

Appendix D
COST REIMBURSEMENT AGREEMENT
BETWEEN DISTRICT AND CONTRACTOR

The Cost Reimbursement Agreement (“Agreement”) is entered into as of [Date] (“Effective Date”), by and between Alhambra Unified School District, a California public school district (“District”) and [Name of Contractor], a [Type of Entity] (“Contractor”). District and Contractor are each referred to individually as a “Party” and together as the “Parties.”

RECITALS

- A. The District issued a Request for Proposals for Power Purchase Agreement for Solar Photovoltaic Systems and Battery System Addendum dated May [], 2019 (the “RFP”).
- B. The RFP requires that the successful respondent reimburse the District for certain costs incurred, including: (1) the costs of consultant services (“**Development Costs**”); and (2) the District’s legal costs (“**Legal Costs**”).
- C. After District’s receipt of all proposals in response to the RFP, Contractor was determined to be the successful respondent in connection with the RFP.
- D. This Agreement sets forth the terms and provisions under which Contractor shall reimburse the District for its Development Costs, and Legal Costs (collectively referred to herein as the “**Incurred Costs**”).

NOW, THEREFORE, in consideration of the covenants hereinafter contained and the foregoing recitals, which constitute a part of this Agreement, the Parties agree as follows:

AGREEMENT

1. Scope. The Parties intend to negotiate and enter into a solar power purchase agreement (“**PPA**”) for each project specified in Exhibit A, which is attached hereto and made part of this Agreement (each, a “**Project**”). Contractor shall reimburse and pay District the Incurred Costs in accordance with the terms and provisions of this Agreement.
2. Incurred Costs. The Incurred Costs are described and calculated as follows:
 - a. Development Costs. The Development Costs are intended to approximate the amount payable by District to its third party energy advisor (“**Energy Advisor**”) in consideration for consultant services provided by Energy Advisor to the District, including, but not limited to: analyzing and designing the Project, preparing the RFP and reviewing responses, facilitating the negotiation of the PPAs, and overseeing the performance and completion of the Projects. The Development Costs payable by Contractor to the District shall be equal to \$XX, provided that the Development Costs shall be subject to adjustment in accordance with Section 3 of this Agreement. The District shall be responsible for any

amount charged by Energy Advisor in excess of the Maximum Development Costs (as defined in Section 3.b.).

- b. Legal Costs. The Legal Costs consist of the amounts billed to the District by a legal services provider for legal services incurred in connection with negotiating this Agreement and the PPAs. In no case will Contractor be responsible for reimbursing the District for more than [X] in Legal Costs (such not-to-exceed amount, the “**Maximum Legal Costs**”). The District shall be responsible for any Legal Costs in excess of the Maximum Legal Costs. Notwithstanding this section or any other provision of this Agreement, District retains the right to recover attorneys’ fees from Contractor in the event Contractor is in default of any of Contractor’s obligations under this Agreement and District incurs attorneys’ fees in enforcing this Agreement.

3. Maximum Development Cost; Estimated Development Cost.

- a. Estimated Development Cost. For purposes of calculating amounts payable by Contractor to the District at the Effective Date Milestone and NTP Milestone (each, as defined in Section 4), the “**Estimated Development Cost**” shall be equal to the total number of kW DC of Projects for which PPAs are executed and in effect as of such time (the “**Contracted kW**s”), multiplied by the \$/kW Cost specified herein. As of the Effective Date of this Agreement, the Parties intend for the Installed kW to total [X] kW DC (“**Estimated PV kW**”) and [X] kW AC (“**Estimated BESS kW**”). The “**PV \$/kW Cost**” shall be \$[AMOUNT] and the “**BESS \$/kW Cost**” shall be \$[AMOUNT].
- b. Maximum Development Cost. The Development Cost payable by Contractor to the District shall in no case exceed an amount equal to the PV \$/kW Cost multiplied by the aggregate number of kW DC (the “**Installed PV kW**”) plus the BESS \$/kW Cost multiplied by the aggregate number of kW AC (the “**Installed BESS kW**”) of Projects built pursuant to PPAs (such not-to-exceed cost, the “**Maximum Development Cost**”).
- c. Estimated Development Cost – Reductions in System Size. If a PPA is terminated for any reason other than due to an uncured breach thereunder by Contractor, or the Project size under such PPA is reduced, and such termination or reduction in Project size results in a decrease of greater than two percent (2%) in the Estimated PV kW or the Estimated BESS kW, then the Estimated Development Cost will be deemed reduced, as applicable, as of the effective date of such termination or reduction by an amount equal to:
 - i. the applicable PV \$/kW Cost multiplied by the total number of kW DC resulting from such termination or reduction below the Estimated PV kW.
 - ii. the applicable BESS \$/kW Cost multiplied by the total number of kW AC resulting from such termination or reduction below the Estimated BESS kW.

- d. Estimated Development Cost – Increases in System Size. If, as of the Commercial Operation Date, the Installed PV kW exceeds the Estimated PV kW, or the Installed BESS kW exceeds the Estimated BESS kW, by more than two percent (2%) then the Maximum Development Costs payable by Contractor to the District shall be increased by an amount equal to:
 - i. the applicable PV \$/kW Cost multiplied by the total number of kW DC of Projects for which Installed PV kW are increased above the Estimated PV kW.
 - ii. the applicable BESS \$/kW Cost multiplied by the total number of kW AC of Projects for which Installed BESS kW are increased above the Estimated BESS kW.
4. Payment Schedule. Contractor shall pay District as follows, subject to any applicable offset(s) as described in Section 5 of this Agreement:
- a. 60% of the Estimated Development Costs within 15 days of the Effective Date of this Agreement (the “**Effective Date Milestone**”); and
 - b. 30% of the Estimated Development Costs within 15 days of the date on which the District issues Contractor a Notice to Proceed with respect to all Projects (the “**NTP to Construction Milestone**”).
 - c. 10% of the Development Costs within 15 days of the Commercial Operation Date of the final Project to be constructed (the “**COD Milestone**”).
 - d. 100% of the Legal Costs not previously reimbursed under this Agreement within 30 days of the date on which the District presents Contractor with reasonably detailed invoices from the District’s legal services Contractor, subject to reasonable content redaction for preservation of attorney-client privileged communications, provided that in no case will Contractor be required to pay any Legal Costs in excess of the Maximum Legal Costs.
5. Offsets and Reimbursement.
- a. Offsets at NTP Milestone. If, between the Effective Date Milestone and the NTP Milestone, any PPAs have been (i) amended to reduce the Project size, or (ii) terminated for any reason other than an uncured default by Contractor, the Estimated Development Costs shall be reduced in accordance with Section 3.c. If, between the Effective Date Milestone and the NTP Milestone, any PPAs have been amended to increase the Project size the Estimated Development Costs shall be increased in accordance with Section 3.d. Such changes in the Estimated Development Costs shall be made retroactive to the Effective Date Milestone, such that Contractor or District shall be entitled to an offset against the NTP Milestone payment equal to: (A) the Effective Date Milestone payment minus (B) 50% of the Estimated Development Cost as of the

NTP Milestone in the case of a reduction or plus (C) 50% of the Estimated Development Cost as of the NTP Milestone in the case of an increase.

The following calculation and the summary table in Exhibit B are provided solely as an example to demonstrate the application of this provision:

$\$/kW \text{ Cost} = \1.00

Contracted kW as of Effective Date Milestone = 100 kW

Effective Date Milestone payment = 50% of (100 kW x \$1.00), or \$50.00

Contracted kW as of NTP Milestone = 90 kW

Offset amount at NTP = \$50.00 (Effective Date Milestone payment) – \$45.00 ([50% of reduced Contracted kW x $\$/kW \text{ Cost}$ (90 kW x \$1.00)]) = \$5.00

NTP Milestone payment, before Offset = 40% of (90 kW x \$1.00), or \$36.00

Total amount owed by Contractor as of NTP Milestone = \$36.00 - \$5.00, or \$31.00

- b. Offset, Reimbursement at COD Milestone. If the Installed PV kW or Installed BESS kW as of the COD Milestone is lower than the Estimated PV kW or Estimated BESS kW, respectively, the Estimated Development Costs shall be reduced retroactively in accordance with Section 3.c. Contractor shall be entitled to an offset against the COD Milestone payment equal to: (A) (1) the actual Effective Date Milestone payment as of NTP, minus (2) 50% of the Estimated Development Cost as of the COD Milestone and (B) (1) the actual NTP Milestone payment as of NTP, minus (2) 40% of the Estimated Development Cost as of the COD Milestone. If the COD Milestone Payment is less than the offset to which Contractor is entitled, the District shall pay Contractor the difference within 30 days of Contractor's written request. If the Installed PV kW or Installed BESS kW as of the COD Milestone exceeds the Estimated PV kW or Estimated BESS kW, respectively, the Estimated Development Costs shall be increased retroactively in accordance with Section 3.d. The District shall be entitled to a reimbursement against the COD Milestone payment equal to: (A) (1) the actual Effective Date Milestone payment as of NTP, plus (2) 50% of the Estimated Development Cost as of the COD Milestone and (B) (1) the actual NTP Milestone payment as of NTP, plus (2) 40% of the Estimated Development Cost as of the COD Milestone. Contractor shall pay the District the difference within 30 days of the District's written request.

The following calculations and the summary table in Exhibit B are provided solely as an example to demonstrate the application of this provision:

Contracted kW as of COD Milestone = 50 kW

Effective Date Offset amount at COD = \$45 (Effective Date Milestone payment amount at NTP) - \$25 (50% of Contract kW at COD x $\$/kW \text{ Cost}$) = \$20.00

NTP Milestone Offset amount at COD = \$36.00 (NTP Milestone Payment amount at NTP) – \$20.00 (40% of Contract kW at COD x $\$/kW \text{ Cost}$ [50 kW x \$1.00]) = \$16.00

COD Offset = \$20 (Effective Date Offset amount at COD) + \$16 (NTP Milestone Offset amount at COD) = \$36.00

COD Milestone payment at COD = 10% of (50 kW x \$1.00), or \$5.00

Total amount owed by the District to Contractor = \$36 (COD Offset) - \$5 (COD Milestone payment at COD) = \$31.00

6. Miscellaneous.

- a. Term. This Agreement shall be effective as of the Effective Date and shall remain in effect until each Party has fulfilled all of its obligations to the other hereunder.
- b. Termination and Rights and Obligations Thereafter. This Agreement shall be terminated on the same date and time as the PPAs in the event there is a termination of all of the PPAs. Upon termination of this Agreement, the following shall apply and survive termination of this Agreement:
 - i. District as Defaulting Party. If District is the Defaulting Party (as this term is defined in the PPA) under one or more PPAs, Contractor shall not be obligated to pay and shall not pay District for any Incurred Costs that are incurred after the date of termination of this Agreement.
 - ii. Contractor as Defaulting Party. If Contractor is the Defaulting Party (as this term is defined in the PPA) under one or more PPAs, Contractor shall be obligated to and shall pay District for all Incurred Costs incurred before the date of termination of this Agreement and all Incurred Costs that District is obligated to pay on or after the date of termination of this Agreement.
- c. Limitation of Liability. Neither Party, or its directors, officers, shareholders, members, managers, Governing Board or members thereof, agents, employees, subcontractors or suppliers shall be liable for indirect, special, exemplary, or consequential damages of any nature arising out of any act or omission hereunder. A Party's aggregate liability arising out of or in connection with this Agreement shall be limited to an amount equal to the sum of the unpaid Maximum Development Costs, and Maximum Legal Costs.
- d. Dispute Resolution. Any dispute(s) between the Parties arising from or connected to this Agreement shall be handled in accordance with Section 21.b of the applicable PPA.
- e. Governing Law; Choice of Forum. This Agreement shall be governed by the laws of the State of California. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Los Angeles, subject to transfer of venue under applicable State law.
- f. No Partnership. This Agreement shall not be construed or represented as creating any partnership, trust, joint venture, fiduciary or any similar relationship between the Parties.

No Party is authorized to act on behalf of the other Party, and neither Party shall be considered or represented as the agent of the other.

- g. Full Agreement; Modification. This Agreement, together with any Exhibits, completely and exclusively states the agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties.
- h. Execution in Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. A facsimile or electronic signature shall be deemed to be the equivalent of the actual original signature. All counterparts so executed shall constitute one Agreement binding all Parties hereto.
- i. Severability. If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- j. Binding Effect; Assignment. Contractor, by execution of this Agreement, acknowledges that Contractor has read this Agreement, including any all Exhibits and attachments thereto, and understands them and agrees to be bound by their terms and conditions. Neither Party may assign this Agreement except to a permitted assignee of, and with, the PPA pursuant to Section 18 of the PPA.
- k. Notices. All notices under this Agreement shall be in accordance with the provisions regarding notices set forth in Section 21(c) of the PPA, which Section is hereby incorporated by reference.

Each person executing this Agreement on behalf of a Party represents that he/she is authorized to execute on behalf of and to bind the Party to this Agreement

ALHAMBRA UNIFIED SCHOOL DISTRICT

[COMPANY]

By: _____

Name: George Murray

Title: Assistant Superintendent

[Contractor Name]

By: _____

Name: _____

Title: _____

Exhibit A

Project Site	Meter	Site Address	PV System Size (kW DC)	BESS System Size (kW AC)
Alhambra HS - Main	V349N-011604	101 S 2nd St, Alhambra, CA 91801		
Alhambra HS - Second	V349N-006716	101 S 2nd St, Alhambra, CA 91801		
Mark Keppel HS	V349N-013897	501 E Hellman Ave, Alhambra, CA 91801		
San Gabriel HS	V349N-009011	801 S Ramona St, San Gabriel, CA 91776		
District Office - Marengo	259000-059899	1515 W Mission Rd, Alhambra, CA 91803		
District Office - Mission	259000-060253	1515 W Mission Rd, Alhambra, CA 91803		
Baldwin ES	V349N-001655	900 S Almansor St, Alhambra, CA 91801		
Brightwood ES	V349N-003967	1701 Brightwood St, Monterey Park, CA 91754		
Emery Park ES	V349N-018677	2821 W Commonwealth Ave, Alhambra, CA 91803		
Fremont ES	V349N-003998	2001 Elm St, Alhambra, CA 91803		
Garfield ES	259000-061089	110 W McLean St, Alhambra, CA 91801		
Granada ES	259000-074677	100 S Granada Ave, Alhambra, CA 91801		
Marguerita ES	V349N-017150	1603 Marguerita Ave, Alhambra, CA 91803		

Monterey Highlands ES	V349N-004618	400 Casuda Canyon Dr, Monterey Park, CA 91754		
Northrup ES	V349N-019401	409 S Atlantic Blvd, Alhambra, CA 91801		
Park ES	V349N-003990	301 N Marengo Ave, Alhambra, CA 91801		
Ramona ES	V349N-003295	509 W Norwood Pl, Alhambra, CA 91803		
Repetto ES	V349N-016690	650 Grandridge Ave, Monterey Park, CA 91754		
Ynez ES	V349N-004774	120 S Ynez Ave, Monterey Park, CA 91754		

Exhibit B
Example (Summary) Table

	Scenario as Of:		
	Effective Date	NTP (5.a)	COD (5.b)
Inputs			
KW	100	90	50
\$/kW	\$1	\$1	\$1
Total Project Cost	\$100	\$90	\$50
% Milestone 1	50%	50%	50%
% Milestone 2	40%	40%	40%
% Milestone 3	10%	10%	10%
Payment Schedule			
Effective Date Payment	\$50	\$45	\$25
NTP Payment	\$40	\$36	\$20
COD Payment	\$10	\$9	\$5
Total	\$100	\$90	\$50
Adjusted Payment			
Overpayment on Effective Date Payment		(\$5)	(\$20)
Overpayment on NTP Payment			(\$16)
Total Overpayment		(\$5)	(\$36)
Next Scheduled Payment	\$50	\$36	\$5
Adjusted Payment / (Credit)	\$50	\$31	(\$31)