

District Energy St. Paul, Inc.
76 Kellogg Boulevard West
St. Paul, Minnesota 55102

Solar America Cities Project

Solar Collector Installation Bid and Specifications

August 25, 2010

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**SECTION 002
INVITATION TO BIDDERS**

PROJECT DESCRIPTION:

District Energy St. Paul, Inc., a Minnesota non-profit corporation (“District Energy” or “Owner”), is proposing to install a rooftop solar thermal system (“Project”) to be operational by December 15, 2010. The installation will be on a building commonly known as the Saint Paul RiverCentre (“Building” or “Site”), which Building is owned by the City of Saint Paul (“City”) and is managed by the Saint Paul RiverCentre Visitors and Convention Authority (“Authority”) pursuant to an agreement by and between the City and the Authority. The Site is managed by the Saint Paul Arena Company (“SPAC”), pursuant to that certain agreement by and between the Authority and the SPAC. Both the City and the Authority have executed agreements with District Energy that, for the limited purpose of the Project as hereinafter defined, allows District Energy to act on their behalf.

This solicitation is for installation of solar panels (“Panels”) for use with a district heating system application (“Project”). This requires installation of high-performance Panels and all associated materials that exceed the requirements for a typical residential or commercial applications (“Installation”). The maximum system capacity will exceed 1 Megawatt (3.4 MMBTU/hr).

Contractor must acknowledge that he/she/it is qualified to install such Panels and the he/she/it agrees that he/she/it shall be supervised in the Installation of the Panels at the Site under this Project by the Supplier, as that term is hereinafter defined, in addition to the Owner.

OWNER:

District Energy St. Paul, Inc.
76 Kellogg Boulevard West
St. Paul, Minnesota 55102
Contact: Nina Axelson
Phone: (651) 925-8147

ENGINEER:

Toltz, King, Duvall, Anderson and Associates (“TKDA”)
444 Cedar Street, Suite 1500
Saint Paul, Minnesota 55101

TARGET PROJECT SITE:

Saint Paul RiverCentre
175 West Kellogg Boulevard
St Paul, MN 55102

BIDDING METHOD:

Lump Sum Bids from Bidders

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BIDDING DOCUMENT AVAILABILITY:

Bidders may obtain Bidding Documents and Specification Documents (collectively, the “Preliminary Documents”) from www.districtenergy.com. Bidders are responsible for downloading and producing paper copies as necessary. For additional considerations, please contact Nina Axelson at (651) 925-8147 or nina.axelson@districtenergy.com.

BID SECURITY:

Bids of \$500,000 or more must be accompanied by a Sixty (60) day Bid Bond, equal to 5% of the Base Bid, made payable to District Energy St. Paul, Inc.

PERFORMANCE /PAYMENT BOND: See Section 010

BID SUBMISSION:

Electronic: nina.axelson@districtenergy.com
Paper: District Energy St. Paul, Inc.
76 Kellogg Boulevard West
St. Paul, Minnesota 55102

Deadline for Receipt of Bids:	September 15, 2010, 3:00 PM
Bid Opening (District Energy):	September 15, 2010, 3:00 PM

OTHER CONDITIONS:

Owner reserves the right to waive irregularities/informalities and to reject any or all Bids.

Bid from successful Bidder may not be withdrawn by Successful Bidder until after over Sixty (+60) days.

Contract will be awarded as specified herein and subject to the execution of an Installation Agreement, a sample of which is specified under Section 007.

Bids will be open to the public.

END OF SECTION

**SECTION 003
INSTRUCTIONS TO BIDDERS**

PART I - GENERAL INSTRUCTIONS:

Copies of Bidding Documents

1. Complete sets of the Preliminary Documents are available for downloading from the District Energy website (www.districtenergy.com). Preliminary Documents are also on file at the District Energy offices for review during normal working hours.
2. Complete sets of Preliminary Documents shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
3. Owner and Engineer, in making copies of Preliminary Documents available on the above terms, do so only for the purpose of obtaining Bids on the work and do not confer a license or grant for any other use.

Qualifications of Bidders

To demonstrate qualifications to perform the Installation, each Bidder must be prepared to submit as part of the Bid Package those items requested in the Specification Documents. Each Bid must contain evidence of Bidder's qualification to do business in the State of Minnesota, or covenant to obtain such qualification prior to award of the Installation Agreement. To demonstrate qualifications to perform the work, each Bidder must submit with the Bid Package the following items:

1. Evidence of financial data, and evidence of Bidder's qualification to do business in the State of Minnesota;
2. The manufacturer of any key components shall be named;
3. Indicate the Bidder's history of installation of thermal solar collectors;
4. Name of any solar subcontractor and any relevant experience; and
5. The Bidder must provide three references, with the greatest weight applied to those references on projects of similar size. Bidder shall provide the name, company and phone number of each such contact. Also include project locations, installation date and cost of contracts in the Bid Package.

The qualified, lowest Bidder will be defined as the Successful Bidder.

Examination of Documents and Site

Before submitting a Bid, each Bidder must (a) examine the Preliminary Documents thoroughly; (b) familiarize himself/herself/itself with local conditions that may in any manner affect cost, progress or performance of the Installation; (c) familiarize himself/herself/itself with Federal, State, and Local laws, ordinances, rules, and regulations that may in any manner affect cost, progress or performance of the Installation, including, but not limited to, the American Recovery and Reinvestment Act ("ARRA") and the obligations of Bidder to the Department of Energy under and pursuant to grant number DE-EE0002076 ("Grant"); (d) perform any and all investigation and examination of the Site which the Bidder, at his/her/its sole discretion, deems necessary and appropriate for the Installation; and (e) study and carefully correlate Bidder's observations with the Preliminary Documents.

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The submission of a Bid will constitute an incontrovertible representation by the Bidder that he/she/it has complied with every requirement of the Preliminary Documents and that the Preliminary Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Installation. Also, submission of a Bid will constitute an incontrovertible representation that the Bidder has given the Owner written notice of all conflicts, errors, ambiguities, and discrepancies that the Bidder has discovered in the Preliminary Documents, and that the written resolutions thereof given by the Owner are acceptable to the Bidder.

A Pre-Bid meeting will not be held. An optional site walk-through is scheduled for August 31st at 1:00 PM. RSVP is required for attendance.

Interpretations: Questions about the meaning or intent of the Preliminary Documents must be submitted by September 2nd, 2010. Owner will only respond to questions submitted in writing. Replies will be issued by September 8th and available for downloading from the District Energy website. Owner reserves the right to release addenda earlier than September 8th to address significant questions or modifications. Contractor questions received after the date specified on the Project schedule may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications shall be without legal effect.

Bid Security: No Bid will be considered unless filed with the Owner and accompanied by Bid Security in the form detailed in Section 010 or in the form of a Bid Bond issued on AIA Document A310 by a surety listed on the most recent United States Treasury List (Department of Treasury Circular 570), payable to the Owner for five percent (5%) of the Base Bid amount.

The Bid Security of the Successful Bidder will be retained until the Successful Bidder has executed the Installation Agreement and furnished the required Installation Agreement security ("Performance Payment Bond"), whereupon the Bid Security will be returned. If the Successful Bidder fails to execute and deliver the Installation Agreement and furnish the required Certificate of Insurance and other required documents within Five (5) days after the Notice of Award, Owner may, but shall not be required to, annul the Notice of Award; if the Notice of Award is annulled, the Bid Security will be forfeited by the Successful Bidder. The Bid Security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of the Seventh (7th) calendar day after the Effective Date of the Installation Agreement or the Fourteenth (14th) calendar day after the Notice of Award, whereupon Bid Security furnished by such Bidders will be returned, except to the next lowest and otherwise acceptable and qualified Bidder in the event that the Successful Bidder has failed to execute and deliver the Installation Agreement and furnish the required Performance Payment Bonds, Certificate of Insurance, and other documentation as required. Bid Security furnished with Bids that are not competitive will be returned within Seven (7) days after the Bid opening.

Bid Form: Refer to Section 005 - Bid Form

Complete Bid Form electronically or in freehand using ink or by use of typewriter. State the amount of each item on the form in words and numerals. Complete the form legibly.

Bids by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested to by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.

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Bids by partnerships must be executed in the partnership name and signed by a general partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature

Type or print names below the signature.

The Bid shall contain an acknowledgment of receipt of all Addenda. Insert Addenda numbers on the Bid Form.

Submission of Bids: Submit Bids before the time and at the place indicated in Section 002 - Invitation to Bidders. Bids should be submitted as hard copies (in duplicate) to offices of District Energy. Hard copies should be sealed in an opaque envelope, marked with the Project title, name, and address of Bidder and accompanied by the required Preliminary Documents. Hard copies must be accompanied by cd or jump drive including electronic version of all documents and material contained in Bid. If the Bid is sent by mail or other delivery system, enclose the sealed envelope in a separate envelope with the notation "BID ENCLOSED" on the face thereof.

Modification and Withdrawal of Bids: Bids may be modified or withdrawn by an appropriate document duly executed and delivered to the place where Bids are to be submitted at any time prior to the Date and Time for Receipt of Bids.

If, within 24 hours after Bids are opened, any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of his/her/its Bid, that Bidder will not be permitted to modify his/her/its Bid but may withdraw the Bid. Thereafter, that Bidder will be disqualified from further bidding under the Preliminary Documents.

OPENING OF BIDS. All Bids shall remain open for thirty days after the day of the Bid opening, but Owner may, in its sole discretion, release any Bid and return the Bid Security prior to that date.

AWARD OF CONTRACT

1. Owner reserves the right to reject any and all Bids, to waive any and all informalities, to negotiate Installation Agreement terms with any Bidder, and reserves the right to disregard all nonconforming, non-responsive or conditional Bids. The Bid Price shall be the primary, but not the sole, basis for determining the successful Bid.
2. Owner will consider the qualifications and experience of subcontractors and other persons and organizations (including those who are to furnish the principal items of material or equipment) proposed for those portions of the Installation as to which the identity of subcontractors and other persons and organizations must be submitted. Operating costs, maintenance considerations, performance data, and guarantees of workmanship, materials and equipment may also be considered by Owner.
3. Owner may conduct such investigations as it deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of the Bidders, proposed subcontractors and other persons and organizations, to perform the Installation in accordance with the Preliminary Documents to Owner's satisfaction within the prescribed time.

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4. Owner reserves the right to reject the Bid of any Bidder who does not pass any such evaluation to Owner's satisfaction.
5. In evaluating Bids, Owner may consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements of the Preliminary Documents, and any requested Alternate. Owner may accept or reject any Alternate.
6. If the Installation Agreement is to be awarded, it will be awarded to the lowest Bidder whose evaluation by Owner indicates to Owner that the award will be in the best interests of the Project.
7. If the Installation Agreement is to be awarded, Owner will give the successful Bidder ("Successful Bidder") a Notice of Award within sixty (60) days after the date of the Bid opening or other specified date.

Performance and Other Bonds. Section 010 sets forth Owner's requirements as to Bid Bonds, Performance Bonds, and other Bonds. When the Successful Bidder delivers the executed Installation Agreement to Owner, it shall be accompanied by the required Bonds.

Signing of the Agreement. When Owner gives a Notice of Award to the Successful Bidder, it will be accompanied by at least two unsigned counterparts of the Installation Agreement and all other Contract Documents. Within Ten (10) days thereafter, the Successful Bidder shall sign and deliver at least two counterparts of the Installation Agreement to Owner with all other Contract Documents attached. Within Ten (10) days thereafter, Owner will deliver all fully signed counterparts to Successful Bidder (hereafter referred to as "Contractor"). Owner will identify those portions of the Contract Documents not fully signed by Owner and Contractor and such identification shall be binding on all parties.

PART 2 - SPECIAL INSTRUCTIONS:

Owner's Tax Exempt Status: The Owner is exempt from Minnesota State Sales Tax for purchases made under this Installation Agreement and will provide the Contractor with required exemption certificates. Reference is also made to MN Sales and Use Tax (July 2009 Revision), which states, in part: "Solar energy systems. Solar energy systems are exempt. 'Solar energy system' means a set of devices whose primary purpose is to collect solar energy and convert and store it for useful purposes including heating and cooling buildings or other energy using processes, or to produce generated power by means of any combination of collecting, transferring, or converting solar-generated energy."

END OF SECTION

SECTION 004
THE AMERICAN RECOVERY AND REINVESTMENT ACT REQUIREMENTS

Solar America Cities (“SAC”) Special Projects have been selected to address specific barriers to solar adoption in urban settings and support innovative approaches that can be widely replicated. This Project, as part of the Saint Paul SAC, is bound by all requirements of The American Recovery and Reinvestment Act (“ARRA”). Special attention should be paid to Buy American and Davis-Bacon clauses set forth in ARRA pertaining to materials and wages, respectively.

Part 1: Buy American

ARRA provides, in part, the following material requirements (providing this portion of the applicable statute below does not alleviate the obligation of Contractor to comply with the entirety of ARRA as it pertains to the materials used by Contractor):

§ 176.140 Award term—Required Use of American Iron, Steel, and Manufactured Goods—Section 1605 of the American Recovery and Reinvestment Act of 2009.

When awarding ARRA funds for construction, alteration, maintenance, or repair of a public building or public work that does not involve iron, steel, and/or manufactured goods covered under international agreements, the agency shall use the award term described in the following paragraphs:

(a) *Definitions.*

(1) *Manufactured good* means a good brought to the construction site for incorporation into the building or work that has been—

- (i) Processed into a specific form and shape; or
- (ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(b) *Domestic preference.*

(1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5), by requiring that all iron, steel, and manufactured goods used in the Project are produced in the United States except as provided in paragraph (b)(2) and (b)(3) of this section and condition.

(2) This requirement does not apply to the material listed by the Federal Government as follows:

[*Award official to list applicable excepted materials or indicate “none”*]

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this section and condition if the Federal Government determines that—

- (i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the Project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;
- (ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) Request for determination of inapplicability of Section 1605 of the Recovery Act .

(1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including—

- (A) A description of the foreign and domestic iron, steel, and/or manufactured goods;
- (B) Unit of measure;
- (C) Quantity;
- (D) Cost;
- (E) Time of delivery or availability;
- (F) Location of the Project;
- (G) Name and address of the proposed supplier; and
- (H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) *Data.* To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity	Cost (dollars)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
<i>Item 2:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

*[*Include all delivery costs to the construction site.]*

**SECTION 005
BID FORM**

INSTALLATION OF SOLAR COLLECTORS
SAINT PAUL SOLAR INSTALLATION
DISTRICT ENERGY ST. PAUL, INC.

Bid Due Date: **September 15, 2010, 3:00 PM**

Bid To: District Energy St. Paul, Inc.
c/o Ms. Nina Axelson
76 Kellogg Boulevard West
St. Paul, Minnesota 55102-1611
nina.axelson@districtenergy.com

ARTICLE 1 - BASE BID

- 1.01 The undersigned, having reviewed the Preliminary Documents for the Installation, dated _____, **2010**, and being familiar with the conditions affecting the Installation; proposes to furnish all labor, material, skills and equipment necessary for the complete Installation of the Panels, at the Site, in Saint Paul, MN, for the lump sum (“Base Bid”) of:

_____ Dollars (\$ _____)

ARTICLE 2 - ALTERNATES

ARTICLE 3 - SUBMITTAL WITH BID

- 3.01 Specification Compliance – Provide paragraph by paragraph compliance report with the Specification Documents. Bid shall indicate for each numbered paragraph, how the proposed work meets the criteria of the paragraph. Format shall be:
1. Comply – without exception.
 2. Qualify – meet the functional intent. Identify all differences in specific work stated and provide description of what is excluded or how the qualified work will meet the intent specified.

ARTICLE 4 - ACKNOWLEDGEMENTS AND COVENANTS

- 4.01 In the event of a discrepancy between the written words and numeral amounts in this Bid, the written words shall govern.
- 4.02 Receipt is acknowledged of Addenda Nos. _____, _____, and _____.
- 4.03 Bid Security as specified in the Invitation to Bidders is enclosed, and is offered subject to the terms specified therein.

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- 4.04 This Bid may not be rescinded for a period of Sixty (60) days from the Bid Opening Date.
- 4.05 If this Bid is accepted, Owner and Successful Bidder will execute an Installation Agreement based on the content of this Bid.
- 4.06 If this Bid is accepted, Contractor will furnish the required materials and equipment as specified on or before October 22nd, 2010, but in no case later than October 29th, 2010.

Bid From: Company Name: _____

By: _____

Corporate Seal:

Signed: _____

Title: _____

Address: _____

We are incorporated in the State of _____

We are a Partnership

We are a Proprietorship

END OF SECTION

SECTION 006
BUSINESS CONDITIONS/REFERENCES

1.01 EVALUATION. The Owner will evaluate the Contractor with a preference toward familiarity with district heating systems and loads. Other factors that will be considered by the Owner include the cost of the total Panel Installation and Installation characteristics. The Installation Agreement will be awarded to the qualified, lowest Bidder whose Bid will be in the best interests of the Project.

1.02 FINAL PAYMENT. No Final Payment will be made until such time as all of the funds from the Grant have been fully paid to the Owner. Any reduction or modification of the payment to Owner under the Grant will directly affect payment to Contractor, and shall require a change to the Contract Price. In addition to the foregoing, Contractor hereby acknowledges that no Final Payment will be made to Supplier until after system testing is complete and testing verifies the Panels meet the performance guarantee as specified in the Procurement Documents. If the performance test indicates the Panel performance to be less than indicated in the Supplier's guarantee, the Owner reserves the right to remove a random representative sample of 10 panels or 290 ft², whichever is less, gross Panel area. The Panels will be sent to a mutually agreed to independent testing lab for performance testing of individual units. If the Panels meet the performance guarantee the Owner shall pay for their removal, testing, and reinstallation by Contractor. If the Panels do not pass the test, the cost of the testing, removal, resupply of correctly performing Panels, and Installation by Contractor shall be paid by the Supplier. The Owner reserves the right to reduce the Final Payment to Supplier by the same percentage as the reduction in performance. The Final Payment to Contractor shall not be subject to said performance testing unless and except Supplier objects that such performance testing failure was the result of Contractor's Installation.

1.03 RIVERCENTRE. The Owner makes no representations or warranties as to the condition of the Site for the purposes of the Installation provided hereunder. Questions regarding the condition of the Site and the efficacy of the Installation as detailed herein on to the Site shall be first directed to the Engineer, who is authorized by Owner to make contact with the Authority and with the City regarding questions pertaining to the Site.

1.04 SUPPLIER. The Contractor shall be responsible for installing the Panels created for the Project and shipped to the Site by the Supplier. Specific reference is made herein to that certain Invitation to Bid, No. _____, issued by Owner ("Solar Panel Bid"), of which Supplier was the Successful Bidder. The Project Manual, as that term is defined in said Solar Panel Bid, is hereby made part of the Contract Documents for the Installation. Pursuant to the terms detailed herein and in the Solar Panel Bid, Contractor shall be supervised in his/her/its Installation by the Supplier. Disputes regarding supervision shall be directed to the Owner, and the decision of the Owner on any such dispute shall be binding upon the Contractor and upon the Supplier.

SECTION 007

THE INSTALLATION AGREEMENT (SAMPLE)

District Energy reserves the right to amend by addition or deletion any or all provisions as may be determined at a subsequent date. The occurrence of such action will be the subject of a Modification.

PROVISIONS AND CONSIDERATIONS:

1. **The Parties:** The Installation Agreement is dated as of _____ day of _____ in the year 2010 by and between District Energy St. Paul, Inc., 76 Kellogg Blvd. St. Paul, MN 55102 (“Owner”) and _____ (“Contractor”).

2. **Mutual Covenants:** Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

3. **Installation:** Contractor shall furnish the Installation, as specified or indicated in the Contract Documents. The Installation to be provided consists of the installation of solar thermal (or hybrid) Panels necessary for Saint Paul SAC – District Energy large-scale solar project.

4. **Engineer:** The Specifications for the Installation has been drafted by TKDA, Inc, as “Engineer”.

5. **Point of Installation:** The place where the Installation is to take place is the Saint Paul RiverCentre, in the City of Saint Paul, Minnesota, defined as the Building or the Site.

6. **Contract Time:** In addition to the covenants detailed in **Article 12** hereinbelow, the Contract Time shall start on the date of the Notice of Award. The Installation shall take place commencing on September 1, 2010. Contractor shall remove the Panels from shipping vehicle and install at the Site as supervised by Supplier and Owner.

7. **Contract Price:** In addition to the covenants detailed in **Article 11** hereinbelow, Owner will pay Contractor for furnishing the Installation in accordance with the Contract Documents, in current funds, as follows:

Total Contract Price (TBD): _____
(\$ _____) US DOLLARS.

8. **Payment Procedures:** Contractor shall submit Applications for Payment in accordance with **Section 11** of the Installation Agreement.

9. **Progress Payments:** Applications for Payment will be processed and Owner will make progress payments on account of the Contract Price in accordance with **Section 11** of the Installation Agreement.

10. **Final Payment:** Upon completion of all conditions precedent to payment and receipt of the final Application for Payment after satisfactory Installation at the Owner’s Site, Owner will make Final Payment of the Contract Price.

11. Contractor's Representations: In addition to the obligations and representations set forth in **Article 7** hereinbelow, in order to induce Owner to enter into this Installation Agreement, Contractor makes the following representations:

- a. Contractor has familiarized himself/herself/itself with the nature and extent of the Contract Documents and has given Owner written notice of all conflicts, errors or discrepancies that he/she/it has discovered in the Contract Documents, and the written resolution thereof by Owner is acceptable to Contractor.
- b. Contractor has familiarized himself/herself/itself with all conditions and federal, state and local laws, ordinances, rules and regulations, including but not limited to the Grant, that in any manner may affect the Installation of the Panels and other services in connection therewith.
- c. Contractor does not require additional information from Owner or Engineer to enable Contractor to perform the Installation of the Panels, at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, but subject to Contractor's right to request interpretations and clarifications.
- d. Contractor has correlated the results of all such examinations, investigations, and resolutions with the terms and conditions of the Contract Documents.

12. Contract Documents: The Contract Documents which comprise the entire Installation Agreement between Owner and Contractor are attached to, or accompany, this Installation Agreement or are made a part hereof by reference, and consist of the following:

- Original Bid dated _____ (including all accompanying documents otherwise identified as Preliminary Documents therein);
- Bid Bond;
- Specifications - **Divisions 0 through 1**;
- Solar Panel Bid;
- Project Manual;
- Notice of Award;
- Installation Agreement;
- Performance Payment Bond;
- Progress Schedule;
- Certificates of Insurance;
- Collateral Assignment of Agreement Between Owner and Contractor; and
- Contractor's Agreement and Consent to Assignment.

- a. There are no other Contract Documents as of the date of this Installation Agreement. The Contract Documents may only be altered, amended or repealed by a Modification.

13. Definition of Terms: Unless otherwise defined herein, terms set forth in Article 1 of the Installation Agreement shall have the meanings indicated therein. In the case of any conflict between the any defined term in any of the Preliminary Documents and any defined term in the Installation Agreement, the definition set forth in the Installation Agreement shall prevail.

14. Rights of Assignment: Except as provided below, no assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party thereto without the written

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consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law); and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents. Notwithstanding the foregoing, Contractor recognizes and acknowledges that the financing requirements of the Project that includes the Installation require that this Agreement and all of the Contract Documents may inure to the benefit of the one or more creditors (each, a "Secured Party") as collateral security for one or more financings of Owner, and Contractor hereby agrees to any and all such assignments. As a result of such assignment, Contractor may receive notice from such Secured Party with an assertion that an event of default has occurred under the financing, and that the obligations of Contractor to Owner under this Installation Agreement are to be made by Contractor to such Secured Party. Contractor agrees to make such performance to such Secured Party, and Owner agrees to hold Contractor harmless for making such performance to such Secured Party after Contractor has received such notice of default. Contractor further agrees that all such Secured Parties shall be deemed third-party beneficiaries of this Installation Agreement, until such time as Contractor receives written notice to the contrary from Owner and each such Secured Party.

Owner and Contractor each binds himself/herself/itself, any partners, successors, assigns and legal representatives to the other party hereto, and any partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

15. Business Conditions/References: The parties hereto agree that the Business Conditions/References, SECTION 006, is hereby incorporated into this Installation Agreement, and is made a part hereof as though fully restated herein.

IN WITNESS WHEREOF, the parties hereto have signed this Installation Agreement in triplicate. One counterpart each has been delivered to Owner, Contractor and Engineer. All portions of the Contract Documents have been signed or identified by Owner and Contractor or by Engineer on their behalf.

Owner: District Energy St. Paul, Inc.

Contractor:

By: _____

By: _____

Its _____

Its _____

(Corporate Seal)

Attest: _____

Attest: _____

Address for Giving Notice:

Address for Giving Notice:

District Energy St. Paul, Inc.
76 Kellogg Boulevard West
St. Paul, MN 55102

(If Contractor is a corporation, attach evidence of authority to sign.)

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**SECTION 007.1
COLLATERAL ASSIGNMENT OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR
(SAMPLE)**

THIS COLLATERAL ASSIGNMENT OF AGREEMENT BETWEEN OWNER AND CONTRACTOR (“*Assignment*”) is made as of as of _____ day of _____ in the year 2010, by DISTRICT ENERGY ST. PAUL, INC., a Minnesota nonprofit corporation (“*Owner*”), to Deutsche Bank AG New York Branch, (“**Deutsche Bank** “), and to US Bank National Association (“**US Bank**”).

WITNESSETH:

WHEREAS, the Owner and “*Contractor*”, have executed an agreement between Owner and Contractor (“*Installation Agreement*”) dated _____ day of _____, 2010 for the installation of those certain solar panels necessary for the "*Project*";

WHEREAS, US Bank agreed to issue certain Letters of Credit (collectively, the “*US Bank Letters of Credit*”) for the account of the Owner upon the terms and conditions set forth in the Letter of Credit Reimbursement Agreement, dated as of June 1, 2009, between the Owner and US Bank (the “*US Bank Reimbursement Agreement*”);

WHEREAS, Deutsche Bank agreed to issue certain Letters of Credit (collectively, the “*Deutsche Bank Letters of Credit*”) for the account of the Owner upon the terms and conditions set forth in the Letter of Credit Reimbursement Agreement, dated as of September 1, 2009, between the Owner and Deutsche Bank (the “*Deutsche Bank Reimbursement Agreement*”);

WHEREAS, US Bank and Deutsche Bank shall collectively be referred to herein as “*Creditors*”, the US Bank Letters of Credit and the Deutsche Bank Letters of Credit shall hereinafter be collectively referred to as the “*Letters of Credit*”, and the US Bank Reimbursement Agreement and the Deutsche Bank Reimbursement Agreement shall collectively be referred to herein as the “*Reimbursement Agreement*”. Any capitalized terms used herein, and not otherwise defined, shall have the respective meanings assigned thereto in the Reimbursement Agreement;

WHEREAS, as a condition to the issuance of Letters of Credit and the release of certain escrowed finds, the Creditors have required that the Owner assign all of its right, title and interest in the Installation Agreement, Contract Documents, and other items to the Creditors.

NOW, THEREFORE, in accordance with the requirements of the Reimbursement Agreement and for other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the Owner does hereby transfer, set over, warrant, grant a security interest in and collectively assign unto the Creditors all right, title and interest of the Owner in, to and under (a) the Installation Agreement, a true and complete copy of which is being delivered to the Creditors contemporaneously herewith, together with all permitted amendments, supplements and modifications thereto, providing for the construction of the Project and (b) the Permits (as hereinafter defined and collectively, the items in (a) and (b) are referred to as the "*Contract Documents*"). This Assignment is made to secure the payment by the Owner of the indebtedness evidenced and secured by the Reimbursement Agreement and to secure the performance by the Owner of each and every obligation, covenant and agreement of the Owner contained herein and in the Reimbursement Agreement.

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The Owner hereby further agrees as follows:

1. Exercise of Creditors' Remedies. Any breach of this Assignment that remains uncured for a period of Thirty (30) days after its occurrence (provided that such Thirty (30) day period shall be extended by the Creditors to no more than Ninety (90) days if the Creditors determine that such breach is of a nature that cannot be cured within Thirty (30) days and corrective action is initiated by the Owner within such Thirty (30) day period and diligently pursued until the breach is cured) and any Event of Default under the Reimbursement Agreement shall constitute an "Event of Default" hereunder; and upon the occurrence of such Event of Default, the Creditors, subject to **Section 7** hereof, may exercise any and all of their rights and remedies under the Reimbursement Agreement and this Assignment. Immediately upon notice to the Owner and to Contractor that the Creditors are exercising their rights hereunder pursuant to the preceding sentence, the Creditors shall succeed to all of the Owner's right, title and interest in, to and under the Contract Documents; provided, however, that the Creditors do not assume any of the Owner's obligations or duties under or in connection with the Contract Documents, except as may be expressly provided in this Assignment or in the Contractor's Agreement and Consent to Assignment.

2. Assignment of Permits. This Assignment includes all permits, licenses, approvals, certificates and consents issued by any governmental or private authority or agency relating to the Project naming the Owner or Contractor, in which either of them has an interest, copies of which have been furnished to the Creditors (herein, together with any and all other such permits, licenses, approvals, certificates and consents, being collectively referred to as the "Permits"); and to the extent otherwise allowed by applicable law, the Creditors shall have the right to use the Permits in connection with the construction and use of the Project.

3. Other Agreements of the Owner. The Owner has, with the consent of Contractor, full power and authority to make this Assignment. The Installation Agreement is in full force and effect, and the Owner shall make the required payments and shall otherwise perform its obligations thereunder. The Owner agrees to make, execute and deliver all such further or additional instruments as may be necessary to satisfy the intent and purpose hereof or to perfect the assignment made hereby.

4. Power of Attorney. The Owner irrevocably appoints the Creditors as its attorney-in-fact to exercise, after the occurrence of any Event of Default under this Assignment, any or all of the Owner's rights in, to and under the Contract Documents, to give appropriate receipts, releases and satisfactions on behalf of the Owner in connection with Contractor's performance under the Contract Documents, and to do any or all other acts, in the Owner's name, in the Creditors' own names, that the Owner could do under the Contract Documents with the same force and effect as if done by the Owner.

5. Indemnification. The Owner hereby agrees to indemnify and hold the Creditors harmless from and against any claim, loss, cost (including reasonable attorneys' fees), expense, damage, right, demand or cause of action of any nature whatsoever in connection with, or arising from (i) the Contract Documents, (ii) the services provided by the Contractor pursuant to the Contract Documents, and (iii) this Assignment that accrues or is incurred prior to the Creditors' succession to the Owner's right, title and interest in, to and under the Contract Documents pursuant to **Section 1** hereof; provided, however, that the Owner shall not be required to indemnify the Creditors against any claim, loss, cost, expense, damage, right, demand or cause of action directly caused by their respective gross negligence or willful misconduct.

6. No Third-Party Rights. This Assignment shall under no circumstances be construed to make the Creditors liable or responsible to any materialman, contractor or other person supplying labor,

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materials, equipment or services to, or upon, the Project, including, but not limited to, those supplied for utilization in the construction of the Project, or for debts or claims accruing against the Owner by any such person. It is agreed that there is no contractual or other relationship, express or implied, between the Creditors and any materialman, contractor or other person supplying labor, materials or services either to the Project or in connection with the acquisition, construction, installation or equipping of the Project.

7. Notices. Any and all notices, elections, demands, requests and responses thereto given with regard to this Assignment shall be given in the manner provided in, and shall be controlled by, the Reimbursement Agreement.

8. Miscellaneous. This Assignment shall inure to the benefit of and be binding upon the Creditors and the Owner and their respective successors and assigns. This Assignment shall be governed by, construed in accordance with the laws of the State of Minnesota without giving effect to conflict of law provisions.

IN WITNESS WHEREOF, the Owner has executed this Assignment as of the day and year first above written.

CONTRACTOR

DISTRICT ENERGY ST. PAUL, INC.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

SECTION 007.2
CONTRACTOR'S AGREEMENT
AND
CONSENT TO ASSIGNMENT
(SAMPLE)

FOR VALUE RECEIVED, the undersigned Contractor hereby acknowledges and consents to the foregoing Collateral Assignment of Agreement between Owner and Contractor (the "**Assignment**") and enters into this Contractor's Agreement and Consent to Assignment (this "**Agreement**"). All terms defined in the Assignment are used herein with the same meanings. The Contractor hereby further agrees as follows in favor of the Creditors:

1. The Contractor hereby consents to the foregoing Assignment and agrees to the terms thereof, notwithstanding any contrary terms in the Installation Agreement. The Contractor agrees that, in the event the Creditors deliver written notice to the Contractor that they are exercising their rights under the Assignment (the "Exercise Notice"), the Contractor shall perform for such Creditors all or such portion of the Contractor's obligations and undertakings under the Installation Agreement as the Creditors may direct, notwithstanding any counterclaim, right of set-off, defense or claim the Contractor may have against the Owner or any contrary instruction, direction or request from the Owner; provided that the Contractor receives the compensation for such performance as provided in the Installation Agreement. It is expressly understood that the Creditors neither assume nor have any obligation to the Contractor to exercise the Creditors' rights under the Assignment or to declare an Event of Default under the Reimbursement Agreement, but that the option to exercise such rights or declare a default rests in the sole and absolute discretion of the Creditors as provided therein. In the event the Creditors exercises their rights under the Assignment, (i) the Contractor agrees that the Creditors' obligations or liabilities under the Installation Agreement or the Assignment shall be limited to the amounts available to fund construction under the Grant, and (ii) the Creditors agree (a) that the Contractor shall have no obligation to continue construction under the Installation Agreement unless it receives compensation for its services performed after receipt of the Exercise Notice as provided in the Installation Agreement, and (b) if at the time of the Exercise Notice, or any time thereafter, there are no moneys available to fund construction under the Grant, the Contractor shall have no obligation to continue construction under the Installation Agreement until either sufficient funds are deposited with the Trustee or the Contractor receives reasonably adequate assurance that it will be paid for such additional construction.

2. The Contractor represents that the Contractor has no claim, counterclaim, right of set-off, defense or like right against the Owner or the Creditors and that the Contractor has been paid all amounts due for its work as of this date. The Contractor agrees to make no changes in or amendments to the Installation Agreement, except as permitted under the Reimbursement Documents, without the prior written consent of the Creditors.

3. In addition to the foregoing, the Contractor agrees not to terminate, or to permit the termination of, the Installation Agreement and agrees not to cease to perform its work thereunder for any reason (including, but not limited to, the Owner's failure to make any payments to the Contractor) without giving written notice to the Creditors of such intention to terminate or cease performing its work at least ten (10) days prior thereto, so that the Creditors may exercise their rights as described in the Assignment and this Agreement.

4. The Contractor agrees to furnish to the Owner and the Creditors such

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information, verification, lien waivers, affidavits and other items and documentation as are required under the Contract Documents for disbursement of funds under the Installation Agreement.

5. The Contractor hereby agrees that he/she/it shall construct the Project in strict accordance with the Plans and Specifications identified in the Installation Agreement. In the event the Creditors exercise their rights under the Assignment, Contractor shall not undertake or perform any extra or additional work or furnish any extra or additional materials by change order, direction of Engineer or the Owner or independently, nor in such instance shall the Contractor in any other manner deviate from the construction of the Project as required pursuant to the Specifications and the Installation Agreement without the prior written consent of the Creditors.

6. In the event the Creditors exercise their rights under the Assignment, the Contractor agrees to extend to the Creditors any rights of indemnity which the Owner may have against the Contractor under the Installation Agreement.

7. This Agreement shall under no circumstances be construed to make the Creditors liable or responsible to any materialman, contractor or other person supplying labor, materials or equipment to, or upon, the Project, including, but not limited to, those supplied for utilization in the construction of the Project, or for debts or claims accruing against the Owner or the Contractor by any such person. It is agreed that there is no contractual or other relationship, express or implied, between the Creditors and any materialman, contractor or other person supplying labor, materials or services either to the Project or in connection with the construction, installation or equipping of the Project.

8. Upon the occurrence of any breach of the Installation Agreement by the Owner or any receipt by the Contractor of notice from any person of any claimed breach by the Owner of the Installation Agreement or any subcontract or agreement for supplying material or equipment, the Contractor shall notify the Creditors in writing of each such breach, by certified United States mail, return receipt requested, postage prepaid, addressed as follows:

If to Deutsche Bank: Deutsche Bank AG New York Branch
60 Wall Street
New York, New York 10005
Attention: Municipal Structuring and Trading, to Patrick Marsh or
successor
Telephone No.: (212) 250-8257
Facsimile No.: (917) 338-4032

with copies to:

Deutsche Bank AG New York Branch
60 Wall Street
New York, New York 10005
Attention: Legal Department, to Kathleen Yohe, Esq. or successor
Telephone No.: (212) 250-5022
Facsimile No.: (212) 797-4566

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and:

Deutsche Bank AG New York Branch
60 Wall Street
New York, New York 10005
Attention: Credit Risk Management, to Kyle Ingram or successor
Telephone No.: (212) 250-8766
Facsimile No.: (646) 502-4414

If to US Bank: U.S. Bank National Association
Mail Code: EP-MN-S22C
101 East Fifth St.
Minneapolis, MN 55101
Attention: Mark Bagley
Telephone No.: (651) 466-8106

with copies to:

U.S. Bank National Association
800 Nicollet mall: BC-MN-H20G
Minneapolis, Minnesota 55402
Attn: Standby Letters of Credit

IN WITNESS WHEREOF, the Contractor has executed and delivered this Contractor's Agreement and Consent to Assignment as of this _____ day of _____ in the year 2010.

DISTRICT ENERGY ST. PAUL, INC:

CONTRACTOR:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

END OF SECTION

SECTION 008
APPLICABLE AGREEMENT FORM SUPPLEMENTS

PART 1 - GENERAL

1.01 Bonds/Certificates/Related Forms: The following documents and forms are applicable for the Installation:

- A. Certificate of Insurance Form: As submitted by the Insurer;
- B. Performance Payment Bond; and
- C. Bid Bond if Bid is over \$500,000.00.

PART 2 - EXECUTION AND AVAILABILITY

- A. Execution: Prepare and submit forms as specified under **Section 103**, Submittals, unless otherwise directed or specified.

END OF SECTION

SECTION 009
INSTALLATION AGREEMENT GENERAL CONDITIONS

ARTICLE 1. DEFINITIONS

- 1.01 Applicable Definitions:** Unless otherwise defined in the Solar Panel Bid or hereunder, wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:
- A. **Addenda** - Written or graphic instruments issued by Owner prior to the opening of Bids which clarify, correct or change the Contract Documents.
 - B. **Alternate Bid (or Alternate)** - An amount stated in the Bid to be added to or deducted from the amount of the Base Bid if the corresponding change in project scope or materials or methods of construction described in the Bidding Documents is accepted.
 - C. **Amendment** - A document executed by Owner and Engineer amending the Contract Documents, issued after bids have been received, and before the Installation Agreement has been executed. An amendment may increase or decrease the Bid Amount in establishing the Contract Price.
 - D. **Application for Payment** - The form, to be approved by Owner, which is to be used by Contractor in requesting progress payments, which is to include such supporting documentation as is required by the Contract Documents, and which is subject to the conditions set forth in **Article 11** hereinbelow.
 - E. **Base Bid** - The sum stated in the Bid for which the Bidder offers to perform the work described as the base, to which work may be added or deducted for sums stated in the Alternate Bids.
 - F. **Bid** - The offer or proposal of the Bidder submitted on the prescribed form setting forth the price(s) for furnishing the Installation.
 - G. **Bid Package** – Includes all documents and materials defined as Bidding Documents, all documents and materials defined as Preliminary Documents, the Bid, and all Drawings, documents, references, samples, and any and all materials submitted by the Bidder with the Bid.
 - H. **Bidder** – Any party submitting a Bid in response to the Invitation to Bid, including the Contractor as identified in the Installation Agreement.
 - I. **Bidding Documents** - Includes the Invitation to Bid, Instructions to Bidders, the Bid form, any other sample bidding and corresponding forms, and the proposed Installation Agreement (Sample), including any Addenda issued prior to receipt of Bids.
 - J. **Bonds** – Bid Bonds and Performance Payment Bonds identified herein, including any other instruments of security required hereunder from time to time by Owner.
 - K. **Bulletin** - A document issued after the Installation Agreement has been executed, which requests a cost quotation for proposed changes to the Contract Documents, and which, if accepted by the Owner, is followed by the issuance of a Change Order.

- L. **Change Order** - A written order to Contractor signed by Owner authorizing an addition, deletion or revision in the Installation, or an adjustment in the Contract Price or the Contract Time, issued after the effective date of the Installation Agreement.
- M. **Contract Documents** – All documents and materials identified in **Section 007, Contract Documents**, and all Addenda, Modifications, Change Orders issued thereunder and pursuant hereto.
- N. **Contract Price or Contract Sum** - The moneys payable by Owner to Contractor under the Contract Documents as stated in the Installation Agreement.
- O. **Contract Time** - The total number of days or the dates stated in the Installation Agreement for furnishing the Installation.
- P. **Contractor** - The person, firm or corporation with whom Owner has entered into the Installation Agreement.
- Q. **Day** - Unless otherwise indicated, a calendar day of twenty-four hours measured from midnight to the next midnight.
- R. **Defective** - An adjective which when modifying the word Installation, refers to any portion of the Installation which is unsatisfactory, faulty or deficient, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents.
- S. **Drawings** - The drawings which show the character and scope of the Installation.
- T. **Effective Date of the Installation Agreement** - The date indicated in the Installation Agreement on which it becomes effective, or if no such date is indicated, the date on which the Installation Agreement is signed and delivered by the last of the two parties to sign and deliver.
- U. **Engineer** - Toltz, King, Duvall, Anderson and Associates (“TKDA”)
- V. **Engineer’s Order** - A written order issued by the Engineer which clarifies or interprets the Contract Documents or orders minor changes or alternations in the Installation, but which does not involve a change in the Contract Price or Contract Time.
- W. **Final Payment** – The final payment made by Owner to Contractor in response to Contractor’s final Application for Payment.
- X. **Grant** – That certain grant issued by the U.S. Department of Energy under ARRA, as identified as grant # DE-EE0002076.
- Y. **Installation** - Services to be furnished by Contractor at the Project Site as required by the Contract Documents.
- Z. **Means and/or Methods** – Those means and/or methods of installation of the Panels as directed and described by Supplier which are exclusive to the Supplier and not otherwise generally accepted means and methods of installation of solar panels within the solar panel installation industry.

- AA. **Modification** - (a) A written amendment to the Contract Documents signed by both parties hereto, (b) a written Change Order, or (c) a written Engineer's Order. A Modification may be in the form of an Amendment after receipt of Bids but prior to the effective date of the Installation Agreement, but only by Change Order or Engineer's Order after the effective date of the Installation Agreement.
- BB. **Notice of Award** - The written notice by Owner to the apparent Successful Bidder stating that upon compliance by the apparent Successful Bidder with the conditions precedent enumerated therein, within the time specified, Owner will retain the Contractor to perform the Installation through execution and delivery of the Installation Agreement.
- CC. **Owner** - District Energy St. Paul, Inc., a Minnesota non-profit corporation, under express permission and the written authority of the City of Saint Paul and the Saint Paul RiverCentre Visitors and Convention Authority.
- DD. **Panels** - The solar panels and accompanying materials to be installed under this Installation Agreement.
- EE. **Point of Delivery** - The place designated in the Installation Agreement where the Panels are to be delivered to Owner and Contractor.
- FF. **Preliminary Documents** - The Bidding Documents and Specification Documents, and any and all materials associated therewith, which Preliminary Documents were prepared and issued prior to the Notice of Award.
- GG. **Progress Payments** – Those payments made by Owner to Contractor in accordance with the terms of the Installation Agreement and in response to an Application for Payment submitted by Contractor.
- HH. **Progress Schedule** – That certain schedule prepared by the Engineer in consultation with the Owner for the Installation, which Progress Schedule shall detail those benchmarks required to be met by the Contractor for the Contractor to apply for any Progress Payments or for the Final Payment.
- II. **Project** - The use of an ARRA Grant for the purposes of obtaining and installing a rooftop solar thermal system on the RiverCentre.
- JJ. **Project Manual** - The book or books containing the Solar Panel Bid and all accompanying documents and materials therein described.
- KK. **Shop Drawings** - All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for Contractor to illustrate some portion of the Installation.
- LL. **Site or Building** – The building commonly known as the Saint Paul RiverCentre, in the City of Saint Paul, County of Ramsey and State of Minnesota.
- MM. **Specifications** - That material consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Installation, and all applicable administrative requirements.
- NN. **Specification Documents** – All materials and documentation pertaining to the Specifications as issued and required by the Engineer for the Project.

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- OO. **Subbidder** - One who submits a Bid to a Bidder for materials or labor for a portion of the Project.
- PP. **Successful Bidder** – One who submits a Bid, which Bid is accepted by Owner, and who becomes a Contractor by virtue of his/her/its execution of a Installation Agreement.
- QQ. **Supplier** - The person, firm or corporation from whom Owner has obtained the Panels.
- RR. **Unit Price** - Any amount stated in the Bid as a price per unit of measurement for any of the materials or services to be delivered under the Contract Documents.

ARTICLE 2. PRELIMINARY MATTERS

- 2.01 Delivery of Bonds:** When Contractor delivers the executed Installation Agreements to Owner, Contractor shall also deliver to Owner such Bonds required by the Contract Documents in accordance with **Article 4**.
- 2.02 Commencement of Contract Time:** The Contract Time will commence to run on the effective date of the Installation Agreement or the date stated in the Installation Agreement.
- 2.03 Schedules:** Contractor shall, within Ten (10) days after the effective date of the Installation Agreement, submit preliminary schedules of progress, Shop Drawing submissions, and deliveries as required by the Contract Documents and in conformity with the Progress Schedule. No Progress Schedule which is required and has been accepted shall be changed by Contractor without approval of Engineer and Owner.
- A. Preconstruction Conference: Within Twenty (20) days after the commencement of the Installation Agreement, but before any Installation at the Site is started, a conference attended by Contractor, Engineer, Owner, and others as appropriate will be held to establish a working understanding among the parties as to the Installation and to discuss the Progress Schedules, procedures for handling Drawings and other submittals, processing Applications for Payment, and maintaining required records.
- B. Initial Acceptance of Schedules: Unless otherwise provided in the Installation Agreement, at least Ten (10) days before submission of the first Application for Payment a conference attended by Contractor, Engineer, Owner, and others as appropriate will be held to review for acceptability to Engineer of the schedules submitted by Contractor under the Installation and as required under the Progress Schedule. Upon receipt of any objection to his/her/its schedule and progress, Contractor shall have an additional Ten (10) days to make corrections and adjustments and to complete and resubmit the schedules. No Progress Payment shall be made to Contractor until acceptable schedules are submitted to and accepted by Engineer.
- (i) The Contractor's schedule will be acceptable to Engineer if it provides for an orderly progression of the Installation to completion within any specified Contract Time and according to the Progress Schedule. Such acceptance will not impose on Engineer responsibility for the Contractor's schedule, for sequencing, scheduling, or progress of the Installation, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

- (ii) Contractor's schedule of Drawings and any sample submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals in accordance with the Progress Schedule.
- (iii) Contractor's schedule of values will be acceptable to Engineer as to form and substance if it identifies in detail the components of, and provides a reasonable allocation of, the Contract Price to component parts of the Installation.
- (iv) Contractor is responsible for maintaining the Building's normal operations. Notification is required 72 hours in advance of any impact to Building entrances or exits. Notification is required 72 hours in advance of any service disruption for hot water tie-ins. Contractor will be provided a schedule of Building events and is expected to coordinate through Owner with the RCVA to avoid or minimize impacts.

2.04 Record Documents: Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Modifications, Change Orders, and any written interpretations and clarifications in good order and annotated to show changes made and interpretations rendered during construction ("Record Documents"). These Record Documents together with all approved Drawings will be available to Engineer for reference. Upon completion of the Installation, these Record Documents and Drawings shall be delivered to Engineer for Owner.

ARTICLE 3. INTENT OF CONTRACT DOCUMENTS

3.01 Contract Documents: The "Contract Documents" comprise the agreement between Owner and Contractor concerning the Installation, and consist of all documents and other materials made part of the Project. The Contract Documents may be altered only by a Modification, and all of which Modifications, if any, shall become part of the Contract Documents and the Project.

- A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. If, during performance of the Installation Agreement, Contractor finds a conflict, error or discrepancy in the Contract Documents, Contractor shall so report to Owner in writing at once and shall obtain a written interpretation or clarification from Owner before proceeding further; however Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof or should reasonably have known thereof.
- B. All materials, equipment and services that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not specifically required. When words which have a well-known technical or trade meaning are used to describe materials, equipment or services, such words will be interpreted in accordance with such meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or the code of any governmental authority, whether such reference be specific or by implication, shall mean the manual or code in effect at the time of opening of Bids (or, on the effective date of the Installation Agreement if there were no Bids), except as may be otherwise specifically stated. However, no provisions of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall change the duties and responsibilities of Owner, Contractor or Engineer, or any of their agents, consultants or employees from those set forth in the Contract Documents.

Clarifications and interpretations of the Contract Documents will be issued by Engineer as provided in **Article 9**.

ARTICLE 4. BONDS AND INSURANCE

4.01 Performance and Other Bonds:

- A. Performance Payment Bond: The security issued by Contractor on behalf of and for the benefit of the Owner as set forth Form 010 is attached hereto and made a part hereof.
- B. Bid Bond: The Bid Security of the Successful Bidder will be retained until the Successful Bidder has executed the Installation Agreement whereupon the Bid Security will be returned.

4.02 Insurance: The Contractor shall be required to carry insurance of a kind and in the amounts shown below for the term of this Installation Agreement. Contractor shall provide Owner with an ACORD certificate of liability insurance listing the Owner, the RCVA, the City and the SPAC, together with their respective officials, employees, agents and representatives as “Additional Insureds”, and evidencing the availability and validity of such insurance policies and coverage (“Certificate of Insurance”), to the Owner with his/her/its executed copy of the Installation Agreement.

- A. Property Insurance: Unless otherwise provided in the Contract Documents, Contractor shall obtain insurance sufficient to protect the Panels against the risk of loss or damage during the Installation, including “all risk” insurance for physical loss and damage including theft, vandalism and malicious mischief, collapse, water damage and such other perils as Contractor in consultation with Owner deems appropriate to protect the Panels.
- B. Contractors Liability Insurance: The Contractor shall provide liability insurance for Bodily and Personal Injury in an aggregate amount of \$2,000,000 unless a larger amount is required by any applicable law. Liability insurance shall remain in effect for a period of 2 years after Installation of the Panels.
- C. Approval: Approval of the insurance by the Owner shall not relieve or decrease the liability of the Contractor. The Owner does not in any way represent that the insurance or the types and limits of insurance specified in this article are sufficient or adequate to protect the Contractor’s interests or liabilities, but are minimums.

ARTICLE 5. REMOVAL OF PANELS UPON ACCEPTANCE

5.01 Inspection: Owner, accompanied by Engineer, will inspect the Panels upon delivery for the sole purpose of identifying the Panels and general verification of quantities in order to provide a basis for a Progress Payment to Supplier.

5.02 General: Upon acceptance of all or a portion of the Panels by Owner and Engineer, Contractor, under the supervision of the Supplier and Owner, shall remove those Panels accepted by Owner and Engineer from the deliverer and shall commence the Installation.

ARTICLE 6. INTELLECTUAL PROPERTY

6.01 Patent Rights: All material created for the Project shall be deemed “work-for-hire” and all rights thereto shall vest in Owner. Contractor hereby agrees that pursuant to the Grant, the

federal government has certain statutory rights in any invention that is conceived or first actually reduced to practice under a Department of Energy (“DOE”) award. 42 U.S.C. 5908 provides that title to such inventions vests in the United States, except where 35 U.S.C. 202 provides otherwise for nonprofit organizations or small business firms. As Owner is a nonprofit, 501(c)(3) organization, Contractor hereby agrees to transfer to Owner any and all patent rights in materials of Contractor created specifically to fulfill the obligations of Contractor under the Installation Agreement. No claim is made by Owner in any or all material used as part of the Installation which has been patented by Contractor and which has not been modified for the Installation.

- 6.02 Rights in Technical Data:** All technical data used in the Project shall be deemed the property of Owner, and Contractor hereby agrees that all rights in such technical data automatically vest in Owner. Contractor also agrees that the government has unlimited rights in technical data created under a DOE award, which includes any technical data created specifically to fulfill the obligations of Contractor under the Installation Agreement and under the Grant. Contractor further agrees that it shall execute any written request by the DOE or by Owner to license the use of such technical data to the DOE or the Owner for the Owner’s or DOE’s own needs or to insure the commercialization of technology developed under the Grant.

ARTICLE 7. CONTRACTOR’S RESPONSIBILITIES

- 7.01 Supervision and Coordination:** Contractor shall supervise, inspect, and direct the Installation competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Installation in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, but Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. Contractor shall be responsible to see that the completed Installation complies accurately with the Contract Documents.

- A. Contact Person: At all times during the progress of the Installation, Contractor shall assign a competent resident superintendent thereto who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances. The superintendent shall be Contractor’s representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or received from the superintendent shall be binding on Contractor.

- 7.02 Labor; Working Hours:** Contractor shall provide competent, suitable qualified personnel to survey, lay out, and construct the Installation as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.

- A. Hours: Except as otherwise required for the safety or protection of persons, the Installation, or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, the Installation at the Site shall be performed during working hours established under the control of the Contractor in consultation with Owner and Engineer and in keeping with the schedule required under the Installation Agreement.

- 7.03 Concerning Subcontractors, Suppliers, and Others:** Contractor shall supply Owner with a complete list of all proposed subcontractors, suppliers, and other persons or organizations who will furnish labor, material or equipment to the Installation. Owner retains the right to reject any or all of subcontractors, suppliers, and others detailed on the above list, and in the event Owner

does not approve of any or all of the subcontractors, suppliers, or others, the Contractor must make suitable replacement within Seven (7) days of notice of such disapproval.

- A. Owner Approval Required: Contractor shall not employ any subcontractor, supplier, or other individual or entity (including those acceptable to Owner), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any subcontractor, supplier, or other individual or entity to furnish or perform any of the Installation against whom Contractor has reasonable objection.
- B. Acceptance of Subcontractor: Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any subcontractor, supplier, or other individual or entity identified by Contractor may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected subcontractor, supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost (if any) occasioned by such replacement, and an appropriate Change Order will be issued or Modification signed. No acceptance by Owner of any such subcontractor, supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Installation.
- C. Acts or Omissions: Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the subcontractors, suppliers, and other individuals or entities performing or furnishing any of the Installation just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such subcontractor, supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such subcontractor, supplier or other individual or entity, nor shall it create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such subcontractor, supplier, or other individual or entity except as may otherwise be required by law or by regulation.
- D. Schedule: Contractor shall be solely responsible for scheduling and coordinating the Installation with all subcontractors, suppliers, and other individuals or entities performing or furnishing any of the Installation under a direct or indirect contract with Contractor. In no instance shall such scheduling or coordinating interfere with or compromise the Progress Schedule.
 - (i) Contractor may submit to Engineer for acceptance proposed adjustments in the Progress Schedule that will not materially alter the Progress Schedule and will not result in changing the Contract Time. Such adjustments will conform generally to the Progress Schedule then in effect and additionally will comply with any provisions of the Installation Agreement applicable thereto. Any such submittal may be accepted by Engineer in consultation with Owner and at its sole discretion.
 - (ii) Proposed adjustments in the Progress Schedule that will change the Contract Time shall be submitted in accordance with the requirements of **Article 9**. Such adjustments may only be made by a Change Order or Modification in accordance with the terms described herein.

- E. Subcontractor Contracts: All Installation performed for Contractor by a subcontractor or supplier will be pursuant to an appropriate agreement between Contractor and the subcontractor or supplier which specifically binds the subcontractor or supplier to the applicable terms and conditions of the Installation Agreement and to the benefit of Owner and Engineer. Whenever any such agreement is with a subcontractor or supplier, the agreement between the Contractor and the subcontractor or supplier will contain provisions whereby the subcontractor or supplier waives all rights against the Site, Owner and the Engineer, and all other individuals or entities, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by any insurable loss applicable to the Installation. If the insurers on any such policies require separate waiver forms to be signed by any such subcontractor or supplier, Contractor will obtain the same.
- F. Communication: Contractor shall require all subcontractors, suppliers, and such other individuals or entities performing or furnishing any of the Installation to communicate with Engineer through Contractor.

7.04 Concerning the RCVA: Contractor agrees to communicate all matters pertaining to or otherwise concerning the City, the RCVA and/or the Site exclusively and directly to the Owner and the Engineer, and shall not otherwise communicate with the City or the RCVA pertaining to the Installation unless otherwise absolutely necessary and only in the case of an emergency, and the entirety of any such emergency communication by Contractor to the City or the RCVA shall be immediately made known to the Owner and Engineer.

- A. RCVA Negligence: Contractor agrees to hold harmless and fully indemnify Owner and Engineer from any claim of liability, loss or damages resulting from the negligence of the City or of the RCVA while performing the Installation or at the Site.
- B. RCVA Agreements: Contractor further agrees that in any instance wherein he/she/it enters into any agreement with the City or the RCVA, regardless of whether any such agreement pertains in any way to the Site or to the Installation, he/she/it shall hold harmless and fully indemnify Owner and Engineer from any claim of loss, liability or damages resulting from any agreement by and between the RCVA or the City with Contractor and/or any of his/her/its subcontractors, and that the sole recourse of Contractor under any such agreement shall be limited exclusively to the City and/or the RCVA, as the case may be, and in no instance shall any such recourse include any claim on or against the Grant.

7.05 Material, Equipment and Workmanship: Unless otherwise specified, the materials and equipment incorporated into the Installation will be new and of good quality. All workmanship will be of good quality and free from defects. Contractor shall, if required, furnish satisfactory evidence as to the source, kind and quality of the materials and equipment incorporated into the Installation, and the Installation shall be performed by competent and qualified personnel.

- A. Responsibilities: Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Installation.

- B. Delivery of Warranties: All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable manufacturer, except as otherwise may be provided in the Contract Documents.

7.06 Contractor's Representations: Contractor warrants and represents that he/she/it (a) has reviewed the Contract Documents and has given Owner written notice of all conflicts, errors or discrepancies discovered in the Contract Documents and the written resolution thereof by Owner is acceptable to Contractor; (b) has reviewed all conditions and federal, state and local laws, ordinances, rules and regulations, including but not limited to the Grant, that in any manner may affect the Installation and other services in connection therewith; (c) does not require additional information from Owner or Engineer to enable Contractor to perform the Installation, at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, but subject to Contractor's right to request interpretations and clarifications; and (d) Contractor has correlated the results of all such examinations, investigations, and resolutions with the terms and conditions of the Contract Documents.

- A. Permits: Unless otherwise provided in the Installation Agreement, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Installation which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Installation Agreement.

- B. Laws and Regulations: Contractor shall give all notices and comply with all laws and regulations applicable to the Installation, including ARRA. Except where otherwise expressly required by applicable laws and regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any laws or regulations.

- (i) If Contractor performs any of the Installation knowing or having reason to know that it is contrary to applicable laws or regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Installation; however, it shall not be Contractor's primary responsibility to make certain that the Specifications are in accordance with all applicable laws and regulations, but this shall not relieve Contractor of Contractor's liabilities and obligations hereunder.

- (ii) Any changes in the applicable law or regulations not known at the time of opening of Bids (or, on the Effective Date of the Installation Agreement if there were no Bids) having an effect on the cost or time of performance of the Installation may be the subject of an adjustment in Contract Price or Contract Time. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in **Paragraph 9.03**.

- C. Contractor's General Warranty and Guarantee:

- (i) Contractor warrants and guarantees to Owner, City and RCVA that the Installation will be in accordance with the Installation Agreement and will not be defective. Contractor's warranty and guarantee hereunder excludes defects or damage caused by normal wear and tear under normal usage, or abuse, modification, or improper maintenance or operation by persons other than Contractor, subcontractors, suppliers, or any other individual or entity for whom Contractor is responsible.
- (ii) Contractor's obligation to perform and complete the Installation in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Installation that is not in accordance with the Installation Agreement or a release of Contractor's obligation to perform the Installation in accordance with the Contract Documents:
 - (1) observations by Engineer;
 - (2) recommendation by Engineer or payment by Owner of any progress or final payment;
 - (3) the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 - (4) use of the Installation or any part thereof by Owner;
 - (5) any acceptance by Owner or any failure to do so;
 - (6) any review and approval of a Shop Drawing or Submittal or the issuance of a notice of acceptability by Engineer;
 - (7) any inspection, test, or approval by others; or
 - (8) any correction of defective Installation by Owner.

D. Manufacturer's Warranties: The Contractor's warranties shall not be affected, diminished, or restricted by the limitations, restrictions, or conditions of the Supplier, or any other manufacturer, supplier or installer's warranty, including the expiration of any Uniform Commercial Code statute of limitations. Inability or refusal of a subcontractor, supplier or installer responsible for defective Installation, to correct or warrant such Installation shall not relieve Contractor from performing under the warranties set forth in the Installation Agreement.

E. Warranties Not Limitations: These warranties shall be in addition to and not in limitation of the obligations set forth herein or of other warranties, causes of action, rights or remedies required, implied, or allowed by law, by the Installation Agreement, or set forth in any manufacturer's warranty for products, materials, equipment, or systems. The Contractor shall defend, indemnify, and hold the Owner, the RCVA, the City and the SPAC, together with their respective officials, employees, agents and representatives harmless from and against all claims, losses, damages and expenses (including attorneys' fees) arising in any way, including, but not limited to, out of breach of any warranty, and shall pay to the Owner, the RCVA, the City and/or the SPAC, as the case may be, all such losses, damages and expenses (including attorneys' fees) as may be incurred by Owner, City, RCVA, or SPAC as a result of such breach.

7.07 Quality Standards: Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular manufacturer, fabricator, supplier or distributor, the specification is intended to establish the type, function and quality required. Unless the name is followed by words such as “or equal” or “approved equal” no other products shall be used.

- A. Means and/or Methods: If any Means and Methods of Installation are specified by the Supplier or the Contract Documents, Contractor shall review the same. Contractor shall advise Owner in writing: (1) if any specified Means and Methods deviate from good construction practice; (2) if following any specified Means or Methods will affect any warranties; and/or (3) of any objections Contractor may have to any specified Installation procedure.
- (i) Contractor specifically agrees that all warranties of Supplier in the Panels are dependant on performing the Installation following the Means and Methods set forth by the Supplier, and shall ensure that he/she/it follows any and all such Means and Methods unless expressly authorized in writing by the Owner to deviate therefrom.
- B. Labor, Materials, and Equipment: Contractor shall employ only competent persons for the Installation and shall not employ persons or procedures which may cause strikes, work stoppages, or any other disturbances by workers employed by Contractor, any subcontractor, Owner, or any other contractor. Whenever Owner notifies Contractor that, in Owner’s opinion, any person on the Installation is incompetent, unfaithful, disorderly, or otherwise unsatisfactory, or not employed in accordance with the provisions of the Installation Agreement, such person shall be discharged from the Installation and shall not again be employed on it, except with the written consent of Owner.
- C. Inadequate Effort: If, in the judgment of Owner, Contractor or its subcontractors are not employing sufficient labor, plant, equipment or other means to complete the Installation within the time specified, Owner may, upon written notice to Contractor, require Contractor or its subcontractors to employ such additional labor, plant, equipment, and other means as Owner deems necessary to enable the Installation to progress properly without additional cost to Owner.
- D. Site Clean-up: If Contractor fails to keep and maintain the Site in a clean and orderly fashion at any time or clean the Site upon completion of the Installation, Owner may do so without prior notice to Contractor and the cost thereof shall be charged to Contractor and may be deducted from progress payments or Final Payment.
- E. Deviations: If the Installation deviates from the requirements of the Contract Documents, Contractor shall be responsible for all resulting damages. A claim by Contractor that performing the Installation without deviation from what is required by the Contract Documents also would have caused or resulted in damages shall not be available to Contractor as a defense or a claim to reduce Contractor’s liability. This provision does not limit the other rights of Owner or Engineer or other obligations of Contractor.
- F. Additional Services from Engineer: When Engineer’s additional services are required because of defective Installation, neglect, failure, deficiencies, or default by Contractor, Contractor shall compensate Engineer therefor. The amount of such compensation shall include such other costs, damages, and liabilities incurred by Owner or Engineer, and

shall be the basis for adjusting the Contract Price by a Change Order, to so compensate Owner.

- G. Notwithstanding any provision to the contrary contained in this Installation Agreement, Contractor, prior to performing any correction, repair, or replacement of any defective Installation, shall provide written notification to Owner of said defective Installation, unless an emergency or hazard requires immediate performance of such correction, repair, or replacement, in which case said notice shall be provided as soon as possible, but no later than simultaneous with the commencement of such correction, repair, or replacement. Contractor hereby agrees that it shall be liable for any and all damages sustained by Owner for Contractor's failure to provide the aforesaid notice.

7.08 Substitution Procedures: Requests for product substitution will not be reviewed.

7.09 Patent Fees and Royalties: Contractor shall pay all license fees and royalties and assume all costs incident to the use in the Installation or the incorporation in the Installation of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the Installation and if to the actual knowledge of Owner or Engineer its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner and Engineer, and anyone directly or indirectly employed by either of them, to Contractor, and the failure to provide such disclosure shall result that Contractor shall be held harmless and fully indemnified by Owner and/or Engineer from and against all claims, damages, losses and expenses (including attorneys' fees), and shall defend all such claims in connection with any alleged infringement of such rights, arising out of any infringement of any such patent rights or copyrights incident to the use in the Installation or incorporation therein.

- A. Contractor agrees that if he/she/it has actual knowledge that a particular invention, design, process, product or device specified in the Contract Documents for use in the Installation is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Contractor, and anyone directly or indirectly employed by Contractor, to Owner, and the failure to provide such disclosure, or the use of any invention, design, process, product or device not specified in the Contract Documents, shall require that Contractor hold harmless and fully indemnify Owner and/or Engineer from and against all claims, damages, losses and expenses (including attorneys' fees), and shall defend all such claims in connection with any alleged infringement of such rights, arising out of any infringement of patent rights or copyrights incident to the use in the Installation or incorporation therein.

7.10 Taxes: Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the laws and regulations of the place of the Project which are applicable during the performance of the Installation. In light of the foregoing, Contractor should also take note that Owner is exempt from Minnesota State Sales Tax for purchases made under this Project. Reference is also made to MN Sales and Use Tax (July 2009 Revision), wherein it states, in part: "Solar energy systems. Solar energy systems are exempt. 'Solar energy system' means a set of devices whose primary purpose is to collect solar energy and convert and store it for useful purposes including heating and cooling buildings or other energy using processes, or to produce generated power by means of any combination of collecting, transferring, or converting solar-generated energy."

7.11 Access to the Installation in Process: Contractor shall provide Supplier, Engineer, Owner, and governmental agencies with jurisdictional interests, proper and safe access to Site during the Installation at such reasonable times as is necessary for the performance of their functions in connection with the Project and with the Contract Documents.

7.12 Physical Site: Contractor has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies which pertain to the subsurface or physical conditions at or contiguous to the Site or which otherwise may affect the cost, progress, performance or furnishing of the Installation as Contractor considers necessary for the performance or furnishing of the Installation at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.

A. Site Limits: Contractor agrees that it shall (i) not obstruct existing access and egress from adjacent areas of the construction Site which remain operational throughout the Installation; (ii) keep and maintain the Site as accessible at all times; (iii) limit activities to the Site and those designated staging areas; (iv) notify Owner if work activities require work outside the Site or staging areas; (v) keep and maintain open and constant communication with Owner's representative during all facets of the Installation; and (vi) coordinate its Installation with all work by others, including, but not limited to, Owner's staff, Engineer and its staff, Supplier and its staff, and any other authorized vendor.

B. Adjacent Property: Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by law, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume all responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Installation.

(i) Should any claim be made by any such owner or occupant because of the performance of the Installation, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

(ii) To the fullest extent permitted by laws, Contractor shall defend, indemnify and hold harmless Owner, RiverCentre, RCVA, City, SPAC, Engineer, and the officers, directors, partners, employees, agents, representatives and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, RiverCentre, RCVA, City, SPAC, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance during the Installation.

C. Removal of Debris During the Installation: During the Installation, Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable laws and regulations.

- D. Cleaning of Site Prior to Substantial Completion: Prior to substantial completion of the Installation, Contractor shall clean the Site and make it ready for utilization by Owner. At the completion of the Installation Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Installation Agreement.
- E. Loading Structures: Contractor shall not load or permit any part of the RiverCentre or any other structure made part of the Installation to be loaded in any manner that will endanger said structure, nor shall Contractor subject any part of the RiverCentre or adjacent property to stresses or pressures that will endanger it.
- F. Monitoring: Owner will monitor use of site and will allot site space for Contractor's use. Site space is extremely limited. Owner will have sole authority regarding use of site space. Contractor agrees that he/she/it and any and all subcontractors or persons under his/her/its control must obtain approval for any use of site space including trailer placement, storage and staging. Owner will also require access to areas of the Site for installation of Owner provided items and equipment, if any, and such work or equipment or deliveries required for the Site and hereby agrees that it shall coordinate any such access to the Site with Contractor.
- G. RiverCentre and City: Owner shall furnish the Site solely under the express authority of RiverCentre and the City. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site of which Owner is aware with which Contractor must comply in performing the Installation. Owner is not responsible for any encumbrance or restriction of which Owner is not expressly made aware by City or RiverCentre.

7.13 Differing Physical Conditions: If Contractor believes that any physical condition at or contiguous to the Site that is uncovered or revealed either: (i) is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely is materially inaccurate; or (ii) is of such a nature as to require a change in the Installation Agreement; or (iii) differs materially from that shown or indicated in the Contract Documents; or (iv) is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; then Contractor shall, promptly but in no case later than Three (3) days after becoming aware thereof and before further disturbing the physical conditions or performing any Installation in connection therewith (except in an emergency), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Installation in connection therewith (except as aforesaid) until receipt of written order to do so.

- A. Engineer's Review: After receipt of the required written notice, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.
- B. Possible Price and Times Adjustments: The Contract Price or the Contract Time, or both, may be equitably adjusted to the extent that the existence of such differing physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Installation.

- (i) If Owner and Contractor are unable to agree on the amount or extent, if any, of any adjustment in the Contract Price or Contract Time, or both, a Claim may be made therefor as provided in **Paragraph 9.03**. However, in no instance shall Owner be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
 - (ii) Contractor agrees that the ability of Owner to accommodate an increase in the Contract Price as a result of such differing condition is incumbent on Owner being able to obtain reimbursement from the City or from the RCVA, as the case may be, due to the differing condition, and the inability of Owner to obtain such reimbursement from the City or the RCVA, as the case may be, shall be a factor as to whether an increase in the Contract Price is justified.
- C. Contractor's Knowledge: Contractor shall not be entitled to an adjustment in the Contract Price or Contract Time if:
- (i) Contractor knew of the existence of such conditions at the time Contractor made final commitment to Owner in respect of Contract Price and Contract Time by the submission of a Bid or becoming bound under this Installation Agreement; or
 - (ii) the existence of such condition could reasonably have been discovered or revealed as result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by or for the Contractor prior to the submission by Contractor of the Bidding Documents or execution of the Installation Agreement; or
 - (iii) Contractor failed to give the written notice within the time allowed.

7.14 Reference Points: Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Installation. Contractor shall be responsible for laying out the Installation, shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of Owner and Engineer. Contractor shall report to Engineer whenever any reference point requires relocation because of necessary changes in locations due to conditions of the Installation.

7.15 Hazardous Environmental Condition at Site

- A. Reports and Drawings: Reference is made to any supplementary conditions for the identification of those reports and drawings relating to hazardous environmental conditions ("Hazardous Environmental Conditions") identified at the Site, if any, that have been utilized by the Engineer in the preparation of the Specification Documents.
- B. Responsibility: Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Specification Documents to be within the scope of the Installation. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, its subcontractors, suppliers, or anyone else for whom Contractor is responsible.

- C. Actions Required: If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Installation in connection with such condition and in any area affected thereby (except in an emergency); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any.
- D. Further Instructions: Contractor shall not be required to resume Installation in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered to Contractor written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Installation; or (ii) specifying any special conditions under which such Installation may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Time, or both, as a result of such Installation stoppage or such special conditions under which Installation is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in **Paragraph 9.03**.
- E. Objection: If after receipt of such written notice Contractor does not agree to resume such Installation based on a reasonable belief it is unsafe, or does not agree to resume the Installation under any special conditions, then Owner may order the portion of the Installation that is in the area affected by such condition to be deleted from the Installation. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price, or Contract Time as a result of deleting such portion of the Installation, then either party may make a Claim therefor as provided in **Paragraph 9.03**. Owner may have such deleted portion of the Installation performed by Owner's own employees or others at its sole discretion.
- G. Indemnity: To the fullest extent permitted by law, Contractor shall indemnify and hold harmless Owner, City, RCVA, SPAC and Engineer, and the officers, directors, partners, employees, agents, representatives, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this paragraph shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

7.16 Indemnification: To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless Owner, City, RCVA, SPAC, Engineer, or their respective officers, agents, servants, representatives, and employees, from and against any and all claims, demands, suits, proceedings, liabilities, judgments, awards, losses, damages, cost and expenses, including attorney's fees, on account of bodily injury, sickness, disease or death sustained by any person or persons or injury or damage to or destruction of any property, directly or indirectly arising out of Contractor's negligence or otherwise wrongful act or omission, including a breach in the performance of this Installation Agreement or arising out of his/her/its subcontractors' negligence or otherwise wrongful act or omission, including a breach in the performance of their portion of the Installation, whether or not due or claimed to be in whole or in part to the active, passive or

concurrent negligence or fault of Contractor, his/her/its officers, agents, servants or employees or any of his/her/its subcontractors, or any of their respective officers, agents, servants or employees, and whether or not such claims, demands, suits or proceedings are ultimately proven just, unjust, groundless, false or fraudulent; and Contractor shall and does hereby assume and agree to pay for the defense of all such claims, demands, suits, and proceedings, whether in a court of law or in arbitration; provided however, that Contractor shall not be required to indemnify Owner, City, RCVA, SPAC, Engineer, or their respective officers, agents, servants, representatives or employees, against any such damages occasioned by acts or omissions of Owner, City, RCVA, SPAC and/or Engineer, other than supervisory acts or omissions of Owner, Engineer or Supplier in the Installation.

A. Existing Structures: Contractor shall conduct its operations so as not to damage existing structures or work installed either by it or by others. In the event of any such damage resulting from its operations, Contractor shall repair and make good as new the damaged portions at his/her/its own expense and with the consent of the damaged party. In the event that consent is not given, Contractor shall continue to be liable for any damage which he/she/it has caused.

7.17 Complete Responsibility: Contractor shall have complete responsibility for the Installation and the protection thereof, and for preventing injuries to persons and damage to the Installation and property and utilities on or about the Site, until final completion and final acceptance thereof. Contractor shall in no way be relieved of his/her/its responsibility by any right of Owner, Engineer or Supplier to give permission or directions relating to any part of the Installation, by any such permission or directions given, or by failure of Owner, Engineer or Supplier to give such permission or directions, provided however, that such giving or failure to give is the primary cause of the injury or damage. Contractor shall bear all costs, expenses, losses and damages on account of the quantity or character of the Installation or the nature of the Building in or under or on which the Installation is conducted being different from that indicated or shown in the Contract Documents or from what was estimated or expected, or on account of the weather, elements, or other causes.

A. Sole Responsibility: Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Installation. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

- (i) all persons on the Site or who may be affected by the Installation, including without limitation inclusive and exclusive responsibility for observing, implementing, and enforcing all rules, regulations, interpretations, and guidelines of the Occupational Safety and Health Administration (OSHA);
- (ii) all the Installation and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
- (iii) other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and any above-ground or underground facilities not designated for removal, relocation, or replacement in the course of construction.

B. Compliance: Contractor shall comply with all applicable laws and regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such

safety and protection. Contractor shall notify owners of adjacent property and other utility owners when prosecution of the Installation may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, any subcontractor, supplier, or any other individual or entity directly or indirectly employed by any of them on behalf of Contractor to perform any of the Installation, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Supplier or to the acts or omissions of Owner or Engineer, or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or, indirectly, in whole or in part, to the fault or negligence of Contractor or any subcontractor, supplier, or other individual or entity directly or indirectly employed by any of them on behalf of Contractor). Contractor's duties and responsibilities for safety and for protection of the Installation shall continue until such time as all the Installation is completed and Engineer has issued a notice to Owner and Contractor that the Installation is acceptable.

- C. Site Specific Issues: Contractor is aware that part of the Installation involves installing solar panels and related piping on the roof of a building. Contractor shall be solely responsible for compliance with any and all Federal, State, and Municipal laws, rules, regulations, standards, and directives relating to Contractor's operations in this location and environment, and Contractor shall take all necessary steps to protect persons and property in and around this location and environment. Contractor shall defend, indemnify, and hold Owner and Engineer harmless from and against all loss, liability, damage, cost, fines, or expenses (including without limitation reasonable attorney's fees) arising out of or relating to Contractor's failure to comply with this subparagraph.
- D. Safety Representative: Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.
- E. Materials Safety Data: Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with any applicable laws or regulations.
- F. Emergencies: In emergencies affecting the safety or protection of persons or the Installation or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Installation or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Modification or Change Order will be issued.

ARTICLE 8. OWNER'S RESPONSIBILITIES

8.01 General: The Owner's responsibilities include the following:

- A. Data: Owner shall furnish the data required of Owner under the Contract Documents promptly and shall make payments to Contractor when due.

- B. Change Orders: In connection with Owner's rights to order changes in accordance with the Contract Documents, Owner will execute Change Orders.
- C. Communication: Owner shall communicate as necessary with all such governmental authorities as have jurisdictional interest in the Project, including but not limited to, the DOE, the City, and the RCVA; **provided, however**, that any such communication by Owner shall not relieve Contractor of his/her/its obligations to any and all such governmental authorities under the Contract Documents.

ARTICLE 9. ENGINEER'S AND OWNER'S STATUS

- 9.01 Owner's Representative:** Engineer will be Owner's representative with respect to the Specification Documents only. The Owner will inform the Contractor of the duties, responsibilities and limitations of authority of the Engineer when requested by the Contractor.
 - 9.02 Clarifications and Interpretations:** Engineer or Owner will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Specification Documents as may be necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If Contractor believes that a written clarification or interpretation justifies an increase in the Contract Price or Contract Time, Contractor may make a claim thereof as provided in **Article 11** or **Article 12**.
 - 9.03 Decisions on Disputes:** Owner will be the initial interpreter of the technical requirements contained in the Specification Documents and judge of the acceptability of the Installation. Claims, disputes and other matters relating to such acceptability or the interpretation of the technical requirements detailed in the Specification Documents pertaining to Contractor's performance and claims under **Articles 11 and 12** with respect to Contract Price or Contract Time ("Claims") shall be referred initially to Engineer in writing with a request for a formal decision in accordance with this paragraph, which Engineer will render in writing within Ten (10) working days. Written notice of each such claim, dispute or other matter shall be delivered by the claimant to Engineer and the other party to the Installation Agreement (Owner or Contractor) within Fifteen (15) days after the occurrence of the event giving rise thereto, and written supporting data will be submitted to Engineer and the other party within Forty-Five (45) days after such occurrence unless Engineer allows an additional period of time to ascertain more accurate data. In its capacity as interpreter and judge hereunder, Engineer will not show partiality to Owner or Contractor. The rendering of a decision by Engineer with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of Final Payment) shall be a condition precedent to any exercise by Owner or Contractor of such rights or remedies as either may otherwise have under the Contract Documents or at law with respect to any such claim or dispute relating to the technical requirements contained in the Specification Documents. In no circumstances shall Engineer have the authority to render a decision which would require Owner to pay Contractor any amount in excess of that portion of the Grant allocated to Contractor for the Project. Further, the parties hereto agree that nothing herein shall otherwise affect Owner's ability to cancel the Installation Agreement pursuant to **Paragraph 14.02**, which **Paragraph 14.02** shall also constitute the extent of any obligation of Owner to the Contractor upon such cancellation.
- A. Rejecting Defective Installation: Owner shall disapprove or reject any portion of the Installation which it concludes, at its discretion and upon the advice of Engineer, is defective.

- B. Limitation on Engineer's Responsibilities: Neither Engineer's authority to act under the Installation Agreement or elsewhere in the Contract Documents nor any decision made by Engineer in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of Engineer to Contractor or to any of Contractor's agents or employees or any other person furnishing materials or equipment for the Installation or furnishing services incidental thereto. Except as otherwise provided in this Installation Agreement, Engineer shall have no authority to supervise or direct any of Contractor's operations or activities.
- C. Owner's Authority: The Owner reserves all rights and authority to make all decisions related to claims and disputes between the parties pertaining to the Contractor's performance and interpretations of the Contract Documents which do not relate to the technical requirements contained in the Specifications.
- D. Contractor's Failure to Perform: Neither the Owner nor Engineer will be responsible for Contractor's failure to complete the Installation in accordance with the Contract Documents, or for any acts or omissions of Contractor or of any other persons involved in the Installation or performing other services in connection therewith. The ability of Contractor to request any Modification to the Contract Price or the Contract Time is dependent on the Contractor being then in compliance with any and all terms of this Installation Agreement. Any default by Contractor in his/her/its obligations hereunder shall render the ability to seek a Modification void until such time as the Contractor cures any and all such defaults.

ARTICLE 10. CHANGES

10.01 Owner Changes: Without invalidating the Agreement, Owner may, at any time or from time to time, order additions, deletions or revisions in the Installation. Changes will be authorized by Change Orders executed by the Owner. Upon receipt of a Change Order, Contractor shall proceed on the basis of the Change involved. If any Change Order causes an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, an equitable adjustment may be made as provided in **Article 11** or **Article 12** on the basis of a Claim made by either party.

ARTICLE 11. CONTRACT PRICE

11.01 Contract Price: The amount due to Contractor from Owner as set forth in **Section 007** of the Installation Agreement is _____ (\$_____), and shall be modified solely as provided herein and upon compliance with **Paragraph 9.03**.

11.02 Payment Terms: TBD

11.03 Payment Procedures: At least 20 days before the date established in this Installation Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Installation completed as of the date of the Application for Payment and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Installation but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all claims and liens and

evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

- (i) Ten (10) days after presentation of any Application for Payment, except for Final Payment, to Owner with Engineer's recommendation, the amount recommended will become due, and when due will be paid by Owner to Contractor; and
 - (ii) Thirty (30) days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.
- A. Second Payment Application: Beginning with the second Application for Payment, each Application for Payment shall include an affidavit of Contractor stating that all previous progress payments received on account of the Installation have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
- (i) The amount of retainage with respect to progress payments will be as stipulated in this Installation Agreement.
- B. Review of Applications: Engineer will, within Ten (10) days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application for Payment to Owner or return the Application for Payment to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application for Payment.
- C. Engineer's Representations: Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Installation as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
- (i) the Installation has progressed to the point indicated;
 - (ii) the quality of the Installation is generally in accordance with the Contract Documents (subject to an evaluation of the Installation as a functioning whole prior to or upon substantial completion, the results of any subsequent tests called for in the Contract Documents, and any other qualifications stated in the recommendation); and
 - (iii) the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Installation.
- D. Engineer's Refusal: Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in **Paragraph 11.03.C**. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent

inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

- (i) the Installation is defective, or the completed portion of the Installation has been damaged, requiring correction or replacement;
- (ii) the Contract Price has been reduced by Change Orders; or
- (iii) Owner has been required to correct defective Installation or complete the Installation in accordance with its obligations hereunder;.

E. Reduction in Payment: Owner may refuse to make payment of the full amount recommended by Engineer because:

- (i) claims have been made against Owner on account of Contractor's performance or furnishing of the Installation;
- (ii) liens have been filed in connection with the Installation, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such liens; or
- (iii) there are other items entitling Owner to a set-off against the amount recommended.
- (iv) If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.

F. Substantial Completion: When Contractor considers the entire Installation may be ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Installation is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of substantial completion.

- (i) Promptly after Contractor's notification, Owner, Contractor, Supplier and Engineer shall make an inspection of the Installation to determine the status of completion. If Engineer does not consider the Installation substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- (ii) If Engineer considers the Installation substantially complete, Engineer will deliver to Owner a tentative certificate of substantial completion which shall fix the date of substantial completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before Final Payment.
- (iii) At the time of delivery of the tentative certificate of substantial completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending Final Payment between Owner and Contractor with respect to security, operation, safety, and protection of the Installation. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of substantial

completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until Final Payment.

- G. **Final Inspection:** Upon written notice from Contractor that the entire Installation is complete, Engineer will promptly make a final inspection with Owner, Supplier and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Installation is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Installation or remedy such deficiencies.

11.04 Grant Considerations: The Contractor agrees that this Installation Agreement is made and entered into by Owner under the express requirement that all obligations of federal, state and local government under the Grant shall be absolutely and timely satisfied. The Contractor hereby agrees that the ability of Owner to pay for the Installation by Contractor is dependant upon such absolute and timely satisfaction by the government of its obligations to Owner under the Grant. Contractor shall not do anything to interfere with the Grant or to otherwise jeopardize the Grant, but shall, when requested by Owner or by the applicable governmental agency, demonstrate that the activities of Contractor are in accordance with its obligations under this Installation Agreement and under the Grant.

11.05 Final Payment: Owner shall make the final payment to Contractor upon receipt of Contractor's final Application for Payment and upon approval of the work performed by Contractor ("Final Payment"). Contractor shall make his/her/its final Application for Payment only at such time that Contractor, according to Contractor's best estimation and belief, has completed all of its obligations hereunder and under the Contract Documents. Contractor agrees that Owner shall have the final approval of all work performed by Contractor and shall not be obligated to issue such Final Payment until Owner, in consultation with Engineer, has determined that the obligations of Contractor hereunder and under the Contract Documents are fully satisfied. Contractor agrees that acceptance of the Final Payment shall constitute his/her/its agreement that all of the obligations of Owner shall have been fully and completely satisfied hereunder, and that he/she/it shall have no claim against Owner for any reason or purpose or for any amount upon acceptance of such Final Payment. Contractor further agrees that acceptance of the Final Payment does not in any way limit or eliminate his/her/its ongoing obligations to Owner as detailed hereunder and at law.

ARTICLE 12. CONTRACT TIME

12.01 Contract Time: The parties hereto agree that the deadlines set in the Progress Schedule shall be the basis upon which the progress and payments made under this Installation Agreement are to be measured. The parties hereto further agree that the Progress Schedule as agreed to hereunder is of the essence to the fulfillment of the obligations of the parties hereto to each other, and shall be modified solely as provided herein and upon compliance with **Paragraph 9.03**.

12.02 Timing: TBD

12.03 Compliance with Progress Schedule: Upon the successful completion of the events detailed on the dates detailed in the Progress Schedule, Contractor shall submit an Application for Payment to Owner, who, within Forty-Five (45) days of confirmation by Owner of receipt of the appropriate Grant proceeds pertaining to such Application for Payment, shall pay the requested amount to Contractor. Each such payment shall constitute a Progress Payment until such time as the Final Payment is made.

ARTICLE 13. MISCELLANEOUS PROVISIONS

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13.01 Contractor's Continuing Obligation and Warranties: Contractor's obligation to complete the Installation and to perform other services in connection therewith in accordance with the Contract Documents is absolute, and Contractor warrants and guarantees to Owner and Engineer that the Installation and other services provided therewith shall be made in accordance with the Contract Documents and shall be free from defects. Prompt notice of all observed defects will be given to Contractor, but such notice, whether given or not, shall not in any way relieve Contractor of his/her/its obligations hereunder and pursuant to the Installation Agreement.

A. Neither the making of any Progress Payment or Final Payment by Owner under the Contract Documents, nor any use of the Panels by Owner, nor any act of acceptance by Owner, nor any failure to do so, nor the issuance of a notice of acceptability, nor any correction by Owner of any defective act performed during the Installation will constitute an acceptance of the Installation and other services provided therewith not in accordance with the Contract Documents or a release of Contractor's obligation to complete the Installation in accordance with the Contract Documents.

13.02 Tests and Inspections: Contractor shall give Engineer and Owner timely notice of readiness of the Panels for all any necessary inspections, tests or approvals during Installation which the Contract Documents specify are to be observed prior to Owner's acceptance of the Installation and prior to Final Payment to Contractor.

13.03 Remedying Defective Installation: If Contractor fails within a reasonable time after written notice from Engineer or Owner to correct any defective Installation or to remove and replace rejected Installation as required by Owner or Engineer, or if Contractor fails to perform the Installation in accordance with the Installation Agreement, or if Contractor fails to comply with any other provision of the Installation Agreement, Owner may, after Five (5) days written notice to Contractor, correct and remedy any such deficiency.

A. Owner Options: In exercising the rights and remedies under this section, Owner shall proceed expeditiously. In connection with such corrective and remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Installation and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Installation all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer access to the Site to enable Owner to exercise the rights and remedies under this section.

B. Claims by Owner: All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this section will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Installation Agreement with respect to the Installation; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in **Paragraph 9.03**. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Installation.

C. No Extensions: Contractor shall not be allowed an extension of the Contract Time because of any delay in the performance of the Installation attributable to the exercise by Owner of Owner's rights and remedies under this section.

13.04 Contractor's Warranty of Title: Contractor warrants, represents and guarantees that title to all Installation materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment therefore free and clear of all liens.

13.05 Giving Notice: Whenever any provision of this Installation Agreement requires the giving of written notice it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended and is designated as the person authorized to bind the respective parties, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

If to OWNER:

If to CONTRACTOR:

District Energy St. Paul, Inc.
ATTN:
76 Kellogg Boulevard West
St. Paul, Minnesota 55102

Either party may change the address for mailing of notices to it hereunder and/or the person to receive such notices by giving Ten (10) days' written notice to the other party in the manner above provided.

13.06 Computation of Time: Except for the immediacy required when confronting any matters arising under **Paragraph 7.14** concerning Hazardous Environmental Conditions, when any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

13.07 General Duties/Obligations: The duties and obligations imposed by this Installation Agreement and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon Contractor under this **Article 13** and all of the rights and remedies available to Owner and Engineer will be in addition to, and shall not be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by law or contract, by special warranty or guarantee or by other provisions of the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. All representations, warranties and guarantees made in the Contract Documents will survive Final Payment and termination or completion of this Installation Agreement.

13.08 Governing Law: This Installation Agreement and all Contract Documents are made under and shall be construed and enforced in accordance with the laws of the State of Minnesota.

13.09 Permits and Inspection Fees: Contractor shall, at its own expense, take out and maintain all necessary permits and approvals from the City, county, local, state, and other government authorities; shall give all notices required by law; and shall post all bonds and pay all fees and

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charges, including inspection and monitoring fees, incident to the due and lawful prosecution of the Installation.

- 13.10 Contractor Parking.** Contractor and Sub-contractors are responsible for arrangement and payment of parking during planning, staging, and Installation. Owner will not reimburse parking expenses nor make arrangements on behalf of the Contractor.
- 13.11 Entire Agreement:** This Installation Agreement represents the entire and integrated agreement between Owner and Contractor and supersedes all prior negotiations, representations or agreements, whether written or oral in connection herewith. This Installation Agreement may be amended only by a written instrument signed by both Owner and Contractor
- 13.12 No Joint Venture:** Owner and Contractor agree that it is not their intention to create, nor does this Installation Agreement or the Contract Documents in fact constitute a joint venture between them and they shall not in any way be construed as being a joint venture.
- 13.13 Unenforceability of Certain Clauses:** The unenforceability or invalidity of any provisions of this Installation Agreement or of any of the Contract Documents shall not render any other provision or provisions therein contained unenforceable or invalid.
- 13.14 Captions and Headings:** The captions and headings of the various paragraphs and sections of this Installation Agreement or of any of the Contract Documents are for the convenience and ease of reference only and are not to be construed as confining or limiting in any way the scope or intent of such paragraphs and sections.
- 13.15 Effect of Waiver:** Whenever any act or failure to act of one party is waived by the other party, such waiver shall be limited to the particular act or failure to act so waived and shall not be deemed to waive any other agreement, covenant, obligation, requirement, or other promise or breach under this Installation Agreement or of any of the Contract Documents.

ARTICLE 14. SUSPENSION, CANCELLATION/TERMINATION

- 14.01 Owner Suspension:** Owner may, at any time and without cause, suspend the Installation or any portion thereof for a period of not more than Ninety (90) days by notice in writing to Contractor. Upon Fifteen (15) days' written notice from Owner, Contractor shall resume performance. Contractor will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension if Contractor makes an approved Claim therefore as provided in **Articles 11 or 12.**
- 14.02 Owner Cancellation:** Owner may, at any time without cause, upon Ten (10) days' written notice to Contractor, cancel all or any part of the Installation and Owner obligation upon cancellation shall be limited as follows: Within Forty-Five (45) days after the Notice of Award, there will be no cancellation charges. After Forty-Five (45) days after the Notice of Award, cancellation charges shall accrue at a rate of Five Percent (5%) of the Contract Price per month up to a maximum of Twenty Percent (20%) of Contract Price.
- 14.03 Owner Termination:** The Owner may terminate the Installation Agreement upon the occurrence of any one or more of the following events detailed below. Where Contractor's services have been terminated by Owner, the transaction shall not affect any rights and remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

- A. Bankruptcy: If Contractor commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, US Code), as now or hereafter in effect, or if Contractor takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to bankruptcy or insolvency;
- B. Involuntary Filing: If a petition is filed against Contractor under any chapter of said Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against Contractor under any other federal or state law in effect at the time relating to bankruptcy or insolvency;
- C. Assignment: If Contractor makes a general assignment for the benefit of creditors;
- D. Trustee Named: If a trustee, receiver, custodian or agent of Contractor is appointed under applicable law, or under contract, whose appointment or authority to take charge of property of Contractor is for the purpose of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of Contractor's creditors;
- E. Insolvency: If Contractor admits in writing an inability to pay his/her/its debts general as they become due;
- F. Breach: A breach by Contractor in any substantial way of any provision of the Contract Documents and such breach continues for a period of Fifteen (15) days after written notice to correct the breach from Owner to Contractor; or
- G. Failure of Grant: Owner receives notice that the Grant or any part thereof will not be fully funded, or that the terms of the Grant have been materially altered by the applicable governmental agency or by law.

14.04 Owner Termination Notice: Owner may, after giving Contractor and any required surety Five (5) working days written notice, and to the extent permitted by law, terminate the services of Contractor. In such case, Contractor shall not be entitled to receive any further payment until the Installation is complete in accordance with the Contract Documents. If the unpaid balance of the Contract Price exceeds the direct, indirect and consequential costs to Owner of such termination (including compensation for additional professional services required to complete the Installation), such excess will be paid to Contractor upon Contractor's performance as required by the Contract Documents. If such costs exceed such unpaid balance, Contractor shall pay the difference to Owner. Such costs incurred by Owner will be incorporated in a Change Order, but when exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price.

14.05 Contractor Suspension/Termination: If, through no act or fault of Contractor, the Installation is suspended for a period of more than Ninety (90) days by Owner or under an order of court or other public authority, or Owner fails for Thirty (30) days to pay Contractor any sum finally determined to be due, then Contractor may, upon Ten (10) days' written notice to Owner and Engineer, terminate the Installation Agreement and recover from Owner payment for all portions of the Installation completed and for all other services furnished. In addition and in lieu of terminating the Installation Agreement, if Owner has failed to make any payment as aforesaid, Contractor may upon Ten (10) days' written notice to Owner and Engineer suspend the Installation and the furnishing of other services until payment of all amounts then due is received by Contractor. The provisions of this paragraph will not relieve Contractor of obligations under

Article 9 to continue performance of the Installation Agreement without delay during disputes and disagreements with Owner.

ARTICLE 15. ALTERNATIVE DISPUTE RESOLUTION

15.01 Arbitration: In the event that the parties experience a dispute regarding any term of this Installation Agreement, the parties agree to work in good faith to amicably resolve the dispute to the satisfaction of each party; to fulfill this commitment, the parties agree to meet informally on one or more occasions to seek resolution; in the event the informal negotiations do not resolve the dispute, the parties agree that each will designate a senior manager to meet in a continued effort to revisit the dispute and seek resolution. The parties agree that any controversy or claim arising under or in connection with this Installation Agreement that cannot be resolved by negotiation shall be settled by binding arbitration in St. Paul, Minnesota, conducted by the American Arbitration Association (“AAA”) in accordance with the rules of the AAA in effect as of the date of this Installation Agreement. The request for arbitration shall be submitted in writing to the American Arbitration Association and the other party to the Installation Agreement. There shall be no stay of the obligations of Contractor to continue with the Installation according to the Contract Time during the pendency of any such arbitration, nor shall there be any stay of Owner’s obligation to meet its obligations to Contractor hereunder, including its payment obligations, except and unless such dispute shall be the direct result of the Contract Time or of Owner’s payment obligations, as the case may be. The parties hereto agree that this provision is entered into in accordance with Minn. Stat. §572.08.

END OF SECTION

**SECTION 010
PERFORMANCE PAYMENT BOND**

KNOW ALL MEN: That we _____

hereinafter called the Principal, and _____

_____ and

hereinafter called the Surety, or Sureties, are held and firmly bound unto

_____ hereinafter called the Owners, and to such persons, firms and corporations who may furnish materials for, or perform labor on the work, building or improvements, contemplated in the contract hereinafter mentioned, in the

sum of _____

_____ Dollars (US) (\$ _____)
for the payment whereof the Principal and Surety, or Sureties, bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents:

WHEREAS, the Principal has by means of a written agreement dated _____ entered into a contract with the Owner for

_____ a copy of which Installation Agreement is by reference made a part hereof.

NOW, THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform the Installation Agreement on his/her/its part, and satisfy all claims and demands incurred for the same and shall fully indemnify and save harmless the Owner from all costs and damage which it may suffer by reason of failure so to do and shall fully reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any such default and shall promptly make payment to all persons supplying labor or material for use in the prosecution of the work provided for in such Installation Agreement, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

AND PROVIDED, that any alterations which may be made in the terms of the Installation Agreement, or in the work to be done under it, or the giving by the Owner of any extension of time for the performance of the Installation Agreement, or any other forbearance on the part of either the Owner or the Principal to the other shall not in any way release the Principal and the Surety, or Sureties, or either or any of them, their heirs, executors, administrators, successors or assigns from their liability hereunder, notice to Surety, or Sureties, of any such alteration, extension or forbearance being hereby waived.

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This bond is made for the use and benefit of the Owner, its successors or assigns, and they and each of them are hereby made Obligees hereunder the same as if their own proper names were written herein as such, and they and each of them may sue herein.

FINAL PAYMENT. Payment by Owner and acceptance by Principal of the Final Payment shall render this bond of no further force or effect.

Signed and Sealed this _____ day of _____, 20_____.

In the presence of:

_____)		_____ (SEAL)
_____)	as to	_____
_____)		
_____)		_____ (SEAL)
_____)	as to	_____
_____)		
_____)		_____ (SEAL)
_____)	as to	_____
_____)		

Countersigned

by _____
Attorney-in-fact

END OF SECTION

**SECTION 101
GENERAL SPECIFICATIONS**

END OF SECTION

**SECTION 102
ALTERNATES**

PART 1 – GENERAL

1.01 SUMMARY

- A. Section Includes:
 - 1. Summary
 - 2. Related Sections
 - 3. Requirements

1.02 RELATED SECTIONS

- A. Section 005 – Bid Form

1.03 REQUIREMENTS

- A. The Alternate in this Section is designated by number and describes, in summary form, the changes in the Installation which, when and if the Bid is accepted by Owner and incorporated in the Installation Agreement, becomes part of the Installation.
- B. Bidders shall submit Bids in support of their proposed Installation. The amount of the Alternate shall be stated in the dollar amount to be added to the Base Bid in the event Owner elects to accept the Alternate.
 - 1. Alternates not addressed in the Bid Form shall be deemed as requiring no change in cost or time.
- C. Owner reserves the right to reject Alternates or to accept any Alternates in any order or combinations and to determine the low Bidder on the basis of the sum of the Base Bid and the accepted Alternates, if any.
 - 1. The general descriptions of the Alternates listed below describe the extent of the Alternates in general and are not intended to be and are not a complete tabulation of the Installation which may be affected by the Alternates.
 - a. **ALTERNATE NO. 1** – (none)
 - 2. Bidders shall carefully examine the Bidding Documents and satisfy themselves as to the exact intent of the Installation affected by the Alternate(s).
 - 3. Detailed requirements may be specified in the various sections of the Specification Documents.
- D. Alternate prices shall not increase by change in material prices, wage rates, or other escalatory factors. Alternate prices are "all inclusive" and include, without limitation, labor, material, supervision, tools, equipment, taxes, overhead, profit, and other items necessary for the Installation.

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- E. Any references made to division, specification section, and/or specific drawing(s) shall be used as a guide only. Bidder shall determine for itself the portions of the Installation affected by Alternates.

END OF SECTION

SECTION 103 SUBMITTALS

PART 1 - GENERAL

1.01 Schedule Requirements for Submittals

- A. Comply with the following requirements in making submittals.
 - 1. Post Installation Agreement Award Submittals: Submit shop drawings for review within Ten (10) business days after receiving Notice of Award.
 - 2. Project Closeout Submittals: Make all related submittals not less than Thirty (30) days before the date scheduled for substantial completion of the Project. Unless otherwise authorized for reasons acceptable to the reviewing parties, failure to comply may delay the making of payments related to Final Completion.

1.02 Submittal Procedures and Review Actions

- A. Make submittals to Engineer for review, **Attention: Shop Drawing Department**, unless specified otherwise.
- B. Make submittals accompanied by a Submittal Transmittal Form as specified in **Section 104**. Failure to comply may result in the return of the submittal without a review.
- C. Submit Shop Drawings in sets of five (5). Submit five (5) copies of other submittals which can be reproduced by plain copier including product data, schedules, wiring diagrams, catalog cuts, and/or brochures.
 - 1. Provide a clear space (4 inches by 5 inches) on each Shop Drawing for action stamps.
 - 2. Identify submittals and transmittal letters with the Project title and location, submission date, specification Section number, and the detail number if applicable to which the submittal pertains.
- D. Submittals that are not legible will be returned without a review.
- E. Submittals will be reviewed with the following actions:
 - 1. An action stating “No Exception Taken” indicates the submittal appears to conform to the design concept of the Installation and that the Contractor at his/her/its discretion may proceed with Installation.
 - 2. An action stating “Make Corrections Noted, No Resubmission Required,” indicates that the submittals, after noted corrections are made, would appear to conform to the design concept of the Installation and that the Contractor at his/her/its discretion may proceed with and the Installation if the corrections are accepted by the Contractor without an increase in Contract Price or Contract Time.

3. An action stating “Make Corrections Noted, Submit Corrected Copy” indicates the noted revisions are such that a corrected copy is required for review to confirm that the revisions have been understood and made. Contractor may proceed at his/her/its discretion with and the Installation after submitting a corrected copy and verifying with the reviewer that the corrected copy is acceptable and the corrections are accepted by Contractor without an increase in the Contract Price or Contract Time.
 4. An action stating “Rejected, Revise and Resubmit” and “Rejected, Submit Specified Item” indicates that the submittal does not appear to conform to the design concept, a resubmission is required, and inclusion in the Installation is not authorized.
 5. An action stating “No Architect/Engineer Action Required” indicates the Contractor may proceed without review of the submittal based on the provisions of the Contract Documents.
- F. After completion of the review, reviewer will make copies of the shop drawings for his/her/its records and will retain one copy of other submittals. Shop drawings and other submittal copy will be returned to submitter who shall retain one (1) record set for the Owner, and shall provide copies and prints required to the Contractor.

1.03 Contract Closeout Submittals

- A. Warranties: Submit warranties and certificates required by Contract Documents.
- B. Operating and Maintenance Manuals: Unless otherwise specified submit three (3) copies of operating and maintenance manuals in paper format and one in PDF. Format to be decided by Owner.

**PART 2 - PRODUCTS
NOT USED**

**PART 3 - EXECUTION
NOT USED**

END OF SECTION

**SECTION 104
SUBMITTAL TRANSMITTAL FORM**

END OF SECTION

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