



**Energy Services Contract
Contra Costa County Fire Protection District and OpTerra Energy Services**

**DIR Project Registration # _____
OpTerra ES Project #: ACECN00070
OpTerra ES Contract # R 3 1 5 7**

ENERGY SERVICES CONTRACT

DRAFT DATED 29 NOVEMBER 2016

This **ENERGY SERVICES CONTRACT** is made and entered into as of 6 December 2016 (the "Contract Effective Date") by and between **OpTerra Energy Services, Inc.**, a Delaware corporation, with California State Contractor's License Number 995037 ("OpTerra Energy Services"), and **Contra Costa County Fire Protection District** ("ConFire", and together with OpTerra Energy Services the "Parties", and each of ConFire and OpTerra Energy Services a "Party").

CONTRACT RECITALS

WHEREAS, ConFire owns and/or operates certain public facilities specifically described in Attachment A hereto (the "Facilities") and ConFire wishes to reduce the Facilities' energy consumption and costs and improve the Facilities' energy quality and reliability; and

WHEREAS, OpTerra Energy Services is a full-service energy services company with the technical capabilities to provide services to ConFire, including identifying supply-side and/or demand-side energy conservation measures ("ECMs"), engineering, procurement, construction management, installation, construction and training; and

WHEREAS, the Parties entered into a Program Development Agreement, dated as of 10 May 2016 (the "PDA") for OpTerra Energy Services to perform an integrated energy assessment of the Facilities, and to present ConFire with recommendations for the implementation of certain ECMs (the "Recommendations"); and

WHEREAS, the Recommendations presented by OpTerra Energy Services identified potential energy and operational savings opportunities at ConFire's Facilities, the estimated program costs to implement the recommended ECMs, and an overall potential energy cost and consumption savings if the ECM recommendations are implemented; and

WHEREAS, on 11 August 2016 OpTerra Energy Services delivered the Recommendations, on an arms-length basis, to ConFire staff, for those staff to make judgments and determinations as to the desired scope of work; and

WHEREAS, pursuant to California Government Code §4217.12, ConFire held a regularly scheduled public hearing on 6 December 2016, of which two weeks advance public notice was given regarding this Contract (as defined below) and its subject matter, and

WHEREAS, ConFire has determined that the anticipated cost to ConFire to implement the recommended ECMs will be less than the anticipated cost to ConFire for thermal, electrical, and other energy that would have been consumed by ConFire in the absence of the recommended ECMs; and

WHEREAS, ConFire has determined that entering into this Contract to implement the ECM recommendations is in the best interests of ConFire.

NOW, THEREFORE, ConFire and OpTerra Energy Services hereby agree as follows:

ARTICLE 1. DEFINITIONS

For purposes of this Contract and its Attachments, the following defined terms have the following meanings:

"**Abnormally Severe Weather Conditions**" means typhoons, hurricanes, tornadoes, lightning storms and other climatic and weather conditions that are abnormally severe for the period of time when, and the area where, such storms or conditions occur, in each case occurring at a property, the access roads to a property, or any other location where Work or Professional Services are then being performed. The term "Abnormally Severe Weather Conditions" specifically includes rain, snow or sleet in excess of one hundred fifty percent (150%) of the median level

over the preceding ten (10) year period for the local geographic area and time of year in which such rain, snow or sleet accumulates.

“**Act**” means the California Public Records Act (California Government Code § 6250 *et seq.*).

“**Affiliate**” means any Person that directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Person specified. For purposes of this definition, control of a Person means the power, direct or indirect, to direct or cause the direction of the management and policies of such Person whether by contract or otherwise; ownership of fifty percent (50%) or more of the voting securities of another Person creates a rebuttable presumption that such Person controls such other Person.

“**Applicable Law**” means any statute, law, treaty, building code, rule, regulation, ordinance, code, enactment, injunction, writ, order, decision, authorization, judgment, decree, protocol, procedure or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, as may be in effect at the time the Work or Professional Services are undertaken.

“**Applicable Permits**” means all permits and approvals required to be issued by any Governmental Authority in connection with the Professional Services or the building, installation and start-up of the Work as of the Contract Effective Date.

“**Application for Payment**” means a monthly progress payment as described in Section 8.01 or an invoice for materials stored off-site as described in Section 8.02.

“**Attachment**” means the following attachments to this Contract, each of which is an “Attachment:”

Attachment A	ConFire’s Facilities and Existing Equipment
Attachment B	Standards of Occupancy and Control
Attachment C	Scope of Work
Attachment D	Scope of Monitoring Installation
Attachment E	M&V Services
Attachment F	Maintenance Services

“**Beneficial Use**” means when major new equipment and systems included in the Scope of Work are properly installed, inspected, operational, and are capable of being used for their intended purpose. Criteria for Beneficial Use of equipment / systems are set forth in Attachment C hereto.

“**Business Day**” means any calendar day other than a Saturday, a Sunday or a calendar day on which banking institutions in San Francisco, California, are authorized or obligated by law or executive order to be closed.

“**CEQA**” means the California Environmental Quality Act, codified at California Public Resource Code § 21000 *et seq.*, and the applicable state and local guidelines promulgated thereunder.

“**Certificate of Beneficial Use**” means the certificate, issued by OpTerra Energy Services to ConFire and subcontractor(s), which identifies when ConFire took Beneficial Use of the Work or any portion thereof. A Certificate of Beneficial Use may be executed for an individual subcontract, a specific building, a portion of the Work, or the entire Work.

“**Certificate of Final Completion**” means the certificate issued by OpTerra Energy Services to ConFire, in accordance with Section 6.03 hereof. A Certificate of Final Completion may be executed for an individual subcontract, a specific building, a portion of the Work, or the entire Work.

“**Certificate of Substantial Completion**” means the certificate issued by OpTerra Energy Services to ConFire, in accordance with Section 6.02 hereof. A Certificate of Substantial Completion may be executed for an individual subcontract, a specific building, a portion of the Work, or the entire Work.

“**Change**” means any addition to, deletion from, suspension of, or other modification to the quality, function, or intent of the Work or Professional Services.

“**Change in Law**” means any of the following events or circumstances occurring after the Contract Effective Date: (i) an amendment, modification, interpretation, construction, enforcement standard, supplement or other change in or repeal of an existing Applicable Law; or (ii) an enactment or making of a new Applicable Law (excluding a change in any income or franchise tax law, worker’s compensation, payroll or withholding tax law).

“**Change Order**” means a written document, signed by both OpTerra Energy Services and ConFire, authorizing OpTerra Energy Services to perform a Change. A Change Order modifies the Scope of Work and will identify: (i) the applicable Change; (ii) any increase or decrease in the compensation to be paid to OpTerra Energy Services to perform such Change; and (iii) any extension of time to complete the Project.

“**ConFire**” is defined in the first paragraph of this Contract.

“**ConFire Persons**” means ConFire, its agents, employees, subcontractors, architects, general contractors, lease/leaseback contractors or other Persons acting on behalf of ConFire or for whom ConFire is responsible.

“**Construction**” means any and all Work to be performed that involves construction, alteration, repair, installation or removal of equipment, addition to, subtraction from, improving, moving, wrecking or demolishing any building, parking facility, excavation, or other structure or improvement, or any part thereof.

“**Construction Documents**” means the final designs, drawings, specifications and submittals that are used for Construction, and any Change Orders affecting those documents, that describe the technical requirements for the installation of all the materials and equipment pursuant to this Contract.

“**Construction Period**” means the period beginning with the first day of the month in which material or equipment is first installed at the Facilities and continuing until the M&V Commencement Date.

“**Contract**” means this Energy Services Contract, and includes all Attachments hereto (all of which are incorporated herein by this reference), as well as all Change Orders, amendments, restatements, supplements and other modifications hereto.

“**Contract Amount**” means Four Million Three Hundred Eighteen Thousand Eight Hundred Forty-Five Dollars (\$4,318,845), which is inclusive of the \$45,000 assessment fee set forth in the PDA, and the mobilization payment, as set forth in Section 8.01, but exclusive of any fees for Professional Services.

“**Contract Bonds**” is defined in Section 11.04 hereof.

“**Contract Effective Date**” is defined in the first paragraph of this Contract.

“**Delay**” means the delay, disruption, hindrance or interference in OpTerra Energy Service’s performance of the Work or the Professional Services.

“**Dispute**” is defined in Section 18.02 hereof.

“**DOE Guidelines**” is defined in Section 12.01 hereof.

“**ECM**” is defined in the Recitals.

“**EMS**” means an energy management system.

“**Energy Delivery Point**” means, for each Generating Facility, the point at which Utility meter energy is being delivered, as designated in the Interconnection Agreement.

“**Energy Savings Term**” is defined in Attachment E hereto.

“**Energy Usage Data**” is defined in Section 2.05 hereof.

“**Event of Default**” is defined in ARTICLE 15 hereof.

“**Excusable Event**” means an act, event, occurrence, condition or cause beyond the control of OpTerra Energy Services, including, but not limited to, the following: (i) any act or failure to act of, or other Delay caused by any ConFire Person; (ii) the failure to obtain, or delay in obtaining, any Interconnection Agreement, Applicable Permit, or approval of a Governmental Authority (including due to failure to make timely inspection), or Delays caused by Changes and/or modifications to the Scope of Work required by a Governmental Authority, other than a failure caused by the action or inaction of OpTerra Energy Services; (iii) changes in the design, scope or schedule of the Work required by any Governmental Authority or ConFire Person; (iv) undisclosed or unforeseen conditions encountered at the Project Location, including discovery or existence of Hazardous Substances; (v) the failure to obtain, or delay in obtaining, approval of any Governmental Authority for design and installation of any portion of the Work, including any further or subsequent approval required with respect to any Change, other than a failure caused by the action or inaction of OpTerra Energy Services; (vi) information provided to OpTerra Energy Services by any ConFire Person or Utility is later found to be inaccurate or incomplete; (vii) any Change in Law; (viii) Delay caused by pending arbitration; (ix) acts of God; (x) acts of the public enemy or terrorist acts; (xi) relocation or construction of transmission facilities or the shutdown of such facilities for the purpose of necessary repairs; (xii) work by Utility; (xiii) flood, earthquake, tornado, storm, fire, explosions, lightning, landslide or similar cataclysmic occurrence; (xiv) sabotage, vandalism, riots or civil disobedience; (xv) labor disputes or strikes; (xvi) labor or material shortages, delay in manufacturing and deliveries of equipment; (xvii) Abnormally Severe Weather Conditions; (xviii) an annual level of direct beam solar resource availability that is less than or equal to 90% of historical averages as measured by long-term weather data (minimum 5 years) collected at the applicable Facility and/or other reliable calibrated and appropriate weather station representative of such Facility; (xix) requirement by Utility that any Generating Facility discontinue operation; (xx) any action by a Governmental Authority that prevents or inhibits the Parties from carrying out their respective obligations under this Contract (including an unstayed order of a court or administrative agency

having the effect of subjecting the sales of energy output to federal or state regulation of prices and/or services); or (xxi) any Utility power outage at a Facility.

“**Facilities**” is defined in the Recitals.

“**Final Completion**” means the stage in the progress of the Work at which the Construction, or a designated portion thereof, has been completed and commissioned, including completion of all Punch List items, completion of all required training, and delivery to ConFire of the final documentation (as-built drawings, operation and maintenance manuals, warranty documentation and final submittals).

“**Generating Facility**” means each of the photovoltaic, solar powered generating facilities located at the sites listed in Attachment E attached hereto, and includes all associated photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wires and other equipment that may be necessary to connect the Generating Facility to the applicable Energy Delivery Point.

“**Governmental Authority**” means any federal, state, regional, town, county, city, municipal or local government agency, department or regulatory body having jurisdiction under Applicable Law over the matter in question.

“**Greenhouse Gases**” is defined in Section 12.01 hereof.

“**Hazardous Substances**” means (i) any hazardous, toxic, or dangerous wastes, substances, chemicals, constituents, contaminants, pollutants, and materials and any other carcinogenic, liquids, corrosive, ignitable, radioactive, reactive, toxic, or otherwise hazardous substances or mixtures (whether solids, liquids, gases) now or at any time subject to regulation, control, remediation, or otherwise addressed under Applicable Laws; (ii) any “hazardous substance” as defined by the Resource, Conservation and Recovery Act of 1976 (42 U.S.C. §6901 *et seq.*), as amended, and regulations promulgated thereunder; and (iii) any “hazardous, toxic or dangerous waste, substance or material” specifically defined as such in 42 U.S.C. §9601 *et seq.*), as amended and regulations promulgated thereunder.

“**Incentive Funds**” is defined in Section 8.06 hereof.

“**Installation**” means the setting up, construction, and placement of any equipment or materials in the manner it will be operated, in accordance with the Scope of Work and in accordance with all Applicable Laws.

“**Instruments of Service**” is defined in Section 10.01(c) hereof.

“**Interconnection Agreement**” means any Interconnection Agreement entered into between ConFire and the Utility with respect to the Generating Facilities.

“**Interconnection Facilities**” is defined in Section 17.02 hereof.

“**Interest**” means interest calculated at the lesser of (i) the Prime Rate plus two percent (2%) or (ii) the maximum rate permitted by Applicable Law, with the term “Prime Rate” being defined as the prime rate of interest per annum for domestic banks as published in The Wall Street Journal in the “Money Rates” section.

“**Losses**” is defined in Section 11.01 hereof.

“**M&V Commencement Date**” means the first day of the month immediately following the later of (i) OpTerra Energy Services’ receipt of the fully signed Certificate of Final Completion, and (ii) OpTerra Energy Services’ receipt of the full Contract Amount.

“**M&V Services**” (if any) are defined in Attachment E hereto.

“**Maintenance Services**” (if any) are defined in Attachment F hereto.

“**Measurement Period**” means each one-year period following the M&V Commencement Date.

“**NEC**” means the National Electric Code.

“**Notice to Proceed**” is defined in Section 2.04 hereof.

“**OpTerra Energy Services**” is defined in the first paragraph of this Contract.

“**OpTerra Energy Services Warranty**” is defined in Section 9.01 hereof.

“**Party**” and “**Parties**” are defined in the first paragraph of this Contract.

“**Person**” means any natural person, corporation, general partnership, limited partnership, limited liability company, proprietorship, other business organization, trust, union, association or Governmental Authority.

“**Professional Services**” means professional services (such as Maintenance Services and M&V Services, if any) provided by OpTerra Energy Services to ConFire under this Contract.

“**Project**” means the entirety of Work to be performed by OpTerra Energy Services pursuant to the Scope of Work, and any Change Orders.

“**Project Locations**” means the areas where the Project materials and equipment and any other energy related equipment, as described in the Scope of Work, are installed, and the general area where the Work is performed.

“**Punch List**” means, with respect to any portion of the Work, a list of minor corrective items which need to be completed or corrected in order to complete such portion of the Work, but do not impair ConFire’s ability to beneficially operate and utilize such portion of the Work.

“**Recommendations**” is defined in the Recitals of this Contract.

“**Retained Items**” is defined in Section 10.01(c) hereof.

“**Retention**” is defined in Section 8.03 hereof.

“**Schedule of Values**” is defined in Section 8.01 hereof.

“**Scope of Work**” means the Work set forth in Attachments C and D, as modified by any Change Order.

“**Substantial Completion**” means the stage in the progress of the Work at which the Work, or a designated portion thereof, is sufficiently complete, in conformance with the Scope of Work, the Construction Documents and any Change Orders, so that ConFire can make Beneficial Use thereof.

“**Surety**” means the surety supplying the Contract Bonds, which must be an admitted surety insurer, as that term is defined in California Code of Civil Procedure §995.120, authorized to do business in the State of California, and reasonably satisfactory to ConFire.

“**Utility**” is defined in Section 17.02 hereof.

“**Work**” means the Work to be done by OpTerra Energy Services pursuant to the Scope of Work, subject to any Change Orders.

ARTICLE 2. TERM; PERFORMANCE OF THE WORK

Section 2.01 Contract Term. The term of this Contract commences on the Contract Effective Date and ends on the last day of the Energy Savings Term, unless terminated earlier as provided in this Contract.

Section 2.02 Performance of Work. OpTerra Energy Services will perform the Work and Professional Services hereunder in accordance with the terms of this Contract and the applicable standard of care. OpTerra Energy Services will perform its obligations under this Contract (i) using the degree of skill and care that is required by current, good and sound professional procedures and practices, and (ii) in conformance with (x) generally accepted professional standards prevailing at the time the Work is performed, (y) the covenants, terms and conditions of this Contract, and (z) applicable laws, codes, rules and regulations, including, without limitation, the applicable provisions of the California Building Code. OpTerra Energy Services represents and warrants that it is fully experienced in projects of the nature and scope of the Work and Professional Services, and that it is properly qualified, licensed and equipped to supply and perform the Work and Professional Services. The Work completed herein will be subject to ConFire’s general right of inspection and supervision to secure the satisfactory completion thereof in accordance with this Contract.

Section 2.03 Scope of Work.

- (a) The Scope of Work may not exceed that set forth in Attachments C and D hereto, except pursuant to a Change Order.
- (b) The Professional Services may not exceed those set forth in Attachments E and F hereto, except pursuant to a Change Order.

Section 2.04 Notice to Proceed. Within ten (10) days after ConFire has closed the financing referenced in Section 2.07, ConFire will send OpTerra Energy Services a written notice to proceed to perform Work (the “Notice to Proceed”). OpTerra Energy Services will begin Work within thirty (30) calendar days after OpTerra Energy Services’ receipt of the Notice to Proceed. If ConFire fails to issue the Notice to Proceed within twenty (20) calendar days after the financing has closed, OpTerra Energy Services will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount as a result of such delay.

Section 2.05 Project Schedule. After receipt of the Notice to Proceed, OpTerra Energy Services will develop, with input from ConFire, a master project schedule using Microsoft Project®. OpTerra Energy Services will

establish a weekly construction meeting at which time the Work of the previous week will be reviewed and a two-week look ahead will be coordinated. The project schedule will be updated monthly.

Section 2.06 ConFire's Energy and Operational Records and Data. If OpTerra Energy Services requests, ConFire will provide to OpTerra Energy Services, within thirty (30) calendar days after such request, ConFire's Energy Usage Data for the twelve (12) months preceding the Contract Effective Date, and will make commercially reasonable efforts to provide the Energy Usage Data for the thirty-six (36) months preceding the Contract Effective Date. As used in this Contract, "Energy Usage Data" means all of ConFire's records and complete data concerning energy usage, energy-related maintenance, and other related costs for the Facilities, including, without limitation: utility records; occupancy information; descriptions of any past, present or anticipated changes in a building's structure or its heating, cooling, lighting or other systems or energy requirements; descriptions of all energy consuming or saving equipment used in the Facilities; applicable building drawings, specifications, existing AutoCAD files, operation and maintenance manuals, and as-builts; bills and records relating to operation and maintenance of systems and equipment within the Facilities, and a description of operation and management procedures currently utilized. ConFire shall deliver Energy Usage data that is accurate to the best of its ability, and agrees that OpTerra Energy Services may rely on the foregoing data as being accurate in all respects. If OpTerra Energy Services requests, ConFire will also provide to OpTerra Energy Services, within thirty (30) calendar days after such request, any prior energy audits of the Facilities, and copies of ConFire's financial statements and records related to energy usage and operational costs for the requested time period at the Facilities, and will authorize its agents and employees to provide and freely discuss such records and to make themselves available for consultations and discussions with authorized representatives, employees, subcontractors, and agents of OpTerra Energy Services.

Section 2.07 Finance Contingency. It is acknowledged and agreed by the Parties that the continued existence of this Contract is expressly contingent upon ConFire obtaining financing that will allow it to make the payments to OpTerra Energy Services required by this Contract. ConFire will have sixty (60) calendar days after the Contract Effective Date to obtain such financing. If the financing is not obtained within this time, for any reason, either Party may by written notice to the other Party declare this Contract to be null and void; and the Contract will be null and void as of the other Party's receipt of this notice. It is acknowledged and agreed that OpTerra Energy Services will have no obligation to commence performance of the Work unless and until the financing has been obtained.

Section 2.08 Proof of Financial Arrangements. Prior to the commencement of the Work, ConFire will provide OpTerra Energy Services proof that financial arrangements have been made to fulfill ConFire's obligations under this Contract. ConFire's requirement to furnish such proof to OpTerra Energy Services is a condition precedent to commencement of the Work. After commencement of the Work, OpTerra Energy Services may request such proof if (i) ConFire fails to make payments to OpTerra Energy Services as this Contract requires; (ii) a Change in the Work materially changes the Contract Amount; or (iii) OpTerra Energy Services has other reasonable concerns regarding ConFire's ability to fulfill its payment obligations under this Contract when due. ConFire will furnish such proof as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After ConFire furnishes any such proof, ConFire will not materially vary such financial arrangements without prior consent of OpTerra Energy Services. If ConFire fails to provide OpTerra Energy Services with such proof within ten (10) calendar days of receiving a demand from OpTerra Energy Services, OpTerra Energy Services will be entitled to suspend its performance under this Contract until such proof is received.

ARTICLE 3. PROJECT IMPLEMENTATION - GENERAL

Section 3.01 Registrations, Permits and Approvals.

- (a) Prior to issuing the Notice to Proceed, ConFire will register the Project with the California Department of Industrial Relations using Form PWC-100 as required by California Labor Code section 1773.3.
- (b) ConFire will cooperate fully with and assist OpTerra Energy Services in obtaining all Applicable Permits required under this Contract. OpTerra Energy Services is responsible for obtaining (but not paying for) Applicable Permits, except those Applicable Permits to be issued by ConFire itself. ConFire is responsible for obtaining and paying for all other permits or approvals that may be required, including annual operating permits and any approvals or exemptions required by CEQA, as applicable.
- (c) ConFire is responsible for all fees associated with plan checks (including expedited plan checks), permits, inspections and utility interconnection(s), including any additional Scope of Work that may be required by the Utilities as part of the Interconnection Agreement(s).

Section 3.02 Coordination. ConFire will be responsible for coordinating its own operations and any other construction project that is ongoing at or around the Project Locations with the Work of OpTerra Energy Services.

Section 3.03 Project Meetings/Status Updates. During the course of the Work, OpTerra Energy Services will periodically meet with ConFire to report on the general status and progress of the Work.

Section 3.04 Project Location Access. ConFire hereby grants to OpTerra Energy Services, without cost to OpTerra Energy Services, all rights of ingress and egress at the Project Locations, necessary for OpTerra Energy Services to perform the Work and provide all services contemplated by this Contract. OpTerra Energy Services will provide twenty-four-hour advance notice to ConFire for access to any Facilities. All persons entering the Project Locations, including ConFire and its employees and agents, must follow OpTerra Energy Services' safety procedures.

Section 3.05 Consents; Cooperation. Whenever a Party's consent, approval, satisfaction, or determination is required or permitted under this Contract, and this Contract does not expressly state that the Party may act in its sole discretion, such consent, approval, satisfaction, or determination will not be unreasonably withheld, qualified, conditioned, or delayed, whether or not such a standard of reasonableness is expressly stated in this Contract. Whenever a Party's cooperation is required for the other Party to carry out its obligations hereunder, each Party agrees that it will act in good faith and reasonably in so cooperating with the other Party or its designated representatives or assignees or subcontractors. Each Party will furnish decisions, information, and approvals required by this Contract in a timely manner so as not to delay the other Party's performance under this Contract.

Section 3.06 Independent Contractor. The Parties hereto agree that OpTerra Energy Services, and any agents and employees of OpTerra Energy Services, its subcontractors and/or consultants, is acting in an independent capacity in the performance of this Contract, and not as a public official, officer, employee, consultant, or agent of ConFire for purposes of conflict of interest laws or any other Applicable Law.

ARTICLE 4. FINAL DESIGN PHASE – CONSTRUCTION DOCUMENTS / EQUIPMENT PROCUREMENT

Section 4.01 General Provisions.

- (a) After the Contract Effective Date, OpTerra Energy Services will proceed with the preparation of any necessary designs, drawings, and specifications related to the Scope of Work.
- (b) After completion of the design phase and approval of the final plans and specifications by ConFire, OpTerra Energy Services will order the equipment identified in the Scope of Work, and any other necessary materials and supplies in order to meet the project schedule.
- (c) ConFire will designate a single-point representative with whom OpTerra Energy Services may consult on a reasonable, regular basis and who is authorized to act on ConFire's behalf with respect to the Project design. ConFire's representative will render decisions in a timely manner with regard to any documents submitted by OpTerra Energy Services and to other requests made by OpTerra Energy Services in order to avoid delay in the orderly and sequential progress of OpTerra Energy Services' design services.
- (d) Within ten (10) Business Days after OpTerra Energy Services' request, ConFire will:
 - (i) furnish all surveys or other information in ConFire's possession that describe the physical characteristics, legal limitations, and utility locations in and around the Project Location;
 - (ii) disclose any prior environmental review documentation and all information in its possession concerning subsurface conditions, including without limitation the existence of any known Hazardous Substances, in or around the general area of the Project Location;
 - (iii) supply OpTerra Energy Services with all relevant information in ConFire's possession, including any as-built drawings and photographs, of prior construction undertaken at the Project Location;
 - (iv) make application for any and all easements, zoning variances, planning approvals, including any resolution of any environmental impact issues, and any other legal authorization regarding utilization of the Project Location for the execution of the Work; and
 - (v) obtain any and all title reports for those Project Locations reasonably requested by OpTerra Energy Services.

- (e) All information furnished pursuant to this Section 4.01 will be supplied at ConFire's expense, and OpTerra Energy Services is entitled to rely upon the accuracy and completeness of all information provided. If OpTerra Energy Services is adversely affected by any failure to provide, or delay in providing, the information specified in Section 4.01(d), OpTerra Energy Services will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount.
- (f) If any information disclosed under this Section 4.01 gives rise to a Change to the Work or an Excusable Event, OpTerra Energy Services will notify ConFire. The Parties will meet and confer with respect to those Changes, and if appropriate, OpTerra Energy Services will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount. If the Parties, however, are unable to agree on whether ConFire's disclosed information gives rise to a Change to the Work or an Excusable Event, those disputes are to be resolved in accordance with ARTICLE 18.
- (g) OpTerra Energy Services contemplates that it will not encounter any Hazardous Substances at any Project Locations, except as has been disclosed as a pre-existing condition by ConFire prior to the Contract Effective Date. However, any disclosure of Hazardous Substances that will affect the performance of the Work after the Contract Effective Date will constitute a valid basis for a Change Order.

Section 4.02 Review of Construction Documents. OpTerra Energy Services will prepare and submit all drawings and specifications to ConFire for review. ConFire will review the documents and provide any comments in writing to OpTerra Energy Services within fifteen (15) Business Days after receipt of the documents. OpTerra Energy Services will incorporate appropriate ConFire comments into the applicable drawings and specifications. OpTerra Energy Services reserves the right to issue the drawings and specifications in phases to allow Construction to be performed in phases. If ConFire fails to provide written comments within the fifteen (15) Business Day period, ConFire will be deemed to have no comments regarding the documents.

Section 4.03 Permits. The respective obligations of the Parties in obtaining permits are as specified in Section 3.01. ConFire will agree to any nonmaterial changes to the designs, drawings, and specifications required by any Governmental Authority. The Contract Amount must be increased by any additional cost incurred by OpTerra Energy Services due to a Change required by a Governmental Authority and the time required to complete the Work must be increased by the number of additional days required to complete the Work because of a Change imposed by a Governmental Authority.

Section 4.04 Changes During Final Design Phase. If during the design phase ConFire requests Changes and/or modifications to the Work and/or an Excusable Event occurs, OpTerra Energy Services will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount. Valid bases for additional compensation and/or time extension include, but are not limited to: (i) any ConFire Person requests changes and/or modifications to the Project Scope of Work during the Project design phase; (ii) any ConFire Person causes delays during OpTerra Energy Services' design work; (iii) the discovery of subsurface or other site conditions that were not reasonably anticipated or disclosed as of the Contract Effective Date; (iv) the discovery of Hazardous Substances at or impacting a Project Location; (v) changes to the Scope of Work required to obtain Applicable Permits; (vi) damage to any equipment or other Work installed by OpTerra Energy Services caused by the act or omission of ConFire; (vii) changes and/or modifications to Scope of Work ordered by any Governmental Authority; and (viii) any other condition that could not reasonably have been anticipated by OpTerra Energy Services, which modifies and/or changes the Scope of Work and increases the agreed-upon Contract Amount or increases the time needed to complete the Work.

ARTICLE 5. CONSTRUCTION PHASE

Section 5.01 General Provisions. Upon securing the requisite Applicable Permits pursuant to Section 3.01, and completion of Construction Documents, OpTerra Energy Services will commence the construction of the Project in accordance with the Construction Documents. The construction will be performed in accordance with all Applicable Laws and Applicable Permits, by OpTerra Energy Services and/or one or more licensed subcontractors qualified to perform the Work.

Section 5.02 OpTerra Energy Services' Responsibilities during Construction Phase.

- (a) As an independent contractor to ConFire, OpTerra Energy Services will provide, or cause to be provided by its subcontractor(s), all labor, materials, equipment, tools, transportation, and other facilities and services necessary for the proper execution, construction, and completion of the Work. OpTerra Energy Services will purchase in advance all necessary materials and supplies for the construction of the Project in order to assure the prompt and timely delivery of the completed Work

pursuant to the Project schedule. OpTerra Energy Services is responsible for all means, methods, techniques, sequences, and procedures required by the Construction Documents.

- (b) OpTerra Energy Services will make commercially reasonable efforts to coordinate Construction activities and perform the Work to minimize disruption to ConFire's operations at the Project Locations. OpTerra Energy Services will provide at least thirty (30) calendar days' written notice to ConFire of any planned power outages that will be necessary for the Construction. OpTerra Energy Services will cooperate with ConFire in scheduling such outages, and ConFire agrees to provide its reasonable approval of any scheduled outage.
- (c) OpTerra Energy Services will initiate and maintain a safety program in connection with its Construction of the Project. OpTerra Energy Services will take reasonable precautions for the safety of, and will provide reasonable protection to prevent damage, injury, or loss to: (i) employees of OpTerra Energy Services and subcontractors performing Work under this Contract; (ii) OpTerra Energy Services' property and other materials to be incorporated into the Project, under the care, custody, and control of OpTerra Energy Services or its subcontractors; and (iii) other property at or adjacent to the Project Locations not designated for removal, relocation, or replacement during the course of Construction. OpTerra Energy Services is not responsible for ConFire's employees' safety unless OpTerra Energy Services' negligence or willful misconduct in the performance of its Work is the proximate cause of the employee's injury.
- (d) OpTerra Energy Services will provide notice to ConFire of scheduled test(s) of installed equipment, if any, and ConFire and/or its designees will have the right to be present at any or all such tests conducted by OpTerra Energy Services, any subcontractor, and/or manufacturers of the equipment.
- (e) Pursuant to California Labor Code §6705, if the Work is a public work involving an estimated expenditure in excess of \$25,000 and includes the excavation of any trench or trenches five (5) feet or more in depth, OpTerra Energy Services will, in advance of excavation, submit to ConFire and/or a registered civil or structural engineer, employed by ConFire, to whom authority to accept has been delegated, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches, which provisions will be no less effective than the current and applicable CAL-OSHA Construction Safety Orders. No excavation of such trench or trenches may be commenced until this detailed plan has been accepted by ConFire or by the person to whom authority to accept has been delegated by ConFire. Pursuant to California Labor Code §6705, nothing in this Section 5.02(e) shall be construed to impose tort liability on ConFire or any of its employees.
- (f) Pursuant to California Public Contract Code §7104, if the Work is a public work involving digging trenches or other excavations that extend deeper than four (4) feet below the surface of the ground:
 - (i) OpTerra Energy Services will promptly, and before the following conditions are disturbed, notify ConFire, in writing, of any:
 - 1) Material that OpTerra Energy Services believes may be material that is hazardous waste, as defined in California Health and Safety Code §25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law;
 - 2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to OpTerra Energy Services before the Contract Effective Date;
 - 3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.
 - (ii) ConFire will promptly investigate the conditions and, if it finds that the conditions do materially so differ or do involve hazardous waste, and cause a decrease or increase in OpTerra Energy Services' cost of, or the time required for, performance of any part of the Work will issue a Change Order under the procedures described in this Contract.
 - (iii) If a dispute arises between ConFire and OpTerra Energy Services, whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in OpTerra Energy Services' cost of, or time required for, performance of any part of the Work, OpTerra Energy Services will not be excused from any scheduled completion date provided for by this Contract, but shall proceed with all Work to be performed under this Contract. OpTerra Energy Services will retain any and all rights provided either by this Contract or by law which pertain to the resolution of disputes and protests between the Parties.

Section 5.03 ConFire's Responsibilities during Construction Phase.

- (a) ConFire will designate a single-point representative authorized to act on ConFire's behalf with respect to Project Construction and/or equipment installation. ConFire may from time to time change the designated representative and will provide written notice to OpTerra Energy Services of such change. Any independent review of the Construction will be undertaken at ConFire's sole expense, and will be performed in a timely manner so as to not unreasonably delay the orderly progress of the Work.
- (b) ConFire will provide a temporary staging area for OpTerra Energy Services, or its subcontractors, to use during the Construction phase to store and assemble equipment for completion of the Work, if needed. ConFire will provide sufficient space at the Facilities for the performance of the Work and the storage, installation, and operation of any equipment and materials and will take reasonable steps to protect any such equipment and materials from harm, theft and misuse. ConFire will provide access to the Facilities, including parking permits and identification tags, for OpTerra Energy Services and subcontractors to perform the Work during regular business hours, or such other reasonable hours as may be requested by OpTerra Energy Services and acceptable to ConFire. ConFire will also either provide a set or sets of keys to OpTerra Energy Services and its subcontractors (signed out per ConFire policy) or provide a readily available security escort to unlock and lock doors. ConFire will not unreasonably restrict OpTerra Energy Services' access to Facilities to make emergency repairs or corrections as OpTerra Energy Services may determine are needed.
- (c) ConFire will maintain the portions of the Project Locations that are not directly affected by OpTerra Energy Services' Work. ConFire will keep the designated Project Locations and staging area for the Project free of obstructions, waste, and materials within the control of ConFire.
- (d) ConFire will obtain any required environmental clearance from, and any special permits required by, any federal, state, and local jurisdictions, including but not limited to any clearances required under CEQA, prior to scheduled Construction start date.
- (e) ConFire will prepare the Project Locations for construction, including, but not limited to, clearance of all above and below ground obstructions, such as vegetation, buildings, appurtenances, and utilities. Subsurface conditions and obstacles (buried pipe, utilities, etc.) that are not otherwise previously and accurately documented by ConFire and such documentation made available to OpTerra Energy Services are the responsibility of ConFire. If OpTerra Energy Services encounters such unforeseen conditions in the performance of the Work, OpTerra Energy Services may be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount.
- (f) ConFire will remove any Hazardous Substances either known to ConFire prior to the commencement of the Work or encountered by OpTerra Energy Services during the Construction of the Project, if necessary in order for the Work to progress safely, that were not knowingly released or brought to the site by OpTerra Energy Services. OpTerra Energy Services will respond to the discovery of Hazardous Substances at or around the Project Location during the course of OpTerra Energy Services' construction in accordance with Section 5.06.
- (g) ConFire will coordinate its own operations and any other construction project that is ongoing at or around the Project Location with the Work, with the exception that OpTerra Energy Services will coordinate the Interconnection Facilities work, if any, which will be performed by the local utility.
- (h) ConFire will, and will cause ConFire Persons to, allow OpTerra Energy Services and its subcontractors access to and reasonable use of necessary quantities of ConFire's water and other utilities, including electrical power, as needed for the construction of the Work, at no cost to OpTerra Energy Services; *provided* that OpTerra Energy Services will provide its own water and temporary power at the Project Location for ECM SGF #4.
- (i) ConFire will, and will cause ConFire Persons to, provide OpTerra Energy Services and/or its subcontractors with reasonable access to the Project Locations to perform the Work, including without limitation and at no extra cost to OpTerra Energy Services, access to perform Work on Saturdays, Sundays, and legal holidays.
- (j) ConFire will also do the following:
 - (i) Attend the regularly scheduled progress meetings. Participate as needed regarding scheduling of the Work.
 - (ii) When requested by OpTerra Energy Services, participate in the job inspection walk-through with OpTerra Energy Services to determine Substantial Completion or Beneficial Use of major equipment, and will sign the Certificate(s) of Substantial Completion.

- (iii) Perform a final walk-through of the Project and, upon receipt of the operation and maintenance manuals and as-built drawings, sign the Certificate of Final Completion for the related Work.
- (iv) Upon the completion of the entire Scope of Work listed in Attachment C, including training, if any, and submission of close-out documents, sign a Certificate of Final Completion for the entire Project.

Section 5.04 Changes.

- (a) Change Orders Generally. Changes and/or modifications to the Scope of Work will be authorized by a written Change Order. The Change Order will state the change and/or modification to the Scope of Work, any additional compensation to be paid, and any applicable extension of time. OpTerra Energy Services may, at its election, suspend performance of that portion of the Work affected by any proposed Change until a written Change Order with respect to the Changed or modified Work has been signed by both ConFire and OpTerra Energy Services. OpTerra Energy Services will use its reasonable efforts to continue other portions of the Work not affected or impacted by such proposed Change until such time as the applicable Change Order is resolved. In addition, if ConFire requests a proposal from OpTerra Energy Services for a Change and ConFire subsequently elects to not proceed with such Change, ConFire agrees that a Change Order will be issued to reimburse OpTerra Energy Services for any costs reasonably incurred for estimating services, design services, and/or preparation of the proposal requested by such ConFire Person.
- (b) Change Orders Requiring Additional Compensation. If during construction ConFire requests changes and/or modifications to the Work that increase the cost of the Work or extend the time for the Work, and/or there are Excusable Events, ConFire will pay the extra costs caused by such modifications and/or changes and/or Excusable Event and OpTerra Energy Services will be entitled to additional compensation for the following reasons, that include, but are not limited to: (i) ConFire requests changes and/or modifications to the Scope of Work during the Construction phase of the Project; (ii) ConFire causes delays during OpTerra Energy Services' construction work; (iii) discovery of subsurface or other site conditions that were not reasonably anticipated or disclosed prior to the commencement of the Work; (iv) discovery of Hazardous Substances at or impacting the Project Location; (v) changes and/or modifications to the Scope of Work required to obtain required permits and approvals as required by any Governmental Authority; (vi) damage to any equipment or other Work installed by OpTerra Energy Services caused by the act or omission of any ConFire Person; (vii) changes and/or modifications to Scope of Work ordered by any Governmental Authority; and (viii) any other condition that would not reasonably have been anticipated by OpTerra Energy Services, that modifies and/or changes the Scope of Work or the Contract Amount.
- (c) Change Orders Requiring Additional Time. If during Construction ConFire requests changes and/or modifications to the Scope of Work and/or an Excusable Event occurs, the Parties agree that an equitable extension of time to complete the Work may be necessary. Prior to any extension of time, OpTerra Energy Services will use commercially reasonable efforts to make up such delays, including authorizing overtime payments; *provided* that ConFire has issued a Change Order authorizing any such overtime payment and has specifically agreed to pay all costs, including administrative charges and expenses, associated therewith.
- (d) Method for Adjustment. An increase or decrease in the Contract Amount and/or time resulting from a Change in the Work and/or Excusable Event must be determined by one or more of the following methods:
 - (i) unit prices set forth in this Contract or as subsequently agreed;
 - (ii) a mutually accepted, itemized lump sum; or
 - (iii) costs calculated on a basis agreed upon by ConFire and OpTerra Energy Services plus a fee (either a lump sum or a fee based on a percentage of cost) to which the Parties agree.
- (e) Disagreements. If there is a disagreement between ConFire and OpTerra Energy Services as to whether OpTerra Energy Services is entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount, those disputes are to be resolved in accordance with the provisions of ARTICLE 18. Pending the resolution of any such dispute, OpTerra Energy Services may suspend Work.

Section 5.05 Minor Changes to Scope of Work. OpTerra Energy Services has the authority to make minor changes that do not change the total Contract Amount and are consistent with the intent of the Construction Documents, without prior notice to ConFire. OpTerra Energy Services will either promptly inform ConFire, in writing, of any minor

changes made during the implementation of the Project, or make available to ConFire at the site a set of as-built drawings that will be kept current to show those minor changes.

Section 5.06 Hazardous Substances.

- (a) OpTerra Energy Services will promptly provide written notice to ConFire if OpTerra Energy Services observes any Hazardous Substance, as defined herein, at or around the Facilities during the course of Construction or installation of any equipment which have not been addressed as part of the Scope of Work. OpTerra Energy Services will have no obligation to investigate the Facilities for the presence of Hazardous Substances prior to commencement of the Work unless otherwise specified in the Scope of Work. ConFire will be solely responsible for investigating Hazardous Substances and determining the appropriate removal and remediation measures with respect to the Hazardous Substances. ConFire will comply with all Applicable Laws with respect to the identification, removal and proper disposal of any Hazardous Substances known or discovered at or around the Facilities, and in such connection will execute all generator manifests with respect thereto. OpTerra Energy Services will comply with all Applicable Laws in connection with the use, handling, and disposal of any Hazardous Substances in the performance of its Work. In connection with the foregoing, ConFire will provide OpTerra Energy Services, within ten (10) Business Days after the Contract Effective Date, a written statement that represents and warrants (i) whether or not, to its knowledge, there are Hazardous Substances either on or within the walls, ceiling or other structural components, or otherwise located in the Project Location, including, but not limited to, asbestos-containing materials; (ii) whether or not, to its knowledge, conditions or situations exist at the Facilities which are subject to special precautions or equipment required by federal, state, or local health or safety regulations; and (iii) whether or not, to its knowledge, there are unsafe working conditions at the Facilities.
- (b) ConFire will indemnify, defend, and hold OpTerra Energy Services harmless from and against any and all Losses that in any way result from, or arise under, ConFire owned or generated Hazardous Substances, except for liabilities due to the negligence or willful misconduct of OpTerra Energy Services, or its subcontractors, agents or representatives, in the handling, disturbance or release of Hazardous Substances. This indemnification will survive any termination of this Contract.

Section 5.07 Pre-Existing Conditions. Certain pre-existing conditions may be present within the Facilities that (i) are non-compliant with Applicable Law, (ii) may become non-compliant with Applicable Law upon completion of OpTerra Energy Services' Work, (iii) may cause OpTerra Energy Services' completed Work to be non-compliant with Applicable Law, (iv) may prevent ConFire from realizing the full benefits of OpTerra Energy Services' Work, (v) may present a safety or equipment hazard, or (vi) are otherwise outside the scope of OpTerra Energy Services' Work. Regardless of whether or not such conditions may have been readily identifiable prior to the commencement of Work, OpTerra Energy Services will not be responsible for repairing such pre-existing conditions unless such responsibility is expressly provided for in the Scope of Work or an approved Change Order. OpTerra Energy Services, in its sole discretion, may determine whether it will bring any such pre-existing conditions into compliance with Applicable law or eliminate the lack of benefit or hazard, as the case may be, by agreeing to execute a Change Order with ConFire for additional compensation and, if appropriate, an extension of time.

ARTICLE 6. PROJECT COMPLETION

Section 6.01 Occupancy or Use of Work. ConFire may take occupancy or use of any completed or partially completed portion of the Work at any stage, whether or not such portion is Substantially Complete, *provided* that such occupancy or use is authorized by a Governmental Authority and, *provided further*, that ConFire assumes responsibility for the security of, insurance coverage for, maintenance, utilities for, and damage to or destruction of such portion of the Work. If Substantial Completion of a portion of the Construction Work is not yet achieved, occupancy or use of such portion of the Work will not commence until ConFire's insurance covers such occupancy or use. When occupancy or use of a portion of the Work occurs before Substantial Completion of such portion, ConFire and OpTerra Energy Services will accept in writing the responsibilities assigned to each of them for title to materials and equipment, payments and Retention with respect to such portion.

Section 6.02 Substantial Completion. When OpTerra Energy Services considers the Work, or any portion thereof, to be Substantially Complete, OpTerra Energy Services will supply to ConFire a written Certificate of Substantial Completion with respect to such portion of the Work, including a Punch List of items and the time for their completion or correction. ConFire will within ten (10) Business Days of receipt of the Certificate of Substantial Completion, review such portion of the Work for the sole purpose of determining whether it is Substantially Complete, and sign and return the Certificate of Substantial Completion to OpTerra Energy Services acknowledging and agreeing: (i) that the portion of the Work set forth in the Certificate of Substantial Completion is Substantially Complete; (ii) the date of such Substantial Completion; (iii) that from the date of Substantial Completion ConFire will assume responsibility for the security of,

insurance coverage for, maintenance, utilities for, and damage to or destruction of such portion of the Work. ConFire will not unreasonably withhold, delay or condition approval of a Certificate of Substantial Completion.

Section 6.03 Final Completion. When OpTerra Energy Services considers the entirety of the Work to be fully complete, OpTerra Energy Services will notify ConFire that the Work is fully complete and ready for final inspection. ConFire will inspect the Work to verify the status of Final Completion within ten (10) Business Days after its receipt of OpTerra Energy Services' certification that the Work is complete. If ConFire does not agree that the Work is fully complete, it will so notify OpTerra Energy Services in writing, specifying the reasons therefor. When ConFire agrees that the Work is fully completed, OpTerra Energy Services will issue a Certificate of Final Completion, which ConFire must sign. ConFire agrees that its signing of the Certificate of Final Completion will not be unreasonably withheld, delayed or conditioned. ConFire will promptly record a notice of completion or notice of acceptance in the office of the county recorder in accordance with California Civil Code §9204. Forty-five (45) calendar days after ConFire signs the Certificate of Final Completion, it shall pay the remaining Contract Amount after deducting all amounts properly withheld under this Contract, provided OpTerra Energy Services shows conditional lien releases on final payment from its first-tier subcontractors, no claims have been presented to ConFire based on acts or omissions of OpTerra Energy Services, and no liens or withhold notices have been filed against the Work or Project Location, and provided there are no reasonable indications of defective or missing work or of late-recorded notices of liens or claims against OpTerra Energy Services.

Section 6.04 Transfer of Title; Risk of Loss. Title to all or a portion of the Project equipment, supplies and other components of the Construction Work will pass to ConFire upon the earlier of (i) the date payment for such Project equipment, supplies or components is made by ConFire, or (ii) the date any such items are incorporated into a Project Location. OpTerra Energy Services will retain care, custody and control and risk of loss of such Project equipment, supplies and components until the earlier of Beneficial Use or Substantial Completion. Transfer of title to ConFire will in no way affect ConFire's and OpTerra Energy Services' rights and obligations as set forth in other provisions of this Contract. Except as provided in this Section 6.04, after the date of Substantial Completion, OpTerra Energy Services will have no further obligations or liabilities to ConFire arising out of or relating to this Contract, except for the obligation to complete any Punch List items, the obligation to perform any warranty service under Section 9.01, obligations to perform Professional Services, and obligations which, pursuant to their terms, survive the termination of this Contract.

ARTICLE 7. SUBCONTRACTORS

Section 7.01 Authority to Subcontract. OpTerra Energy Services may subcontract its duties and performance of Work under this Contract, and has the right to enter into agreements with any subcontractors and other service or material providers as OpTerra Energy Services may select in its discretion to perform the Work, provided however, that OpTerra Energy Services shall remain responsible for all of the Work and other obligation hereunder notwithstanding any subcontracts it may enter into. OpTerra Energy Services will not be required to enter into any subcontracts with parties whom OpTerra Energy Services has not selected or subcontractors whom OpTerra Energy Services has objection to using.

Section 7.02 Prompt Payment of Subcontractors. OpTerra Energy Services will promptly pay, when due, all amounts payable for labor and materials furnished in the performance of this Contract and will endeavor to prevent any lien or other claim under any provision of Applicable Law from arising against any ConFire property, against OpTerra Energy Services' rights to payments hereunder, and against ConFire.

Section 7.03 Relationship. Nothing in this Contract constitutes or will be deemed to constitute a contractual relationship between any of OpTerra Energy Services' subcontractors and ConFire, or any obligation on the part of ConFire to pay any sums to any of OpTerra Energy Services' subcontractors.

Section 7.04 Prevailing Wages. To the extent required by California Labor Code §1771 or other Applicable Law, all employees of OpTerra Energy Services and OpTerra Energy Services' subcontractors performing Work at the Project Location will be paid the per diem prevailing wages for the employee's job classification in the locality in which the Work is performed. In accordance with California Labor Code §§1773 and 1773.2, ConFire will obtain from the Director of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work, in the locality in which the Work is to be performed, for each craft, classification or type of worker needed to execute the Work at the Project Location and will cause copies of such determinations to be kept on file at its principal office and posted at each Project Location. ConFire will promptly notify OpTerra Energy Services of any changes to any such prevailing wage determination.

ARTICLE 8. PAYMENTS

Section 8.01 Monthly Progress Payments. Promptly after the financing described in Section 2.07 has been obtained, OpTerra Energy Services will invoice ConFire for the assessment fee for the Recommendations in the amount

of Forty-Five Thousand Dollars (\$45,000) plus a mobilization payment in the amount of Eight Hundred Sixty-Three Thousand Seven Hundred Sixty-Nine Dollars (\$863,769). ConFire will make payment to OpTerra Energy Services for the assessment fee and the mobilization payment within forty-five (45) calendar days after ConFire's receipt of an invoice for those amounts. In addition, as the Work progresses, OpTerra Energy Services will submit to ConFire its applications for monthly payments based on the progress made on the Project through the date on which OpTerra Energy Services submits such Application for Payment. Within twenty-one (21) calendar days from the Contract Effective Date, OpTerra Energy Services will prepare and submit to ConFire a schedule of values apportioned to the various divisions or phases of the Work ("Schedule of Values"). Each line item contained in the Schedule of Values will be assigned a value such that the total of all items equals the Contract Amount. All Applications for Payment will be in accordance with the Schedule of Values.

Section 8.02 Materials Stored Off-Site. In addition to the monthly progress payments specified in Section 8.01, OpTerra Energy Services may invoice ConFire for materials purchased in advance of their use and not stored at the Project Location. All Applications for Payment for materials purchased in advance will be accompanied by proof of off-site material purchases, evidence that the materials have been delivered to a warehouse reasonably acceptable to ConFire, and evidence of appropriate insurance coverage. OpTerra Energy Services will furnish to ConFire written consent from the Surety approving the advance payment for materials stored off site. ConFire will pay one hundred percent (100%) of OpTerra Energy Services' Application for Payment for the materials delivered within forty-five (45) calendar days after ConFire's receipt of an invoice for those amounts, less Retention as indicated in Section 8.03. OpTerra Energy Services will protect stored materials from damage. Damaged materials, even though paid for, will not be incorporated into the Work.

Section 8.03 Retention. ConFire, or its designee, must approve and pay each Application for Payment, less a retention amount of five percent (5%) ("Retention") in accordance with California Public Contract Code §7201, within forty-five (45) calendar days after its receipt of the Application for Payment; *provided, however*, that there ConFire will not withhold a Retention with respect to the mobilization payment. ConFire's failure to approve and pay an Application for Payment in a timely manner is a material default by ConFire under this Contract. ConFire may make progress payments in full without Retention at any time after fifty percent (50%) of the Work has been completed, as permitted pursuant to California Public Contract Code §9203. In lieu of Retention being held by ConFire, OpTerra Energy Services may request that securities be substituted or Retention be held in an escrow account pursuant to California Public Contract Code §22300.

Section 8.04 Final Payment. The final Application for Payment may be submitted after Final Completion. ConFire's final payment amount will also include payment to OpTerra Energy Services for any remaining Retention withheld by ConFire.

Section 8.05 Disputed Invoices/Late Payments. ConFire may in good faith dispute any Application for Payment, or part thereof, within forty-five (45) calendar days after the date the Application for Payment was received by ConFire. If ConFire disputes all or a portion of any Application for Payment, ConFire will pay the undisputed portion when due and provide OpTerra Energy Services a written notice and explanation of the basis for the dispute and the amount of the Application for Payment being withheld related to the dispute. ConFire will be deemed to have waived and released any dispute known to it with respect to an Application for Payment if such notice and written explanation is not provided within fifteen (15) calendar days after the date the Application for Payment was received by ConFire. If any amount disputed by ConFire is finally determined to be due to OpTerra Energy Services, either by agreement between the Parties or as a result of dispute resolution pursuant to ARTICLE 18 below, it will be paid to OpTerra Energy Services within ten (10) Business Days after such final determination, plus Interest from the date billed or claimed until such amount is paid.

Section 8.06 Rebate Programs. The Parties agree that no energy efficiency rebate, incentive, and/or loan program(s) are applicable to or available for this Project.

ARTICLE 9. WARRANTY / LIMITATION OF LIABILITY

EXCEPT FOR THE WARRANTIES PROVIDED IN THIS ARTICLE 9, OPTERRA ENERGY SERVICES MAKES NO WARRANTIES IN CONNECTION WITH THE WORK PROVIDED UNDER THIS CONTRACT, WHETHER EXPRESS OR IMPLIED IN LAW, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES AGAINST INTELLECTUAL PROPERTY INFRINGEMENT. CONFIRE WILL HAVE NO REMEDIES AGAINST EITHER OPTERRA ENERGY SERVICES OR ANY OPTERRA ENERGY SERVICES SUBCONTRACTOR OR VENDOR FOR ANY DEFECTIVE MATERIALS OR EQUIPMENT INSTALLED, EXCEPT FOR THE REPAIR OR REPLACEMENT OF SUCH MATERIALS OR EQUIPMENT IN ACCORDANCE WITH THE WARRANTIES INDICATED BELOW AND WARRANTIES PROVIDED BY EQUIPMENT MANUFACTURERS. SPECIFICALLY, NEITHER OPTERRA ENERGY SERVICES, NOR OPTERRA ENERGY SERVICES' SUBCONTRACTORS OR VENDORS, WILL BE LIABLE TO CONFIRE FOR LOSS OF PROFITS OR FOR

ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY.

Section 9.01 OpTerra Energy Services warrants to ConFire that material and equipment furnished under this Contract will be of good quality and new, unless otherwise specifically required or permitted by this Contract. OpTerra Energy Services further warrants that its workmanship provided hereunder, including its subcontractors' workmanship, will be free of material defects for a period of one (1) year from the date of Substantial Completion as indicated on the executed Certificate of Substantial Completion, or the date of Beneficial Use as indicated on the executed Certificate of Beneficial Use ("OpTerra Energy Services Warranty"). Notwithstanding the preceding sentence, the date the OpTerra Energy Services Warranty commences with respect to a specific piece or pieces of equipment may be further defined in Attachment C.

Section 9.02 Equipment and material warranties that exceed the OpTerra Energy Services Warranty period will be provided directly by the equipment and/or material manufacturers and such warranties will be assigned by OpTerra Energy Services directly to ConFire, after the one (1) year period. During the OpTerra Energy Services Warranty period, OpTerra Energy Services will act as ConFire's agent in working with the equipment and material manufacturers in resolving any equipment or material warranty issues. If any material defects are discovered within the OpTerra Energy Services Warranty period, OpTerra Energy Services, or OpTerra Energy Services' subcontractors, will correct its defects, and/or OpTerra Energy Services will work with the equipment or material manufacturer as ConFire's agent to facilitate the manufacturer's correction of the equipment or material defect. Such warranty services will be performed in a timely manner and at the reasonable convenience of ConFire. If a warranty issue arises on any equipment or material installed after the OpTerra Energy Services Warranty period, and the equipment or material has a warranty period that exceeds one (1) year, ConFire will contact the manufacturer directly to resolve such warranty issues and ConFire acknowledges that the manufacturer will have sole responsibility for such issues.

Section 9.03 The warranties in this ARTICLE 9 expressly exclude any remedy for damage or defect caused by improper or inadequate maintenance of the installed equipment by service providers other than OpTerra Energy Services or its subcontractors, corrosion, erosion, deterioration, abuse, modifications or repairs not performed by an authorized OpTerra Energy Services subcontractor, improper use or operation, or normal wear and tear under normal usage.

ARTICLE 10. OWNERSHIP OF CERTAIN PROPERTY AND EXISTING EQUIPMENT

Section 10.01 Ownership of Certain Proprietary Property Rights.

- (a) Ownership: Except as expressly provided in this Contract, ConFire will not acquire, by virtue of this Contract, any rights or interest in any formulas, patterns, devices, software, inventions or processes, copyrights, patents, trade secrets, other intellectual property rights, or similar items of property which are or may be used in connection with the Work. OpTerra Energy Services will own all inventions, improvements, technical data, models, processes, methods, and information and all other work products developed or used in connection with the Work, including all intellectual property rights therein.
- (b) License: Solely in connection with the Facilities, OpTerra Energy Services grants to ConFire a limited, perpetual, royalty-free, non-transferrable license for any OpTerra Energy Services intellectual property rights necessary for ConFire to operate, maintain, and repair any modifications or additions to Facilities, or equipment delivered, as a part of the Work.
- (c) Ownership and Use of Instruments of Service. All data, reports, proposals, plans, specifications, flow sheets, drawings, and other products of the Work (the "Instruments of Service") furnished directly or indirectly, in writing or otherwise, to ConFire by OpTerra Energy Services under this Contract will remain OpTerra Energy Services' property and may be used by ConFire only for the Work. OpTerra Energy Services will be deemed the author and owner of such Instruments of Service and will retain all common law, statutory and other reserved rights, including copyrights. The Instruments of Service may not be used by ConFire or any ConFire Person for future additions or alterations to the Project or for other projects, without the prior written agreement of OpTerra Energy Services. Any unauthorized use of the Instruments of Service will be at ConFire's sole risk and without liability to OpTerra Energy Services. If ConFire uses the Instruments of Service for implementation purposes, including additions to or completion of the Project, without the written permission of OpTerra Energy Services, ConFire agrees to waive and release, and indemnify and hold harmless, OpTerra Energy Services, its subcontractors, and their directors, employees, subcontractors, and agents from any and all Losses associated with or resulting from such use.

Section 10.02 Ownership of any Existing Equipment. Ownership of any equipment and materials presently existing at the Facilities on the Contract Effective Date will remain the property of ConFire even if such equipment or materials are replaced or their operation made unnecessary by work performed by OpTerra Energy Services. If applicable, OpTerra Energy Services will advise ConFire in writing of all equipment and materials that will be replaced at the Facilities and ConFire will, within five (5) Business Days of OpTerra Energy Services' notice, designate in writing to OpTerra Energy Services which replaced equipment and materials should not be disposed of off-site by OpTerra Energy Services (the "Retained Items"). ConFire will be responsible for and designate the location and storage for the Retained Items. OpTerra Energy Services will be responsible for the disposal of replaced equipment and materials, except for the Retained Items. OpTerra Energy Services will use commercially reasonable efforts to remove the Retained Items in such a manner as to avoid damage thereto, or if it is unreasonable to avoid damage altogether, to minimize the damage done. OpTerra Energy Services will not be responsible for the removal and/or disposal of any Hazardous Substances except as required by the Scope of Work.

ARTICLE 11. INDEMNIFICATION / INSURANCE / BONDS

Section 11.01 Indemnification. To the full extent permitted by Applicable Laws, each Party will indemnify, hold harmless, release and defend the other Party, its officers, employees, and agents from and against any and all actions, claims, demands, damages, disabilities, fines, penalties, losses, costs, expenses (including consultants' and attorneys' fees and other defense expenses) and liabilities of any nature ("Losses") that may be asserted by any third party, to the extent such Losses arise out of that Party's negligence or willful misconduct in its performance of its obligations hereunder, including the performance or activities of other persons employed or utilized by that Party in the performance of this Contract, excepting liabilities to the extent due to the negligence or willful misconduct of the indemnified party. This indemnification obligation will continue to bind the Parties after the termination of this Contract.

Section 11.02 Waiver of Consequential Damages and Limitation of Liability. The liability of a defaulting Party to the other Party hereunder will be limited to direct, actual damages. Neither Party shall be liable to the other Party for any special, indirect, incidental or consequential damages whatsoever, whether in contract, tort (including negligence) or strict liability, including, but not limited to, operational losses in the performance of business such as lost profits or revenues or any increase in operating expense; *provided* that third party damages subject to indemnification by a Party under this Contract will not be limited by this Section 11.02. Additionally, each Party waives any claims for negligence (other than gross negligence) against the other Party to the greatest extent permitted by law; *provided* that this waiver of negligence claims does not apply to a Party's indemnification obligations under this Contract. In no event will OpTerra Energy Services be liable to ConFire for any Losses that collectively exceed the Contract Amount, regardless of whether such amounts arise out of breach of contract, guarantee or warranty, tort, product liability, contribution, strict liability or any other legal theory.

Section 11.03 OpTerra Energy Services Insurance. OpTerra Energy Services will maintain, or cause to be maintained, for the duration of this Contract, the insurance coverage outlined in (a) through (f) below, and all such other insurance as required by Applicable Law. Evidence of coverage will be provided to ConFire via an insurance certificate.

(a) Workers' Compensation/Employers Liability for states in which OpTerra Energy Services is not a qualified self-insured. Limits as follows:

- * Workers' Compensation: Statutory
- * Employers Liability: Bodily Injury by accident \$1,000,000 each accident
Bodily Injury by disease \$1,000,000 each employee
Bodily Injury by disease \$1,000,000 policy limit

(b) Commercial General Liability insurance with limits of:

- * \$2,000,000 each occurrence for Bodily Injury and Property Damage
- * \$4,000,000 General Aggregate - other than Products/Completed Operations
- * \$4,000,000 Products/Completed Operations Aggregate
- * \$2,000,000 Personal and Advertising Injury
- * \$ 100,000 Damage to premises rented to OpTerra Energy Services

Coverage to be written on an occurrence form. Coverage to be at least as broad as ISO form CG 0001 (04/13) or its equivalent forms, without endorsements that limit the policy terms with respect to: (1) provisions for severability of interest or (2) explosion, collapse, underground hazard.

(c) Auto Liability insurance for owned, hired and non-owned vehicles with limits of \$1,000,000 per accident. Coverage to be written on an occurrence form.

(d) Professional Liability insurance with limits of:

- * \$1,000,000 per occurrence
- * \$1,000,000 aggregate

Coverage to be written on a claims-made form.

(e) Umbrella/Excess Liability Insurance. Limits as follows:

- * \$1,000,000 each occurrence
- * \$1,000,000 aggregate

Coverage terms and limits to apply excess of the per occurrence and/or aggregate limits provided for Commercial General Liability and Professional Liability written on a claims made form. Coverage terms and limits also to apply in excess of those required for Employers Liability and Auto Liability written on an occurrence form.

(f) Policy Endorsements.

- * The insurance provided for Workers' Compensation and Employers' Liability above will contain waivers of subrogation rights against ConFire, but only to the extent of the indemnity obligations contained in this Contract.
- * The insurance provided for Commercial General Liability and Auto Liability above will:
 - (i) include ConFire as an additional insured with respect to Work performed under this Contract, but only to the extent of the indemnity obligations contained in this Contract, and
 - (ii) provide that the insurance is primary coverage with respect to all insureds, but only to the extent of the indemnity obligations contained in this Contract.

Section 11.04 **Performance and Payment Bonds.** Prior to commencing Work under this Contract, OpTerra Energy Services will furnish a performance bond, in an amount equal to one hundred percent (100%) of the Contract Amount, and a payment bond to guarantee payment of all claims for labor and materials furnished, in an amount equal to one hundred percent (100%) of the Contract Amount (collectively, the "Contract Bonds"). The Contract Bonds are not being furnished to cover the performance of any Professional Services, including any energy guaranty or guaranteed savings under this Contract, nor to cover any equipment and/or material manufacturer's warranty or other third-party warranty being assigned to ConFire.

ARTICLE 12. DOE GUIDELINES; ENERGY POLICY ACT

Section 12.01 As authorized by §1605(b) of the Energy Policy Act of 1992 (Pub. L. No. 102-486) the U.S. Department of Energy has issued, and may issue in the future, guidelines for the voluntary reporting of Greenhouse Gas emissions ("DOE Guidelines"). "Greenhouse Gases" means those gases and other particles as defined in the DOE Guidelines. ConFire hereby assigns and transfers to OpTerra Energy Services, and its Affiliates and assigns, any Greenhouse Gas emission reduction credits that result from the Work.

Section 12.02 As authorized by §1331 of the Energy Policy Act of 2005 (Pub. L. No. 109-58) ConFire agrees that for the Work, OpTerra Energy Services will be the "designer" as that term is identified in Internal Revenue Bulletin 2008-14, Notice 2008-40, and OpTerra Energy Services will have the exclusive right to report to any federal, state, or local agency, authority or other party any tax benefit associated with the Work. Upon Final Completion, ConFire agrees to cooperate in executing a written allocation including a declaration related to Internal Revenue Code §179D. OpTerra Energy Services will prepare the declaration and all accompanying documentation. OpTerra Energy Services will be designated the §179D beneficiary.

ARTICLE 13. MUNICIPAL ADVISOR

Section 13.01 THE PARTIES ACKNOWLEDGE AND AGREE THAT OPTERRA ENERGY SERVICES IS NOT A MUNICIPAL ADVISOR AND CANNOT GIVE ADVICE TO CONFIRE WITH RESPECT TO MUNICIPAL SECURITIES OR MUNICIPAL FINANCIAL PRODUCTS ABSENT CONFIRE BEING REPRESENTED BY, AND RELYING UPON THE ADVICE OF, AN INDEPENDENT REGISTERED MUNICIPAL ADVISOR. OPTERRA ENERGY SERVICES IS NOT SUBJECT TO A FIDUCIARY DUTY WITH REGARD TO CONFIRE OR THE PROVISION OF INFORMATION TO CONFIRE. CONFIRE WILL CONSULT WITH AN INDEPENDENT REGISTERED MUNICIPAL ADVISOR ABOUT THE FINANCING OPTION APPROPRIATE FOR CONFIRE'S SITUATION.

ARTICLE 14. PUBLIC RECORDS ACT

If a third party makes a request under the Act for disclosure of any materials or information provided by OpTerra Energy Services to ConFire under or in connection with this Contract or the Project, ConFire will notify OpTerra Energy Services of such request as soon as practical (but not later than five (5) calendar days) after receipt of such request, so that OpTerra Energy Services may advise ConFire whether OpTerra Energy Services believes that any such materials are exempt from disclosure under the Act. OpTerra Energy Services shall seek a protective order if it wants ConFire to withhold the production of materials OpTerra Energy Services feels are exempt from production under the Act.

ARTICLE 15. EVENTS OF DEFAULT

Section 15.01 Events of Default by OpTerra Energy Services. Each of the following events or conditions will constitute an "Event of Default" by OpTerra Energy Services:

- (i) any substantial failure by OpTerra Energy Services to perform or comply with this Contract, including a material breach of any covenant contained herein, and such failure continues for thirty (30) calendar days after ConFire's written notice to OpTerra Energy Services demanding that such failure to perform be cured; *provided* that (y) such failure to perform will not be deemed a default hereunder if it is excused by a provision of this Contract, or (z) if such cure cannot be reasonably effected in thirty (30) calendar days, OpTerra Energy Services will not be deemed to be in default as long as it continues to diligently pursue remedy of the breach until it is cured; or
- (ii) any representation or warranty furnished by OpTerra Energy Services in this Contract which was false or misleading in any material respect when made; or
- (iii) OpTerra Energy Services filed for bankruptcy protection or is placed into bankruptcy involuntarily, or makes a general assignment for the benefit of its creditors, or declares publicly an inability to pay its obligations.

Section 15.02 Events of Default by ConFire. Each of the following events or conditions will constitute an "Event of Default" by ConFire:

- (i) any substantial failure by ConFire to perform or comply with this Contract, including a material breach of any covenant contained herein, and such failure continues for thirty (30) calendar days after OpTerra Energy Services written notice to ConFire demanding that such failure to perform be cured; *provided* that (y) such failure to perform will not be deemed a default hereunder if it is excused by a provision of this Contract; or (z) if such cure cannot be reasonably effected in thirty (30) calendar days, ConFire will not be deemed to be in default as long as it continues to diligently pursue remedy of the breach until it is cured; or
- (ii) any representation or warranty furnished by ConFire in this Contract which was false or misleading in any material respect when made; or
- (iii) any failure by ConFire to pay any amount to OpTerra Energy Services which is not paid within ten (10) calendar days after written notice from OpTerra Energy Services that the amount is past due.

ARTICLE 16. REMEDIES UPON DEFAULT

Section 16.01 Termination for Cause. If there is an Event of Default by either Party under this Contract, unless such Event of Default has been cured within the applicable time periods for a cure set forth in ARTICLE 15, the non-defaulting Party may terminate this Contract by providing ten (10) Business Days' written notice to the defaulting Party. Upon termination of this Contract, each Party will promptly return to the other all papers, materials, and property of the other held by such Party in connection with this Contract. Each Party will also assist the other in the orderly termination of this Contract and the transfer of all aspects hereof, tangible and intangible, as may be necessary for the orderly, non-disrupted business continuation of each Party.

Section 16.02 Remedies Upon Default by OpTerra Energy Services. If an Event of Default by OpTerra Energy Services occurs, ConFire will be entitled to obtain any available legal and equitable remedies available to it, including, without limitation, terminating this Contract, and recovering amounts due and unpaid by OpTerra Energy Services and/or damages, which may include ConFire's reasonable, actual, direct out-of-pocket losses incurred by reason of such Event of Default and any cost of funding; loss of anticipated payment obligations; and any payment or delivery required to have been made on or before the date of the Event of Default and not made, including Interest on any sums due, losses and costs incurred as a result of terminating this Contract and all costs and expenses reasonably incurred in exercising the foregoing remedies.

Section 16.03 Remedies upon Default by ConFire. If an Event of Default by ConFire occurs, OpTerra Energy Services will be entitled to obtain any available legal or equitable remedies available to it, including, without limitation, terminating this Contract or recovering amounts due and unpaid by ConFire, and/or damages which will include OpTerra Energy Services' reasonable, actual, direct out-of-pocket losses incurred by reason of such Event of Default and any cost of funding; loss of anticipated payment obligations; and any payment or delivery required to have been made on or before the date of the Event of Default and not made, including Interest on any sums due, losses and costs incurred as a result of terminating this Contract, payment for Work satisfactorily performed, earned profit and overhead, costs incurred in accordance with this Contract up to the date of termination, and all costs and expenses reasonably incurred in exercising the foregoing remedies.

ARTICLE 17. CONDITIONS BEYOND CONTROL OF THE PARTIES

Section 17.01 Excusable Events. If either Party is delayed in, or prevented from, performing or carrying out its obligations under this Contract by reason of any Excusable Event, such circumstance will not constitute an Event of Default, and such Party will be excused from performance hereunder for the period of time that the Excusable Event prevents the Party from performing its obligations hereunder, and will not be liable to the other Party for or on account of any loss, damage, injury or expense resulting from, or arising out of, such delay or prevention.

Section 17.02 Utility Work. ConFire expressly understands and agrees that an Excusable Event may occur due to Interconnection Facilities work that may need to be performed by the local electric utility ("Utility") in order for OpTerra Energy Services to fully implement the Project. As used in this Contract the term "Interconnection Facilities" means any distribution or transmission lines and other facilities that may be required to connect equipment supplied under this Contract to an electrical distribution/transmission system owned and maintained by the Utility. Any Interconnection Facilities work that may be required will be performed by the Utility under the Interconnection Agreement.

ARTICLE 18. GOVERNING LAW AND RESOLUTION OF DISPUTES

Section 18.01 Governing Law. This Contract is governed by and must be interpreted under the laws of the State of California, without regard to the jurisdiction's choice of law rules.

Section 18.02 Initial Dispute Resolution. If a dispute arises out of or relates to this Contract, the transaction contemplated by this Contract, or the breach of this Contract (a "Dispute"), either Party may initiate the dispute resolution process set forth in this ARTICLE 18 by giving notice to the other Party. Nothing in this Article 18 shall limit the right of a Party to pursue any remedy available to it in law or equity. The Parties will endeavor to settle the Dispute as follows:

- (i) *Field Representatives' Meeting*: Within fifteen (15) Business Days after notice of the Dispute, OpTerra Energy Services' senior project management personnel will meet with ConFire's project representative in a good faith attempt to resolve the Dispute.
- (ii) *Management Representatives' Meeting*: If OpTerra Energy Services' and ConFire's project representatives fail to meet, or if they are unable to resolve the Dispute, senior executives for OpTerra Energy Services and for ConFire, neither of whom have had day-to-day management responsibilities for the Project, will meet, within thirty (30) calendar days after notice of the Dispute, in an attempt to resolve the Dispute and any other identified disputes or any unresolved issues that may lead to a dispute. If the senior executives of OpTerra Energy Services and ConFire are unable to resolve a Dispute or if a senior management conference is not held within the time provided herein, either Party may submit the Dispute to mediation in accordance with Section 18.03.

Section 18.03 Mediation. If the Dispute is not settled pursuant to Section 18.02, the Parties may endeavor to settle the Dispute by mediation under the Commercial Mediation Procedures of the American Arbitration Association. Mediation is not a condition precedent to arbitration or the institution of legal or equitable proceedings by either Party. Once one Party files a request for mediation with the other Party and with the American Arbitration Association, the Parties agree to conclude the mediation within sixty (60) calendar days after filing the request. Either Party may terminate the mediation at any time after the first session, but the decision to terminate must be delivered in person by the Party's representative to the other Party's representative and the mediator

Section 18.04 Lien Rights. Nothing in this ARTICLE 18 limits any rights or remedies not expressly waived by OpTerra Energy Services that OpTerra Energy Services may have under any lien laws or stop notice laws.

ARTICLE 19. REPRESENTATIONS AND WARRANTIES

Section 19.01 Each Party warrants and represents to the other that:

- (i) it has all requisite power and authority to enter into this Contract, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (ii) the execution, delivery, and performance of this Contract have been duly authorized by its governing body, or are in accordance with its organizational documents, and this Contract has been duly executed and delivered for it by the signatories so authorized, and constitutes its legal, valid, and binding obligation;
- (iii) the execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under, its organizational documents or any contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected; and
- (iv) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any Applicable Laws, awards or permits which would materially and adversely affect its ability to perform hereunder.

ARTICLE 20. NOTICE

Any notice required or permitted hereunder will be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice.

TO OPTERRA ENERGY SERVICES: OpTerra Energy Services, Inc.
500 Twelfth Street, Suite 300
Oakland, CA 94607
Tel: 415-735-9103
Attention: Patrick Yost, Lead Project Manager

With a COPY TO: Legal Department
OpTerra Energy Services, Inc.
150 East Colorado Boulevard, Suite 360
Pasadena, CA 91105-3711
Tel: 626-377-4948
Attention: Contract Administrator

TO CONFIRE: Contra Costa County Fire Protection District
2010 Geary Road,
Pleasant Hill, CA 94523
Tel: 925-941-3314
Fax: 925-941-3319
Attention: Lizz Patterson

ARTICLE 21. CONSTRUCTION OF CONTRACT

This Contract is the result of arms-length negotiations between two sophisticated parties and ambiguities or uncertainties in it will not be construed for or against either Party, but will be construed in a manner that most accurately reflects the intent of the Parties as of the Contract Effective Date. Each of the Parties acknowledges and agrees that neither Party has provided the other with any legal, accounting, regulatory, financial, or tax advice with respect to any of the transactions contemplated hereby, and each Party has consulted its own legal, accounting, regulatory, financial and tax advisors to the extent it has deemed appropriate.

ARTICLE 22. BINDING EFFECT

Except as otherwise provided herein, the terms and provisions of this Contract will apply to, be binding upon, and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and permitted assigns.

ARTICLE 23. NO WAIVER

The failure of OpTerra Energy Services or ConFire to insist upon the strict performance of this Contract will not constitute or be construed as a waiver or relinquishment of either Party's right to thereafter enforce the same in

accordance with this Contract in the event of a continuing or subsequent default on the part of OpTerra Energy Services or ConFire.

ARTICLE 24. SEVERABILITY

If any clause or provision of this Contract or any part thereof becomes or is declared by a court of competent jurisdiction invalid, illegal, void, or unenforceable, this Contract will continue in full force and effect without said provisions; *provided* that no such severability will be effective if it materially changes the benefits or obligations of either Party hereunder.

ARTICLE 25. HEADINGS

Headings and subtitles used throughout this Contract are for the purpose of convenience only, and no heading or subtitle will modify or be used to interpret the text of any section.

ARTICLE 26. COUNTERPARTS; INTEGRATION

This Contract may be executed in counterparts (and by different Parties hereto in different counterparts), each of which will constitute an original, but all of which when taken together will constitute a single contract. This Contract constitutes the entire contract among the Parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Delivery of an executed counterpart of a signature page of this Contract by email or fax will be effective as delivery of a manually executed counterpart of this Contract.

ARTICLE 27. ASSIGNMENT

Section 27.01 Except as provided in this ARTICLE 27, this Contract may not be assigned by either Party in whole or in part without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. This Contract is binding on, enforceable by, and shall inure to the benefit of, the Parties and their respective successors and permitted assigns. Any assignment made in contravention of this clause is void and unenforceable.

Section 27.02 Assignment by OpTerra Energy Services. Notwithstanding Section 27.01, OpTerra Energy Services may assign this Contract without the consent of ConFire (i) to an Affiliate; or (ii) pursuant to a merger, consolidation, or a transfer of substantially all its assets, provided however, that any such assignee shall possess the capabilities to perform the obligations under this Contract. OpTerra Energy Services may also make a collateral assignment of its rights, but not its obligations, under this Contract without the consent of ConFire to (x) a lender providing financing to OpTerra Energy Services, or (y) a special purpose entity that is an Affiliate of such lender.

[the Parties' signatures appear on the following page]

**Energy Services Contract
ConFire and OpTerra Energy Services**

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto subscribe their names to this Contract by their duly authorized officers as of the Contract Effective Date.

OPTERRA ENERGY SERVICES:

OpTerra Energy Services, Inc.

CONFIRE:

Contra Costa County Fire Protection District:

By: _____
Name:
Title:

By: _____
Name:
Title:

ATTACHMENT A

CONFIRE'S FACILITIES and EXISTING EQUIPMENT

(a) The following ConFire Facilities are included under the Scope of Work as listed below:

Facility	Address	Square Feet
FS 1	1330 Civic Drive, Walnut Creek 94596	4240
FS 2	2012 Geary Road, Pleasant Hill 94523	3324
FS 3	1520 Rossmoor Pkwy, Walnut Creek 94595	5532
FS 5	205 Boyd Road, Pleasant Hill 94523	3384
FS 6	2210 Willow Pass Rd., Concord 94520	6590
FS 7	1050 Walnut Avenue, Walnut Creek 94598	4550
FS 8	4647 Clayton Road, Concord 94521	2246
FS 10	2955 Treat Boulevard, Concord 94518	4540
FS 11	6500 Center Street, Clayton 94517	5600
FS 13	251 Church Street, Martinez 94553	3663
FS 14	521 Jones Street, Martinez 94553	8500
FS 15	3338 Mt. Diablo Blvd., Lafayette 94549	7500
FS 17	620 St. Marys Road, Lafayette 94549	2784
FS 22	5050 Crystyl Ranch Dr., Concord 94521	5500
FS 69	4640 Appian Way, El Sobrante, 94803	7835
FS 81	315 W. 10th Street, Antioch 94509	10000
FS 82	196 Bluerock Dr., Antioch 94531	5600
FS 83	2717 Gentrytown Drive, Antioch 94509	3090
FS 84	1903 Railroad Ave., Pittsburg 94565	7500
FS 85	2331 Loveridge Road, Pittsburg 94565	7000
FS 87	800 West Leland Rd., Pittsburg 94565	5600
FS 88	4288 Folsom Drive, Antioch 94509	5500
Delta Fair Property	Intersection of Delta Fair Blvd. and Century Blvd.	N/A
Administration	2010 Geary Road, Pleasant Hill 94523	7793
Communication Center	2900 Dorothy Dr., Pleasant Hill 94523	4136
Training Campus	2945 Treat Boulevard, Concord 94518	24150
FPB East office	2329 Loveridge Road, Pittsburg 94565	7000
Investigations, FIUB	200 E. Sixth St., Pittsburg 94565	5836

ATTACHMENT B

STANDARDS OF OCCUPANCY and CONTROL

The following standards are a guideline used to evaluate the energy conservation measures in this program. It is understood that existing and installed equipment may not allow for exact times and temperatures to be met, but every effort will be made to meet the below standards as closely as the equipment allows.

Facility	Occupancy Schedule	Existing HVAC Schedule	Existing Heating Occupied/Unoccupied Temperature	Existing Cooling Occupied/Unoccupied Temperature	Proposed HVAC Schedule	Proposed Heating Occupied/Unoccupied Temperature	Proposed Cooling Occupied/Unoccupied Temperature
General Office Buildings	MTWRF 7AM – 6PM	MTWRF 7AM – 6PM	70/65	72/76	MTWRF 7AM – 6PM	70/65	72/76
Fire Stations and Communication Center	24/7	24/7	70/65	72/76	MTWRF 7AM – 6PM	70/65	72/76

ATTACHMENT C

SCOPE OF WORK

California State Contractor's License Number 995037
California Public Works Contractor Registration Number 1000001498

Energy Conservation Measures to Be Implemented

ECM #	Description
1	HVAC Upgrades
2	Water Conservation
3	Solar Generating Facilities (see below)

Solar Generating Facilities to be Installed

SGF #	Facility	Address	System Type
1	FS 10 and Training Center	2945/2955 Treat Boulevard, Concord 94518	Solar Shade Canopy
2	FS 11	6500 Center Street, Clayton 94517	Solar Shade Canopy
3	FS 84	1903 Railroad Ave., Pittsburg 94565	Solar Shade Canopy
4	Delta Fair Property RES-BCT	Intersection of Delta Fair Blvd. and Century Blvd.	Ground Mounted

ECM #1 – HVAC Upgrades

The general scope of the HVAC upgrade project is to replace the following aging equipment at the thirteen (13) sites shown below:

Site	Rooftop Units	Condensing Units	Furnaces	Packaged Units	Boilers	Exposed Rooftop Ductwork/ Insulation
FS 1	2					
FS 3		3	3			
FS 7		3	3			
FS 10	2					
Training Center				3		X
FS 13	1					X
FS 14	2					
FS 22		3	3			X
FS 81	3					X
FS 88		2	2			
Administration Building					1	
Communications Center	3					
Investigations		3	3			X
Total	13	14	14	3	1	5 sites

Rooftop Gas Package AC Replacement

Scope of Work:

Demolition:

1. Remove and dispose existing thirteen (13) rooftop gas packaged units as per the table below
2. Include disposal of equipment in accordance with applicable codes.
3. Provide crane lift safety plan and rigging for rooftop equipment. ConFire must make arrangements to have building unoccupied during any lift.

Location	Unit Type	Make	Model #	Qty	Notes
FS 1	RTU	Carrier	48SS-048080341AA	1	
	RTU	Carrier	48SS-048080341AA	1	

Location	Unit Type	Make	Model #	Qty	Notes
Communication Center	RTU (AC-1)	Carrier	48DJ008510	1	
	RTU (AC-2)	Carrier	48DJ008510	1	
	RTU (AC-3)	Carrier	48DJ008510	1	
FS 10 & Training	RTU (FS10)	Carrier	48SS-048100551AA	1	
	RTU (FS10)	Carrier	48SS-048100551AA	1	
FS 13	RTU	Bryant	588ANW0482100AFAG	1	Replace rooftop ductwork & insulation from unit to roofline
FS 14	RTU	Carrier	48GS-048115301--	1	
	RTU	Carrier	48GS-048115301--	1	
FS 81	RTU	Rheem	RKKA-A060JK10E	1	Replace rooftop ductwork& insulation from unit to roofline
	RTU	Rheem	Bleached out	1	
	RTU	Rheem	Bleached out	1	

New Work:

1. Provide and install new mechanical equipment as identified in the mechanical equipment upgrade scope of work.
2. Work will include material, labor, supervision, design completion, services, equipment and tools required to replace the HVAC systems.
3. All units will be installed in the location of the previous equipment.
4. Units will be selected to minimize any increase in weight to limit any potential structural upgrades. The scope of work does not include any structural modifications or seismic upgrades to ConFire buildings.
5. Compressors will come with a minimum 5-year manufacturer's warranty.
6. All units will be provided with a new programmable thermostat and be reconnected to the existing twist timer if present. The programmable thermostat will meet Title 24 requirements.
7. Provide and install flexible connectors with galvanized sheet metal cover at inlet and outlet.
8. Start up by factory trained personnel and commission per factory specifications, ensuring the units operate per user-defined schedule.
9. Reconnect the unit to existing ductwork except in cases where exposed ductwork will be replaced under this scope of work.
10. Reconnect to existing natural gas and condensate piping systems.
11. Existing smoke detectors will be reconnected. New smoke detectors will be provided as required if mechanical system or combined systems serving the zone is > 2000 cfm.
12. Provide and install new electrical disconnect and fuses.
13. Provide and install condensate discharge to comply with local jurisdiction requirements.
14. Provide and install a new adapter curb or sleepers as required for installation of new mechanical equipment and weather proofing. Patch and repair roof as required.
15. Measure and document pre and post installation air flows at each register.
16. Test and balance work will be performed in accordance with AABC or NEBB guidelines.

Split System Replacement

Scope of Work:

Demolition:

1. Remove and dispose fourteen (14) existing furnaces and fourteen (14) existing condensing units as per the table below.
2. Include disposal of equipment in accordance with applicable codes.

Location	Unit Type	Make	Model #	Qty	Notes
FS 3	CU-1	Carrier	38CKB024320	1	
	Furnace - 1	Carrier	58WAV045-08	1	
	CU-2	Carrier	38CKB042500	1	
	Furnace - 2	Carrier	58WAV091-16	1	

Location	Unit Type	Make	Model #	Qty	Notes
FS 7	CU-3	Carrier	38CKB060500	1	
	Furnace - 3	Carrier	58WAV111-20	1	
	CU-1	Day & Night	591ANX042000ABAA	1	
	Furnace -1	Day & Night	395CAV060090	1	
	CU-2	Day & Night	591ANX036000AAAA	1	
	Furnace -2	Day & Night	395CAV048075	1	
	CU-3	Day & Night	591ANX024000AAAA	1	
FS 22	Furnace -3	Day & Night	395CAV036055	1	
	CU-1	Carrier	38CKC042510	1	
	Furnace - 1	Carrier	58WAV091-16	1	Replace insulation on ductwork from unit to ceiling line
	CU-2	Carrier	38CKC060520	1	
	Furnace - 2	Carrier	58WAV111-20	1	Replace insulation on ductwork from unit to ceiling line
	CU-3	Carrier	38CKC030330	1	
Investigations	Furnace -3	Carrier	58WAV045-08	1	Replace insulation on ductwork from unit to ceiling line
	CU-1	Day & Night	565B1036-A	1	
	Furnace-1	Day & Night	518A036	1	Replace insulation on ductwork from unit to ceiling
	CU-2	Day & Night	565B1042	1	
	Furnace-2	Day & Night	518A036	1	Replace insulation on ductwork from unit to ceiling line
	CU-3	Day & Night	565BJ042	1	
FS 88	Furnace-3	Day & Night	518042	1	Replace insulation on ductwork from unit to ceiling
	CU-1	Carrier	38CKB060510	1	
	Furnace-1	Carrier	58WAV111-20	1	
	CU-2	Carrier	38CKB042500	1	
	Furnace-2	Carrier	58WAV091-14	1	

New Work:

1. Provide and install new mechanical equipment as identified in the mechanical equipment upgrade scope of work.
2. Work will include material, labor, supervision, design completion, services, equipment and tools required to replace the HVAC systems.
3. All units will be installed in the location of the previous equipment.
4. Compressors will come with a minimum 5-year manufacturer's warranty.
5. All units will be provided with a new programmable thermostat and be reconnected to the existing twist timer if present. The programmable thermostat will meet Title 24 requirements.
6. Provide and install new refrigerant line sets as per code.
7. Provide and install new matching cooling coils.
8. Start up by factory trained personnel and commission per factory specifications, ensuring the units operate per user defined schedule.
9. Reconnect the unit to existing ductwork except in cases where exposed ductwork will be replaced under this scope of work.
10. Reconnect to existing natural gas and condensate piping systems.

11. Existing smoke detectors will be reconnected, if applicable. New smoke detectors will be provided as required if mechanical system or combined systems serving the zone is > 2000 cfm.
12. Provide and install new electrical disconnect and fuses.
13. Provide and install condensate discharge to comply with local jurisdiction requirements.
14. Ensure all flue vent terminations on furnace meet local code and provide flue extension if required.
15. Measure and document pre and post installation air flows at each register.
16. Test and balance work will be performed in accordance with AABC or NEBB guidelines.

Packaged Unit Replacements

Scope of Work:

Demolition:

1. Remove and dispose three (3) gas packaged units as per the table below
2. Include disposal of equipment in accordance with applicable codes.

Location	Unit Type	Make	Model#	Qty	Notes
FS 10 & Training	Package Unit (Classroom 3)	Carrier	48GS-036090501--	1	Replace exterior ductwork & insulation till wall inlet
	Package Unit (Classroom 3)	Bryant	588ANW0360B0ACBF	1	Replace exterior ductwork & insulation till wall inlet
	Package Unit (Classroom 3)	Day & Night	584ANW036080	1	Replace exterior ductwork & insulation till wall inlet

New Work:

1. Provide and install new mechanical equipment as identified in the mechanical equipment upgrade scope of work.
2. Work will include material, labor, supervision, design completion, services, equipment and tools required to replace the HVAC systems.
3. All units will be installed in the location of the previous equipment.
4. Compressors will come with a minimum 5-year manufacturer's warranty.
5. All units will be provided with a new programmable thermostat and be reconnected to the existing twist timer if present. The programmable thermostat will meet Title 24 requirements.
6. Start up by factory trained personnel and commission per factory specifications, ensuring the units operate per user defined schedule.
7. Reconnect the unit to existing ductwork except in cases whether exposed ductwork will be replaced under this scope of work.
8. Reconnect to existing natural gas and condensate piping systems.
9. Existing smoke detectors will be reconnected, if applicable. New smoke detectors will be provided as required if mechanical system or combined systems serving the zone is > 2000 cfm.
10. Provide and install new electrical disconnect and fuses with all wiring installed in conduit.
11. Provide and install condensate discharge to comply with local jurisdiction.
12. Measure and document pre and post installation air flows at each register.
13. Test and balance work will be performed in accordance with AABC or NEBB guidelines.

Boiler Replacements

Scope of Work:

Demolition:

1. Remove and dispose one (1) boiler, one (1) hot water circulation water pump - 49 GPM, 1.5 HP, one (1) thirty-gallon expansion tank and one (1) pot feeder as per the table below
2. Include disposal of equipment in accordance with applicable codes.

Location	Unit Type	Make	Model#	Qty
Administration	Boiler	Peerless	210-4-WVP	1
	Hot circulation water pump (49 GPM, 1.5 HP)			1
	Expansion tank (30 gallons)			1
	Pot feeder			1

New Work:

1. Provide and install new boiler, hot water pump, expansion tank and pot feeder.
 - a. Work will include material, labor, supervision, design completion, services, equipment and tools required to replace the HVAC systems.
 - b. All units will be installed in the location of the previous equipment.
2. Modify piping as necessary for the new installation including all shut off valves, temperature gauges on the entering and leaving side of the boiler and pressure gauges on the entering and leaving side of the pumps.
3. Provide new thermal insulation on hot water piping inside mechanical room as per code and label piping as appropriate.
4. Include required line and low electrical modification and connections.
5. Connect new equipment to existing controls systems
6. Make gas, hot water and venting connections for hot water equipment / boilers. Include new venting to roof/exterior per manufacturer's requirement.
7. Start up by factory trained personnel and commission per factory specifications, ensuring the units operate per user defined schedule.

ECM #2 – Water Conservation

Scope of Work

Scope of work will include:

1. Retrofit existing lavatory and kitchen sink faucets with 1.5 GPM aerators at the facilities listed below:

Site	Lavatory Sinks	Kitchen Sinks
FS 1	-	1
FS 2, Admin and Comm Center	12	4
FS 3	4	1
FS 5	4	1
FS 6	3	1
FS 7	-	1
FS 8	-	1
FS 10 and Training Center	13	1
FS 11	2	1
FS 13	2	1
FS 14	5	1
FS 15	-	1
FS 17	2	1
FS 22	4	1
FS 69	5	1
FS 81	4	1
FS 82	3	1
FS 83	2	1
FPB East	-	1
Total	65	22

2. Provide materials, labor, supervision, and coordination with ConFire for the installation.

ECM #3 - Solar Generating Facilities

Scope of Work

Scope of work will include:

1. Prepare and submit design drawings to the Cities of Antioch, Clayton, Concord and Pittsburg for approval and to local utility for interconnection permits.
2. Provide geotechnical evaluations necessary for design requirements.
3. Provide utility interconnection drawings and application management services.
4. Provide and coordinate installation of the NGOM and NEM metering.
5. Procure materials and equipment necessary for construction.
6. Provide project management and construction management necessary for a full and complete installation.
7. Provide labor, supervision, and coordination with ConFire for the installation of photovoltaic modules and supporting structures, electrical distribution and control systems.
8. Provide and install PV modules and necessary mounting hardware for each system.

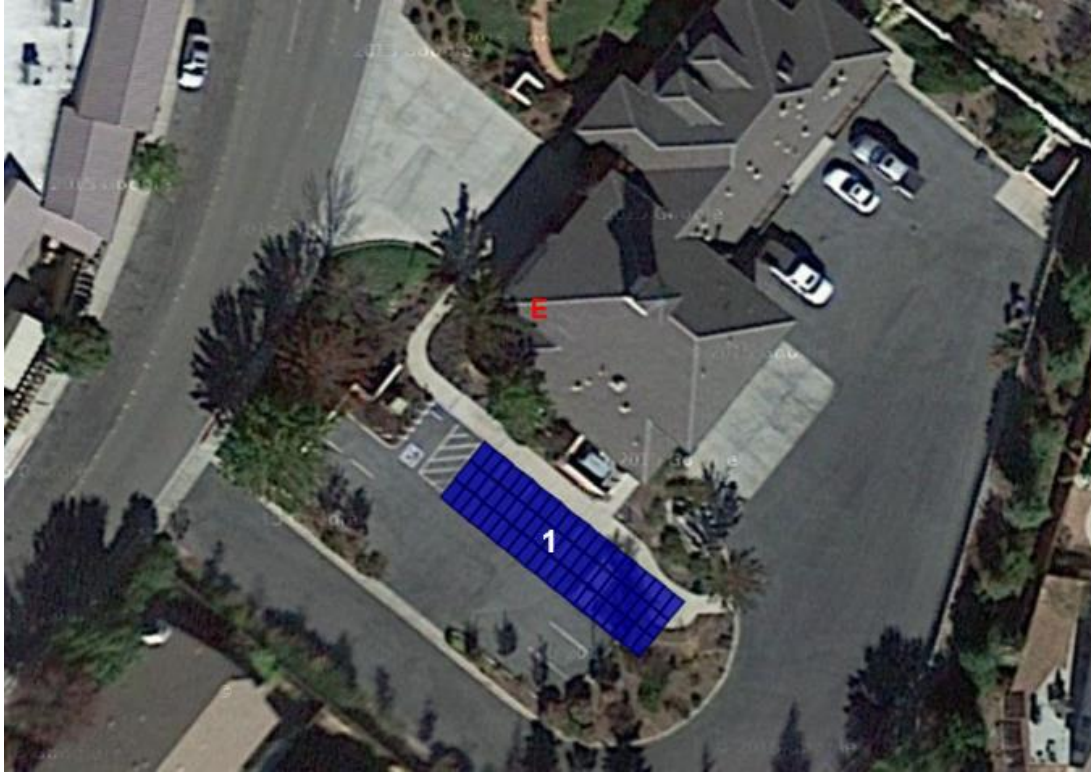
9. Provide and install inverters and necessary electrical equipment and conduits to connect to the electrical switchgear or meter. Electrical shut-downs are anticipated at each site. Time of shutdown will be coordinated with ConFire and PG&E and may include weekends.
10. Provide and install solar canopy structures to offset electrical consumption at 4 locations in the table above. The canopy structure design will include a painted canopy structure that is 10-12 feet clear of grade level on the low side and a pier depth of eight feet deep and assumes no de-watering, benching, shoring, or casing. Canopies for engine parking (12' clear) are only provided for Array 3 at Fire Station 10 and Training Center.
11. At Delta Fair Property provide and install a ground mount racking structure that provides at least a 1' ground clearance for the solar PV modules. Approximately 1,800 feet of 6' chain-link fence will be provided around the ground mount system to limit access to the ground mount system. Fence slats, security cameras, and security alarming is not included in the scope of work. The ground within the fenced area and beneath the solar PV modules will remain native grasses and will be maintained by ConFire.
12. DC wiring and AC wiring within the solar canopies and ground mount structure will be copper wire. Aluminum wire will be used from each system's AC combiner to the main point of connection at the site's electrical switchgear.
13. Provide and install eighteen (18) new LED lighting fixtures (Relume PV 40HB or equivalent) for canopies located in parking lots (one for each 27' bay).
14. Provide as-built drawings and Operations & Maintenance manuals upon project completion.
15. Provide tree removal as noted on the solar layouts provided during the project update meetings on 20 July and 6 October 2016.
16. Provide miscellaneous backfill and restoration of landscaping in areas of work.
17. Start-up, test, and commission the systems in accordance with design plan and applicable industry standards.
18. Secure the Project Location and provide traffic redirection during rigging operations, and during the move-in and move-out of large equipment. ConFire will assist with the foregoing site logistics by coordinating access and scheduling with OpTerra Energy Services.

Preliminary Photovoltaic Layouts

Fire Station 10 and Training Center



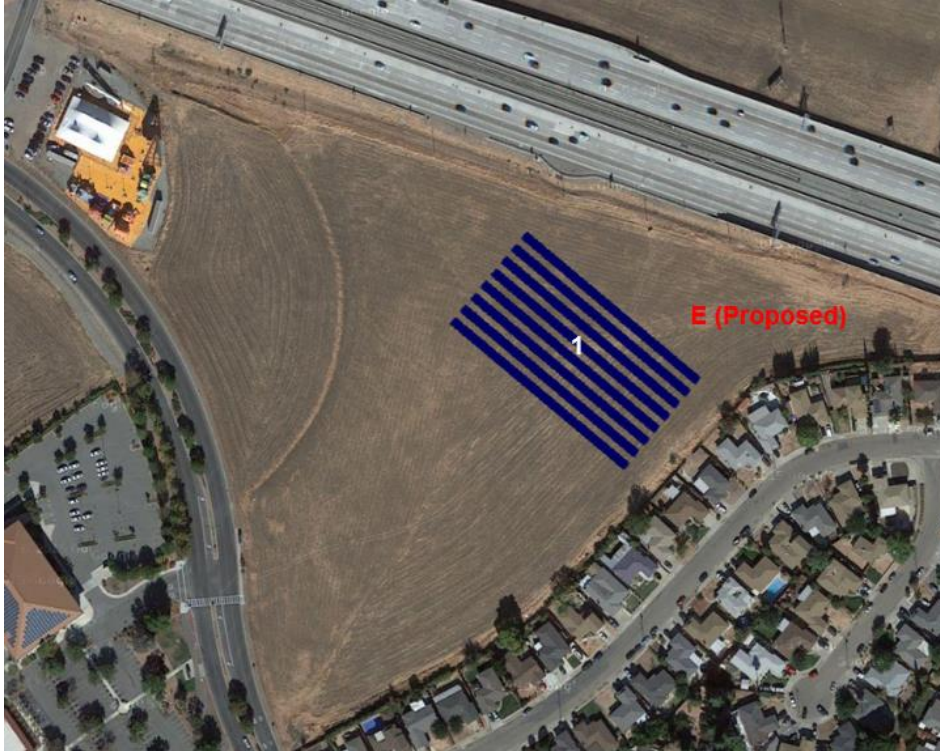
Fire Station 11



Fire Station 84



RES-BCT at Delta Fair Property



Assumptions, Exceptions, Exclusions:

1. Cost for ADA accessibility upgrades to existing buildings or parking lots for path of travel, if required, are not included and will be calculated based upon final design.
2. Remediation and/or removal of hazardous materials, hazardous wastes, or spoils are not included. CEQA or other environmental studies, if required, will be the responsibility of ConFire.
3. Public Hearings, if required, will be the responsibility of ConFire
4. Access to areas of construction will be blocked to public during construction for safety.
5. An allowance of \$150,000 is included in the Contract Amount for PG&E Interconnection costs for the RES-BCT site, still to be determined. If the final costs are greater than this allowance ConFire will be responsible for the additional cost. If the final costs are less than this allowance a deductive change order can be applied to the Contract or OpTerra Energy Services can perform other ECMs with a value equivalent to the remaining allowance.

General Project Exclusions and Clarifications:

- Inspection for all scopes of work are excluded.
- OpTerra Energy Services has assumed Construction will be allowed to proceed smoothly and in a continuous flow. No allowance has been made to demobilize and remobilize resources due to schedule interruptions.
- Temporary utilities are to be provided by ConFire at no cost to OpTerra Energy Services (including, without limitation, trailer power, phone lines, and construction power).
- Removal and disposal of Hazardous Substances, including asbestos containing materials, to be by ConFire (except as noted above). If OpTerra Energy Services encounters material suspected to be hazardous, OpTerra Energy Services will notify ConFire representative and stop further work in the area until the material is removed.
- OpTerra Energy Services will require the assistance of ConFire personnel to secure the Project Location and to provide traffic redirection during rigging operations, and during the move-in and move-out of large equipment.
- No allowance has been made for structural upgrades to existing structures, except as specifically set forth in this Scope of Work.
- No allowance has been made for screening of new or existing equipment, except as specifically set forth in this Scope of Work.
- No temporary heating or cooling services have been included in the Contract Amount. OpTerra Energy Services will attempt to phase Construction in such a way as to avoid complete interruptions of service.
- OpTerra Energy Services standard construction means and methods will be used.

- ConFire will provide access to the Facilities, laydown areas at the work sites, and a reasonable number of parking spaces for OpTerra Energy Services and OpTerra Energy Services' subcontractor vehicles in parking lots at the Facilities.
- Work will be performed during normal work hours; no overtime hours are included in the Contract Amount.
- The Scope of Work assumes that, unless specifically identified otherwise, all existing systems are functioning properly and are up to current codes. OpTerra Energy Services will not be responsible for repairs or upgrades to existing systems that are not functioning properly or compliant with current codes. No allowances have been made to bring existing systems up to code.
- No allowance has been made to repair or replace damaged or inoperable existing equipment that is not specifically being replaced under the Scope of Work. When such items are discovered, OpTerra Energy Services will immediately notify ConFire representative.
- No allowance has been made for underground obstructions or unsuitable soil conditions encountered during trenching or other excavation.
- The PV shade structure is not weather tight and will not provide shelter from rain.
- Water hose bibs for washing the panels are excluded.
- Decorative fascia along the perimeter of the panels and decorative covering underneath the panels are excluded.
- Parking lot repairs are excluded, except to the extent of damage caused by OpTerra Energy Services or its subcontractors.
- Repair or replacement of existing housekeeping pads, concrete pads, or base repair of existing walkway lighting are excluded, except as specifically set forth in this Scope of Work.
- Painting, unless specified, is excluded.
- Where this Scope of Work includes pulling new wiring for lighting fixtures from an existing lighting panel, a grounding conductor must be included in the lighting circuits. ConFire is responsible for providing an existing or new grounding conductor terminal bar at the lighting panel that is properly connected to the Facility grounding electrode system in compliance with the latest NEC adopted by the authority having jurisdiction.
- With respect to Projects with new equipment connecting to the Facility's existing electrical distribution system, OpTerra Energy Services will not be responsible for the electrical integrity of the existing electrical system, e.g., the condition and proper termination of current-carrying, grounded, and grounding conductors, bus taps, protective elements, the proper protection of existing wire through knockouts, or missing components. ConFire is responsible for providing and maintaining the facility's electrical distribution system that meets the latest NEC and guidelines adopted by the authority having jurisdiction.
- OpTerra Energy Services is not responsible for repairing or replacing existing damaged, blocked, or leaky ductwork, or cleaning dirt or mildew, except as specifically set forth in this Scope of Work.
- OpTerra Energy Services will not be responsible for existing damaged pipes, valves, and related parts and components.
- Existing pneumatic control systems that remain in place must be properly maintained (use of air dryer, clean filter, etc.) by ConFire such that oil or moisture does not reach the control and operating devices.
- Unless specifically included in this Scope of Work, existing valves, dampers, linkages, and piping specialties to which new controls/building automation system are being connected are to be in proper functioning condition. If existing device is found to be improperly functioning, ConFire may repair or compensate OpTerra Energy Services for repair / replacement of the device.
- Any upgrade or replacement work to fire alarm systems is excluded, except for reconnecting smoke detectors to units being replaced in this Scope of Work.

OpTerra Energy Services Beneficial Use and Warranty criteria for specific pieces of equipment:

- i) ROOFTOP GAS PACKAGE AC / SPLIT SYSTEM / PACKAGE UNIT - The OpTerra Energy Services Warranty commences immediately upon the occurrence of two weeks of uninterrupted operation of the mechanical equipment while providing reasonable comfort. "Uninterrupted operation" is defined as: no involuntary shutdowns due to control problems. "Reasonable comfort" is defined as: maintaining occupied spaces controlled by the system within +/- 4 degrees of setpoint. Comfort performance will be established by manual spot checks of temperatures by an OpTerra Energy Services employee. With respect to the HVAC equipment, OpTerra Energy Services will provide written notice to ConFire of the date the OpTerra Energy Services Warranty commences.
- ii) HOT WATER BOILER –The OpTerra Energy Services Warranty commences immediately upon the occurrence of two weeks of uninterrupted supply of GPM flows within 10% of design values at a supply temperature of approximately 180°F. "Uninterrupted operation" is defined as: no involuntary shutdowns due to mechanical difficulties. Flows will be established by a test and balance report created by OpTerra Energy Services. Temperature performance will be established by EMS trend logs or by manual spot checks of temperature gauge by a OpTerra Energy Services employee. With respect to the Hot Water Boiler, OpTerra Energy Services will provide written notice to ConFire of the date the OpTerra Energy Services Warranty commences.

- iii) SOLAR SYSTEM - The OpTerra Energy Services Warranty commences immediately when the Generating Facility is capable of generating expected energy and the Utility is ready to issue the permission-to-operate letter.

Tentative work scopes to receive Substantial and Final Completion:

Scope of Work	Location	Total Qty of SC	Total Qty of FC
SGF 1 through 4 – Solar PV	4 sites	4; one per site	1; for entire SGF
ECM 1 – HVAC Upgrades	13 sites	13; one per site	1; for entire ECM
ECM 2 – Water Conservation	22 sites	1; for entire ECM	1; for entire ECM

ATTACHMENT D
MONITORING INSTALLATION SCOPE OF WORK

Overview of DAS Network Installation and Equipment Requirements

OpTerra Energy Services will provide a revenue-grade billing, data acquisition system (DAS). This will provide readily available access to various internal and external information collected on the distributive generation (i.e., solar PV) plant.

OpTerra Energy Services DAS Monitoring Installation:

- Supply and install hardware specific to the DAS system.
- Supply and install, terminate, label, and test all Data Point of Connection (DPOC) communication cabling from each DAS node to the predetermined and respective DPOC(s); in accordance with ConFire's specifications.
- Test and verify ConFire/Facility network connectivity.
 - a. TCP/IP internal addressing and verification
- Supply, install, and configure a Modbus based digital Net Energy Meter (NEM).
- Connect the data portion of digital NEM(s) to their respective DPOC(s).
- Supply, install, and configure a Modbus based digital Net Generation Output Meter (NGOM).
- Perform the physical installation, labeling, testing and certification testing of each data circuit from the digital NEM(s) to their respective DPOC(s).
- Provide basic system training to designated ConFire/Facility maintenance staff.

ConFire/Facility Responsibilities:

- Provide four (4) external static IP addresses, subnet mask default gateway, and DNS-information to allow remote access to DAS panel(s).
- Provide network connectivity to each DAS panel location.
- Provide OpTerra Energy Services five (5) Business Days prior notification of any IP addressing scheme changes or changes made to restrict network access to ensure maximum uptime is maintained.

ATTACHMENT E
M&V SERVICES

EQUIPMENT AND FACILITIES COVERED

OpTerra Energy Services will perform measurement and verification services (“M&V Services”) as set forth in this Attachment E with respect to ConFire’s property at the following Project Locations:

Facility	Address
FS 1	1330 Civic Drive, Walnut Creek 94596
FS 2	2012 Geary Road, Pleasant Hill 94523
FS 3	1520 Rossmoor Pkwy, Walnut Creek 94595
FS 5	205 Boyd Road, Pleasant Hill 94523
FS 6	2210 Willow Pass Rd., Concord 94520
FS 7	1050 Walnut Avenue, Walnut Creek 94598
FS 8	4647 Clayton Road, Concord 94521
FS 10	2955 Treat Boulevard, Concord 94518
FS 11	6500 Center Street, Clayton 94517
FS 13	251 Church Street, Martinez 94553
FS 14	521 Jones Street, Martinez 94553
FS 15	3338 Mt. Diablo Blvd., Lafayette 94549
FS 17	620 St. Marys Road, Lafayette 94549
FS 22	5050 Crystyl Ranch Dr., Concord 94521
FS 69	4640 Appian Way, El Sobrante, 94803
FS 81	315 W. 10th Street, Antioch 94509
FS 82	196 Bluerock Dr., Antioch 94531
FS 83	2717 Gentrytown Drive, Antioch 94509
FS 84	1903 Railroad Ave., Pittsburg 94565
FS 88	4288 Folsom Drive, Antioch 94509
Delta Fair Property Administration	Intersection of Delta Fair Blvd. and Century Blvd. 2010 Geary Road, Pleasant Hill 94523
Communication Center	2900 Dorothy Dr., Pleasant Hill 94523
Training Campus	2945 Treat Boulevard, Concord 94518
FPB East office	2329 Loveridge Road, Pittsburg 94565
Investigations, FIUB	200 E. Sixth St., Pittsburg 94565

I. Definitions:

Capitalized terms used in this Attachment E and not defined in the Contract, have the meanings set forth below:

“**Accumulated Savings**” means, as of any date of determination, the cumulative total of Excess Savings.

“**Annual M&V Fee**” means a fee payable annually in advance by ConFire to OpTerra Energy Services, in consideration of the provision of up to nineteen (19) years of M&V Services, on the terms and subject to the conditions set forth in this Attachment E.

Measurement Period	Annual M&V Fee
1	Included in Contract Amount
2	Included in Contract Amount
3 (optional)	\$17,312.83
4 (optional)	\$17,832.21
5 (optional)	\$18,367.18
6 (optional)	\$18,918.19
7 (optional)	\$19,485.74
8 (optional)	\$20,070.31
9 (optional)	\$20,672.42
10 (optional)	\$21,292.59
11 (optional)	\$21,931.37

Measurement Period	Annual M&V Fee
12 (optional)	\$22,589.31
13 (optional)	\$23,266.99
14 (optional)	\$23,965.00
15 (optional)	\$24,683.95
16 (optional)	\$25,424.47
17 (optional)	\$26,187.20
18 (optional)	\$26,972.82
19 (optional)	\$27,782.01

“**Assessment Work**” means work required to assess the effect on EC Savings for any significant changes to the Facilities (including, but not limited to, building additions, new buildings, and new or changed HVAC equipment).

“**Base Energy Rate**” means the dollars per energy unit for each building and/or each ECM, set forth in this Attachment E, Section (III), and used by OpTerra Energy Services to calculate the EC Savings.

“**Baseline**” means the energy use established by OpTerra Energy Services from time to time for each building in the Facilities, taking into consideration Energy Use Factors for such buildings.

“**EC Savings**” means the savings in units of dollars (\$) calculated by OpTerra Energy Services in the manner set forth in this Attachment E, Section (III), achieved through the reduction in consumption or demand through implementation of the Work.

“**Energy Rate Factors**” means factors identified by OpTerra Energy Services which may affect utility rates from the local utility companies.

“**Energy Savings Report**” is defined in this Attachment E, Section (II)(D).

“**Energy Savings Term**” means the period beginning on the first day of the Construction Period and ending on the earlier of: (i) the day immediately preceding the second (2nd) anniversary of the M&V Commencement Date (unless extended in accordance with the terms of Attachment E, Section (II)(H) hereof); (ii) the termination of the Contract; (iii) the termination by ConFire of the M&V Services in accordance with this Attachment E, Section (II)(G); or (iv) the failure by ConFire, following written notice and an opportunity to cure pursuant to Section 15.02(iii) of the Contract, to pay the Annual M&V Fee in accordance with this Attachment E, Section (II)(I)(i).

“**Energy Unit Savings**” means the savings in units of energy, power, water, etc., calculated by OpTerra Energy Services in the manner set forth in this Attachment E, Section (III), achieved through the reduction in consumption or demand through implementation of the Work.

“**Energy Use Factors**” means factors identified by OpTerra Energy Services which may affect the Baselines or energy use for the Facilities, including but not limited to: hours and levels of occupancy; adjustments in labor force; building use and operational procedures; temperature, humidification, and ventilation levels; installed lighting and scheduled use; building construction and size; general level of repair and efficiency of heating and air conditioning equipment and other energy-using equipment; and amount of heating and air conditioning and other energy-using equipment.

“**Energy Use Savings**” means, for any Measurement Period, those savings, having units of dollars (\$), achieved for such Measurement Period through reductions in energy use, energy demand, water use, and the use of other commodities.

“**Excess Savings**” means the excess of EC Savings over Guaranteed Savings, calculated in the manner set forth in this Attachment E, Section (II)(I)(iv).

“**Guarantee Payment**” means, for any Measurement Period, either: (i) a cash payment by OpTerra Energy Services to ConFire in an amount equal to the Guarantee Shortfall for that Measurement Period pursuant to this Attachment E, Section (II)(A)(ii); or (ii) additional energy services or energy saving retrofits requested by ConFire with an agreed value equal to the Guarantee Shortfall for that Measurement Period pursuant to this Attachment E, Section (II)(A)(iii).

“**Guarantee Shortfall**” means an amount calculated in accordance with this Attachment E, Section (II)(I)(v).

“**Guaranteed Savings**” means, for any Measurement Period, the dollar amount set forth below for such Measurement Period, as the same may be adjusted from time to time by OpTerra Energy Services for changes in Energy Rate Factors, Energy Use Factors and consequential revisions to the relevant Baseline:

Measurement Period	Guaranteed Savings
1	\$185,171
2	\$193,506
3 (optional)	\$202,216

Measurement Period	Guaranteed Savings
4 (optional)	\$211,318
5 (optional)	\$220,830
6 (optional)	\$230,771
7 (optional)	\$241,160
8 (optional)	\$252,017
9 (optional)	\$263,363
10 (optional)	\$275,220
11 (optional)	\$287,611
12 (optional)	\$300,560
13 (optional)	\$314,093
14 (optional)	\$328,235
15 (optional)	\$343,014
16 (optional)	\$358,459
17 (optional)	\$374,600
18 (optional)	\$391,469
19 (optional)	\$409,098

“**IPMVP**” means the International Performance Measurement and Verification Protocol prepared by Efficiency Valuation Organization.

“**Projected Energy Savings**” means those Energy Unit Savings which OpTerra Energy Services anticipates will be realized from the installation and continued operation of the Work, as set forth in this Attachment E, Section (III).

“**Savings Guarantee**” is defined in this Attachment E, Section (II)(A)(i).

“**Stipulated Non-Energy Savings**” means, for any Measurement Period, those savings, having units of dollars (\$), achieved for such Measurement Period through reductions in non-energy costs due to the implementation of the Work. Stipulated Non-Energy Savings will be stipulated by the Parties and set forth in this Attachment E, Section (III).

II. Terms and Conditions

A. Guaranteed Savings.

- i. Savings Guarantee. In consideration of the payment of the Annual M&V Fee, and upon the terms and subject to the conditions set forth herein, OpTerra Energy Services warrants that ConFire will realize total EC Savings during the Energy Savings Term of not less than the total Guaranteed Savings (the “Savings Guarantee”), as the same may be adjusted from time to time for changes in Energy Rate Factors, Energy Use Factors and consequential revisions to the relevant Baseline.
- ii. Guarantee Payment. For any Measurement Period in which there is a Guarantee Shortfall, OpTerra Energy Services will pay to ConFire, within forty-five (45) calendar days after the acceptance by ConFire of the Energy Savings Report for such Measurement Period, the Guarantee Payment for that Measurement Period.
- iii. Services or Retrofits in Lieu of Guarantee Payment. If in the judgment of ConFire, ConFire would benefit from additional energy services or energy saving retrofits, ConFire and OpTerra Energy Services may mutually agree that OpTerra Energy Services will provide such services or retrofits in lieu of the Guarantee Payment for such Measurement Period. For the purposes of this Contract, such services or retrofits will have a deemed value equal to the Guarantee Shortfall for that Measurement Period.
- iv. Excess Savings. For any Measurement Period in which there are Excess Savings, ConFire will repay to OpTerra Energy Services, to the extent of such Excess Savings, any Guarantee Payments previously paid by OpTerra Energy Services to ConFire and not previously repaid to OpTerra Energy Services by ConFire, and the Excess Savings for such Measurement Period will be reduced by the amount of such repayment. If OpTerra Energy Services has provided services or retrofits in lieu of the Guarantee Payment for a prior Measurement Period, such that the Guarantee Payment for such Measurement Period cannot be repaid by ConFire, then in lieu of such repayment Excess Savings will be increased by the deemed value of such services or retrofits.
- v. Excusable Events. If OpTerra Energy Services is delayed in, or prevented from, accurately calculating the actual EC Savings for any day of any Measurement Period by reason of any event beyond its control, such circumstance will not constitute a default, and OpTerra Energy Services will be excused

from performing the M&V Services while such event is continuing. During such event, Projected Energy Savings for the month(s) in which such event is continuing will be used in lieu of actual data; *provided* that if three (3) or more years of post M&V Commencement Date data are available for such month(s), the historical average of such data for such month(s) will be used in lieu of Projected Energy Savings.

B. Changes in Energy Use Factors.

- i. Adjustments to Baselines. ConFire will notify OpTerra Energy Services in writing within ten (10) Business Days of any change in any Energy Use Factor. In addition, data collected by OpTerra Energy Services during or before the Energy Savings Term may indicate a change in the energy use pattern at the Facilities or any portion thereof and require a change to one or more Baselines. OpTerra Energy Services will determine the effect that any such change will have on EC Savings and present to ConFire a written analysis of the effects of such changes. OpTerra Energy Services will also make corresponding revisions to the Baselines and/or EC Savings that it deems appropriate in its reasonable discretion.
- ii. Adjustments to Guaranteed Savings. If a change in any Energy Rate Factor or Energy Use Factor results in a reduction of EC Savings, then the Guaranteed Savings for the corresponding Measurement Period(s) will be decreased by the same amount. OpTerra Energy Services will notify ConFire, in writing, of all such changes.
- iii. Changes to Facilities. ConFire or OpTerra Energy Services may from time to time propose to make changes to the Facilities for the express purpose of increasing EC Savings or addressing events beyond its control. It is agreed that these changes will only be made with the written consent of both Parties, which will not be unreasonably withheld. The Baseline will not be adjusted to reflect any changes agreed to under this Attachment E, Section (II)(B)(iii).
- iv. Baseline Adjustment. If OpTerra Energy Services proposes changes to the Facilities that would not unreasonably interfere with the conduct of ConFire's business or cause ConFire to incur additional costs, and ConFire does not consent to the changes, then OpTerra Energy Services will adjust the Baselines upward by the amount of savings projected from the changes.
- v. Projected Energy Savings. During the Energy Savings Term, when the ultimate effect of the Work on EC Savings cannot be accurately determined due to pending construction or changes to the Scope of Work, Projected Energy Savings for the Facilities will be used until the effect of the changes can be determined by OpTerra Energy Services.
- vi. Assessment Work. OpTerra Energy Services has the right to charge ConFire for Assessment Work, which will be billed at current OpTerra Energy Services engineering rates and will be paid by ConFire within forty-five (45) calendar days after receiving OpTerra Energy Services' invoice. Before initiating Assessment Work, OpTerra Energy Services will notify ConFire in writing of the intent and estimated cost associated with the Assessment Work. ConFire will, within forty-five (45) calendar days, give OpTerra Energy Services written permission to proceed or, alternatively at no charge to OpTerra Energy Services, to stipulate that the Projected Energy Savings for the portion of the Facility in question be used for the purpose of meeting the Savings Guarantee for such Measurement Period and thereafter. If OpTerra Energy Services does not receive written notice within forty-five (45) calendar days, the Projected Energy Savings for the portion of the Facility in question will be used until such time as ConFire approves the Assessment Work.
- vii. Changes in Energy Use Factors. If ConFire fails to notify OpTerra Energy Services of changes in Energy Use Factors or fails to supply OpTerra Energy Services in a timely manner with information that is requested by OpTerra Energy Services for the calculation of EC Savings, the Energy Unit Savings for the relevant Measurement Period will be deemed equal to the corresponding Projected Energy Savings for such period. If information for the relevant Measurement Period is supplied at a later date, the Energy Unit Savings will be modified only if and to the extent that the calculated savings for such period exceed the Projected Energy Savings for such period.
- viii. Change Order – Savings Effect. OpTerra Energy Services will calculate the energy impact of any Change Orders.
- ix. Changes in Savings Calculations. Any changes made by OpTerra Energy Services to the savings calculations will be presented to ConFire in advance. ConFire will have thirty (30) calendar days to challenge or question the changes in writing.
- x. Inspection of Facilities. ConFire agrees that OpTerra Energy Services will have the right, with three (3) Business Days advance written notice, to inspect the Facilities to determine if ConFire has consistently

complied with its obligations as set forth above. If any inspection discloses that ConFire has failed, on or prior to the date of such inspection, to be in compliance with any of its obligations, then the Guaranteed Savings will be assumed to have been achieved for the portion of the Energy Savings Term during which such failure will have existed.

- xi. Interference. ConFire may not cause, and will take all commercially reasonable steps to prevent any third party from causing, any overshadowing, shading or other interference with the solar insolation that falls on the Generating Facility. Upon discovering, or otherwise becoming aware of, any actual or potential overshadowing, shading or other interference with insolation, ConFire will promptly notify OpTerra Energy Services. If an unforeseeable overshadowing or shading condition not caused by OpTerra Energy Services or its subcontractors exists and continues for five (5) Business Days or more, ConFire agrees that the Guaranteed Savings for such Generating Facility will be reduced based upon such shading condition, and OpTerra Energy Services may present ConFire with a proposed reduction to the Guaranteed Savings reflecting such overshadowing, shading or other interference.

C. ConFire Maintenance. Beginning at Beneficial Use or Substantial Completion for any portion of the Work, ConFire will maintain such portion of the Work and upon Final Completion will maintain the Project, in accordance with the maintenance schedules and procedures recommended by OpTerra Energy Services and by the manufacturers of the relevant equipment, such maintenance to include maintaining all landscaping (including tree trimming) in and around the Generating Facilities.

D. Energy Savings Report. Annually during the Energy Savings Term, OpTerra Energy Services will submit to ConFire an energy savings report containing a precise calculation of the EC Savings during the applicable Measurement Period (an "Energy Savings Report"). OpTerra Energy Services will use its best efforts to submit such Energy Savings Report within ninety (90) calendar days after receipt of all needed information for a Measurement Period, unless additional information is needed to accurately calculate the EC Savings, in which case ConFire will be notified of such a situation within the ninety (90) calendar-day period.

E. On-Site Measurements. ConFire irrevocably grants to OpTerra Energy Services the right, during the Energy Savings Term, to monitor EC Savings and energy management performance by conducting on-site measurements, including, but not limited to, reading meters and installing and observing on-site monitoring equipment. OpTerra Energy Services will not exercise such right in a manner that unreasonably interferes with the business of ConFire as conducted at the Facilities as of the date hereof. ConFire will cooperate fully with the exercise of such right by OpTerra Energy Services pursuant to this Attachment E, Section (II)(E). ConFire will further cooperate with OpTerra Energy Services' performance of the M&V Services by providing utility information, changes in Energy Use Factors, and/or additional information as reasonably requested by OpTerra Energy Services.

F. Internet Communication Path. At OpTerra Energy Services' request, to facilitate OpTerra Energy Services' monitoring of the Work, ConFire will open an internet communication path between ConFire's energy management system(s) and OpTerra Energy Services' office in Overland Park, Kansas. ConFire will provide, at ConFire's expense, all networking, telecommunication, encryption, and security hardware and/or software OpTerra Energy Services deems necessary to achieve such communication path, as well as any similar hardware, software, or encryption devices necessary for use at OpTerra Energy Services' office. OpTerra Energy Services will provide ConFire with the precise locations for network communication ports within ConFire's Facilities. ConFire agrees not to charge OpTerra Energy Services to install or maintain such communication paths.

G. Termination of Guaranteed Savings. If (i) ConFire notifies OpTerra Energy Services in writing of its intent to terminate the M&V Services, (ii) the Contract is terminated by OpTerra Energy Services for default by ConFire or by ConFire for any reason permitted by the Contract, (iii) OpTerra Energy Services is no longer the provider of the Maintenance Services set forth in Attachment E, or (iv) ConFire fails to maintain the Project in accordance with this Attachment E, Section (II)(C), or is in default of any of its other obligations under this Attachment E, the obligation of OpTerra Energy Services to prepare and deliver the Energy Savings Report and to make a Guarantee Payment will also be terminated. If such termination occurs on a date other than the last day of a Measurement Period, OpTerra Energy Services will have no obligation to make a Guarantee Payment or prepare and deliver an Energy Savings Report for such Measurement Period.

H. Renewal of Savings Guarantee. The Savings Guarantee will terminate on the first day of the third Measurement Period, unless ConFire delivers written notice to OpTerra Energy Services, within thirty (30) calendar days after its receipt of the prior Measurement Period's Energy Savings Report, of its intent to renew the Savings Guarantee for an additional Measurement Period. Subject to Attachment E, Section (II)(B)(xi), ConFire may thereafter renew the Savings Guarantee for additional one (1) year periods (through the

nineteenth (19th) Measurement Period) by delivering written notice to OpTerra Energy Services, within thirty (30) calendar days after its receipt of the prior Measurement Period's Energy Savings Report, of its intent to renew the Savings Guarantee for an additional Measurement Period. The Savings Guarantee cannot be renewed or reinstated if ConFire fails to timely renew for any Measurement Period after the second Measurement Period.

I. Annual M&V Fee.

- i. Invoicing and Payment. The Annual M&V Fee for the first two Measurement Periods is included in the Contract Amount. If the M&V Services are renewed, all subsequent Annual M&V Fees will be invoiced by OpTerra Energy Services on the first day of the corresponding Measurement Period. ConFire, or its designee, will pay OpTerra Energy Services such Annual M&V Fee, without any retention amount withheld, within forty-five (45) calendar days after its receipt of the corresponding invoice. Unless ConFire gives OpTerra Energy Services prior written notice of its intent to terminate the M&V Services, any failure to timely pay the Annual M&V Fee in accordance with this Attachment E, Section (II)(H) will be a material default by ConFire under the Contract, and OpTerra Energy Services, in addition to any other legal, contractual and equitable remedies available to it, will have no obligation thereafter to perform M&V Services or to make Guarantee Payments.
- ii. Any amount not paid when due will, from and after the due date, bear Interest. Accrued and unpaid Interest on past due amounts (including Interest on past due Interest) will be due and payable upon demand.
- iii. Not Refundable. The Annual M&V Fee is not refundable for any reason.

J. Calculations.

- i. Calculation of Accumulated Savings. Accumulated Savings will be increased, for any Measurement Period, by the amount of Excess Savings during such Measurement Period, and will be decreased, for any Measurement Period, by the *difference*, to the extent positive, between (i) the Guaranteed Savings for such Measurement Period *minus* (ii) the EC Savings for such Measurement Period. For the avoidance of doubt, Accumulated Savings will not be reduced below zero.
- ii. Calculation of EC Savings. EC Savings for any Measurement Period will be equal to the *sum*, for such Measurement Period, of (i) the Energy Use Savings, *plus* (ii) the Stipulated Non-Energy Savings, in each case as adjusted for changes in Energy Use Factors during such Measurement Period. EC Savings achieved during the Construction Period will be included in the EC Savings for the first Measurement Period.
- iii. Calculation of Energy Use Savings. Energy Use Savings will be calculated by OpTerra Energy Services as the *product* of (i) the Energy Unit Savings *multiplied by* (ii) the applicable Base Energy Rate.
- iv. Calculation of Excess Savings. From and after the M&V Commencement Date, Excess Savings will be calculated by OpTerra Energy Services as the *difference*, to the extent positive, between (i) the EC Savings for the relevant Measurement Period *minus* (ii) the Guaranteed Savings for such Measurement Period. During the Construction Period, Excess Savings will be calculated by OpTerra Energy Services in the manner set forth in this Attachment E, Section (III). For the avoidance of doubt, Excess Savings will not be reduced below zero.
- v. Calculation of Guarantee Shortfall. The Guarantee Shortfall, for any Measurement Period, will be calculated by OpTerra Energy Services as the *difference*, to the extent positive, between (i) the Guaranteed Savings for such Measurement Period *minus* (ii) the sum of (a) EC Savings for such Measurement Period plus (b) Accumulated Savings then outstanding.

K. Benefitting Accounts. ConFire is responsible for managing the benefitting accounts designated to receive generation credits in regard to the Utility's RES-BCT tariff to ensure that generation is credited at the preferred rate. During the first two (2) Measurement Periods, OpTerra Energy Services will provide up to eight (8) hours per year of assistance to ConFire to establish and manage the benefitting accounts, and to train ConFire in managing the benefitting accounts. Any additional assistance provided by OpTerra Energy Services will be on a time and materials basis at a rate of \$85/hour. Within twenty (20) Business Days after the first and second anniversaries of the date on which the Generating Facilities are interconnected to the Utility's distribution/transmission system, ConFire shall provide OpTerra Energy Services with the prior twelve (12) months of historical Utility billing data for all ConFire's Utility accounts (both benefitting and non-benefitting), in Excel format.

III. Methodologies and Calculations

The following details the methodologies and calculations to be used in determining the Energy Unit Savings under this Contract.

Table E-1 Measurement & Verification Methodologies

ECM	Electric Usage	Natural Gas Usage	Domestic Water
SGF 1 through 4 – Solar PV	M&V Option B	N/A	N/A
ECM 1 – HVAC Upgrades	Stipulated	Stipulated	N/A
ECM 2 – Water Conservation	N/A	N/A	Stipulated

1. M&V Option B: Energy savings performance of Scope of Work are measured and verified at the end-use site. Option B techniques are designed for projects where long-term continuous measurement of performance is desired and warranted. Under Option B, while some parameter may be stipulated or measured once then stipulated, some individual loads are continuously monitored to determine performance; and this measured performance is compared with an equipment-use Baseline to determine the Energy Unit Savings.
 - a. OpTerra Energy Services will supply a one-time report to ConFire detailing any initial measurements taken to establish usage Baselines or other parameters. Ongoing post-retrofit measurements will be compared to the Baselines, and the quantified Energy Unit Savings will be calculated and presented in ongoing reports. During the Construction Period, the Energy Unit Savings will be calculated by adding the savings measured for the whole months between Substantial Completion or Beneficial Use of the EC Measure and the M&V Commencement Date.
 - b. Scope of Work
No baseline measurements are necessary because pre-retrofit PV production is zero. Kilowatt-hours produced by the PV system will be measured using automated metering. Measured interval production kilowatt-hours will be compared against production shown on the monthly utility bills and any differences will be reconciled. Projected kWh production is shown in *Table E-4* below, and is projected to degrade by 0.5% per year.

Table E-2 First Year Solar PV Production

Location	Projected Annual Production (kWh)
Fire Station #10 & Training Campus	187,578
Fire Station #11	29,812
Fire Station #84	44,208
Delta Fair RES-BCT	823,848
Total	1,085,446

- c. Assumptions: Once Work is Substantially Complete, these savings will be measured and verified monthly for the Energy Savings Term.
 - d. Baselines and Projected Savings: EC Savings will be determined by multiplying the Energy Unit savings by the applicable Base Energy Rate. EC Savings will be calculated and presented in ongoing reports. During the Construction Period, the EC Savings will be calculated by adding the production measured for the period between Substantial Completion of the EC Measure and the M&V Commencement Date.
2. Stipulated Savings: When the cost, complexity, or uncertainty of savings measurements are high as compared to the projected savings, ConFire and OpTerra Energy Services may agree to stipulate the projected Energy Unit Savings as being achieved, without any measurements being taken.
 - a. For the Stipulated Option, the Energy Unit Savings presented below will be agreed to occur each Measurement Period. During the Construction Period, the Energy Unit Savings will be calculated by adding the savings projected for the whole months between Substantial Completion or Beneficial Use of the EC Measure and the M&V Commencement Date.

Table E-3: Stipulated Annual Savings

Location/ECM	Projected Annual Savings (kWh)	Projected Annual Savings (Therms)	Projected Annual Savings (CCF)
ECM 1: HVAC Upgrades	34,640	1,124	-
ECM 2: Water Conservation	-	-	177
Total	34,640	1,124	177

3. Base Energy Rates: EC Savings will be calculated using the Base Energy Rates for that meter.

The Base Energy Rates listed here are to be increased each Measurement Period on a cumulative basis by five percent (5%) beginning on the first anniversary of the M&V Commencement Date and continuing on the first day of each Measurement Period thereafter.

Table E-4 Base Energy Rates

Location/ECM	Electricity Rate (\$/kWh)	Gas Rate (\$/Therm)	Domestic Water Rate (\$/CCF)
SGF 1: Fire Station #10 & Training Campus	0.2130	-	-
SGF 1: Fire Station #11	0.2260	-	-
SGF 1: Fire Station #84	0.2600	-	-
SGF 1: Delta Fair RES-BCT	0.1430	-	-
ECM 1: HVAC Upgrades	0.2120	1.0520	-
ECM 2: Water Conservation	-	-	3.668

**ATTACHMENT F
MAINTENANCE SERVICES**

EQUIPMENT AND FACILITIES COVERED

OpTerra Energy Services will perform preventive maintenance services (“Maintenance Services”) as set forth in this Attachment F with respect to Generating Facilities being constructed on ConFire’s property at the following Project Locations:

SGF #	Facility	Address
1	FS 10 and Training Center	2945/2955 Treat Boulevard, Concord 94518
2	FS 11	6500 Center Street, Clayton 94517
3	FS 84	1903 Railroad Ave., Pittsburg 94565
4	Delta Fair Property RES-BCT	Intersection of Delta Fair Blvd. and Century Blvd.

Capitalized terms used in this Attachment F and not defined in the Contract, have the meanings set forth below:

I. Definitions

“**Annual Maintenance Fee**” means a fee payable annually in advance by ConFire to OpTerra Energy Services, in consideration of the provision of up to thirty (30) years of Maintenance Services, as set forth in the following table:

Measurement Period	Annual Maintenance Fee
1	Included in Contract Amount
2	Included in Contract Amount
3 (optional)	\$23,355
4 (optional)	\$24,056
5 (optional)	\$24,777
6 (optional)	\$25,521
7 (optional)	\$26,286
8 (optional)	\$27,075
9 (optional)	\$27,887
10 (optional)	\$28,724
11 (optional)	\$29,585
12 (optional)	\$30,473
13 (optional)	\$31,387
14 (optional)	\$32,329
15 (optional)	\$33,299
16 (optional)	\$34,297
17 (optional)	\$35,326
18 (optional)	\$36,386
19 (optional)	\$37,478
20 (optional)	\$38,602
21 (optional)	\$39,760
22 (optional)	\$40,953
23 (optional)	\$42,182
24 (optional)	\$43,447
25 (optional)	\$44,750
26 (optional)	\$46,093
27 (optional)	\$47,476
28 (optional)	\$48,900
29 (optional)	\$50,367
30 (optional)	\$51,878

II. Term

So long as ConFire pays to OpTerra Energy Services the Annual Maintenance Fee, OpTerra Energy Services will provide the Maintenance Services, as described herein, up to thirty (30) years from the M&V Commencement Date on an annualized basis. At the end of this term, ConFire may:

- a. Enter into another agreement with OpTerra Energy Services to perform Maintenance Services
- b. Enter into an agreement with another service provider
- c. Self-perform preventive maintenance

III. Annual Maintenance Fee; Reporting

The Annual Maintenance Fees for the first and second Measurement Periods are included in the Contract Amount. The Maintenance Services will terminate on the first day of the third Measurement Period, unless ConFire delivers written notice to OpTerra Energy Services, within thirty (30) calendar days after its receipt of the prior Measurement Period's Energy Savings Report, of its intent to renew the Maintenance Services for an additional Measurement Period. ConFire may thereafter renew the Maintenance Services for additional one (1) year periods (through the thirtieth (30th) Measurement Period) by delivering written notice to OpTerra Energy Services, within thirty (30) calendar days after its receipt of the prior Measurement Period's Energy Savings Report, of its intent to renew the Maintenance Services for an additional Measurement Period. If ConFire timely elects to renew the Maintenance Services for the third and subsequent Measurement Periods, the Annual Maintenance Fee for such Measurement Period will be invoiced by OpTerra Energy Services to ConFire in a lump sum immediately following OpTerra Energy Services' receipt of ConFire's written notice of renewal.

ConFire, or its designee, will pay OpTerra Energy Services the Annual Maintenance Fee, without any retention amount withheld, within forty-five (45) calendar days after its receipt of the corresponding invoice. Any failure to timely pay the Annual Maintenance Fee in accordance with this Attachment F will be a material default by ConFire, and OpTerra Energy Services, in addition to any other legal, contractual and equitable remedies available to it, will have no obligation thereafter to provide Maintenance Services.

Any amount not paid when due will, from and after the due date, bear Interest. Accrued and unpaid Interest on past due amounts (including Interest on past due Interest) will be due and payable upon demand.

The Annual Maintenance Fee is not refundable for any reason.

Upon completion of any maintenance or repair work, OpTerra Energy Services will update service logs detailing the work performed, location and any notes relevant to safe and efficient operations. These service logs will be compiled and submitted to ConFire on a quarterly basis.

If OpTerra Energy Services is no longer the provider of Maintenance Services, ConFire's new provider will maintain similar service logs. OpTerra Energy Services will have reasonable access to inspect service logs to determine that adequate Maintenance Services are being performed.

IV. Preventive Maintenance Services Provided

OpTerra Energy Services will provide the following Maintenance Services during the term:

- a. Inspection: Inspect PV modules, combiner boxes, inverters, isolation transformers, and PV service roof penetrations and support structure on an annual basis.
- b. Testing: Perform voltage testing, amperage testing, and infrared scans of inverters, combiner boxes, disconnects and switchgear on an annual basis.
- c. Monitoring: Monitor system performance on a daily basis.
- d. Cleaning:
 - i. Remove dust, dirt, and debris from outside cabinets of combiner boxes, inverters, transformers, and disconnect switches on an annual basis.
 - ii Wash PV modules and remove accumulated dust and debris on an annual basis.

V. Repair Services

If a Generating Facility is damaged and requires safe-off, repair, demolition and/or reconstruction, ConFire must contact the OpTerra Energy Services PV Operations & Maintenance Manager. In the event of damage, any component of the

Generating Facility installed by OpTerra Energy Services can be repaired or reconstructed by OpTerra Energy Services at ConFire's request. ConFire must submit a request for quotation to the OpTerra Energy Services PV Operations & Maintenance Manager. OpTerra Energy Services will inspect the damage and provide a written quotation and complete scope of work to ConFire to restore the Generating Facility to normal operational condition. Before proceeding with repairs, OpTerra Energy Services and ConFire must execute a work order, on OpTerra Energy Services' form, for the agreed scope of work and quotation amount. Repair work is done on a time and materials basis.

- Hourly technician labor rate \$150/hr.
- Materials markup 15%

VI. Warranty Services

The OpTerra Energy Services PV Operations & Maintenance Manager will also be ConFire's point of contact for all issues related to the OpTerra Energy Services Warranty set forth in Section 9.01 of the Contract. ConFire should refer to Section 9.02 of the Contract for services provided by OpTerra Energy Services to ConFire in relation to manufacturer's warranties. The terms and conditions of the relevant manufacturer's warranties can be found in the operation and maintenance manuals delivered to ConFire at Final Completion.

VII. Services and Equipment to Be Covered By ConFire

OpTerra Energy Services' obligations under this Attachment F are expressly conditioned upon ConFire's payment of the Annual Maintenance Fee and providing and being responsible for the following, without cost to OpTerra Energy Services:

- a. Making the Generating Facilities described herein available to OpTerra Energy Services as of the Contract Effective Date.
- b. Operating and maintaining security systems associated with the Generating Facilities.
- c. Managing the benefitting accounts designated to receive generation credits in regard to the Utility's RES-BCT tariff to ensure that generation is credited at the preferred rate.
- d. Maintaining all landscaping in and around Generating Facilities including tree trimming.
- e. Allowing OpTerra Energy Services and its personnel access as necessary to the Generating Facilities, and any related areas that may be reasonably necessary for performance of the Maintenance Services, including reasonable work, parking, and equipment staging areas.
- f. Allowing OpTerra Energy Services and its personnel to access electrical power and other utilities then existing at the Generating Facilities as necessary for OpTerra Energy Services to satisfy its obligations under the Contract.
- g. Remediating, pursuant to Applicable Law, any known Hazardous Substances encountered by OpTerra Energy Services during the performance of the Maintenance Services which Hazardous Substances were not deposited by OpTerra Energy Services, including any backfill with clean soil as may be reasonably required.
- h. Insuring the Generating Facilities against loss due to acts of God and the public enemy; flood, earthquake, tornado, storm, fire; civil disobedience, sabotage, and vandalism.

OpTerra Energy Services will have no obligation to provide the Maintenance Services to the extent such provision of Maintenance Services is materially adversely affected by ConFire's failure to satisfy the conditions set forth in this Attachment F.