

SUMMARY OF 2020 PROJECT AGREEMENT AND APPENDICES

SECOND DRAFT RELEASED TO SHORTLISTED PROPOSERS (7/20/15) AND INTERIM RELEASES (up to 8/28/15)

Article/ Section No.	Subject	Description
1	Definitions and Interpretation; Contract Documents; Standards	
1.1	Abbreviations and Definitions	Abbreviations used in the Contract Documents are set forth in Appendix 1, Section 1. Definitions used in the Contract Documents are set forth in Appendix 1, Section 2. Abbreviations and definitions used in the Technical Volumes and not defined in Appendix 1 are set forth in Section 2.1 of the Technical Requirements.
1.2-1.4	Construction and Interpretation of Contract Documents;	Sets forth typical construction and interpretation provisions.
1.4	Order of Precedence	Sets forth order of precedence among the Contract Documents. Notwithstanding the order in the list, in the event of conflict, the higher standard/quality/requirement applies.
1.5	Principal Developer Document	Limits ability of Developer to terminate or amend a Principal Developer document.
1.6	Reference Documents	Describes non-binding nature of Reference Documents and inability of Developer to rely.
1.7	Design and Construction Standards	Sets forth Developer obligations to notify the Owner of provisions inconsistent with Best Management Practice or applicable Law, sets the effective date for Manuals and Guidelines at 30 days prior to Proposal Due Date for D&C Work, and the current edition in effect for O&M Services, except as otherwise provided in the contract. Owner has right to change Manuals and Guidelines during the Term as an Owner Change.

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2	Concession Term	
2.1.1	Grant of Concession	Developer to develop, design, construct, finance, operate and maintain the Project subject to terms and conditions of Contract Documents and applicable Laws.
2.1.2, 2.1.3	Project Right of Entry	Developer is granted a Project Right of Entry onto Project Site, Ancillary Site and Facilities for purposes of carrying out its obligations under the Agreement. No real property interest granted to Developer.
2.2	Term	From Effective Date until expiry of Term ([39] years from Effective Date) or any earlier termination of Agreement.
3	Developer Responsibility for Work; Owner Review and Oversight	
3.1.1- 3.1.3	General	Developer is responsible for the Work, mitigating interference with Campus Activities and coordination with any other ongoing adjacent projects.
3.1.4	Project Commitments	Developer is responsible for complying with and performing on behalf of the Owner, except as otherwise specified, the Owner's obligations under the Project Commitments.
3.3	Governmental Approvals	Developer is responsible for securing all Governmental Approvals other than the Owner-Provided Approvals, and any amendments required for the Project and Work. If the subject Governmental Approval is an Owner-Provided Approval or is a Governmental Approval obtained or to be obtained in the Owner's name, Developer must obtain the Owner's prior written approval of the terms and conditions of same, and Owner may withhold such approval if it determines, in its good faith discretion, that they may adversely affect the Owner or its other future projects.
3.4	Submittals	These provisions set forth rules that apply to Owner approvals, review, comment, rejection or disapproval of Submittals generally, and hold Developer responsible for compliance with the Contract Documents notwithstanding any such Owner action or inaction.

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3.5	Property Damage	Developer is responsible for loss or damage caused to property or assets of the Owner, its contractors or other Indemnified Parties arising from any act or omission of any Developer-Related Entity except any act or omission that is expressly required by, and is in strict compliance with, the terms and conditions of the Contract Documents, and Developer indemnifies the Owner for such loss or damage on written notice.
3.6, 3.7	Policing, Security and Incident Response, Police Services	Developer acknowledges, and Owner has no liability for, Governmental Entities carrying out law enforcement duties. Developer is responsible for the safety and security of the Project, workers and public during performance of the D&C Work. The Owner is responsible for providing security services for the Facilities upon completion.
3.8	Financial Reporting	Developer must deliver on an annual basis Developer's most recent annual audited financial statements and any other financial reporting provided to Lenders under the Finance Documents.
4	Design and Construction	
4.1.1, 4.3	General Duties, FF&E	Developer is responsible for the D&C Work, including procurement and installation of the FF&E, and costs of same, and to achieve Occupancy Readiness of all First Delivery Facilities no later than the First Delivery Facilities Long Stop Date and achieve Substantial Completion no later than the Substantial Completion Long Stop Date. Developer must comply with Contract Documents, applicable Laws, cooperate with the Owner and Governmental Entities with jurisdiction over Work, use commercially reasonable efforts to mitigate delay and delay damages, and bear the risk of unforeseen work and conditions except to the extent expressly assumed by the Owner under the Contract Documents.
4.1.2	Performance, Project Schedule	Developer must perform the D&C Work in accordance with Best Management Practice, the Contract Documents, applicable Laws, and terms and conditions of Governmental Approvals, and schedule the work so as to minimize inconvenience to adjacent businesses or residences.
4.2.1, 4.2.2	Design Implementation and Submittals	Developer is responsible for preparing designs, plans and specifications in accordance with Contract Documents using appropriately qualified and licensed design professionals, and is responsible for errors and omissions discovered in the Plans or Final Design Documents.
4.2.3	Preliminary Design Submittals	Developer must submit all Preliminary Design Submittals prior to January 1, 2017. If Developer fails to do so for any reason other than as a direct result of a Relief Event, Developer is responsible for complying with all changes in the Building Code that go into effect in 2017 with no

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		additional compensation, time extension or other relief. To the extent Developer is unable to submit all Preliminary Design Submittals prior to January 1, 2017 as a direct result of a Relief Event, Developer will be entitled to additional compensation under Section 10.3.3.1 (Direct Costs).
4.4	Project Site and Ancillary Site	The Owner will furnish the Project Site, and the Project must be situated entirely within it. The Owner will also furnish the Ancillary Site for use by Developer for construction staging and parking between the Effective Date and the Project Final Acceptance Date. Developer is responsible for obtaining any other real property which Developer deems desirable for the Project, including for additional construction staging and parking. Developer must comply with all Site Commitments.
4.5	Utility Adjustments	Developer is responsible for coordinating and causing all Utility Adjustments necessary for timely Work, including negotiating and executing necessary Utility Agreements that are reasonably acceptable to the Owner and consistent with applicable Contract Document requirements. Developer is responsible for all Utility Adjustment costs except Betterment costs, which are the responsibility of the Utility Owner. Developer is entitled to compensation/relief for Utility Owner Delays and Unknown Utilities, which are Relief Events. Developer must respond to requests by Utility Owners for Utility Enhancements, but is not required to agree to them. If agreed, such work must be performed by separate contract outside of the Work, is subject to Owner's prior written approval, in its sole discretion, and is subject to the same standards and requirements as if it were a Utility Adjustment. Developer may not commence construction of a Utility Adjustment until NTP 2 is issued except to the extent authorized by the Owner in its sole discretion as Advance Construction Activities under Section 4.8.2.
4.6	Conditions to Commencement of Design Work	Various conditions precedent must be satisfied prior to issuance by the Owner of NTP 1 and commencement of Design Work by Developer, including having in place the Performance Bond and Payment Bond and insurance policies required for Design Work, certain technical submittals are approved (e.g. Project Management Plan), representations and warranties remain true and correct, Developer is not in default under financing documents, and Developer has delivered the Financial Model into escrow and the D&C Pricing Documents to the Owner as required.
4.7	Conditions to Commencement of Construction Work	Except to the extent authorized by the Owner in its sole discretion as Advance Construction Activities under Section 4.8.2, various conditions precedent must be satisfied prior to issuance by the Owner of NTP 2 and commencement of Construction Work by Developer, including having in place insurance policies required for Construction Work, Governmental Approvals necessary to begin the applicable portions of the Construction Work have been obtained, Developer has submitted and Owner has approved the Project Schedule and the Construction Quality

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		Management Plan, Developer has delivered an initial Skilled Workforce Plan and initial SBE Plan, representations and warranties remain true and correct, there exists no uncured Developer Default, Developer is not in default under financing documents, and Developer has provided a functional Project Office.
4.8	Construction Commencement Deadline; Advance Construction Activities	<p>Developer must commence Construction Work no later than the date which is 150 days after the Effective (adjusted for any Relief Events). Failure to do so is a Developer Default.</p> <p>The Owner may, in its sole discretion, authorize Developer to perform Advance Construction Activities prior to NTP 2, and Developer must satisfy and comply with any conditions and requirements imposed by the Owner prior to commencing such activities.</p>
4.9.1	Substantial Completion	<p>Developer must exercise its best efforts to achieve Substantial Completion on or before the Scheduled Substantial Completion Date (which is the Baseline Substantial Completion Date adjusted for any Relief Event Delays).</p> <p>Failure to achieve Substantial Completion by the Substantial Completion Long Stop Date (12 months after the Scheduled Substantial Completion Date) is a Developer Default.</p>
4.9.2	Conditions to Substantial Completion	<p>Various conditions precedent must be satisfied for Substantial Completion, including completion of the D&C Work except Punch List items, Designated Campus Fire Marshall and Building Official approval, Facilities and FF&E are ready for use for performing Facilities Activities, all Governmental Approvals and third party approvals required for use and operation of the Project have been obtained, the Operations and Maintenance Plan and other required O&M submittals have been approved or accepted and necessary training completed, all IP Materials have been delivered to the Owner or deposited to escrow, there exists no uncured Developer Default, all Developer-provided O&M insurance policies are in place, Developer has submitted all Punch Lists and all other Submittals required to be submitted prior to Substantial Completion and Owner has approved such Submittals to extent required.</p> <p>Developer must give 60 days' prior written notice of anticipated Substantial Completion Date, and Owner will review and inspect within the next 14 days and thereafter issue a Certificate of Substantial Completion (effective as of the actual date achieved) or notify Developer why it has not been achieved.</p>
4.9.3	D&C and Facility Punch Lists	Developer must prepare, maintain and complete the Work identified on the D&C Punch List and each Facility Punch List in accordance with contract and Project Management Plan requirements.

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4.9.4	Project Final Acceptance	<p>Following Substantial Completion, Developer must complete all remaining Construction Work, including Punch List items, and exercise its best efforts to achieve Project Final Acceptance by the Project Final Acceptance Deadline.</p> <p>Various conditions precedent must be satisfied for Project Final Acceptance, including completion of all Punch List items, submittal of all Submittals required to be submitted for D&C Work after Substantial Completion and approval by the Owner of same, receipt by the Owner of the As-Built Plans, delivery of all required manufacturer warranties, all IP Materials have been delivered to the Owner or deposited to escrow, delivery of any certifications from the AOR or EOR required by any Governmental Entity with jurisdiction, there exists no uncured Developer Default, and Developer certifies and has paid for all work by third parties that Developer is obligated to pay for other than disputed amounts.</p> <p>Developer must give the Owner written notice when it determines it has achieved Project Final Acceptance. The Owner will review and inspect within the next 20 days and thereafter issue a Certificate of Project Final Acceptance (effective as of the actual date achieved) or notify Developer why it has not been achieved. Within 10 days of issuance of a Certificate of Project Final Acceptance, the Owner will file a Project Notice of Completion.</p>
4.10	Contaminated Materials	<p>Developer is responsible for Contaminated Materials and Undesirable Materials management.</p> <p>As between the parties: (a) Developer is considered the sole generator and arranger for Releases of Contaminated Materials by any Developer-Related Entity and Contaminated Materials that migrate onto the Work Site where the source is a Developer-Related Entity; and (b) the Owner is considered the sole generator and arranger of Known Contaminated Materials and Unknown Contaminated Materials existing prior to the Effective Date (provided Developer manages in accordance with all applicable requirements) and for Releases of Contaminated Materials by the Owner or a third party that is not a Developer-Related Entity, and Contaminated Materials that migrate onto the Work Site where the source is any of them.</p> <p>Discovery of Unknown Contaminated Materials and Releases of Contaminated Materials by the Owner at any time during the term are Relief Events for which Developer is entitled to additional compensation, time extension and other relief under Article 10. Releases of Contaminated Materials by third parties is a Relief Event; Developer must assign and subrogate to the Owner all rights of recovery of any Developer-Related Entity against third parties upon written request from the Owner.</p>

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4.11	Environmental Compliance	Developer must comply with all applicable Environmental Laws and perform all environmental mitigation measures and permit conditions, monitoring and reporting required under the Contract Documents, Environmental Approvals and CEQA Documentation that are applicable to the D&C Work and with any additional commitments in any subsequent environmental re-evaluations submitted up to 30 days prior to the Proposal Due Date.
4.12.1	Oversight	The Owner has robust Oversight rights over the D&C Work. Developer must uncover finished work at the request of the Owner prior to Final Acceptance and fix any deficiency found at its cost; if the work was compliant, such uncovering will be an Owner-Caused Delay/Relief Event. Owner may step in to correct if Developer fails to do so. Nothing in the Contract Documents, except the limitation on remedies in Section 19.2.10, limits the Owner's right to assert claims for patent and latent defects.
4.12.2	Meetings	Developer must conduct regular progress meetings and provide progress reports throughout the Term. The Owner will call a preconstruction conference in Merced prior to commencement of construction. Either party can request additional meetings with the other party.
4.13	Design and Construction Warranties	<p>Developer must correct any Defect in the Non-O&M Segment Work (i.e., any upgrade of the Central Plant or new energy plant) if notified of same within the first three years following Substantial Completion (Non-O&M Segment Warranty Period).</p> <p>Developer must obtain from all Contractors warranties appropriate for work of similar scope and scale, and extend to any third parties for whom Work is being performed. Warranties of Key Contractors must be for such periods specified in the Technical Requirements or, if not specified, for not less than one year from date of Certificate of Occupancy Readiness or the Substantial Completion Date, as applicable.</p>

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5	First Delivery Facilities and Occupancy Readiness	
5.1	First Delivery Facilities	<p>Developer must exercise its best efforts to achieve Occupancy Readiness for each First Delivery Core Facility by May 1, 2018 (subject to adjustment for Relief Events) and for each First Delivery Non-Core Facility by (June 1, 2018, subject to adjustment for Relief Events). If Developer fails to do so, liquidated damages will be assessed according to amounts fixed to a calendar schedule that reflects the impact to the Owner of missing an academic semester/year.</p> <p>Developer must exercise its best efforts to achieve Occupancy Readiness for each First Delivery Non-Core Facility by the First Delivery Facilities Long Stop Date (<i>i.e.</i>, November 1, 2018, subject to adjustment for Relief Events). If Developer fails to do so, liquidated damages will be assessed per day.</p> <p>Any liquidated damages assessed will be deducted from the Final Acceptance Payment.</p> <p>Failure by Developer to achieve Occupancy Readiness for all First Delivery Facilities by the First Delivery Facilities Long Stop Date is a Developer Default.</p>
5.2	Occupancy Readiness	<p>The Owner will issue a Certificate of Occupancy Readiness for any Facility prior to Substantial Completion for which specified conditions precedent are satisfied, including completion of applicable D&C Work except Facility Punch List items, and other requirements that mirror the conditions precedent to overall Substantial Completion, but with respect to the particular Facility. However, the Owner will not issue a Certificate of Occupancy Readiness for a Facility any earlier than the date specified in Developer's Sequencing Plan for delivery of such Facility.</p>
5.3	Facility Final Acceptance	<p>Following achievement of Occupancy Readiness of a Facility, Developer must complete all remaining Construction Work for the Facility, including all Facility Punch List items, and exercise its best efforts to achieve Facility Final Acceptance by the applicable Facility Final Acceptance Deadline.</p> <p>Various conditions precedent must be satisfied for each Facility Final Acceptance, including completion of all Facility Punch List items, submittal of all Submittals required to be submitted for D&C Work for the Facility after Occupancy Readiness and approval by the Owner of same, receipt by the Owner of the As-Built Plans for the Facility, delivery of all required manufacturer warranties, all IP Materials have been delivered to the Owner or deposited to escrow, and delivery of any certifications from the AOR or EOR required by any Governmental Entity with jurisdiction.</p> <p>Developer must give the Owner written notice when it determines it has achieved Facility Final</p>

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		Acceptance. The Owner will review and inspect within the next 20 days and thereafter issue a Certificate of Facility Final Acceptance (effective as of the actual date achieved) or notify Developer why it has not been achieved. Within 10 days of issuance of a Certificate of Facility Final Acceptance, the Owner will file a Facility Notice of Completion.
5.4	[LEED Certification]	<i>[Note – Owner is considering assessment of LDs for failure by Developer to achieve LEED Gold for each Building.]</i>
6	Operations and Maintenance	
6.1	Commencement of O&M Services	Developer will commence the O&M Services upon the effective date of: (a) the applicable Certificate of Occupancy Readiness, if any; or (b) the Certificate of Substantial Completion.
6.2	O&M Standards and Requirements	<p>Developer must perform the O&M Services in accordance with Best Management Practices as it evolves from time to time, the Contract Documents, all applicable Laws and Governmental Approvals, specified plans and any Safety Compliance Order.</p> <p>Failure to meet the performance standards specified in Section 4 of the Technical Requirements entitles the owner to various rights and remedies, including assessment of Noncompliance Points, payment deductions and termination for Developer Default.</p> <p>Developer's obligations with respect to Contaminated Materials and environmental compliance also apply during performance of the O&M Services.</p> <p>The Owner is responsible for the cost of Utility services required for the O&M Services, subject to the provisions of Appendix 17.</p> <p>Developer is responsible for emergency repair work from and after the Effective Date and must solicit competitive bids for such work if specified by the Owner.</p>
6.3	Vandalism	Developer is responsible for any maintenance, repair or replacement of a Facility required due to Vandalism. During the Operating Period, subject to an Annual Vandalism Deductible (\$10,000 of Direct Costs per Calendar Year), Vandalism is a Relief Event for which Developer is entitled to additional compensation and relief.
6.4	Oversight, Meetings and Reporting	The Owner has robust Oversight rights, and Developer must conduct regular meetings and reporting.

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6.5 – 6.7	Renewal Work and Renewal Work Reserve	<p>Developer is responsible for performing Renewal Work in accordance with a Renewal Work Schedule, which will be submitted/updated by Developer and agreed to by the Owner on an annual basis.</p> <p>Developer must fund and maintain a Renewal Work Reserve in the amounts required by the Lenders. The initial estimated amounts will be attached as a sub-appendix to Appendix 2, then updated throughout the Operating Period, and amounts cannot be reduced from such specified amounts without the prior approval of the Owner. The Lenders will have a first priority security interest in the reserve, and the Owner will have a second priority security interest. Amounts in the reserve may only be used for Renewal Work, Compliance Work, and work to meet Handback Requirements. Any balance in the Renewal Work Reserve as at four years prior to the expiry date of the Term will roll over into the Handback Requirements Reserve.</p>
6.8 – 6.9	Handback Requirements and Handback Requirements Reserve	<p>On the Termination Date, Developer must transfer the Project to the Owner in the condition meeting the Handback Requirements, as specified in the Technical Requirements (but if early termination, only to the extent Renewal Work was required to be performed prior to such early termination).</p> <p>Beginning four years prior to the end of the Term, Developer must establish and fund a Handback Requirements Reserve Account (and any remaining balance in the Renewal Work Reserve will be transferred to the Handback Requirements Reserve at such time). Funds in the reserve must be used exclusively for work required to meet Handback Requirements, and required amount adjusted annually and Developer must fund any shortfall. The Owner will have a first priority security interest in this account. Any amount remaining in the reserve on the Termination Date will go to the Owner, and in the case of early termination, by way of deduction from the Termination Compensation otherwise owing to Developer.</p>
7	Noncompliance Points	
7.1 – 7.3	Noncompliance Points System, Assessment, Notification, Cure,	<p>Appendix 5 sets forth a Noncompliance Points table, identifying specific breaches or failures in performance that will result in the assessment of Noncompliance Points and accrual of Noncompliance Instances. Developer is responsible for self-reporting, and Owner may notify as well. Applicable cure periods are specified in Appendix 5, and if the Owner notified rather than Developer, 100% of the specified Noncompliance Points may be assessed prior to the expiration of the applicable cure period (if any), whereas if Developer notifies, no points are assessed unless the Noncompliance is not fully cured within the specified cure period. Noncompliance that is not fully cured within the applicable cure period or Recurrence Period will be treated as a new</p>

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		instance of Noncompliance for each new cure period/Recurrence Period until it is fully cured, unless the Owner chooses to exercise its step-in rights (which it may after expiration of the initial cure period/Recurrence Period). Developer is responsible for keeping and providing the Owner with current records of the number of assessed Noncompliance Points and accrual of Noncompliance Instances and related information.
7.4	Monetary Deductions	<p>In addition to Noncompliance Points, certain instances of Noncompliance will result in monetary deductions in accordance with Appendices 3-B and 6.</p> <p>Developer acknowledges that any monetary deductions assessed under the Contract Documents are reasonable liquidated damages to compensate the Owner for increased costs of administration, loss of tuition and auxiliary revenues, loss of reputation, etc., and are the Owner's sole remedy unless otherwise expressly provided in the agreement.</p>
7.5	Increased Oversight	If Developer is assessed more than a specified number of Noncompliance Points or accrues more than a specified number of Noncompliance Instances within specified time frames on a rolling basis, the Owner has increased Oversight rights at Developer's expense.
8	Contracting and Labor Practices	
8.1 – 8.2	Contractors, Employees	<p>Developer must provide list of all Contracts and Contractors with each monthly report required under the Agreement or Technical Volumes and allow ready access to them. Developer must deliver to Owner copies of all Key Contracts, guarantees, amendments and supplements (unredacted) within 10 days after execution and any other Contract within 20 days upon request. Developer must notify Owner of name, address, phone number and authorized representative of any potential first-tier Contractor not later than 15 days prior to scheduled initiation of work by such Contractor.</p> <p>Contractors must be qualified and have all necessary licenses, bonds and insurance required by Law, including registration to perform public work under Labor Code Section 1725.5.</p>
8.3	Key Contractors	Developer must use the Key Contractors identified in Appendix 2 (and if identified in SOQ or SSOQ, cannot remove or replace without Owner approval in its good faith discretion). A Key Contractor may not be terminated by Developer or a Contractor except for (1) material uncured default by Key Contractor, (2) termination of the Project Agreement and Owner's election not to assume the Key Contract, (3) suspension, debarment, disqualification or removal of Contractor or agreement or voluntary exclusion of Contractor from bidding, proposing or contracting with any

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		<p>federal, State or local department or agency, or (3) with Owner's prior written approval in its good faith discretion.</p> <p>Key Contracts must contain certain mandatory provisions as set forth in Section 8.3.2, including (1) compliance with applicable provisions of Contract Documents, Governmental Approvals and applicable Laws, (2) no right to suspend or demobilize until Key Contractor delivers to the Owner written notice of Developer's breach or default, requirement to participate in meetings between Developer and Owner, (3) agreement to participate in any dispute resolution proceeding under Project Agreement if requested, (4) permit assignment of Key Contracts as contemplated in Project Agreement and Lender's Direct Agreement, (5) expressly include the Indemnified Parties as indemnities, with direct right of enforcement, in any indemnity given by Key Contractor, and (6) expressly include an acknowledgement that the Key Contractor has no right or claim to any lien or encumbrance on the Project, the Project Site, the Ancillary Site or the Facilities for failure of counterparty to pay and a waiver of any such right or claim as may exist at Law or equity.</p>
8.4	Key Personnel	<p>Developer must retain the Key Personnel identified in Appendix 2 and any replacement must be approved by the owner in its good faith discretion. Developer must ensure adequate supervision of the Work, including presence of the Project Executive, Project Manager or other Owner-approved designee at the Work Site at all times while the Work is in progress.</p>
8.6 – 8.11	Labor and Ethical Standards, Nondiscrimination, Prevailing Wages, Skilled Workforce, Small Businesses	<p>Developer and Contractors must comply with all applicable labor laws and standards. All individuals performing the Work must have the requisite skill and experience, licenses and certifications, failing which they must be replaced or affected work may be suspended.</p> <p>Developer must adopt policies establishing ethical standards of conduct for all Developer-Related Entities.</p> <p>Developer and Contractors (other than Suppliers, manufacturers or distributors) must comply with Sections 12900 through 12996 of the State of California Government Code, and must permit access to records of employment, etc. to Owner or any agency of State of California designated by Owner for compliance investigation.</p> <p>Developer, the Lead Contractor and the Lead O&M Firm and their respective Contractors (excluding Suppliers, manufacturers or distributors) must comply with Sections 1770, 1771, 1772, 1773, 1774, 1775 and 1776 of the State of California Labor Code. Developer and Contractors must pay not less than prevailing wage rates. Work will be subject to an Owner's Labor Compliance Program.</p> <p>Developer and Contractors must employ Skilled Journeypersons for manual labor in graduated</p>

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		<p>percentages as set forth in Section 8.10. This requirement does not apply to any Contractor that is a Small Business Enterprise or a Disabled Veteran Business Enterprise. Developer must take reasonable and good faith efforts to draw construction workers from the Trades Pre-Apprenticeship program under the Central Valley Infrastructure Employment Project grant. Developer must submit a Skilled Workforce Plan prior to commencement of Construction Work and submit updated plans on each anniversary of NTP 2 until completion of Construction Work. If Developer fails to comply with these requirements, liquidated damages will be assessed in an amount of \$1,000,000 for each one (1) percent that the actual percentage of Skilled Journeypersons employed directly or indirectly by Developer or a Contractor is below the applicable percentage requirement.</p> <p>Developer must aspire and exercise good faith efforts to achieve specified participation of local Small Business Enterprises and local Disabled Veteran Business Enterprises. Local means an enterprise headquartered in Counties comprising the San Joaquin Valley. Developer must submit an SBE Plan and update same on each anniversary of NTP 2 throughout the Term.</p> <p>A self-certification form must be submitted for each SBE and DVBE.</p>
8.12	Certification of Payment to Contractors; Bond and Release of Contractor Stop Notice Claims, etc.	Developer or Contractor must return all retainage withheld from a Contractor of a lower tier within 30 days after the lower tier Contractor's work is satisfactorily complete, and Developer must certify that this has been done prior to receipt of any Payment. Within 30 days of Developer's receipt of the Final Acceptance Payment, Developer must ensure all Contractors that completed work or furnished materials on the project are paid unless Developer demonstrates good cause for non-payment. If a stop payment notice, lien or other claim is made against the Owner or Project by any Contractor in connection with the Work, Developer must bond in compliance with statutory requirements as necessary to release such claim within 10 days of filing.
9	Safety Compliance	
9.1-9.2	Safety Compliance Orders; Duty to Comply	The Owner may issue Safety Compliance Orders and must consult with Developer prior to doing so except in case of an Emergency. Developer must implement Safety Compliance upon issuance of such order. Relief Event is not an excuse for not implementing a Safety Compliance Order, but a Safety Compliance Order is itself a Relief Event.

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10	Relief Events	
		<p>Relief Events are defined in Appendix 1. These are specified events which Owner agrees to bear the risk as between the parties should they occur, subject to certain limitations and conditions.</p> <p>Developer may make claims for additional compensation, time extension and other relief for Relief Events in accordance with Article 10. Developer must strictly follow the claims procedure and other obligations (including mitigation) set forth in the Article, and is not entitled to any other compensation or relief for a Relief Event. Deductible Relief Events are subject to a \$50,000 per claim costs deductible (indexed to CPI), and a 90-day deductible for delayed Payment relief under Section 10.4. All entitlement to compensation is net of insurance proceeds, insurance deductibles/self-insured retentions, and deemed self-insurance.</p> <p>Monetary compensation is limited to Direct Costs (including limited delay costs), as defined in Appendix 18, and, if applicable, compensation for delayed receipt of Milestone Payments, Availability Payments and/or Final Acceptance Payment due to a Relief Event Delay that delays achievement of the corresponding Milestone, Substantial Completion or Final Acceptance.</p> <p>Time extensions are limited to extensions of Completion Deadlines for critical path delay. If the Owner elects to pay compensation to which Developer is entitled by a deferred payment method, the Owner will pay additional compensation to offset the effect of such delayed payment on Equity IRR and debt service coverage ratios.</p> <p>Developer is also entitled to relief from assessment of Noncompliance Points, accrual of Noncompliance Instances, assessment of monetary deductions, and relief from Developer Default, in each case to the extent they would not have been assessed or would not have occurred except due to a Relief Event.</p> <p>Developer has obligation to maintain detailed records related to any Relief Event claim, and the Owner has broad rights to audit them.</p>
11	Changes in the Work; Alternative Technical Concepts	
11.1	Owner Changes	<p>The Owner has the right to direct an Owner Change at any time during the Term. An Owner Change may include alterations or changes in the Work, additions and deletions to scope (up to a cap of 20% of the cost for the D&C Work as set forth in the Schedule of Values as at the Effective Date), and changes to requirements applicable to the Work. Owner Changes may include Renovations during the Operating Period, for which Developer must solicit competitive bids in</p>

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		<p>accordance with policies and procedures of the Owner and applicable Laws.</p> <p>The Owner Change Procedure is set out in Appendix 21 (including determination of cost of an Owner Change). An Owner Change is a Relief Event, and therefore provisions of Article 10 with respect to any delayed Payments, time extension and other relief required as a result of an Owner Change also apply.</p>
11.2	Developer Change Proposals	Developer may request Owner approval of modifications to the Technical Volumes by submitting a Developer Change Proposal setting forth its detailed estimate of the net cost and schedule impacts of the requested change. The Owner may accept or reject such request in its sole discretion. If accepted, The Owner is entitled to 50% of savings for D&C and O&M costs and 100% of financing cost savings associated with same.
11.3	Deviations	Developer may apply to Owner for approval of any deviation from, or noncompliance with, the requirements of the Technical Volumes in Work performed. The Owner must consider, but has no obligation to approve, such application. If an approved Deviation results in diminution of value of the completed Work or reduction in D&C or O&M costs, Owner is entitled to 100% of such diminution/reduction.
11.4	Alternative Technical Concepts	Developer is responsible for, and must make good faith efforts to obtain, all third party approvals required to implement an ATC. Developer must satisfy all conditions to the Owner's pre-approval of an ATC before implementing same, and must use good faith efforts to do so. If Developer is unable to obtain any required approval or fails to satisfy any condition to Owner's pre-approval of the ATC, it must give notice to the Owner and must comply with the baseline requirements at its cost with no relief. If the ATC represented additional Work, higher quality materials or would have required additional resources, the Owner is entitled to a credit for the reduced costs to Developer of reverting to the baseline requirements. If Developer uses any Unsuccessful Proposer's Work Product provided to Developer by the Owner, it does so at its sole risk.
12	Payments to Developer	
12.1	Milestone Payments / Milestones	Developer is entitled to two Milestone Payments upon achievement of the corresponding Milestones and requisite invoicing for same, provided there exists no uncured Developer Default: (1) \$50,000,000 upon delivery of requisite evidence of a minimum of \$100,000,000 in D&C Work having been completed and invoiced by the design-builder and approved by Developer, and (2) \$250,000,000 upon issuance by the Owner of Certificates of Occupancy Readiness for all First Delivery Facilities and delivery by Developer to the Owner of a written notice with supporting

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		documentation demonstrating that Developer has incurred State-Eligible Costs in excess of \$100,000,000.
12.2	Final Acceptance Payment	A Final Acceptance Payment of \$300,000,000 is payable upon (a) issuance of a Certificate of Project Final Acceptance, (b) delivery by Developer to the Owner of a written notice with supporting documentation demonstrating that Developer has incurred State-Eligible Costs in excess of \$400,000,000, and (c) requisite invoicing (but no earlier than June 1, 2020).
12.3 – 12.4	Availability Payments	Availability Payments commence upon Substantial Completion, but no earlier than the Early Completion Date (June 1, 2020). Each Availability Payment comprises a combined payment of AP Capital amount and AP O&M amount. Payment will be made through a combination of advance Monthly Disbursements and Quarterly Settlement Amounts calculated in accordance with Appendix 6.
12.5 – 12.6	Disputed Amounts; Interest	<p>The Owner has the right to dispute any amount of an invoice under Article 12, and will pay the undisputed portion and provide written reasons for any withheld portion.</p> <p>Interest is payable on any late payment of an undisputed amount due and owing from a Party to the other Party at the Late Payment Rate (10% per annum or maximum rate permitted by law, whichever is less).</p>
13	Lenders	
		The Owner, Developer and the Collateral Agent, on behalf of the Lenders, will have executed the Direct Agreement concurrently with execution of the Project Agreement.
14	Equity Transfers and Change of Control; Committed Investment Requirement	
14.1 – 14.2	Restrictions on Equity Transfers and Changes of Control	<p>Equity transfers and Changes of Control prior to the second anniversary of Substantial Completion require the Owner's prior written approval, in its sole discretion. (An exception is made for any proposed Equity Transfer during such period by a purely financial Initial Equity Member that does not constitute a Change of Control, in which case the applicable standard is reasonable approval.) Transfers/transactions that fall within an exception to the definition of Change of Control are allowed at any time, subject to specified notice requirements.</p> <p>Equity transfers and Changes of Control following the second anniversary of Substantial Completion are subject to the Owner's prior written approval, which may not be unreasonably</p>

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		withheld. The Owner has 60 days to approve or disapprove in writing following receipt of a request for approval and required supporting documentation.
14.3	Minimum Equity Requirement	During the Construction Period, Developer must maintain a Construction Equity Ratio of 10%, with limited exceptions.
15	Financial Model	
		The Initial Financial Model is included in Attachment 2 to the Project Agreement. The Initial Financial Model and any subsequent Financial Model must be escrowed. Financial Model Updates are required whenever a specified event occurs during the term (e.g., Relief Event for which Owner owes compensation, Refinancing with shared Refinancing Gain). Financial Model Updates must be audited by an independent audit firm prior to becoming part of the Agreement.
16	Project Financing and Refinancing	
		<p>Developer is solely responsible for all financing required for the Work, with no recourse to the Owner (except the Payments).</p> <p>The Owner's prior written approval is required for any Refinancing except an Exempt Refinancing or Rescue Refinancing. Developer must provide at least 60 days' advance notice of any Exempt Refinancing or Rescue Refinancing. Developer must provide requisite documentation and information with respect to Refinancings.</p> <p>Refinancings other than Exempt Refinancings, Rescue Refinancings and Nominal Refinancings are subject to the Owner's prior written approval in its reasonable discretion.</p> <p>Nominal Refinancings are subject to the Owner's prior written approval in its sole discretion.</p> <p>The Committed Equity Investment requirements must continue to be satisfied and a Refinancing may not increase the Lenders' Liabilities by more than 10% except as approved by the Owner in its sole discretion.</p> <p>The Owner is entitled to 70% of any Refinancing Gain calculated in accordance with Appendix 11.</p>

Article/ Section No.	Subject	Description
17	Insurance; Payment and Performance Security, and Indemnity	
17.1	Insurance Policies and Requirements; Unavailability; Premium Benchmarking	<p>The Owner will procure and maintain property insurance following Occupancy Readiness/Substantial Completion, except if claims and loss experience due to negligence, willful misconduct or breach of applicable law or contract of any Developer-Related Entity adversely impacts the Owner or its policy, the Owner may require Developer to procure and maintain at its cost the property insurance for the remainder of the Operating Period.</p> <p>Developer must procure and maintain the remainder of the Project policies in accordance with Section 17.1 and Appendix 8. Developer may use a Controlled Insurance Program during the Construction Period. Developer is liability for deductibles, self-insured retentions, and must include specified terms/conditions in any endorsements and waivers.</p> <p>Every two years during the Term, the Owner and Developer will review and, if appropriate, make adjustments to the Developer-Provided Insurance Policy limits.</p> <p>If any required insurance policy becomes commercially unavailable, the Owner may self-insure or terminate the Agreement.</p> <p>Premiums for Operating Period insurance policies for which Developer is responsible for procuring and maintaining will be compared against a benchmark that is escalated 5% per annum and the Owner will bear 85% of any increases above the benchmark and have the benefit of 85% of any decreases below the benchmark, as adjustments to the MAP.</p> <p>The Owner will self-insure Earthquake and Terrorism risk. Developer will be entitled to Direct Costs to repair or replace tangible property damage to the Project caused by Earthquake or Terrorism, but not for its tools, machinery, equipment, etc. that are not intended for permanent installation into the Project.</p>
17.2	Performance and Payment Bonds	Developer must deliver \$275 million Performance and Payment Bonds as a condition precedent to NTP 1. The Owner will be a multiple-obligee under the bonds. The required forms of the bonds and multiple obligee riders are set forth in Appendix 15.

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17.3	Letters of Credit	If Developer provides a letter of credit where permitted under the Agreement (i.e., in lieu of the Renewal Work Reserve Account or the Handback Requirements Reserve Account), it must be issued by an Eligible LC Issuer and meet the other requirements of Section 17.3 and be in the form set forth in Appendix 14.
17.4	Developer Indemnities	Developer indemnifies the Indemnified Parties for liabilities, claims, Losses, etc. asserted or incurred by or award to any third party to the extent caused by various specified events, including breach or alleged breach by Developer of the Agreement or Principal Developer Document, failure or alleged failure to comply with Governmental Approvals and applicable Laws, IP infringement, negligence, willful misconduct or breach of law by any Developer-Related Entity, stop notices/liens filed in connection with the Work, actual or threatened Releases of Contaminated Materials by any Developer-Related Entity, etc.
18	Representations and Warranties	
18.1	Developer Representations and Warranties	Developer provides certain representations and warranties with respect to organization, authorization, enforceability, no challenging actions, requisite licensing, the Initial Financial Model, investigations of Surface and subsurface conditions, no debarment/suspension and no organizational conflicts of interest, intellectual property infringement, etc.
18.2	Owner Representations and Warranties	The Owner provides certain representations and warranties with respect to formation/existence, authorization, no violation or default, and no challenging actions.
19	Default; Suspension of Work; Suspension for Delinquency	
19.1.1	Developer Default	Twenty-two types of Developer Defaults are set forth in Section 19.1.1, including failure to satisfy conditions precedent to NTP 1 within 30 days of the Effective Date, failure to commence Design Work within 10 days following NTP 1, failure to commence Construction Work by the Construction Commencement Deadline (i.e., 150 days after Effective Date, subject to adjustment for Relief Events), failure to achieve Occupancy Readiness of all First Delivery Facilities by the First Delivery Facility Long Stop Date, failure to achieve Substantial Completion by the Substantial Completion Long Stop Date, Persistent Developer Noncompliance, Persistent Developer Breach, and insolvency or bankruptcy.

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19.1.2	Cure Periods	<p>Applicable cure periods for Developer Defaults vary from zero to 30 days, or in limited circumstances, a further cure period is allowed, provided Developer is taking meaningful steps to cure a default that cannot be completed within the specified period. Cure Period begins upon receipt of Owner's written notice of Developer Default (except no notice required for Developer Default under 19.1.1.18).</p> <p>Developer Defaults for which there is no cure period are insolvency/bankruptcy of Developer, failure to comply with written suspension of Work or Project Right of Entry order, failure to meet certain Completion Deadlines (including the First Delivery Facilities Long Stop Date and the Substantial Completion Long Stop Date), Persistent Developer Noncompliance, failure to provide public with access to records as required by law, conviction of Developer or related Persons of fraud, bribery, etc. in connection with bidding on public works contracts, or identification of any of them on DGS's list of persons engaging in investment activities in Iran, or any of them being a "scrutinized" company as defined in Section 10476 of the Public Contract Code, improper use of funds in Handback Requirements Reserve Account, and Persistent Developer Breach.</p>
19.2	Owner Remedies	<p>The Owner has a right to terminate the Agreement if a Developer Default has not been cured within any applicable cure period.</p> <p>The Owner also have remedies specific to certain circumstances, such as a Developer Default under Section 19.1.1.7 (use of Project in violation of Contract Documents), for which Owner has an immediate right of entry to cure, and to undertake or direct work for failure to meet Safety Standards or timely performance Safety Compliance.</p> <p>Upon occurrence of a Developer Default and expiration of any applicable cure period without full cure, subject to the Lenders' rights under the Direct Agreement, the Owner has step-in rights under Section 19.2.4.</p> <p>Subject to the Lenders' rights under the Direct Agreement, the Owner has the right to suspend the Work in whole or in part – if due to a failure of Developer to comply with its obligations under the Contract Documents, with no liability to Developer; and if for other reasons at its discretion, such suspension is an Owner-Caused Delay and therefore a Relief Event.</p>
19.2.10	Limitation on Developer's Liability for Certain Damages	<p>Developer is not liable to the Owner for punitive damages or indirect, incidental or consequential damages arising under any theory of liability, subject to certain exceptions such as Losses covered by insurance proceeds, Losses arising out of fraud, criminal conduct, intentional misconduct, gross negligence, reckless or bad faith of any Developer-Related Entity, Losses arising out of Releases of Contaminated Materials by any Developer-Related Entity, and any</p>

Article/ Section No.	Subject	Description
		amounts Developer owes under the express provisions of the Contract Documents.
19.3	Owner Default; Cure Periods;	<p>Owner Defaults are: (1) failure to make payment of undisputed amounts due under the Agreement when due; (2) any material breach of representation or warranty made by the Owner under Section 18.2; and (3) the Owner or other Governmental Entity confiscates, condemns, appropriates, etc. the Project or material portion thereof, excluding any exercise of a right of termination under the Agreement.</p> <p>The cure period for (1) is 90 days after Developer delivers written notice of such Owner Default. The cure period for (2) is 30 days after written notice, subject to a longer cure period as is reasonably necessary to cure, up to 180 days, if the cure cannot be completed with diligence within the 30 days and the Owner immediately commenced meaningful steps to cure.</p>
19.4, 20.4.1	Developer Remedies	<p>Developer has a right to terminate the Agreement for a material Owner Default upon expiry of the applicable cure period without cure, effective immediately upon delivery of a written notice of termination to the Owner.</p> <p>If Developer does not terminate the Agreement, Developer may submit a Relief Event claim under Article 10.</p> <p>Developer may exercise any other rights and remedies available under the Agreement or available at Law.</p>
19.4.3	Limitations on Owner's Liability	<p>The Owner is not liable to Developer for punitive damages or indirect, incidental or consequential damages arising under any theory of liability, subject to certain exceptions such as Losses covered by insurance proceeds for which the Owner self-insured, Losses arising out of fraud, criminal conduct, intentional misconduct, reckless or bad faith of any Developer-Related Entity, and any amounts the Owner owes under the express provisions of the Contract Documents.</p>

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20	Termination	
20.1 – 20.4, 20.9	Termination; Exclusive Termination Rights	<p>Sections 20.1 through Section 20.4 set forth the exclusive termination rights of the Parties.</p> <p>Termination for Convenience: The Owner may, in its sole discretion, terminate the Agreement in whole upon not less than 30 days' written notice if it determines that such termination is in its best interest.</p> <p>Termination for Extended Relief Event: Either Party may, on written notice to the other Party, conditionally terminate the Agreement if a Relief Event has occurred and: (a) will result in a delay in achieving Substantial Completion beyond 180 days of Relief Event Delay or such 180 days have expired, or if the written notice is given after the Substantial Completion Date, all or substantially all of the Facilities are inoperable for 270 days or more and not because of another concurrent delay; (b) Developer could not have mitigated or cured with diligent efforts; (c) the result is continuing at time of delivery of the notice, and (d) the notice contains the requisite information. If insurance proceeds are available and Parties agree to a restoration plan, neither Party may elect to so terminate.</p> <p>If the Owner delivers such notice, Developer may notify the Owner that it elects to continue the Agreement and the Owner will have no obligation to compensate Developer for costs or loss of Payments or any other relief arising out of the Relief Event and incurred after the date of the Owner's notice of conditional termination (except if the Relief Event occurred prior to the Substantial Completion Date, Developer is entitled to an extension of the applicable Completion Deadlines). If Developer delivers the conditional notice of termination, the Owner may elect to continue the Agreement for up to 180 days (or more if Parties agree) and pay Developer Direct Costs to repair/restore any physical damage, including Delay Costs after Developer's conditional notice of termination, and MAP prorated less avoided O&M and other expenses.</p> <p>Termination for Developer Default: See 19.2 above.</p> <p>Termination for Owner Default: See 19.4 above.</p> <p>Termination for Suspension of Work: If the Owner issues a suspension order that is not due to Developer's fault for more than 270 days, Developer has a right to terminate the Agreement upon written notice with immediate effect.</p> <p>Termination by Court Ruling: Upon issuance of a final order by a court of competent jurisdiction after exhaustion of all appeals (a) that the Agreement is void, voidable and/or unenforceable or impossible to perform for reasons beyond the reasonable control of Developer or (b) upholding the</p>

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		<p>binding effect of a Change in Law that causes impossibility of performance of a fundamental obligation by, or exercise of a fundamental right of, Developer or Owner, the final court order will be treated as the notice of termination.</p> <p>Termination Compensation due to Developer will depend on the type of termination – applicable formulae are set forth in Sections 20.1 through 20.4. Broadly speaking: (a) if termination is for convenience, Owner Default, or discretionary suspension of work, Lenders and equity investors will be made whole; (b) if termination is for Developer Default, if prior to Substantial Completion, termination compensation (for work performed but not yet paid) will be calculated such that (i) the University does not pay more to rectify and deliver the Project than it otherwise would have, absent a Developer Default, and (ii) equity does not receive any compensation, or if after Substantial Completion, termination compensation will equal 80% of the Developer’s debt less rectification costs, account balances, etc.; and (c) if termination is for Extended Relief Events or by court ruling other than for Owner fault, Lenders are made whole and equity is repaid its nominal value, without additional return on investment.</p>
20.5 – 20.8	Termination Procedures and Duties, etc.	Detailed termination procedures and Developer obligations are set forth in Section 20.5. Developer obligations include providing a transition plan for orderly transition of Work, demobilization and transfer of control of the Project Site, the Ancillary Site (if prior to Project Final Acceptance) and the Facilities to the Owner, relinquishing and surrendering full control and possession of the Project, etc. to the Owner on the Termination Date in at least the condition required by the Handback Requirements, executing and delivering a written assignment of any Key Contracts the Owner elects to continue (if all Work has not yet been completed), and delivery of other information, documents, assignments, releases, etc.
21	Reserved Rights	
		The Owner reserves all Business Opportunities related to the Project, the Project Site, the Ancillary Site and the Facilities, and all ancillary or collateral use thereof, except to the extent such rights are expressly granted to Developer under the Agreement.
22	Records; Intellectual Property; D&C Pricing Documents	
22.1 – 22.2	Project Records; Audits	Developer must maintain all Project-related records and documents in Merced or other location approved by the Owner. All D&C-related records must be kept until the later of five years after Project Final Acceptance and when the last audit related to the D&C Work (and timely commenced) is completed. All O&M-related records must be kept until the later of five years after

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		<p>the Termination Date and when the last audit related to the O&M Services (and timely commenced) is completed.</p> <p>The Owner has broad audit rights with respect to the Project Records.</p>
22.3	Public Record Act	<p>Developer must maintain and allow public access to Project Records subject to the Public Records Act on the same terms and conditions that the Owner would do so as provided by law and on the Termination Date, transfer to the Owner all public records in Developer's possession and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.</p> <p>Developer acknowledges that all Submittals, records, D&C Pricing Documents, etc. in the Owner's possession are subject to the Public Records Act. Developer must label as "CONFIDENTIAL" any proprietary information and cite the relevant provision exempting such material from public disclosure. Owner will use reasonable efforts to notify Developer of a request for public disclosure of any such materials, to allow Developer to assert an exception from disclosure requirements. If a legal action is filed against the Owner to disclose, Owner will promptly notify Developer and Owner's sole role will be as custodian until otherwise ordered by a court, and Developer is responsible for prosecuting or defending such action (although Owner reserves the right to intervene/participate as it deems necessary or desirable).</p>
22.4 – 22.5	Intellectual Property	<p>Project Intellectual Property comprises Subject Intellectual Property, Developer Intellectual Property and Third Party Intellectual Property.</p> <p>Subject Intellectual Property means Intellectual Property created, authored and/or invented under or for the purposes of the Proposal, the Contract Documents and/or the Project. Developer assigns to the Owner all rights, title and interest in and to Subject Intellectual Property, and the Owner grants to Developer a limited license to use the Subject Intellectual Property for incorporation into the Project and performance of the Work.</p> <p>Developer Intellectual Property means Intellectual Property developed by Developer or its Affiliates or Contractors either prior to the Effective Date or independently of the Contract Documents and is incorporated into the Project. Developer grants to the Owner an irrevocable, perpetual, transferable (solely to a permitted Owner's assignee), fully paid-up right and license to use Developer Intellectual Property in connection with the Owner Uses (<i>i.e.</i>, uses in connection with the Work, Project, Facilities and Systems, including maintenance, repair, renewal work and renovations following the Termination Date).</p> <p>Third Party Intellectual Property means Intellectual Property owned by any Person unrelated to</p>

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		<p>Developer or its Affiliates or Contractors and which is incorporated into the Project. Developer must secure licenses in the name of the Owner in connection with the Owner Uses (and may not incorporate any Third Party Intellectual Property without first securing such licenses), and must use reasonable efforts to (i) obtain the Owner's prior written approval of terms and conditions of such licenses, (ii) identify and disclose to the Owner all Third Party Intellectual Property, and (iii) obtain the consent of the relevant third parties to deposit the IP into an Intellectual Property Escrow.</p> <p>Developer must either deliver to the Owner or deposit into an Intellectual Property Escrow all IP Materials (software, source code and other intellectual property and related documentation, as integrated into Project Intellectual Property). Such delivery is a condition precedent to Occupancy Readiness, Substantial Completion, Facility Final Acceptance, and Project Final Acceptance.</p>
22.6	D&C Pricing Documents	Within 10 days after the Effective Date and as a condition precedent to NTP 1, Developer must deliver all D&C Pricing Documents to the Owner. D&C Pricing Documents may only be unsealed and reviewed with Developer's reasonable consent, with notice in connection with any claim, DRB hearing or litigation related to D&C Work, and without consent in response to a Public Records Act request.
23	Legal Requirements	
23.1	Suspension and Debarment	Developer must deliver to the Owner not later than January 31 of each year through Final Acceptance, and upon Final Acceptance, signed certifications regarding suspension, debarment, etc. from Developer and each Affiliate of Developer and each Contractor whose Contract amount equals or exceeds US\$25,000.
24	Assignment and Transfer	
24.1	Restrictions on Developer	Developer may not assign or encumber the Developer's Interest without the Owner's prior written approval, in its sole discretion, except to Lenders for security, to any approved (or deemed approved) Substitute Entity under the Direct Agreement. Any assignment in violation of the provision is null and void <i>ab initio</i> and Owner may declare any such attempted action to be a material Developer Default.
24.2	Restrictions on Owner	The Owner may assign all or any portion of its rights, title and interest in and to, and obligations and liabilities under (if applicable), the Contract Documents, bonds and any other security (a) to any Person that succeeds to the powers and authority of the Owner in its sole discretion without

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		consent, and (b) to others with the prior written consent of Developer. Any assignee must have a credit rating equal to or better than the Owner's at the time of assignment. Any assignment in violation of this provision is null and void <i>ab initio</i> .
25	Dispute Resolution Procedures	
		<p>All Disputes are subject to the Dispute Resolution Procedures except Owner decisions permitted to be made in its sole discretion. The Owner's initial determination is binding pending any final determination of the Dispute unless otherwise expressly provided. Owner decisions permitted to be made in its good faith discretion are binding unless finally determined by clear and convincing evidence that it was arbitrary or capricious.</p> <p>With the exception of Disputes over key Owner determinations discussed below, Disputes that are not resolved between the Parties are referred to the Disputes Review Board (DRB) for a non-binding decision. Disputes that remain unresolved after issuance of the DRB's recommendations regarding such Disputes may be resolved by litigation. Timely submission of a Dispute to the DRB is a condition precedent to a Party having the right to proceed to litigation of such unresolved Dispute.</p> <p>Disputes over Owner determinations regarding (i) achievement of Occupancy Readiness of the First Delivery Facilities, Milestones, Substantial Completion, Facility Final Acceptance, or Project Final Acceptance, or (ii) satisfaction of Handback Requirements, are subject to accelerated Dispute Resolution Procedures. Any DRB recommendations regarding such Disputes are provisionally binding pending the results of any litigation.</p> <p>During the course of any Dispute Resolution Procedures, Developer must continue performing the Work, including any Work that is the subject of the Dispute, as directed by the Owner in accordance with the Contract Documents.</p> <p>See Appendix 9 below regarding form of DRB Agreement and DRB procedures.</p>
26	Miscellaneous	
		The Agreement contains various miscellaneous provisions, including provisions providing for governing law of California and venue for any litigation as a State court of competent jurisdiction in Alameda County, CA.

Article/ Section No.	Subject	Description
Appendix 1	Abbreviations and Definitions	
		Appendix 1 sets forth meanings/definitions for abbreviations and capitalized terms used in the Project Agreement, Appendices and Technical Requirements. Additional abbreviations and capitalized terms used only in the Technical Volumes are defined in Volume II.
Appendix 2	Developer's Proposal Commitments	
		Select portions of Developer's Proposal will be excerpted and attached as Appendix 2 to the Agreement. Anything so attached becomes a contractual requirement.
Appendix 3	Construction Period Payment Deductions	
3-A	First Delivery Facilities LD Deduction	This Appendix sets forth the formula for calculating the aggregate amount of liquidated damages for delay in achieving Occupancy Readiness of all First Delivery Facilities by the First Delivery Facilities Occupancy Readiness Deadline.
3-B	Construction Period Deduction	This Appendix sets forth the formula for determining the aggregate amount of Construction Period Availability Deductions and Construction Period Performance Deductions and provides that such aggregate amount will be deducted from the Final Acceptance Payment.
Appendix 4	Site Maps	
4-A	Project Site Map	The limits of the Project Site are delineated in this map.
4-B	Ancillary Site Map	The limits of the Ancillary Site are delineated in this map.
Appendix 5	Noncompliance Points Table	
		<i>[FIRST DRAFT PROVIDED TO PROPOSERS VIA INTERIM RELEASE ON 8/28/15.]</i> See Article 7 above.

Article/ Section No.	Subject	Description
Appendix 6	Payment Mechanism	
		<p><i>[REVISED DRAFT PROVIDED TO PROPOSERS VIA INTERIM RELEASE ON 8/20/15.]</i></p> <p>This Appendix sets forth the methodology and related requirements for calculating and assessing monetary deductions against the Availability Payments – in particular, deductions for Availability Failures and Performance Failures during the provision of O&M Services.</p>
Appendix 7	List of Initial Funding Agreements and Initial Security Documents	
		<p><i>[TO BE COMPLETED POST-SELECTION OF WINNING PROPOSER, REFLECTING ITS FINANCING DOCUMENTS]</i></p>
Appendix 8	Insurance Requirements	
		<p>This Appendix sets forth certain terms and conditions applicable to required Project insurance policies.</p>
Appendix 9	Disputes	
9-A	Form of Disputes Review Board Agreement	<p>The form of DRB Agreement which DRB members will be required to execute is attached as Appendix 9-A.</p>
9-B	Disputes Review Board Procedures	<p>The DRB procedures, including qualification requirements and process for selection and replacement of DRB members, are set forth in Appendix 9-B.</p>
Appendix 10	Initial Designation of Authorized Representatives	
		<p><i>[TO BE COMPLETED POST-SELECTION OF WINNING PROPOSER]</i></p>

Article/ Section No.	Subject	Description
Appendix 11	Calculation and Payment of Refinancing Gains	
		This Appendix describes how Refinancing Gains will be calculated for purposes of determining the sharing of any Refinancing Gain arising from a Refinancing permitted under Section 16.3 of the Agreement.
Appendix 12	Utilities Survey	
		A utilities survey is attached as Appendix 12 for purposes of baselining known Utilities.
Appendix 13	Form of Direct Agreement	
		This Appendix sets forth the form of Direct Agreement which the Collateral Agent (on behalf of Lenders), the Owner and Developer will enter into concurrently with the execution of the Project Agreement. The Direct Agreement addresses, among other things, Lenders' step-in rights and their right to replace a defaulting Developer, as well as the Owner's option to purchase project debt in default.
Appendix 14	Form of Letter of Credit	
		This Appendix sets forth the required form of letter of credit if Developer elects to deliver any in lieu of the Renewal Work Reserve Account or the Handback Requirements Reserve Account.
Appendix 15	Forms of Performance Bond and Payment Bond	
15-A	Form of Performance Bond	This Appendix sets forth the required form of Performance Bond.
15-B	Form of Payment Bond	This Appendix sets forth the required form of Performance Bond.

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15-C.1	Form of Multiple Obligee Rider – Performance Bond	This Appendix sets forth the required form of multiple obligee rider for the Performance Bond.
15-C.2	Form of Multiple Obligee Rider – Payment Bond	This Appendix sets forth the required form of multiple obligee rider for the Payment Bond.
Appendix 16	Intellectual Property License	
		This Appendix sets forth additional requirements with respect to third party software licenses and grants to Developer a non-exclusive license to use the Owner Proprietary Information on specified terms and conditions.
Appendix 17	Energy Utilities Management	
		<p><i>[FIRST DRAFT PROVIDED TO PROPOSERS VIA INTERIM RELEASE ON 8/28/15.]</i></p> <p>This Appendix sets forth a painshare/gainshare mechanism to incentivize efficiency in the design and performance of Facilities with respect to consumption of Energy Utilities (<i>i.e.</i>, electricity, natural gas, and chilled water if provided from a new/existing central plant). Energy consumption targets for Energy Utilities included in Developer’s proposal are incorporated into the Agreement at execution, refined through completion of design of the Facilities, and adjusted annually for specified events. Energy Utilities consumption is monitored and measured throughout the provision of O&M Services, and a monetary adjustment is made on an annual basis based on how actual energy consumption measures against applicable targets.</p>
Appendix 18	Direct Costs	
		This Appendix sets forth what types of costs may be included in Direct Costs (for purposes of calculating any additional compensation to which Developer may be entitled due to a Relief Event), what types of costs are excluded, and the permitted mark-ups.

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Appendix 19	Baseline Contaminated Materials Report	
		Four Phase 1 Preliminary Site Assessment due diligence reports are attached as Appendix 19 for purposes of baselining Known Contaminated Materials for the Project Site and Ancillary Site.
Appendix 20	First Delivery Facilities	
		This Appendix sets forth the applicable liquidated damages amounts (and, for First Delivery Core Facilities, the schedule of same) for late delivery per type of First Delivery Facility.
Appendix 21	Owner Change Procedure	
		This Appendix sets forth the Owner Change Procedure, including Developer obligations to provide a Preliminary Change Estimate and keep records, the method of calculation of the net cost impact of an Owner Change, the method of payment, agreement and issuance of a Change Order, provisions dealing with any disagreements on a Preliminary Change Estimate, and procedures for Owner's Unilateral Change Orders.
Appendix 22	SBE/DVBE Self-Certification Form	
		Attached as Appendix 22 is the form of SBE/DVBE Self-Certification Form that must be completed and signed by each entity claiming an exemption from the skilled workforce requirements in Section 8.10 or for purposes of counting toward the small business goals in Section 8.11.