.
- (b) Contractor will provide District with copies of pass-through warranties provided by photovoltaic module and inverter Suppliers for the benefit of District.

**2.13 Taxes.**

As part of the Contract Price, Contractor assumes exclusive liability for and shall pay before delinquency all sales, use, value added, excise and other taxes, charges or contributions imposed on, or with respect to, or measured by the matters contemplated by this Agreement other than income, property or other taxes related to the ongoing





operation of the System. Provided that the conditions of indemnification set forth in Section 6.2 are satisfied, Contractor and District shall hold harmless, indemnify and defend each other, together with any and all their officers, directors, agents and employees from any liability, penalty, interest and expense by reason of Contractor or District's failure to pay such taxes, charges or contributions as are the responsibility of each. Contractor and District shall cooperate with each other to minimize the tax liability of both Parties to the extent legally permissible.

**2.14 Liens.**

- (a) Contractor warrants good title, free and clear of all liens, claims, charges, security interests, and encumbrances whatsoever, to all Equipment and other items furnished by it or any of its Subcontractors that become part of the System to the extent payment therefor has been received by Contractor.
- (b) District's title to all Equipment shall be free and clear of all liens, claims, charges, security interests, and encumbrances whatsoever, upon the payment therefor to the Contractor.

**2.15 Compliance with Applicable Laws.**

- (a) Contractor specifically agrees that it shall at all times fully comply with Applicable Laws and that it shall perform the Work in accordance with the Applicable Laws. Notwithstanding the foregoing, Contractor shall not be responsible for any environmental liabilities relating to the relevant part of the Site where the System is located, except for such pollution, toxic emissions and other Hazardous Materials as are caused by Contractor during construction of the System; provided, however, that Contractor shall be required to comply with all applicable environmental laws and regulations during construction of the System.
- (b) District specifically agrees that in the performance of its obligations under this Agreement it shall at all times fully comply with Applicable Laws. District further specifically agrees that at all times during its performance of this Agreement it shall have and keep in effect all Applicable Permits.

**3. PRICE AND PAYMENT**

**3.1 Contract Price.**

- (a) As full compensation for the Work and all of Contractor's obligations hereunder District shall pay to Contractor Five Hundred Twenty Six Thousand Seventy Eight USD (\$526,078.00). The Contract Price (or portion thereof, as applicable) shall be changed by Change Orders approved prior to Substantial Completion in accordance with Section 2.3. The Contract Price shall be paid in accordance with Section 3.2. Sales Tax for the project is \$36,578.16 and is included in the Contract Price.

**3.2 Payment.**

- (a) District shall make progress payments to Contractor for the full Contract Price in accordance with the Schedule of Values in Exhibit E.
- (b) All invoices shall be paid by District within fifteen (15) calendar days of valid invoice delivery by Contractor.
- (c) Invoices shall be sent by email with confirmation of receipt, and District must receive the invoice and, if applicable, the attached documentation, on the same date of delivery by Contractor.
- (d) If Contractor does not receive payment of all sums due from District on the date due, District has thirty (30) days to cure such delinquent payment. Thereafter, District shall pay to Contractor interest on the delinquent payment amount at an interest rate of ten (10%) percent per annum calculated using simple interest. After ninety (90) days of delinquency, the interest rate shall increase to eighteen (18%) percent per annum calculated using simple interest. The Parties agree that this interest charge represents a fair and reasonable estimate of the cost Contractor will incur by reason of District's late payment.



#### **4. COMMENCEMENT & COMPLETION.**

##### **4.1 Commencement and Substantial Completion.**

- (a) Contractor shall perform the Work in accordance with Exhibit A.
- (b) The following are conditions precedent to Substantial Completion:
  - (i) The System is mechanically, electrically, and structurally constructed in accordance with this Agreement, the Work and Industry Standards, except for non-critical punch list items;
  - (ii) The medium voltage infrastructure and the grid connection for the System are mechanically, electrically and functionally complete and capable of interconnection with the local utility;
  - (iii) District and Contractor shall have agreed on the punch list items.
- (c) When Contractor reasonably believes it has achieved Substantial Completion, Contractor shall give District written notice, attached hereto as Exhibit J, certifying that all of the conditions of Substantial Completion have been satisfied. District may (i) visit the Site and review the applicable data and documentation in order to confirm that such System has achieved Substantial Completion and (ii) if the District is satisfied that such System has achieved Substantial Completion, deliver to Contractor a written confirmation to such effect. Failure of District to provide written notice of rejection of the Substantial Completion Notice within ten (10) business days shall constitute acceptance of the Substantial Completion Notice. Any dispute between District and Contractor with respect to the achievement of Substantial Completion as contemplated by this Section 4.1(c) shall be resolved in accordance with Section 7.4. Contractor, in any event, agrees not to commence any Performance Test and not to turn on any System unless and until District provides written consent to do so.
- (d) All punch list items shall be completed no later than ninety (90) Days after Substantial Completion. Failure of Contractor to fulfill this obligation shall entitle District to complete the pending works on its own and charge the Contractor for the duly justified costs.

##### **4.2 Final Completion.**

Final Completion of the System shall be deemed to have occurred only if:

- (a) All punch list items have been completed or waived;
- (b) Commissioning according to procedures set forth in Exhibit F is completed successfully and the corresponding certificates are duly signed by District's Representative, the Contractor's Representative;
- (c) All manuals, drawings and other documents expressly required to be delivered by Contractor hereunder have been delivered to District;
- (d) All final Lien waivers have been obtained.

Upon Final Completion, Contractor shall submit to District a written final completion certificate, attached hereto as Exhibit K, certifying that all of the foregoing conditions have been satisfied. District shall, within ten (10) business days after the receipt by District of such written certificate, execute an acknowledgment of such certificate if Contractor has achieved Final Completion. Execution of the 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 the Contractor's final completion certificate.

##### **4.3 Inspection.**

All Work performed by Contractor and all Equipment shall be subject to inspection by District, but such right of inspection of the Work or Equipment shall not relieve Contractor of responsibility for the proper performance of the Work or Equipment to the extent provided under this Agreement. Contractor shall provide to District or District's designee access to Contractor's facility or facilities where the Work is being performed upon reasonable prior notice (at least forty-eight (48) hours), during business hours, and subject to compliance with Contractor's



safety rules and policies. District shall ensure that the inspections and Performance Tests do not affect the normal performance of this Agreement.

## **5. REPRESENTATIONS & WARRANTIES.**

### **5.1 Representations and Warranties of Contractor.**

Contractor represents and warrants to District that:

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

### **5.2 Representations and Warranties of District.**

District represents and warrants to Contractor that:

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



condition, financial or otherwise, of District or in any impairment of its ability to perform its obligations under this Agreement.

- (d) District has, or will have, available all the funds that are necessary from time to time to pay Contractor the Contract Price.
- (e) The individual executing this Agreement on behalf of District is duly authorized to execute and deliver this Agreement on behalf of District and this Agreement is binding upon District in accordance with its terms.

## **6. BREACH & TERMINATION.**

### **6.1 Termination.**

- (a) By Contractor. Without limiting the provisions of Section 7.4, District agrees that if (a) District becomes bankrupt or insolvent or (b) District violates in any material respect any of the provisions of this Agreement, which violation remains uncured for thirty (30) days following District's receipt of written notice thereof from Contractor, the District shall be in breach and Contractor shall have all rights and remedies that may be available under Applicable Law against District with respect thereto, including without limitation the right to suspend performance of the Work and/or to terminate this Agreement.
- (b) By District. Without limiting the provisions of Section 7.4, Contractor agrees that if (a) Contractor becomes bankrupt or insolvent, or (b) Contractor violates in any material respect any of the provisions of this Agreement, which violation remains uncured for thirty (30) days following Contractor's receipt of written notice thereof from District, the Contractor shall be in breach and District shall have all rights and remedies that may be available under Applicable Law against Contractor with respect thereto, including without limitation the right to suspend performance of the Work and/or to terminate this Agreement.

### **6.2 Indemnity.**

- (a) Subject to Section 2.7, Contractor shall fully indemnify, save harmless and defend District from and against any and all costs, claims, and expenses incurred by District in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any person, but only to the extent caused by (a) the negligence, gross negligence or willful misconduct of Contractor or its agents or employees or others under Contractor's control or (b) a breach by Contractor of its obligations hereunder.
- (b) Subject to Section 2.7, District shall fully indemnify, save harmless and defend Contractor from and against any and all costs, claims, and expenses incurred by Contractor in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any person, but only to the extent caused by (a) the negligence, gross negligence or willful misconduct of District or its agents or employees or others under District's control or (b) a breach by District of its obligations hereunder.
- (c) If any claim is brought against a Party (the "Indemnifying Party"), then the other Party (the "Indemnified Party") shall be entitled to participate in, and, unless in the opinion of counsel for the Indemnifying Party a conflict of interest between the Parties may exist with respect to such claim, assume the defense of such claim, with counsel reasonably acceptable to the Indemnifying Party. If the Indemnifying Party does not assume the defense of the Indemnified Party, or if a conflict precludes the Indemnified Party from assuming the defense, then the Indemnifying Party shall reimburse the Indemnified Party on a monthly basis for the Indemnified Party's defense through separate counsel of the Indemnified Party's choice. Even if the Indemnifying Party assumes the defense of the Indemnified Party with acceptable counsel, the Indemnified Party, at its sole option, may participate in the defense, at its own expense, with counsel of its own choice without relieving the Indemnifying Party of any of its obligations hereunder.
- (d) IN NO CIRCUMSTANCES SHALL THE CONTRACTOR OR ANY OF THEIR RESPECTIVE OFFICERS, MEMBERS OR EMPLOYEES BE LIABLE FOR PUNITIVE, CONSEQUENTIAL OR EXEMPLARY DAMAGES OF ANY NATURE INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOST PROFITS OR REVENUES OR THE LOSS OR USE OF SUCH PROFITS OR REVENUE, LOSS BY REASON OF PLANT SHUTDOWN OR INABILITY TO OPERATE AT



RATED CAPACITY, INCREASED OPERATING EXPENSES OF PLANT OR EQUIPMENT, INCREASED COSTS OF PURCHASING OR PROVIDING EQUIPMENT, MATERIALS, LABOR, SERVICES, COSTS OF REPLACEMENT POWER OR CAPITAL, DEBT SERVICE FEES OR PENALTIES, INVENTORY OR USE CHARGES, DAMAGES TO REPUTATION, DAMAGES FOR LOST OPPORTUNITIES, OR CLAIMS OF ANY OF THE PROJECT COMPANIES' CUSTOMERS, MEMBERS OR AFFILIATES, REGARDLESS OF WHETHER SAID CLAIM IS BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHER THEORY OF LAW. IN ADDITION, WHETHER AN ACTION OR CLAIM IS BASED ON WARRANTY, CONTRACT, TORT OR OTHERWISE, UNDER NO CIRCUMSTANCE SHALL THE INDEMNIFYING PARTY'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED \$1,000,000, MINUS THE AGGREGATE AMOUNT OF ANY PENALTIES PAID BY THE INDEMNIFYING PARTY UNDER THIS AGREEMENT. THE LIMITATIONS IN THIS SECTION 6.2(d) SHALL NOT APPLY IN THE CASE OF (A) THE GROSS NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT OF CONTRACTOR OR DISTRICT OR (B) ANY INDEMNITY CLAIMS AGAINST CONTRACTOR OR DISTRICT RESULTING FROM A CLAIM BY A THIRD PARTY FOR INJURY TO PERSON OR PROPERTY.

## **7. MISCELLANEOUS.**

### **7.1 Representatives.**

- (a) District Representatives. District designates, and Contractor agrees to accept, Martin Klaus, Assistant Superintendent, Business and Administrative Services, as District Representative for all matters relating to Contractor's performance of the Work (except for the execution of the certificates approving any Performance Test contemplated in Section 2.1(e)). The actions taken by District Representative regarding such performance shall be deemed the acts of District and shall be fully binding for District. District may, upon written notice to Contractor, pursuant to Section 7.6 hereof, change the designated District Representative.
- (b) Contractor Representatives. Contractor designates, and District agrees to accept, Boris von Bormann and Jonas Didzbalis as Contractor Representatives for all matters relating to Contractor's performance under this Agreement. The actions taken by Contractor Representative shall be deemed the acts of Contractor. Contractor may, upon written notice to District, pursuant to Section 7.5 hereof, change the designated Contractor Representative.
- (c) Power of Representatives. The Parties shall vest their Representatives with sufficient powers to enable them to assume the obligations and exercise the rights of Contractor or District, as applicable, under this Agreement.
- (d) Notices to Representative. Notwithstanding Sections 7.1(a) and 7.1(b), all amendments, Change Orders, notices and other communications between Contractor and District contemplated herein shall be delivered in writing and otherwise in accordance with Section 7.5.

### **7.2 Governing Law.**

The formation, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California.

### **7.3 Force Majeure.**

Contractor shall promptly notify District in writing of any delay or anticipated delay in Contractor's performance of this Agreement due to a Force Majeure Event, and the reason for and anticipated length of the delay. If reasonably feasible, Contractor shall deliver such notice within three business days of Contractor's becoming aware of such delay. Contractor shall be excused for any delays or defaults in the performance of its obligations under this Agreement that are the result of a Force Majeure Event. Contractor shall be entitled to a reasonable extension of time for delays due to a Force Majeure Event; provided that any Force Majeure Event that prevents performance, or is reasonably expected to prevent performance, for more than ninety (90) days shall entitle the Contractor and District to terminate this Agreement; provided, further, that any Work done or materials furnished by Contractor in restoring or rebuilding the System will be paid for by District as extra Work pursuant to Section 2.3.



7.4 **Dispute Resolution.**

- (a) Good faith negotiations. In the event that any question, dispute, difference or claim arises out of or in connection with this Agreement, including any question regarding its existence, validity, performance or termination (a "Dispute"), which either Party has notified to the other, senior management personnel from both Contractor and District shall meet and diligently attempt in good faith to resolve the Dispute for a period of thirty (30) days following one Party's written request to the other Party for such a meeting. If, however, either Party refuses or fails to so meet, or the Dispute is not resolved by negotiation, the provisions of Sections 7.4(b) and 7.4(c) shall apply.
- (b) Technical Dispute. Technical Disputes shall be resolved by an independent expert. For the purposes of this Agreement, a "Technical Dispute" shall mean a Dispute regarding whether the System conforms to the technical specifications, whether the relevant part of the Site where the System is located meets the required site characteristics, whether the Performance Tests contemplated by the System commissioning plan (Exhibit F) have been satisfied, and any other Disputes of a technical or engineering nature. Costs for the technical evaluation by the third party shall be carried by the District. All Technical Disputes shall be resolved on an accelerated basis by one of the following institutions unless otherwise agreed in writing by Contractor and District:
  - i. Sandia National Laboratories;
  - ii. BEW Engineering
  - iii. National Renewable Energy Laboratories; and
  - iv. Black and Veatch, LLP.
- (c) Submission to Jurisdiction. Each Party hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Superior Court of the State of California sitting in the county of Ventura and of the United States District Court of the Central District of California, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the Parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such California State or, to the extent permitted by law, in such Federal court.
- (d) Service of Process. Each Party hereby irrevocably consents and agrees to the service of any and all legal process, summons, notices and documents out of any of the aforementioned courts in any such suit, action or proceeding, which service may be made by mailing copies thereof by registered or certified mail, postage prepaid, at the address set forth in Section 7.5 or at such other address as such Party has later specified in writing (the Parties agree that such service will become effective five (5) Business Days after such mailing). Each Party hereby agrees that service upon it, or any of its agents, in each case in accordance with this Section 7.4(d), shall constitute valid and effective personal service upon such Party, and each Party hereby agrees that the failure of any of its agents to give any notice of such service to any such Party shall not impair or affect in any way the validity of such service on such Party or any judgment rendered in any action or proceeding based thereon. Nothing herein shall affect the right of any Party to service of process in any other manner permitted by Applicable Law or to commence legal proceedings or to proceed against any other Party in any jurisdiction other than that specified above.
- (e) Assignment of Contract. Contractor shall not assign or transfer in any way any or all of its rights, burdens, duties, or obligations under this Contract without the prior written consent of District. This provision shall not limit the Contractor's right to subcontract portions of its Work to other entities and assign this Contract and all related contracts without the consent of the District (i) to direct affiliates of Contractor; (ii) to an entity that is controlled by, controls, or is under common control with Contractor; or (iii) pursuant to a merger, consolidation, transfer of substantially all its assets, or by operation of law. This Contract will be binding on, enforceable by, and inure to the benefit of, the Parties and their respective successors and permitted assigns. Any assignment made in contravention of this clause shall be void and unenforceable.



7.5 **Notices and Demands.**

Any notice, request, demand or other communication required or permitted under this Agreement, shall be deemed to be properly given by the sender and received by the addressee if made in writing and (a) if personally delivered; (b) five (5) days after deposit in the mail if mailed by certified or registered air mail, post prepaid, with a return receipt requested; or (c) if sent by facsimile with confirmation. Mailed notices and facsimile notices shall be addressed as follows to:

District:

Oak Park Unified School District  
5801 East Conifer Street  
Oak Park, CA 91377  
Attention: Martin Klaus, Assistant Superintendent  
Phone: (818) 735-3200  
Email: [MKlaus@oakparkusd.org](mailto:MKlaus@oakparkusd.org)

Contractor:

SK Solar, Inc.  
2658 Griffith Park Boulevard, # 410  
Los Angeles, CA 90039  
Attention: Boris von Bormann  
Phone: (310) 461-8867  
Email: [bvb@sk-solar-usa.com](mailto:bvb@sk-solar-usa.com)

7.6 **Nondisclosure.**

Whichever Party receives confidential information (the "Receiving Party") from the other Party (the "Disclosing Party") shall not use for any purpose other than performing the Work under this Agreement or divulge, disclose, produce, publish, or permit access to, without the prior written consent of the Disclosing Party, any such information of the Disclosing Party. Confidential information includes, without limitation, this Agreement and exhibits hereto, all information or materials prepared in connection with the Work performed under this or any related subsequent Agreement, designs, drawings, specifications, techniques, models, data, documentation, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, development or marketing timetables, strategies and development plans, customer, supplier or personnel names and other information related to customers, suppliers or personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets. Confidential information does not include (a) information known to the Receiving Party prior to obtaining the same from the Disclosing Party; (b) information in the public domain at the time of disclosure by the Receiving Party; or (c) information obtained by the Receiving Party from a third party who did not receive same, directly or indirectly, from the Disclosing Party. The Receiving Party shall use the higher of the standard of care that the Receiving Party uses to preserve its own confidential information or a reasonable standard of care to prevent unauthorized use or disclosure of such confidential information. Notwithstanding anything herein to the contrary, the Receiving Party has the right to disclose Confidential Information without the prior written consent of the Disclosing Party: (i) as required by any court or other Governmental Authority, or by any stock exchange upon which the shares of any Party are listed, (ii) as otherwise required by law, (iii) as advisable or required in connection with any government or regulatory filings, including without limitation, filings with any regulating authorities covering the relevant financial markets, (iv) to its attorneys, accountants, financial advisors or other agents, in each case bound by confidentiality obligations, (v) to banks, investors and other financing sources and their advisors, in each case bound by confidentiality obligations; or (vi) in connection with an actual or prospective merger or acquisition or similar transaction where the party receiving the Confidential Information is bound by confidentiality obligations. If a Receiving Party believes that it will be compelled by a court or other Governmental Authority to disclose confidential information of the Disclosing Party, it shall give the Disclosing Party prompt written notice, and in all cases not less than five (5) business days notice in advance of disclosure, so that the Disclosing Party may determine whether to take steps to oppose such disclosure. Notwithstanding the foregoing, Contractor acknowledges that this Agreement, once fully executed and approved by the District, is public information, subject to release in response to public information requests under California Government Code § 6250 et seq. (Public Records Act). District shall use reasonable efforts to prevent or limit disclosure of the Confidential Information.

7.7 **Validity.**

The provisions contained in each section, subsection and clause of this Agreement shall be enforceable independently of each of the others and their validity shall not be affected if any of the others are invalid. If any of



those provisions is void but would be valid if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid. The Parties shall, if necessary, negotiate in good faith and make any necessary amendments to ensure the enforceable terms of this Agreement reflect the true intent of the Parties as of the date of execution of this Agreement.

7.8 **Survival.**

Any provisions in this Agreement that, by their terms, are intended to survive termination, including, without limitation, representations and warranties, provisions pertaining to indemnification, confidentiality, and dispute resolution, shall survive the expiration or earlier termination of this Agreement.

7.9 **Binding Effect.**

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

7.10 **No Oral Modifications.**

No oral or written amendment or modification of this Agreement by any officer, agent or employee of Contractor or District, either before or after execution of this Agreement, shall be of any force or effect unless such amendment or modification is in writing and is signed by any officer of the Party (or of the managing member or managing partner of the Party on behalf of the Party) to be bound thereby.

7.11 **Headings.**

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

7.12 **Counterparts.**

This Agreement may be executed in counterparts which, taken together, shall constitute a single instrument.

7.13 **Complete Agreement.**

This Agreement constitutes the complete and entire Agreement between the Parties and supersedes any previous communications, representations or Agreements, whether oral or written, with respect to the subject matter hereof. There are no additions to, or deletions from, or changes in, any of the provisions hereof, and no understandings, representations or Agreements concerning any of the same, which are not expressed herein, unless stated below. THE PARTIES HEREBY AGREE THAT NO TRADE USAGE, PRIOR COURSE OF DEALING OR COURSE OF PERFORMANCE UNDER THIS AGREEMENT SHALL BE A PART OF THIS AGREEMENT OR SHALL BE USED IN THE INTERPRETATION OR CONSTRUCTION OF THIS AGREEMENT.

7.14 **No Agency.**

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

7.15 **Priority of Documents.**

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

7.16 **Underground Utilities.**

Provided that Contractor takes reasonable precautions consistent with industry standards, Contractor is not responsible for damage it causes to any underground utility including but not limited to electric, sewer, gas, or cable lines.





7.17 **Good Will and Publicity.**

Contractor shall have full rights to promote the installation and operation of the system, along with disclosing the District and publicizing images and system specifications of the system. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon, and approve any publicity materials, press releases, or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement; provided that no such publicity releases or other public statements (except for filings or other statements or releases as may be required by, or cannot be proscribed by Applicable Law), shall be made by either Party without the prior written consent of the other Party. At no time shall a Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party without an express written agreement with respect thereto.

7.18 **No Waiver.**

No provision of this Agreement shall be considered waived by either Party except when such waiver is made in writing. The failure of either Party to insist, on one or more occasions, upon strict performance of any of the provisions of this Agreement or to take advantage of its rights hereunder or the delay or failure in exercising totally or partially any right or remedy under this Agreement, shall not be construed as a waiver of any such provisions or the relinquishment of any such rights or any other rights for the future, but the same shall continue and remain in full force and effect.

7.19 **Definition of Terms.**

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

7.20 **Exhibits.**

- Exhibit A – Construction Schedule
- Exhibit B – Performance Tests
- Exhibit C – Scope of Work
- Exhibit D – Contract Change Request
- Exhibit E – Schedule of Values
- Exhibit F – Substantial Completion Commissioning Plan
- Exhibit G – Insurance
- Exhibit H – Warranty
- Exhibit I – Site Layout
- Exhibit J – Notice of Substantial Completion
- Exhibit K – Final Completion Certificate
- Exhibit L – Definitions
- Exhibit M – Estimated Production and Savings

**[Signature Page Follows]**



**IN WITNESS WHEREOF**, the Parties have executed this Engineering, Procurement and Construction Agreement as of the date set forth above.

**DISTRICT: OAK PARK UNIFIED SCHOOL DISTRICT**

\_\_\_\_\_  
Signature

**Anthony W. Knight, Ed.D., Superintendent**

\_\_\_\_\_  
Date

**CONTRACTOR: SK SOLAR, INC.**

\_\_\_\_\_  
Signature

**Boris von Bormann, CEO**

\_\_\_\_\_  
Date

**EXHIBIT A**

**Construction Schedule**

**[Preliminary Schedule attached]**

**(Upon completion, Final Construction Schedule shall be replace the Preliminary Schedule as Exhibit A)**



OAK PARK HIGH SCHOOL

JUNE										JULY										AUGUST										SEPTEMBER																																																										
2	3	4	5	6	9	10	11	12	13	16	17	18	19	20	23	24	25	26	27	30	1	2	3	4	7	8	9	10	11	14	15	16	17	18	21	22	23	24	25	28	29	30	31	1	2	3	4	5	6	9	10	11	12	13	16	17	18	19	20	23	24	25	26	27	30	31	1	2	3	6	7	8	9	10	13	14	15	16	17	20	21	22	23	24	27	28	29	30



\*project schedule is estimated and subject to change based on material availability and DSA review

## EXHIBIT B

### Performance Tests

#### OVERVIEW

Project take-over for the system will depend upon the successful completion of a series of DC-side tests and AC-side commissioning activities. This Exhibit describes the relevant DC and AC test procedures and analyses in detail.

#### SYSTEM TESTS

Contractor technical personnel, with the assistance of the equipment manufacturer(s) as needed, will perform a complete commissioning of the DC and AC system equipment following Contractor's rigorous commissioning procedures. These commissioning procedures include the tests outlined in this Exhibit as well as other standard tests, inspections, safety and quality checks. All testing and commissioning will be conducted in accordance with the manufacturer's specifications. The system inverters will be commissioned on site by a manufacturer's representative or qualified technician and will confirm that the inverter can be operated locally per specification and that automatic operations such as wake-up and sleep routines, power tracking and fault detection responses occur as specified.

Upon completion of each of the commissioning procedures, Contractor's technician or engineer will initial the commissioning checklist or test result page to indicate that the test has been completed successfully. The results of string testing will be summarized and complete results will be provided in digital format.

#### Open Circuit Voltage Test

<b>Purpose:</b>	Open Circuit Voltage Testing provides a simple method to determine that all strings are properly connected (module and string polarity) and that all PV modules are producing an appropriate voltage level.
<b>Scope:</b>	All strings
<b>Party:</b>	Contractor technical personnel
<b>Equipment/ Materials:</b>	rubber insulating gloves
	voltmeter with an accuracy of at least 1 percent of reading
	fuse puller
	infrared thermometer or thermocouple
	PV specification for $V_{oc}$ as a function of temperature
	jumper wire
<b>Conditions:</b>	This test should be conducted under full sun ( $>500 \text{ W-m}^{-2}$ ) and stable sky conditions, generally between the hours of 10:00am and 2:00pm.
<b>Procedure:</b>	Measure the temperature of the PV modules using an infrared thermometer or thermocouple. (It is sufficient to measure the temperature of 2-3 modules and take the average).
	Calculate Expected $V_{oc}$ : Referring to the PV manufacturer supplied equation for $V_{oc}$ as a function of temperature, calculate the expected $V_{oc}$ of each string.
	Remove Fuses: Wearing rubber insulating gloves and using a fuse puller, carefully remove the fuses from the combiner box. Failure to remove the fuses will result in identical voltage measurements for every string since they are in parallel with the fuses in place.
	Test String Voltages: Place the positive lead on the fuse block of the string you are testing while the negative lead is attached to the negative block. Continue testing each string by moving to each positive string fuse block. Test and record the voltage of each electrical string.

<b>Criteria:</b>	<p>For stable sky conditions and irradiance above 500 W-m<sup>-2</sup>, string voltages should conform to within 10% of expected voltage as calculated in Step 2 above and each string should conform to within 5% of the average string voltage in the same combiner box under identical temperature and irradiance conditions.</p> <p>For irradiance less than 500 W-m<sup>-2</sup> or for unstable sky conditions (if irradiance changes by more than 10%, or ambient temperature changes by more than 5°C), compare each string’s measured voltage to periodic measurements on a known good (reference) string. The reference string must be measured at irradiance above 500 W-m<sup>-2</sup> and its measured voltage must be within 10% of the voltage calculated using Step 2 above. Voltage on non-reference strings should be within 10% of the reference string voltage under the same temperature and irradiance conditions.</p> <p>For irradiance less than 200 W-m<sup>-2</sup>, test results may be used only to confirm proper string connection, and not to evaluate voltage performance.</p>
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### **Operating Current Test**

<b>Purpose:</b>	The purpose of this test is to ensure that all strings are producing an adequate and consistent operating current.
<b>Scope:</b>	All strings, after connection with utility grid and inverter start-up
<b>Party:</b>	Contractor technical personnel
<b>Equipment/ Materials:</b>	<p>rubber insulating gloves</p> <p>DC clamp-on ammeter, 0-40 A scale with 2 per cent. of full scale accuracy</p>
<b>Procedure:</b>	<p>Start the Inverter: Start the inverter if it is not already running, making sure all fuses are installed. Wait 5 minutes for the power tracker to stabilize.</p> <p>Prepare for Readings: Open the combiner box, turn on the ammeter, and carefully zero the meter. Keep the clamp away from large bundles of wire, as they will affect the zero, and therefore the actual reading on the meter.</p> <p>Record the “Zero” Value: Wearing rubber insulating gloves, place the meter near a string’s homerun wire. Record the “zero” value.</p> <p>Record the Current Value: While still wearing gloves, clamp the meter on each service loop in the box, recording the current readings.</p> <p>Calculate Actual Current: Calculate and record the actual string currents as the difference between the string current reading and the “zero” value.</p> <p>Example:</p> <ul style="list-style-type: none"> <li>• “Zero” value = 0.3 A</li> <li>• Current reading = 3.0 A</li> <li>• Actual Current: 3.0 A - 0.3 A = 2.7 A</li> </ul>
<b>Conditions:</b>	Measurements should be made during clear and stable sky conditions. The total inverter output should be at least 50% of the aggregate rating of the active inverters. This test should be conducted under full sun (>500 W-m <sup>-2</sup> ), generally between the hours of 10:00am and 2:00pm. Irradiance must be greater than 200 W-m <sup>-2</sup> .
<b>Criteria:</b>	Under clear and stable sky conditions with irradiance greater than 500 W-m <sup>-2</sup> , current readings within each GA6 box should be within 10% of the average under identical sky conditions. A reasonable effort shall be made to conduct this test under conditions with irradiance greater than 500 W-m <sup>-2</sup> , however, if such conditions are not available in the commissioning period, then the Current Test will be performed as a sign-of-life test only, without the 10% criteria.

## **Inverter Commissioning**

<b>Purpose:</b>	Verify the proper operation of the inverter systems
<b>Scope:</b>	All inverters
<b>Party:</b>	Installer and/or manufacturer, with Contractor supervision
<b>Schedule:</b>	At inverter start-up
<b>Equipment/ Materials:</b>	rubber insulating gloves
	digital multi-meter an accuracy of at least 1 percent of reading for voltage
	other equipment as required by manufacturer
<b>Procedure:</b>	Follow all manufacturer's guidelines for inverter start-up and commissioning, including verification of safety and control features.
<b>Conditions:</b>	No special conditions apply.
<b>Criteria:</b>	The inverter and controls should operate as stated in the purchaser or manufacturer specifications.
<b>Comments:</b>	Remote functions should only be tested on those systems that will utilize this feature.

**EXHIBIT C**  
**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
- Solar Panels – Solarworld Sunmodule
- Inverters – to be defined
- Prevailing Wages
- Bonding
- 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 with utility
- Coordination and management of all necessary inspections including DSA
- Full installation of mechanical, structural and electrical components of PV system
- Full commissioning

Excludes:

- Alterations or Deviations from the above
- Assumes Readily Internet Access available





**EXHIBIT D  
CONTRACT CHANGE REQUEST**

<b>DATE:</b>	<b>PROJECT NAME:</b>	<b>CHANGE ORDER #</b>
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<b>PROJECT MANAGER:</b>	<b>CONTRACT DATE:</b>
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**REASON FOR CHANGE:**

Description	Cost
<b>Total Cost of Changes:</b>	

*Attach Additional Sheets If Necessary*

<b>CHANGE ORDER EFFECT ON COMPLETION DATES (Please check appropriate box)</b>	
<input type="checkbox"/>	This Change Order shall <b>NOT</b> affect the Dates of Substantial or Final Completion.
<input type="checkbox"/>	This Change Order <b>WILL</b> affect Completion Dates. The Revised Dates are below.
	Substantial Completion:
	Final Completion:



REVISED CONTRACT AMOUNT	
ORIGINAL CONTRACT SUM	
COST OF PREVIOUS CHANGE ORDERS (IF ANY)	
PREVIOUSLY REVISED TOTAL	
COST OF CURRENT CHANGE ORDER	
REVISED CONTRACT SUM	

CONTRACTOR APPROVAL	
SIGNATURE	
PRINTED NAME	
TITLE	
DATE	

DISTRICT APPROVAL	
SIGNATURE	
PRINTED NAME	
TITLE	
DATE	

**EXHIBIT E**

**Schedule of Values**

**(includes sales tax, bonding and required certificates)**

**Phase 1: Execution of Contract (20%): USD \$52,607.80 shall be payable upon execution of this agreement**

**Phase 2: Delivery of Final – Built- To Plans (15%): USD \$78,911.70 shall be payable upon delivery of final build-to plans to be submitted for permitting**

**Phase 3: Building Permits for the Project Received (10%): USD \$52,607.80 shall be payable upon receipt of building permits for this project**

**Phase 4: Purchase Order for Equipment and Materials Submitted (35%): USD \$184,127.30 shall be payable upon issuance of purchase orders to the material suppliers for solar modules and inverters**

**Phase 5: Notice of Substantial Completion (10%): USD \$52,607.80 shall be payable upon completion of the installation and upon delivery and acceptance of notice of substantial completion to District.**

**Phase 6: Final Completion Certificate (10%): USD \$52,607.80 shall be payable upon delivery and acceptance of final completion certificate.**

**Total system cost: \$526,078.00**

**EXHIBIT F**

**Substantial Completion Commissioning Plan for System**

<b>System</b>		
	Overall Site Condition	Inspect general condition of the Site. Verify cleanliness of Site, structure, and tiles. Confirm 'Danger' signage is erected and check security and safety features are in place.
	Installed Equipment	Verify that all equipment on construction drawings is installed per design documents and manufacturer's specifications.
	PV Mounting	Verify that all modules are properly placed, spaced and aligned. Check for cracks and other defects in each module. Verify that condition frames and clamps are in place. Evaluate the potential degree of soiling that may occur, assess any shading issues, and review any clearance concerns and obstacles for the modules.
	Array Wiring	Check the grounding integrity, all wiring connections, and the wire condition.

<b>Electrical</b>		
	Combiner Box and Terminal Boxes	Check for loose wires and conduit, door seals, fuses and all wiring connections. Verify that the correct signage and labeling is in place.
	Inverter	Follow manufacturer start up and commissioning procedures.
	AC/DC Disconnect	Inspect each disconnect and ensure the proper positioning. Also, check that the appropriate safety signage is in place.

<b>Monitoring</b>		
	Data Acquisition System ("DAS")	Inspect the DAS logger. Verify that operational data is collected.

<b>Testing</b>		
	Test Open Circuit Voltage (All Strings)	
	Test DC Amperage (All Strings)	

## EXHIBIT G

### INSURANCE

#### **Part I: Contractor shall secure and maintain the following insurance coverage:**

Commercial General Liability

Limits of Liability:

\$2,000,000. General Aggregate

\$1,000,000. Products/Completed Operations Aggregate

\$1,000,000. Personal & Advertising Injury Limit

\$1,000,000. Per Occurrence

Endorsements issued in favor to District:

- Additional Insured
- Coverage afforded District shall be Primary and non-contributing to any other insurance maintained by District
- Thirty (30) days notice of cancellation, except ten (10) days for non-payment of premium.

Automobile Liability:

Limits of Liability:

\$1,000,000. per accident

Workers' Compensation:

Limits of Liability:

Statutory

Employers' Liability:

Limits of Liability:

\$1,000,000. per occurrence

Umbrella/Excess Liability:

\$1,000,000. Aggregate

Excess over Primary Limits of Liability required for Commercial General Liability, Automobile Liability and Employers' Liability.

Professional Liability:

Limits of Liability:

\$1,000,000. each claim

\$2,000,000. aggregate

#### **Part II: District Insurance Requirements**

Upon final completion of the project District shall procure and maintain comprehensive insurances appropriate for owners risks arising out of their ownership and operation of the System.

## EXHIBIT H

### 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"). 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 option, promptly either repair the defective work or replace any defective parts at its sole cost and expense. 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. 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.

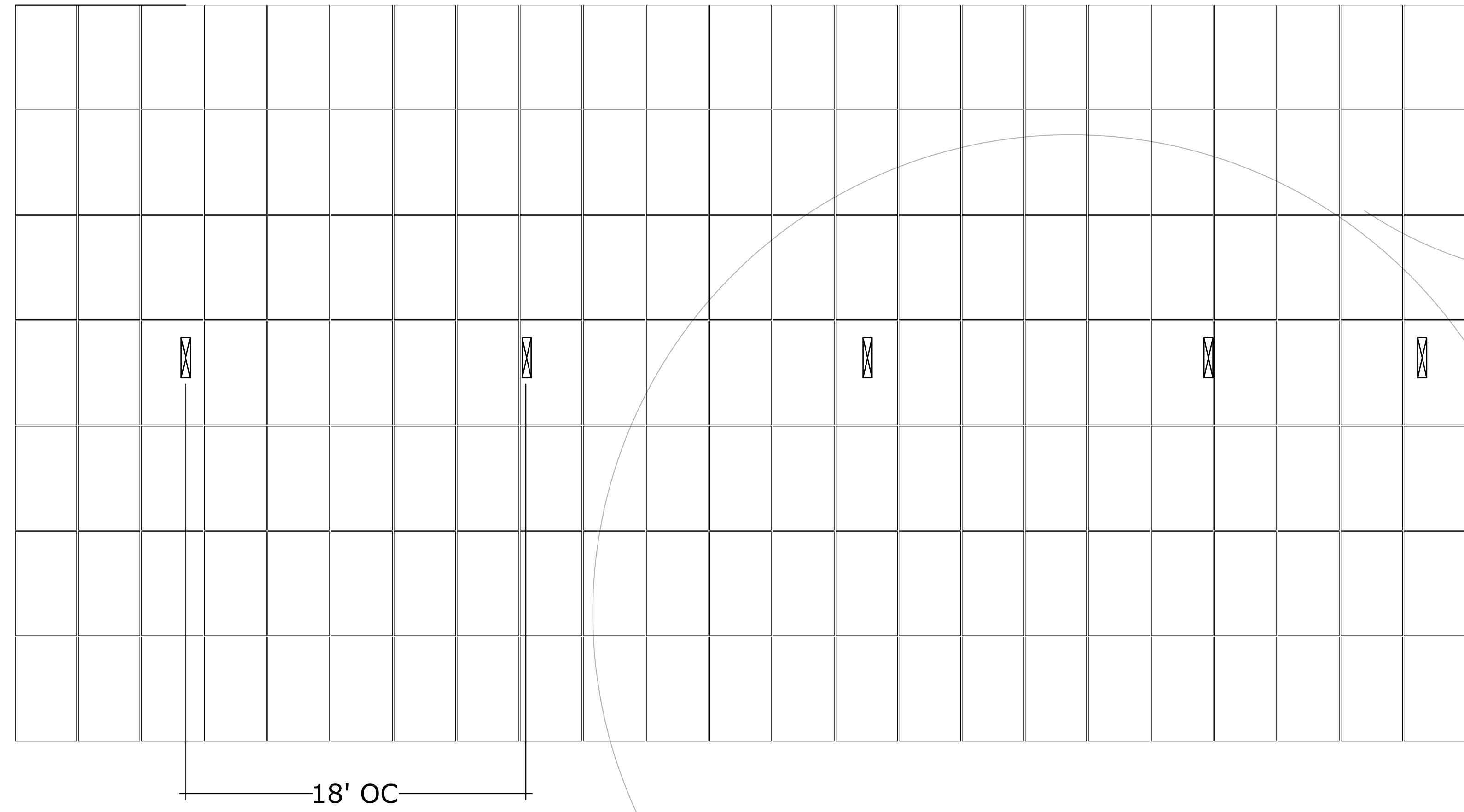
#### 4. Disclaimer

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.

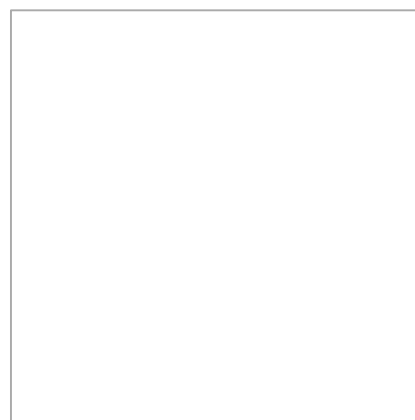
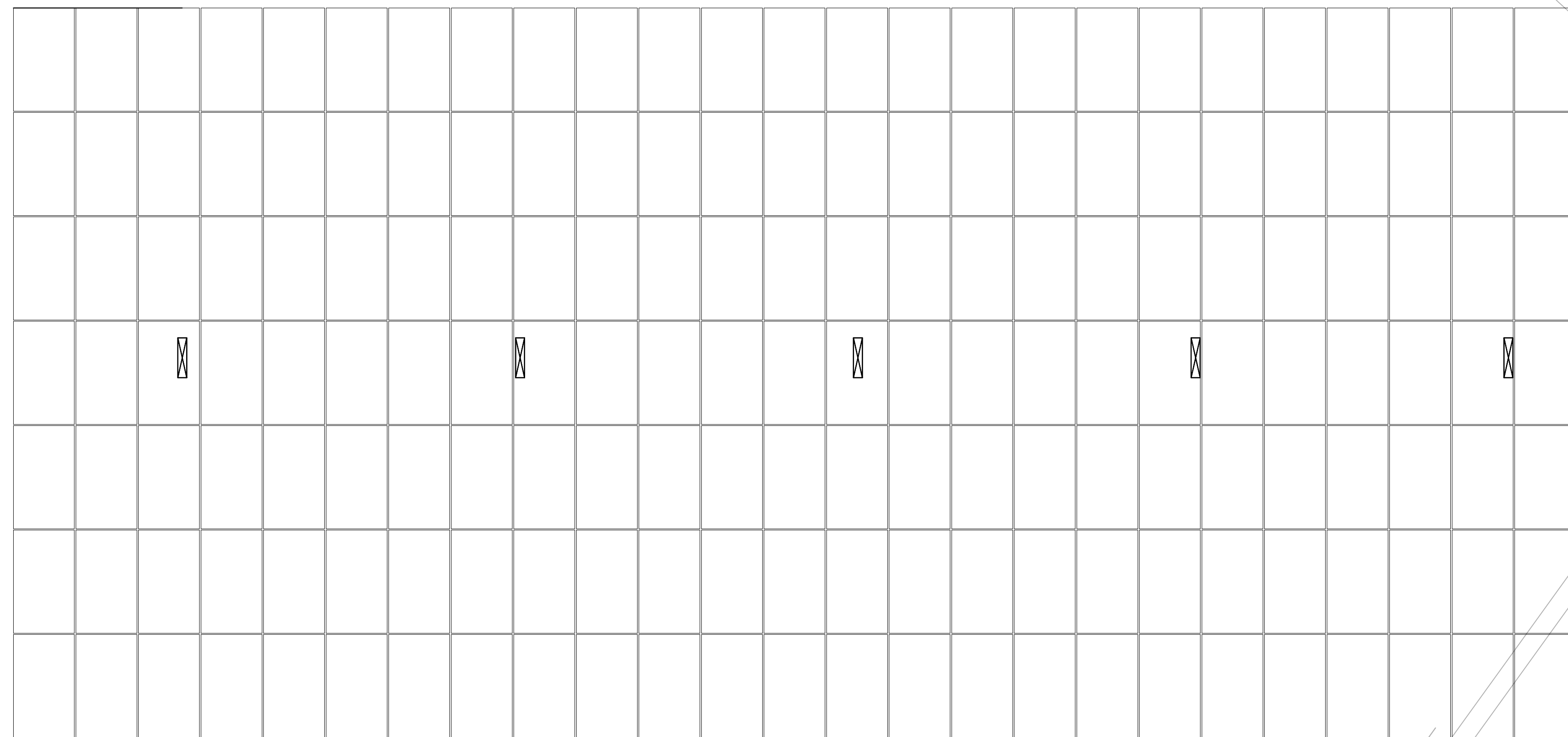
**EXHIBIT I**  
**Site Layout**  
**[See attached]**

A

24x7




26x7



1

CONTRACTOR:  
**SK SOLAR, INC.**  
LICENSE NO. 991593  
BORIS VON BORMANN



2658 GRIFFITH PARK BLVD. #410  
LOS ANGELES, CA 90039, USA

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PROJECT LOCATION:  
OAK PARK HIGH SCHOOL

---

PROJECT:  
OAK PARK / GROWTH  
POINT PV CARPORT DSA  
STRUCTURES

---

SHEET TITLE:  
GENERAL NOTES

---

SHEET NUMBER:  
S-XXX





**Exhibit J**

**Notice of Substantial Completion (Form)**

Date: [DATE]

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

Attn: Boris von Bormann

Re: [PROJECT NAME] SUBSTANTIAL COMPLETION NOTICE

This notice is issued pursuant to Section 4.1 of that certain Engineering, Procurement, and Construction Contract (the "Agreement"), dated as of [EFFECTIVE DATE], by and between SK Solar, Inc., a California Corporation, ("Contractor") and [DISTRICT NAME], a [STATE] [TYPE OF BUSINESS] (the "District"). Capitalized terms used but not defined herein have the meanings set forth in the Contract.

According to Section 4 of the Agreement, the following items are conditions precedent to Substantial Completion:

- (i) The System is mechanically, electrically, and structurally constructed in accordance with this Agreement, the Work and Industry Standards, except for non-critical punch list items;
- (ii) The medium voltage infrastructure and the grid connection for the System are mechanically, electrically and functionally complete and capable of interconnection with the local utility;
- (iii) Commissioning according to procedures set forth in Exhibit F is completed successfully and the corresponding certificates are duly signed by District's Representative, the Contractor's Representative; and
- (iv) District and Contractor shall have agreed on the punch list items.

The Contractor reasonably believes that all of the above listed requirements of Substantial Completion are complete. District may visit the Site and review the applicable data and documentation in order to confirm that such System has achieved Substantial Completion. If District is satisfied that such System has achieved Substantial Completion, District shall acknowledge and confirm Substantial Completion by signing this notice below and returning this executed form to the Contractor. Failure of District to provide written notice of rejection of Substantial Completion within ten (10) business days of this notice shall constitute acceptance of this Substantial Completion Notice.

Acknowledged and Confirmed

District

[DISTRICT NAME]

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

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

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

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

Contractor

SK SOLAR, INC.

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

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

Name: Boris von Bormann

Title: CEO



**Exhibit K**

**Final Completion Certificate (Form)**

Date: [DATE]

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

Attn: Boris von Bormann

Re: FINAL COMPLETION CERTIFICATE

This certificate is issued pursuant to Section 4 of that certain Engineering, Procurement, and Construction Contract (the "Agreement"), dated as of [EFFECTIVE DATE], by and between SK Solar, Inc., a California Corporation, ("Contractor") and [DISTRICT NAME], a [STATE] [TYPE OF BUSINESS] (the "District"). Capitalized terms used but not defined herein have the meanings set forth in the Contract.

According to Section 4 of the Agreement, the following items are conditions precedent to Final Completion:

- (v) All punch list items have been completed or waived;
- (vi) All manuals, drawings and other documents expressly required to be delivered by Contractor hereunder have been delivered to District;
- (vii) All final Lien waivers have been obtained;

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

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

[DISTRICT NAME]

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

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

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

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

Contractor:

SK SOLAR, INC.

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

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

Name: Boris von Bormann

Title: CEO



## **Exhibit L**

### **DEFINITIONS**

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

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

**"Agreement"** shall have the meaning set forth in the Recitals.

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

**"Applicable Permits"** shall mean each and every national, autonomic, regional and local license, authorization, certification, filing, recording, permit or other approval with or of any Governmental Authority, including, without limitation, each and every environmental, construction or operating permit and any agreement, consent or approval from or with any other Person that is required by any Applicable Law or that is otherwise necessary for the performance of the Work or operation of the System.

**"Business Day"** means Mondays through Fridays, except such days on which banks are permitted or required to close in California and except such days on which the business offices of school districts are closed.

**"Change Order"** shall mean a written document signed by District and Contractor authorizing an addition, deletion or revision to the Work or an adjustment of the Contract Price or Construction Schedule issued after execution of this Agreement.

**"District's Representative"** shall mean the individual designated by District in accordance with Section 7.

**"Commercial Operation"** shall mean, with respect to a particular Site, the condition existing when the System at such Site is (i) mechanically complete and operating at least at the capacity listed in the Scope of Work; and (ii) energy is delivered through the System's metering device to such Site's electrical system under an Interconnection Agreement.

**"Commercial Operation Date"** shall mean, with respect to a particular Site, the date on which the System at such Site has achieved Commercial Operation.

**"Construction Schedule"** shall mean the schedule for performance of the Work as set forth on Exhibit A.

**"Contract Documents"** shall mean this Agreement, the exhibits and schedules hereto, and drawings, specifications, plans, calculations, models and designs that have been prepared by Contractor or any Subcontractor exclusively for the Work.



**“Contract Price”** shall mean the amount for performing the Work that is payable to Contractor as set forth in Section 3.1(a), as the same may be modified from time to time in accordance with the terms hereof.

**“Contractor”** shall have the meaning set forth in the Recitals.

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

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

**“Design Submittal”** shall mean, with respect to a particular Site, the delivery to District of the graphical representation of the layout and electrical design of the System.

**“Disclosing Party”** shall have the meaning set forth in Section 7.

**“Dispute”** shall have the meaning set forth in Section 7.

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

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

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

**“Final Completion”** shall mean satisfaction or waiver of all of the conditions for completion of the System set forth in Section 4.

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

- (a) war (whether or not war is declared), hostilities, revolution, rebellion, insurrection against any Governmental Authority, riot, terrorism, acts of a public enemy or other civil disturbance;
- (b) acts of God, including but not limited to, storms, floods, lightning, earthquakes, hailstorms, ice storms, tornados, typhoons, hurricanes, landslides, other weather issues, volcanic eruptions, fires, winds in excess of ninety (90) miles per hour, and objects striking the earth from space (such as meteorites), sabotage or destruction by a third party (other than any contractor retained by or on behalf of the Party) of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;
- (c) Regional or national strikes, walkouts, lockouts or similar industrial or labor actions or disputes; and
- (d) Acts of any Governmental Authority that materially restricts or limits Contractor’s access to the Site or its activities at the Site; provided that no act by the Government of the United States of America shall constitute a Force Majeure Event in respect of any obligation of District hereunder.



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

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

**“Indemnified Party”** shall have the meaning set forth in Section 6.

**“Indemnifying Party”** shall have the meaning set forth in Section 6.

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

**“Interconnection Agreement”** shall mean the interconnection agreement in a form approved by the local utility and providing for connection of the System to the utility’s electrical distribution system.

**“Parties”** means collectively, District and Contractor.

**“Party”** means either District or Contractor.

**“Performance Tests”** means, the tests of the System, as more particularly described in Exhibit B.

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

**“Projected Substantial Completion Date”** means the date on which Contractor reasonably believes it will achieve Substantial Completion.

**“Receiving Party”** shall have the meaning set forth in Section 7.

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

**“Schedule of Values”** shall mean the breakdown and valuation of the work for progress payment purposes as set forth in Exhibit E.

**“Site”** shall have the meaning set forth in the Recitals, and is more fully described in Exhibit I hereto.

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

**“Substantial Completion”** shall mean satisfaction or waiver of all of the conditions set forth in Section 4.

**“Substantial Completion Date”** shall mean the actual date on which the Substantial Completion of the System, as defined in Section 4, has occurred.

**“Substantial Completion Notice”** shall mean the written notice, attached hereto as Exhibit J, provided by Contractor notifying District of the achievement of Substantial Completion.

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

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



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

**“Utility”** shall mean the local electric distribution owner and operator providing electric distribution and interconnection services to the System.

**“Warranty”** shall mean the warranty of Contractor set forth on Exhibit H.

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



## Exhibit M Estimated Production and Savings

**Disclaimers:**

- \* Utility Savings estimates are based on a current electricity rate of \$0.090/kWh with an annual escalation of 3.9%
- \* Production values are estimations only and listed for discussion purposes are not warranted
- \* This proposal is for discussion purposes only and is subject to change.
- \* This proposal is subject to full verification of all information provided, and other due diligence.
- \* SK Solar does not warrant energy utility savings and are listed for discussion purposes only
- \* SK Solar and its employees are not tax experts, consult your tax professional to understand all tax implications.

**Oak Park High School - Estimated Financials**

Project Summary	
Customer Name	Oak Park Unified
Installer Name	SK Solar
City, State	Oak Park, California
<b>System Summary</b>	
Proposed System Size (KW DC)	155KW
Solar Modules	SolarWorld
System Mounting Type	Roof-top
Estimated Yr. 1 Output (kWh)	254,901
<b>Tax Assumptions<sup>1</sup></b>	
Investment Tax Credit	\$0
Federal Tax Rate	0%
State Tax Rate	0.00%
<b>Cash Purchase Summary</b>	
25-yr Total Savings	\$408,793
Incentives <sup>2</sup>	\$0.114/kWh PBI for 5 yrs
Purchase Price	\$466,500
Add-on for Bonding and Prevailing Wage	\$23,000
Sales Tax	\$36,578

Year	Est. System Production (kWh)	Cash Purchase Amount	Down Payment	Est. Utility Rate @ escalator 3.9%	Est. Utility Savings	Est. Performance Based Incentives	Est. Finance Payment	Est. Annual Cash Savings	Est. Cumulth Cash Savings
1	254,901	(\$526,078)	(\$65,000)	\$0.090	\$22,941	\$27,919	(\$56,678)	(\$5,818)	(\$5,818)
2	252,862			\$0.094	\$23,645	\$27,779	(\$56,678)	(\$5,544)	(\$11,072)
3	250,823			\$0.097	\$24,389	\$27,659	(\$56,678)	(\$4,970)	(\$15,742)
4	248,784			\$0.101	\$25,114	\$27,500	(\$56,678)	(\$4,064)	(\$19,806)
5	246,745			\$0.105	\$25,879	\$27,380	(\$56,678)	(\$3,439)	(\$23,245)
6	244,706			\$0.109	\$26,666		(\$56,678)	(\$3,012)	(\$26,256)
7	242,667			\$0.113	\$27,476		(\$56,678)	(\$2,802)	(\$29,022)
8	240,628			\$0.118	\$28,307		(\$56,678)	(\$2,871)	(\$31,829)
9	238,589			\$0.122	\$29,162		(\$56,678)	(\$2,716)	(\$34,345)
10	236,550			\$0.127	\$30,040		(\$56,678)	(\$2,638)	(\$36,993)
11	234,511			\$0.132	\$30,943			\$30,943	(\$134,000)
12	232,472			\$0.137	\$31,870			\$31,870	(\$102,170)
13	230,433			\$0.142	\$32,823			\$32,823	(\$69,347)
14	228,394			\$0.148	\$33,801			\$33,801	(\$35,546)
15	226,355			\$0.154	\$34,806			\$34,806	(\$1,741)
16	224,316			\$0.160	\$35,837			\$35,837	\$35,097
17	222,277			\$0.166	\$36,897			\$36,897	\$71,993
18	220,238			\$0.172	\$37,984			\$37,984	\$109,977
19	218,199			\$0.179	\$39,100			\$39,100	\$149,077
20	216,160			\$0.186	\$40,245			\$40,245	\$189,322
21	214,121			\$0.193	\$41,420			\$41,420	\$230,742
22	212,082			\$0.201	\$42,626			\$42,626	\$273,368
23	210,043			\$0.209	\$43,862			\$43,862	\$317,231
24	208,004			\$0.217	\$45,131			\$45,131	\$362,361
25	205,965			\$0.225	\$46,431			\$46,431	\$408,793

**Assumptions**  
 \* Utility Savings estimates are based on a current electricity rate of \$0.090/kWh with an annual escalation of 3.9%  
 \* Production values are estimations only and listed for discussion purposes are not warranted  
**Disclaimers**  
 \* This proposal is for discussion purposes only and is subject to change.  
 \* This proposal is subject to full verification of all information provided, and other due diligence.  
 \* SK Solar does not warrant energy utility savings and are listed for discussion purposes only  
 \* SK Solar and its employees are not tax experts, consult your tax professional to understand all tax implications.

**Note:**  
 The cost assumptions include Sales Tax. All necessary bonds and certificates as required and also installation cost based on prevailing w/e