

RESOLUTION NO. 19-17

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH
APPROVING ENERGY SERVICES CONTRACT**

WHEREAS, the City Council (“Council”) of the City of Firebaugh (“City”) is considering approval of an energy services contract with ENGIE Services U.S., Inc.; and

WHEREAS, the Council has determined that entering into an energy services contract is in the best interests of the City; and

WHEREAS, the City Manager, with the advice of the City Attorney, has negotiated the draft contract attached as Exhibit 1 (“Contract”); and

WHEREAS, Contract language concerning the allocation and assumption of risk is not yet finalized and the subject of continuing negotiations between the City and ENGIE Services U.S., Inc.; and

WHEREAS, the Council has determined that entering into the Contract with ENGIE Services U.S., Inc. is in the best interest of the City, provided allocation and assumption of risk is adequately addressed.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Firebaugh as follows:

1. Approve the Contract with ENGIE Services U.S., Inc. in substantially the form submitted, attached as Exhibit 1, subject to language adequately addressing the assumption and allocation of risk approved by the City Manager and City Attorney.

The foregoing Resolution was adopted at a regular meeting of the City Council of the City of Firebaugh on the 15th day of April, 2019 by the following call vote:

AYES: **Council Member(s)**

NOES: **Council Member(s)**

ABSENT: **Council Member(s)**

ABSTAIN: **Council Member(s)**

APPROVED:

ATTEST:

Marcia Sablan, Mayor

Rita Lozano, Deputy City Clerk

EXHIBIT 1

[Energy Services Contract]

ENERGY SERVICES CONTRACT

DRAFT DATED 27 March 2019

This **ENERGY SERVICES CONTRACT** (this "Contract") is made and entered into as of April 15, 2019 (the "Contract Effective Date") by and between **ENGIE Services U.S. Inc.**, a Delaware corporation, with California State Contractor's License Number 995037 ("ENGIE Services U.S."), and **City of Firebaugh** ("Firebaugh") and together with ENGIE Services U.S. the "Parties" and each of Firebaugh and ENGIE Services U.S. a "Party").

CONTRACT RECITALS

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

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

WHEREAS, Firebaugh executed a Program Development Agreement with ENGIE Services U.S. to perform an integrated energy assessment and present Firebaugh with recommendations (the "Recommendations") for the implementation of certain ECMs; and

WHEREAS, in the Recommendations,] ENGIE Services U.S. identified potential energy and operational savings opportunities at Firebaugh's Facilities and estimated program costs to implement the recommended ECMs and presented an overall potential energy cost and consumption savings for implementing the ECM recommendations; and

WHEREAS, on March 22, 2019 ENGIE Services U.S. delivered the Recommendations, on an arms' length basis, to personnel of Firebaugh with requisite technical training and experience, for those personnel to make judgments and determinations as to the desired scope of work; and

WHEREAS, Firebaugh has accepted the recommended ECMs and determined that the anticipated cost to Firebaugh to implement the recommended ECMs will be less than the anticipated cost to Firebaugh for thermal, electrical, and other energy, together with anticipated operational, maintenance and other costs, that would have been consumed by Firebaugh in the absence of the recommended ECMs in compliance with California Government Code §§4217.10 through 4217.18; and

WHEREAS, pursuant to California Government Code §4217.12, Firebaugh held a regularly scheduled public hearing on April 15, 2019, of which two weeks advance public notice was given regarding this Contract and its subject matter, and

WHEREAS, Firebaugh has determined that entering into this energy services contract to implement the ECM recommendations is in the best interests of Firebaugh and that California Government Code §4217.10 *et seq.* allows Firebaugh to enter into this Contract; and

WHEREAS, by adoption of Resolution No. [●] at the above-referenced meeting, Firebaugh approved this Contract and authorized its execution.

NOW, THEREFORE, Firebaugh and ENGIE Services U.S. hereby agree as follows:

ARTICLE 1. DEFINITIONS

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

"**Abnormally Severe Weather Conditions**" means typhoons, hurricanes, tornadoes, lightning storms and other climatic and weather conditions that are abnormally severe for the period of time when, and the area where, such storms or conditions occur, in each case occurring at a property, the access roads to a property, or any other location where Work or Professional Services are then being performed. The term "Abnormally Severe Weather Conditions" specifically includes rain, snow or sleet in excess of one hundred fifty percent (150%) of the median level over the preceding ten (10) year period for the local geographic area and time of year in which such rain, snow or sleet accumulates.

"**Act**" is defined in ARTICLE 14.

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

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

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

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

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

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

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

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

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

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

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

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

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

“**Change Order**” means a written document, signed by both ENGIE Services U.S. and Firebaugh, authorizing ENGIE Services U.S. to perform a Change. The Change Order modifies the Scope of Work and should identify: (i) the applicable Change; (ii) any additional compensation to be paid to ENGIE Services U.S. to perform such Change; and (iii) any extension of time to complete the Project.

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

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

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

“Contract” is defined in the Preamble, and includes all Attachments hereto (all of which are incorporated herein by this reference), as well as all Change Orders, amendments, restatements, supplements and other modifications hereto.

“Contract Amount” means Four Million One Hundred Ninety-Eight Thousand Three Hundred Two Dollars (\$4,198,302.00), which is inclusive of the mobilization payment, as set forth in Section 8.01, but exclusive of any fees for Professional Services.

“Contract Bonds” is defined in Section 12.02.

“Contract Effective Date” is defined in the Preamble.

“Delay” means any circumstances involving delay, disruption, hindrance or interference affecting the time of performance of the Work or the Professional Services.

“Dispute” is defined in Section 19.02.

“DOE Guidelines” is defined in Section 13.01.

“ECM” is defined in the Recitals.

“EMS” means an energy management system.

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

“Energy Usage Data” is defined in Section 2.05.

“ENGIE Services U.S.” is defined in the Preamble.

“ENGIE Services U.S. Warranty” is defined in Section 9.01.

“Event of Default” is defined in ARTICLE 16.

“Excusable Event” means an act, event, occurrence, condition or cause beyond the control of ENGIE Services U.S., including, but not limited to, the following: (i) any act or failure to act of, or other Delay caused by any Firebaugh Person; (ii) the failure to obtain, or delay in obtaining, any Interconnection Agreement, Applicable Permit, or approval of a Governmental Authority (including due to failure to make timely inspection), or Delays caused by Changes and/or modifications to the Scope of Work required by a Governmental Authority, other than a failure caused by the action or inaction of ENGIE Services U.S.; (iii) changes in the design, scope or schedule of the Work required by any Governmental Authority or Firebaugh Person; (iv) undisclosed or unforeseen conditions encountered at the Project Location, including discovery or existence of Hazardous Substances; (v) the failure to obtain, or delay in obtaining, approval of any Governmental Authority for design and installation of any portion of the Work, including any further or subsequent approval required with respect to any Change, other than a failure caused by the action or inaction of ENGIE Services U.S.; (vi) information provided to ENGIE Services U.S. by any Firebaugh Person or Utility is later found to be inaccurate or incomplete; (vii) any Change in Law; (viii) acts of God; (x) acts of the public enemy or terrorist acts; (xi) relocation or construction of transmission facilities or the shutdown of such facilities for the purpose of necessary repairs other than those caused by the action(s) or inaction(s) of ENGIE Services U.S.; (xii) work by Utility; (xiii) flood, earthquake, tornado, storm, fire, explosions, lightning, landslide or similar cataclysmic occurrence; (xiv) sabotage, vandalism, riots or civil disobedience; (xv) labor disputes or strikes; (xvi) labor or material shortages, delay in manufacturing and deliveries of equipment; (xvii) Abnormally Severe Weather Conditions; (xviii) requirement by Utility that any Generating Facility discontinue operation for reasons unrelated to the action or inaction of ENGIE Services U.S.; (xix) any action by a Governmental Authority that prevents or inhibits the Parties from carrying out their respective obligations under this Contract (including an unstayed order of a court or administrative agency having the effect of subjecting the sales of energy output to federal or state regulation of prices and/or services) unrelated to the action or inaction of the Parties; or (xx) any Utility power outage at a Facility.

“Facilities” is defined in the Recitals.

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

“**Firebaugh**” is defined in the Preamble.

“**Firebaugh Persons**” means Firebaugh, its agents, employees, subcontractors, architects, general contractors, lease/leaseback contractors or other Persons authorized to act on behalf of Firebaugh.

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

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

“**Greenhouse Gas**” is defined in Section 13.01.

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

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

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

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

“**Interconnection Facilities**” is defined in Section 18.02.

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

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

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

“**M&V Services**” are defined in Attachment E.

“**Maintenance Services**” are defined in Attachment F.

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

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

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

“**Party**” and “**Parties**” are defined in the Preamble.

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

“**Professional Services**” means professional services (such as Maintenance Services and M&V Services) provided by ENGIE Services U.S. to Firebaugh under this Contract.

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

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

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

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

“**Retained Items**” is defined in Section 10.02.

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

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

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

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

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

“**Time for Completion**” shall be Three Hundred Sixty-Five days following issuance by Firebaugh of the Notice to Proceed, excluding any time necessary for Utility-required upgrades, or as otherwise agreed in writing by the Parties.

“**Utility**” is defined in Section 18.02.

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

ARTICLE 2. TERM; PERFORMANCE OF THE WORK

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

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

Section 2.03 Scope of Work.

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

Section 2.04 Notice to Proceed. Within ten (10) days after Firebaugh has closed the financing referenced in Section 2.07, Firebaugh will issue to ENGIE Services U.S. a written Notice to Proceed (“Notice to Proceed”). ENGIE Services U.S. will begin Work within thirty (30) calendar days after ENGIE Services U.S.’s receipt of the Notice to Proceed.

Section 2.05 Project Schedule. Within ten (10) days after the Contract Effective Date, ENGIE Services U.S. will develop, with input from Firebaugh, a master project schedule (“Master Schedule”) which shall be submitted to Firebaugh for review and approval. The Master Schedule will outline a general timeline for completing all individual projects identified in Attachment C. After receipt of the Notice to Proceed, ENGIE Services U.S. will develop, with input from Firebaugh, a master project-specific schedule using Microsoft Project® which shall be submitted to Firebaugh for final review and approval (the “Project Schedule”). ENGIE Services U.S. will establish a weekly construction meeting at which time the Work of the previous week will be reviewed and a two-week look ahead will be coordinated. The Project Schedule will be updated monthly. The Master Schedule will be updated as may be necessary to reflect new projects, Change Orders, and/or updated Project Schedules.

Section 2.06 Firebaugh’s Energy and Operational Records and Data. If ENGIE Services U.S. requests, Firebaugh will provide to ENGIE Services U.S., within thirty (30) calendar days after such request, Firebaugh’s Energy Usage Data for the twelve (12) months preceding the Contract Effective Date, and will make commercially reasonable efforts to provide the Energy Usage Data for the thirty-six (36) months preceding the Contract Effective Date. “Energy Usage Data” means all of Firebaugh’s records and complete data concerning energy usage, energy-related

maintenance, and other related costs for the Facilities, and including, without limitation, utility records; occupancy information; descriptions of any past, present or anticipated changes in a building's structure or its heating, cooling, lighting or other systems or energy requirements; descriptions of all energy consuming or saving equipment used in the Facilities; applicable building drawings, specifications, existing AutoCAD files, operation and maintenance manuals, and as-builts; bills and records relating to operation and maintenance of systems and equipment within the Facilities, and a description of operation and management procedures currently utilized. Firebaugh agrees that ENGIE Services U.S. may rely on the foregoing data as being accurate in all respects. If ENGIE Services U.S. requests, Firebaugh will also provide to ENGIE Services U.S., within thirty (30) calendar days after such request, any prior energy audits of the Facilities, and copies of Firebaugh's financial statements and records related to energy usage and operational costs for said time period at the Facilities, and will authorize its agents and employees to provide and freely discuss such records and to make themselves available for consultations and discussions with authorized representatives, employees, subcontractors, and agents of ENGIE Services U.S. ENGIE Services US agrees that all such Energy Usage Data provided by Firebaugh shall remain confidential and shall not be used by ENGIE Services U.S. for any purpose other than in connection with the Work contemplated under this Contract.

Section 2.07 Finance Contingency. It is acknowledged and agreed by the Parties that the continued existence of this Contract is expressly contingent upon Firebaugh securing financing for the Project through any financing structure that will allow it to make the payments to ENGIE Services U.S. required by this Contract. Firebaugh will have sixty (60) calendar days after the Contract Effective Date to close such financing. If the financing is not closed within this time, for any reason, either Party may by written notice to the other Party declare this Contract to be null and void; and the Contract will be null and void as of the other Party's receipt of this notice; *provided* that Firebaugh may not declare this Contract to be null and void after it has issued the Notice to Proceed. It is acknowledged and agreed that ENGIE Services U.S. will have no obligation to commence performance of the Work unless and until the financing has been closed.

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

ARTICLE 3. PROJECT IMPLEMENTATION - GENERAL

Section 3.01 Registrations, Permits and Approvals.

- (a) Prior to issuing the Notice to Proceed, Firebaugh must register the Project with the California Department of Industrial Relations ("DIR"), using Form PWC-100. ENGIE Services U.S. shall comply with all applicable DIR registration and reporting requirements.
- (b) Firebaugh will cooperate fully with and assist ENGIE Services U.S. in obtaining all Applicable Permits required under this Contract. ENGIE Services U.S. is responsible for obtaining (but not paying for) Applicable Permits, except those Applicable Permits to be issued by Firebaugh itself. Firebaugh will be responsible for obtaining and paying for all other inspections, certifications, permits or approvals that may be required, including annual operating permits and any approvals or exemptions required by CEQA, as applicable.
- (c) Firebaugh is responsible for hiring and paying inspectors, and for fees associated with plan checks (including expedited plan checks), permits, inspections, certifications, and utility interconnection(s), including any additional Scope of Work that may be required by the Utilities as part of the Interconnection Agreement(s). Such fees shall be paid by Firebaugh without any mark-up by ENGIE Services U.S.

Section 3.02 Coordination. Firebaugh will be responsible for coordinating the activities of ENGIE Services U.S. and ENGIE Services U.S.'s subcontractors and suppliers with those of Firebaugh Persons.

Section 3.03 Project Meetings/Status Updates. During the course of the Work, ENGIE Services U.S. will periodically meet with Firebaugh to report on the general status and progress of the Work. ENGIE Services U.S. may (but is not required to) make food and beverage items of nominal value available to Firebaugh and Firebaugh's employees and agents at such meetings, which if offered will be deemed part of the Scope of Work and included in the Contract Amount. ENGIE Services U.S. and ENGIE Services U.S.'s subcontractors are independently responsible to timely inform Firebaugh of any anticipated Construction issues that would impair the Project schedule.

Section 3.04 Project Location Access. Firebaugh hereby grants to ENGIE Services U.S., without cost to ENGIE Services U.S., all rights of ingress and egress at the Project Location, necessary for ENGIE Services U.S. to perform the Work and provide all services contemplated by this Contract. ENGIE Services U.S. will provide twenty-four-hour advance notice to Firebaugh for access to any Firebaugh Facilities. All persons entering the Project Location, including Firebaugh and its employees and agents, must follow ENGIE Services U.S.'s safety procedures. ENGIE Services U.S. may (but is not required to) make transportation available to Firebaugh and Firebaugh's employees and agents between and within Project Locations, which if offered will be deemed part of the Scope of Work and included in the Contract Amount.

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

Section 3.06 Independent Contractor. The Parties hereto agree that ENGIE Services U.S., and any agents and employees of ENGIE Services U.S., its subcontractors and/or consultants, is acting in an independent capacity in the performance of this Contract, and not as a public official, officer, employee, consultant, or agent of Firebaugh for purposes of conflict of interest laws or any other Applicable Law. ENGIE Services U.S. is engaged in an independently established trade, occupation, or business to perform the services required by this Agreement and is hereby retained to perform work that is outside the usual course of Firebaugh's business. ENGIE Services U.S. is free from the control and direction of Firebaugh in connection with the manner of performance of the work. ENGIE Services U.S. understands and agrees that all of its employees, agents, volunteers and representatives shall not be considered officers, employees, agents, partners or joint venturers of Firebaugh, and are not entitled to benefits of any kind of nature normally provided to employees of Firebaugh. All payments made by Firebaugh to ENGIE Services U.S. pursuant to this Contract shall be reported to the applicable federal and state taxing authorities as required. Firebaugh will not withhold any money from fees payable to ENGIE Services U.S., including FICA (social security), state or federal unemployment insurance contributions, or state or federal income tax or disability insurance. ENGIE Services U.S. shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to ENGIE Services U.S. and its employees, agents, representatives and contractors, and otherwise in connection with this Contract. ENGIE Services U.S. agrees to indemnify, defend and hold Firebaugh harmless from any liability which ENGIE Services U.S. may incur to the Federal or State governments as a consequence of this Contract.

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

Section 4.01 General Provisions.

- (a) After receipt of the Notice to Proceed, ENGIE Services U.S. will proceed with the preparation of any necessary designs, drawings, and specifications related to the Scope of Work.
- (b) After completion of the design phase and approval of the final plans and specifications by Firebaugh, ENGIE Services U.S. will order the equipment identified in the Scope of Work, and any other necessary materials and supplies in order to meet the project schedule.
- (c) Firebaugh will designate a single-point representative with whom ENGIE Services U.S. may consult on a reasonable, regular basis and who is authorized to act on Firebaugh's behalf with respect to the Project design. Firebaugh's representative will render decisions in a timely manner with regard to any documents submitted by ENGIE Services U.S. and to other requests made by ENGIE Services U.S. in order to avoid delay in the orderly and sequential progress of ENGIE Services U.S.'s design services.
- (d) Within ten (10) Business Days after ENGIE Services U.S.'s request, Firebaugh will:
 - (i) furnish all surveys or other information in Firebaugh's possession that describe the physical characteristics, legal limitations, and utility locations in and around the Project Location;
 - (ii) disclose any prior environmental review documentation and all information in its possession concerning subsurface conditions, including without limitation the existence of any known Hazardous Substances, in or around the general area of the Project Location;
 - (iii) supply ENGIE Services U.S. with all relevant information in Firebaugh's possession, including any as-built drawings and photographs, of prior construction undertaken at the Project Location;

- (iv) undertake reasonable efforts to obtain any and all easements, zoning variances, planning approvals, including any resolution of any environmental impact issues, and any other legal authorization regarding utilization of the Project Location for the execution of the Work; and
 - (v) obtain any and all title reports for those Project Locations reasonably requested by ENGIE Services U.S.
- (e) All information furnished pursuant to this Section 4.01 will be supplied at Firebaugh's expense, and ENGIE Services U.S. will be entitled to rely upon the accuracy and completeness of all information provided. If ENGIE Services U.S. is adversely affected by any failure to provide, or delay in providing, the information specified in Section 4.01(d), ENGIE Services U.S. will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount, upon agreement of the Parties. ENGIE Services U.S. agrees that any information provided by Firebaugh under this part shall remain confidential and shall not be used by ENGIE Services U.S. for any purpose other than in connection with the Work contemplated under this Contract.
- (f) If any information disclosed under this Section 4.01 gives rise to a Change to the Work or an Excusable Event, ENGIE Services U.S. will notify Firebaugh within thirty (30) days of notice of such Change or Excusable Event. The Parties will meet and confer with respect to those Changes, and upon agreement of the Parties, ENGIE Services U.S. will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount. If the Parties, however, are unable to agree on whether Firebaugh's disclosed information gives rise to a Change to the Work or an Excusable Event, those disputes are to be resolved in accordance with ARTICLE 19.
- (g) ENGIE Services U.S. contemplates that it will not encounter any Hazardous Substances at the Project Location, except as has been disclosed as a pre-existing condition by Firebaugh prior to the Contract Effective Date. However, any disclosure of Hazardous Substances that will materially affect the performance of the Work after the Contract Effective Date will constitute a valid basis for a Change Order.

Section 4.02 Review of Construction Documents. ENGIE Services U.S. will prepare and submit all drawings and specifications to Firebaugh for review. Firebaugh will review the documents and provide any comments in writing to ENGIE Services U.S. within ten (10) Business Days after receipt of the documents. ENGIE Services U.S. will incorporate appropriate Firebaugh comments into the applicable drawings and specifications. ENGIE Services U.S. reserves the right to issue the drawings and specifications in phases to allow Construction to be performed in phases. If Firebaugh fails to provide written comments within the ten (10) Business Day period, Firebaugh will be deemed to have no comments regarding the documents.

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

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

ARTICLE 5. CONSTRUCTION PHASE

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

Section 5.02 ENGIE Services U.S.'s Responsibilities during Construction Phase.

- (a) As an independent contractor to Firebaugh, ENGIE Services U.S. will provide, or cause to be provided by its subcontractor(s), all labor, materials, equipment, tools, transportation, and other facilities and services necessary for the proper execution, construction, and completion of the Work. ENGIE Services U.S. will purchase in advance all necessary materials and supplies for the construction of the Project in order to assure the prompt and timely delivery of the completed Work pursuant to the project schedule. ENGIE Services U.S. will also be responsible for all means, methods, techniques, sequences, and procedures required by the Construction Documents.
- (b) ENGIE Services U.S. will make commercially reasonable efforts to coordinate construction activities and perform the Work to minimize disruption to Firebaugh's operations at the Project Location. ENGIE Services U.S. will provide at least fifteen (15) calendar days' written notice to Firebaugh of any planned power outages that will be necessary for the construction. ENGIE Services U.S. will cooperate with Firebaugh in scheduling such outages, and Firebaugh agrees to provide its reasonable approval of any scheduled outage.
- (c) ENGIE Services U.S. will initiate and maintain a safety program in connection with its Construction of the Project. ENGIE Services U.S. will take reasonable precautions for the safety of, and will provide reasonable protection to prevent damage, injury, or loss to: (i) employees of ENGIE Services U.S. and subcontractors performing Work under this Contract; (ii) ENGIE Services U.S.'s property and other materials to be incorporated into the Project, under the care, custody, and control of ENGIE Services U.S. or its subcontractors; and (iii) other property at or adjacent to the Project Location not designated for removal, relocation, or replacement during the course of construction. ENGIE Services U.S. will not be responsible for Firebaugh's employees' safety unless ENGIE Services U.S.'s negligence in the performance of its Work is the proximate cause of the employee's injury.
- (d) ENGIE Services U.S. will provide notice to Firebaugh of scheduled test(s) of installed equipment, if any, and Firebaugh and/or its designees will have the right to be present at any or all such tests conducted by ENGIE Services U.S., any subcontractor, and/or manufacturers of the equipment.
- (e) Pursuant to California Labor Code §6705, if the Work is a public work involving an estimated expenditure in excess of \$25,000 and includes the excavation of any trench or trenches five (5) feet or more in depth, ENGIE Services U.S. will, in advance of excavation, submit to Firebaugh and/or a registered civil or structural engineer, employed by Firebaugh, to whom authority to accept has been delegated, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches, which provisions will be no less effective than the current and applicable CAL-OSHA Construction Safety Orders. No excavation of such trench or trenches may be commenced until this detailed plan has been accepted by Firebaugh or by the person to whom authority to accept has been delegated by Firebaugh. Pursuant to California Labor Code §6705, nothing in this Section 5.02(e) imposes tort liability on Firebaugh or any of its employees.
- (f) Pursuant to California Public Contract Code §7104, if the Work is a public work involving digging trenches or other excavations that extend deeper than four (4) feet below the surface of the ground:
 - (i) ENGIE Services U.S. will promptly, and before the following conditions are disturbed, notify Firebaugh, in writing, of any:
 - 1) Material that ENGIE Services U.S. believes may be material that is hazardous waste, as defined in California Health and Safety Code §25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law;
 - 2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to ENGIE Services U.S. before the Contract Effective Date;
 - 3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.
 - (ii) Firebaugh will promptly investigate the conditions and, if it finds that the conditions do materially so differ or do involve hazardous waste, and cause a decrease or increase in ENGIE Services U.S.'s cost of, or the time required for, performance of any part of the Work will issue a Change Order under the procedures described in this Contract.
 - (iii) If a dispute arises between Firebaugh and ENGIE Services U.S., whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in ENGIE Services U.S.'s cost of, or time required for, performance of any part of the Work, ENGIE Services U.S. will not be excused from any scheduled completion date provided for by this Contract but will proceed with all Work to be performed under this Contract. ENGIE Services U.S. will retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the Parties.

Section 5.03 Firebaugh's Responsibilities during Construction Phase.

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

- (iv) Upon the completion of the entire Scope of Work listed in Attachment C in accordance with the requirements of the Contract and to the reasonable satisfaction of Firebaugh, including training, if any, and submission of close-out documents, sign a Certificate of Final Completion for the entire Project.

Section 5.04 Changes.

- (a) Change Orders Generally. Changes and/or modifications to the Scope of Work will be authorized by a written Change Order. The Change Order should state the change and/or modification to the Scope of Work, any additional compensation to be paid, and any applicable extension of time. ENGIE Services U.S. will use its reasonable efforts to continue performance as to all portions of the Work not affected or impacted by a proposed Change until such time as the applicable Change Order is resolved, but ENGIE Services U.S. may, to the extent such action does not endanger or jeopardize the Project or Work, suspend performance of the discrete portion(s) of the Work affected by a proposed Change until a written Change Order with respect to the Changed or modified Work has been signed by both Firebaugh and ENGIE Services U.S.
- (b) Change Orders Requiring Additional Compensation. If during construction any Firebaugh Person requests material changes and/or modifications to the Work which materially increase the cost to complete the Work, and/or there are Excusable Events that could not have been reasonably anticipated or mitigated by ENGIE Services U.S., Firebaugh will pay the reasonable and documented extra costs caused by such modifications and/or changes and/or Excusable Event and ENGIE Services U.S. will be entitled to additional compensation for the following reasons, that include, but are not limited to: (i) any Firebaugh Person requests material changes and/or modifications to the Scope of Work during the construction phase of the Project; (ii) any Firebaugh Person causes unreasonable delays during ENGIE Services U.S.'s construction work; (iii) discovery of subsurface or other site conditions that were not reasonably anticipated or disclosed prior to the commencement of the Work; (iv) discovery of Hazardous Substances at or impacting the Project Location; (v) material changes and/or modifications to the Scope of Work required to obtain required permits and approvals as required by any Governmental Authority; (vi) damage to any equipment or other Work installed by ENGIE Services U.S. caused by the act or omission of any Firebaugh Person; (vii) material changes and/or modifications to Scope of Work ordered by any Governmental Authority; and (viii) any other condition that would not reasonably have been anticipated by ENGIE Services U.S., that materially modifies and/or changes the Scope of Work or the Contract Amount.
- (c) Change Orders Requiring Additional Time. If during construction any Firebaugh Person requests material changes and/or modifications to the Scope of Work which materially increase the time required to complete the Work and/or an Excusable Event occurs, the Parties agree that an equitable extension of time to complete the Work may be necessary. Prior to any extension of time, ENGIE Services U.S. will use commercially reasonable efforts to make up such delays, including authorizing overtime payments; *provided* that Firebaugh has issued a Change Order authorizing any such overtime payment and has specifically agreed to pay all costs, including administrative charges and expenses, associated therewith.
- (d) Method for Adjustment. An increase or decrease in the Contract Amount and/or time resulting from a Change in the Work and/or Excusable Event must be determined by one or more of the following methods:
 - (i) unit prices set forth in this Contract or as subsequently agreed;
 - (ii) a mutually accepted, itemized lump sum; or
 - (iii) costs calculated on a basis agreed upon by Firebaugh and ENGIE Services U.S. plus a fee (either a lump sum or a fee based on a percentage of cost) to which the Parties agree.
- (e) Disagreements. If there is a disagreement between Firebaugh and ENGIE Services U.S. as to whether ENGIE Services U.S. is entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount, those disputes are to be resolved in accordance with the provisions of ARTICLE 19.

Section 5.05 Minor Changes to Scope of Work. ENGIE Services U.S. has the authority to make minor changes that do not change the total Contract Amount or Project Schedule and are consistent with the intent of the Construction Documents, without prior notice to Firebaugh. ENGIE Services U.S. will either promptly inform Firebaugh, in writing, of any minor changes made during the implementation of the Project, or make available to Firebaugh at the site a set of as-built drawings that will be kept current to show those minor changes.

Section 5.06 Hazardous Substances.

- (a) ENGIE Services U.S. will promptly provide written notice to Firebaugh if ENGIE Services U.S. observes any Hazardous Substance, as defined herein, at or around the Facilities during the course of construction or installation of any equipment which have not been addressed as part of the Scope of Work. ENGIE Services U.S. will have no obligation to investigate the Facilities for the presence of Hazardous Substances prior to commencement of the Work unless otherwise specified in the Scope of Work. Firebaugh will be solely responsible for investigating Hazardous Substances and determining the appropriate removal and remediation

measures with respect to the Hazardous Substances, except with regard to any Hazardous Substances that are introduced, deposited, or disposed of at or around the Facilities by ENGIE Services U.S., in which case ENGIE Services U.S. shall bear sole responsibility for appropriate removal and remediation measures. Firebaugh will comply with all Applicable Laws with respect to the identification, removal and proper disposal of any Hazardous Substances known or discovered at or around the Facilities, and in such connection will execute all generator manifests with respect thereto. ENGIE Services U.S. will comply with all Applicable Laws in connection with the use, handling, and disposal of any Hazardous Substances in the performance of its Work. In connection with the foregoing, Firebaugh will provide ENGIE Services U.S., within ten (10) Business Days after the Contract Effective Date, a written statement that represents and warrants (i) whether or not, to its knowledge, there are Hazardous Substances either on or within the walls, ceiling or other structural components, or otherwise located in the Project Location, including, but not limited to, asbestos-containing materials; (ii) whether or not, to its knowledge, conditions or situations exist at the Facilities which are subject to special precautions or equipment required by federal, state, or local health or safety regulations; and (iii) whether or not, to its knowledge, there are unsafe working conditions at the Facilities.

- (b) Firebaugh will indemnify, defend, and hold ENGIE Services U.S. harmless from and against any and all Losses that in any way result from, or arise under, such Firebaugh owned or generated Hazardous Substances, except for liabilities to the extent due to the negligence or willful misconduct of ENGIE Services U.S., or its subcontractors, agents or representatives, in the handling, disposal, disturbance or release of Hazardous Substances. This indemnification will survive any termination of this Contract.

- (c) ENGIE Services U.S. will indemnify, defend, and hold Firebaugh harmless from and against any and all Losses that in any way result from or arise under, any Hazardous Substances that are introduced, deposited, or disposed of at or around the Facilities by ENGIE Services U.S., except for liabilities to the extent due to the negligence or willful misconduct of Firebaugh or its subcontractors, agents or representatives, in the handling, disturbance or release of Hazardous Substances. This indemnification will survive any termination of this Contract.

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

ARTICLE 6. PROJECT COMPLETION

Section 6.01 Occupancy or Use of Work. Firebaugh may take occupancy or use of any completed or partially completed portion of the Work at any stage, whether or not such portion is Substantially Complete, *provided* that such occupancy or use is authorized by Governmental Authority and, *provided further*, that Firebaugh assumes responsibility for the security of, insurance coverage for, maintenance, utilities for, and damage to or destruction of such portion of the Work, except that ENGIE Services U.S. shall remain responsible for damage to or destruction of such portion of the Work caused in whole or in part by ENGIE Services U.S. If Substantial Completion of a portion of the Construction Work is not yet achieved, occupancy or use of such portion of the Work will not commence until Firebaugh's insurance company has consented to such occupancy or use. When occupancy or use of a portion of the Work occurs before Substantial Completion of such portion, Firebaugh and ENGIE Services U.S. will accept in writing the responsibilities assigned to each of them for title to materials and equipment, payments and Retention with respect to such portion. Notwithstanding anything stated in this Contract to the contrary, ENGIE Services U.S. shall remain subject to all of the responsibilities and obligations applicable to it under this Contract until Final Completion.

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

damage to or destruction of such portion of the Work, which Firebaugh shall thereon occupy and control, except that ENGIE Services U.S. shall remain responsible for damage to or destruction of such portion of the Work caused in whole or in part by ENGIE Services U.S. Firebaugh agrees that approval of a Certificate of Substantial Completion will not be unreasonably withheld, delayed or conditioned.

Section 6.03 Final Completion. When ENGIE Services U.S. considers the entirety of the Work to be Finally Complete as defined in Public Contract Code section 7107, subdivision (c)(2), ENGIE Services U.S. will notify Firebaugh that the Work is fully complete and ready for final inspection. Firebaugh will inspect the Work to verify the status of Final Completion within ten (10) Business Days after its receipt of ENGIE Services U.S.'s certification that the Work is complete. When Firebaugh agrees that the Work is fully completed, ENGIE Services U.S. will issue a Certificate of Final Completion, which Firebaugh must sign. Firebaugh agrees that its signing of the Certificate of Final Completion will not be unreasonably withheld, delayed or conditioned. At that time, Firebaugh will pay ENGIE Services U.S. any remaining Contract Amount due and any outstanding Retention being withheld by Firebaugh, in accordance with Section 8.03, except as to any portion of the Contract Amount or Retention reasonably withheld in accordance with the terms of this Contract. Firebaugh may give ENGIE Services U.S. written notice of acceptance of the Work and will promptly record a notice of completion or notice of acceptance in the office of the county recorder in accordance with California Civil Code §9204.

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

ARTICLE 7. SUBCONTRACTORS

Section 7.01 Authority to Subcontract. ENGIE Services U.S. may delegate its duties and performance under this Contract, and has the right to enter into agreements with any subcontractors and other service or material providers as ENGIE Services U.S. may select in its discretion to perform the Work. ENGIE Services U.S. will not be required to enter into any subcontracts with parties whom ENGIE Services U.S. has not selected or subcontractors whom ENGIE Services U.S. has objection to using.

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

Section 7.03 Relationship. Nothing in this Contract creates an obligation on the part of Firebaugh to pay any sums to any of ENGIE Services U.S.'s subcontractors.

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

ARTICLE 8. PAYMENTS

Section 8.01 Monthly Progress Payments. Promptly after the Contract Effective Date, ENGIE Services U.S. will invoice Firebaugh for a mobilization payment in the amount of Eight Hundred Thirty-Nine Thousand Six Hundred Sixty Dollars (\$839,660.00). These amounts must be paid to ENGIE Services U.S. within thirty (30) calendar days after Firebaugh's receipt of an invoice for those amounts. In addition, as the Work progresses, ENGIE Services U.S. will submit to Firebaugh its applications for monthly payments based on the progress made on the Project through the date on which ENGIE Services U.S. submits such Application for Payment. Each Application for Payment shall provide sufficient detail for Firebaugh to be able to verify the progress made and the amount claimed, in Firebaugh's reasonable discretion. Within twenty-one (21) calendar days from the Contract Effective Date, ENGIE Services U.S. will prepare and submit to Firebaugh, for Firebaugh's review and reasonable approval, a schedule of values apportioned to the various

divisions or phases of the Work ("Schedule of Values"). Each line item contained in the Schedule of Values will be assigned a value such that the total of all items equals the Contract Amount. All Applications for Payment will be in accordance with the Schedule of Values.

Section 8.02 Materials Stored Off-Site. In addition to the monthly progress payments specified in Section 8.01, ENGIE Services U.S. may invoice Firebaugh for materials purchased in advance and not stored at the Project Location. Each such Application for Payment will be accompanied by proof of off-site material purchases, evidence that the materials have been delivered to a warehouse reasonably acceptable to Firebaugh and evidence of appropriate insurance coverage. ENGIE Services U.S. will furnish to Firebaugh written consent from the Surety approving the advance payment for materials stored off site. Firebaugh will pre-pay one hundred percent (100%) of ENGIE Services U.S.'s Application for Payment for the materials delivered, less Retention as indicated in Section 8.03. Prior to payment, Firebaugh may inspect the materials at the warehouse to verify amounts and identification to the Project. ENGIE Services U.S. will protect stored materials from damage. Damaged materials, even though paid for, will not be incorporated into the Work.

Section 8.03 Retention. Firebaugh, or its designee, must approve and pay each Application for Payment, less a retention amount ("Retention") of five percent (5%) in accordance with California Public Contract Code §7201, within thirty (30) calendar days after its receipt of the Application for Payment; *provided, however*, that there is to be no Retention with respect to the mobilization payment and any fee for the Recommendations. A failure to approve and pay an undisputed Application for Payment, less any amounts subject to withholding or Retention, in a timely manner is a material default by Firebaugh under this Contract. Firebaugh may make progress payments in full without Retention at any time after fifty percent (50%) of the Work has been completed, as permitted pursuant to California Public Contract Code §9203. Upon Substantial Completion, the Parties may agree to reduce the Retention to two percent (2%) of the Contract Amount, and ENGIE Services U.S. may invoice and Firebaugh will pay this amount. Firebaugh will pay ENGIE Services U.S. the remaining Retention amount, subject to any permitted withholding, upon achieving Final Completion. In lieu of Retention being held by Firebaugh, ENGIE Services U.S. may request that securities be substituted or Retention be held in an escrow account pursuant to California Public Contract Code §22300.

Section 8.04 Final Payment. The final Application for Payment may be submitted after Final Completion. The final payment amount must also include payment to ENGIE Services U.S. for any remaining Retention withheld by Firebaugh.

Section 8.05 Disputed Invoices/Late Payments. Firebaugh may in good faith dispute any Application for Payment, or part thereof, within fifteen (15) calendar days after the date the Application for Payment was received by Firebaugh. If Firebaugh disputes all or a portion of any Application for Payment, Firebaugh will pay the undisputed portion when due and provide ENGIE Services U.S. a written notice and explanation of the basis for the dispute and the amount of the Application for Payment being withheld related to the dispute. Firebaugh will be deemed to have waived and released any dispute known to it with respect to an Application for Payment if such notice and written explanation is not provided within fifteen (15) calendar days after the date the Application for Payment was received by Firebaugh. If any amount disputed by Firebaugh is finally determined to be due to ENGIE Services U.S., either by agreement between the Parties or as a result of dispute resolution pursuant to ARTICLE 19 below, it will be paid to ENGIE Services U.S. within ten (10) Business Days after such final determination, plus Interest from the date billed or claimed until such amount is paid.

ARTICLE 9. WARRANTY / LIMITATION OF LIABILITY

EXCEPT FOR THE WARRANTIES PROVIDED IN THIS ARTICLE 9, ENGIE SERVICES U.S. MAKES NO WARRANTIES IN CONNECTION WITH THE WORK PROVIDED UNDER THIS CONTRACT, WHETHER EXPRESS OR IMPLIED IN LAW, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES AGAINST INTELLECTUAL PROPERTY INFRINGEMENT. FIREBAUGH WILL HAVE NO REMEDIES AGAINST EITHER ENGIE SERVICES U.S. OR ANY ENGIE SERVICES U.S. SUBCONTRACTOR OR VENDOR FOR ANY DEFECTIVE MATERIALS OR EQUIPMENT INSTALLED, EXCEPT FOR THE REPAIR OR REPLACEMENT OF SUCH MATERIALS OR EQUIPMENT IN ACCORDANCE WITH THE WARRANTIES INDICATED BELOW.

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

Section 9.02 Equipment and material warranties that exceed the ENGIE Services U.S. Warranty period will be provided directly by the equipment and/or material manufacturers and such warranties will be assigned directly to Firebaugh, after the one (1) year period. During the ENGIE Services U.S. Warranty period, ENGIE Services U.S. will be

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

Section 9.03 The warranties in this ARTICLE 9 expressly exclude any remedy for damage or defect caused by improper or inadequate maintenance of the installed equipment by service providers other than ENGIE Services U.S. or its subcontractors, corrosion, erosion, deterioration, abuse, modifications or repairs not performed by an authorized ENGIE Services U.S. subcontractor, improper use or operation, or normal wear and tear under normal usage. ENGIE Services U.S. shall not be responsible for the cost of correcting a breach of warranty or defect to the extent that the manufacturer of the equipment that is the subject of a warranty hereunder does not honor its equipment warranty as a result of its termination of operations, insolvency, liquidation, bankruptcy or similar occurrence. Unless otherwise specified, all warranties hereunder, including without limitation those for defects, whether latent or patent, in design, engineering, or construction, will terminate one (1) year from the date of Final Completion.

ARTICLE 10. OWNERSHIP OF CERTAIN PROPERTY AND EXISTING EQUIPMENT

Section 10.01 Ownership of Certain Proprietary Property Rights.

- (a) Ownership: Except as expressly provided in this Contract, Firebaugh will not acquire, by virtue of this Contract, any rights or interest in any formulas, patterns, devices, software, inventions or processes, copyrights, patents, trade secrets, other intellectual property rights, or similar items of property which are or may be used in connection with the Work. ENGIE Services U.S. will own all inventions, improvements, technical data, models, processes, methods, and information and all other work products developed or used in connection with the Work, including all intellectual property rights therein.
- (b) License: Solely in connection with the Facilities, ENGIE Services U.S. grants to Firebaugh a limited, perpetual, royalty-free, non-transferrable (except in the event of a change in ownership of Facilities which includes assignment and assumption of the Contract) license for any ENGIE Services U.S. intellectual property rights necessary for Firebaugh to operate, maintain, and repair any modifications or additions to Facilities, or equipment delivered, as a part of the Work.
- (c) Ownership and Use of Instruments of Service. All data, reports, proposals, plans, specifications, flow sheets, drawings, and other products of the Work (the "Instruments of Service") furnished directly or indirectly, in writing or otherwise, to Firebaugh by ENGIE Services U.S. under this Contract will remain ENGIE Services U.S.'s property and may be used by Firebaugh only for the Work. ENGIE Services U.S. will be deemed the author and owner of such Instruments of Service and will retain all common law, statutory and other reserved rights, including copyrights. The Instruments of Service may not be used by Firebaugh or any Firebaugh Person for future additions or alterations to the Project or for other projects, without the prior written agreement of ENGIE Services U.S. Any unauthorized use of the Instruments of Service will be at Firebaugh's sole risk and without liability to ENGIE Services U.S. If Firebaugh uses the Instruments of Service for implementation purposes, including additions to or completion of the Project, without the written permission of ENGIE Services U.S., Firebaugh agrees to waive and release, and indemnify and hold harmless, ENGIE Services U.S., its subcontractors, and their directors, employees, subcontractors, and agents from any and all Losses associated with or resulting from such use.
- (d) Representations and Warranties. ENGIE Services U.S. represents and warrants that ENGIE Services U.S. has the legal right to license any and all copyrights, designs and other intellectual property embodied in the drawings, specifications, studies, estimates or other documents that ENGIE Services U.S. or its consultants prepares or causes to be prepared pursuant to this Contract. ENGIE Services U.S. shall indemnify, defend, and hold Firebaugh harmless pursuant to the terms of this Contract for any breach of this section due to ENGIE Services U.S.'s negligence, recklessness or willful misconduct.

Section 10.02 Ownership of any Existing Equipment. Ownership of any equipment and materials presently existing at the Facilities on the Contract Effective Date will remain the property of Firebaugh even if such equipment or materials are replaced or their operation made unnecessary by work performed by ENGIE Services U.S. If applicable, ENGIE Services U.S. will advise Firebaugh in writing of all equipment and materials that will be replaced at the Facilities and Firebaugh will, within five (5) Business Days of ENGIE Services U.S.'s notice, designate in writing to ENGIE Services U.S. which replaced equipment and materials should not be disposed of off-site by ENGIE Services U.S. (the "Retained Items"). Firebaugh will be responsible for and designate the location and storage for the Retained Items.

ENGIE Services U.S. will be responsible for the disposal of replaced equipment and materials, except for the Retained Items. ENGIE Services U.S. will use commercially reasonable efforts to remove the Retained Items in such a manner as to avoid damage thereto, or if it is unreasonable to avoid damage altogether, to minimize the damage done. ENGIE Services U.S. will not be responsible for the removal and/or disposal of any Hazardous Substances except as required by the Scope of Work.

ARTICLE 11. INDEMNIFICATION / LIMITATION ON LIABILITY

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

Section 11.02 Waiver of Consequential Damages and Limitation of Liability. The liability of a defaulting Party will be limited to direct, actual damages. Neither Party shall be liable to the other Party for any special, indirect, incidental or consequential damages whatsoever, whether in contract, tort (including negligence) or strict liability, including, but not limited to, operational losses in the performance of business such as lost profits or revenues or any increase in operating expense.

ARTICLE 12. INSURANCE / BONDS

Section 12.01 ENGIE Services U.S. Insurance. ENGIE Services U.S. will maintain, or cause to be maintained, for the duration of this Contract, the insurance coverage outlined in (a) through (f) below, and all such other insurance as required by Applicable Law. Evidence of coverage will be provided to Firebaugh via an insurance certificate.

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

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

- (b) Commercial General Liability insurance with limits of:

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

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

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

- (d) Professional Liability insurance with limits of:

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

Coverage to be written on a claims-made form.

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

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

Coverage terms and limits to apply excess of the per occurrence and/or aggregate limits provided for Commercial General Liability and Professional Liability written on a claims made form. Coverage terms

and limits also to apply in excess of those required for Employers Liability and Auto Liability written on an occurrence form.

(f) Policy Endorsements.

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

Section 12.02 Firebaugh's Insurance. Firebaugh will maintain, or cause to be maintained, for the duration of this Contract, the insurance coverage outlined below, and all such other insurance as required by Applicable Law. Evidence of coverage will be provided to ENGIE Services U.S. via an insurance certificate.

(a) Commercial General Liability insurance, written on an occurrence form, with limits of:

- * \$2,000,000 each occurrence for Bodily Injury and Property Damage; and
- * \$4,000,000 General Aggregate

(b) The insurance provided for above will contain waivers of subrogation rights against ENGIE Services U.S., will include ENGIE Services U.S. as an additional insured, and will provide that the insurance is primary coverage with respect to all insureds, but, as to all requirements of this Section 12.02(b), only to the extent of the indemnity obligations contained in this Contract.

Section 12.03 Performance and Payment Bonds. Prior to commencing Work under this Contract, ENGIE Services U.S. will furnish a performance bond, in an amount equal to one hundred percent (100%) of the Contract Amount, and a payment bond to guarantee payment of all claims for labor and materials furnished, in an amount equal to one hundred percent (100%) of the Contract Amount (collectively, the "Contract Bonds"). The Contract Bonds are not being furnished to cover the performance of any Professional Services, including any energy guaranty or guaranteed savings under this Contract, nor to cover any equipment and/or material manufacturer's warranty or other third-party warranty being assigned to Firebaugh.

ARTICLE 13. DOE GUIDELINES; ENERGY POLICY ACT

Section 13.01 As authorized by §1605(b) of the Energy Policy Act of 1992 (Pub. L. No. 102-486) the U.S. Department of Energy has issued, and may issue in the future, guidelines for the voluntary reporting of Greenhouse Gas emissions ("DOE Guidelines"). "Greenhouse Gases" means those gases and other particles as defined in the DOE Guidelines. Firebaugh hereby assigns and transfers to ENGIE Services U.S., and its Affiliates and assigns, any Greenhouse Gas emission reduction credits that result from the Work.

Section 13.02 As authorized by §1331 of the Energy Policy Act of 2005 (Pub. L. No. 109-58) Firebaugh agrees that for the Work, ENGIE Services U.S. will be the "designer" as that term is identified in Internal Revenue Bulletin 2008-14, Notice 2008-40, and ENGIE Services U.S. will have the exclusive right to report to any federal, state, or local agency, authority or other party any tax benefit associated with the Work. Upon Final Completion, Firebaugh agrees to execute a written allocation including a declaration related to Internal Revenue Code §179D. ENGIE Services U.S. will prepare the declaration and all accompanying documentation. ENGIE Services U.S. will be designated the §179D beneficiary.

ARTICLE 14. MUNICIPAL ADVISOR

Section 14.01 THE PARTIES ACKNOWLEDGE AND AGREE THAT ENGIE SERVICES U.S. IS NOT A MUNICIPAL ADVISOR AND CANNOT GIVE ADVICE TO FIREBAUGH WITH RESPECT TO MUNICIPAL SECURITIES OR MUNICIPAL FINANCIAL PRODUCTS ABSENT Firebaugh BEING REPRESENTED BY, AND RELYING UPON THE ADVICE OF, AN INDEPENDENT REGISTERED MUNICIPAL ADVISOR. ENGIE SERVICES U.S. IS NOT SUBJECT TO A FIDUCIARY DUTY WITH REGARD TO FIREBAUGH OR THE PROVISION OF INFORMATION TO FIREBAUGH. FIREBAUGH WILL CONSULT WITH AN INDEPENDENT REGISTERED MUNICIPAL ADVISOR ABOUT THE FINANCING OPTION APPROPRIATE FOR FIREBAUGH'S SITUATION.

ARTICLE 15. TRADE SECRETS

If any materials or information provided by ENGIE Services U.S. to Firebaugh under this Contract are designated by ENGIE Services U.S. as a "trade secret" or otherwise exempt from disclosure under the Public Records Act (California Government Code §6250 *et seq.*, the "Act") and if a third party makes a request for disclosure of the materials under the Act,

as soon as practical (but not later than five (5) calendar days) after receipt of such request, Firebaugh will notify ENGIE Services U.S. of such request and advise ENGIE Services U.S. whether Firebaugh believes that there is a reasonable possibility that the materials may not be exempt from disclosure.

ARTICLE 16. EVENTS OF DEFAULT

Section 16.01 Events of Default by ENGIE Services U.S. Each of the following events or conditions will constitute an "Event of Default" by ENGIE Services U.S.:

- (i) any substantial failure by ENGIE Services U.S. to perform or comply with this Contract, including a material breach of any covenant contained herein, and such failure continues for thirty (30) calendar days after notice to ENGIE Services U.S. demanding that such failure to perform be cured; *provided* that (y) such failure to perform will not be deemed a default hereunder if it is excused by a provision of this Contract, and (z) if such cure cannot be effected in thirty (30) calendar days, ENGIE Services U.S. will be deemed to have cured the default upon the commencement of a cure within thirty (30) calendar days and diligent subsequent completion thereof; or
- (ii) any representation or warranty furnished by ENGIE Services U.S. in this Contract which was false or misleading in any material respect when made.

Section 16.02 Events of Default by Firebaugh. Each of the following events or conditions will constitute an "Event of Default" by Firebaugh:

- (i) any substantial failure by Firebaugh to perform or comply with this Contract, including a material breach of any covenant contained herein, and such failure continues for thirty (30) calendar days after notice to Firebaugh demanding that such failure to perform be cured; *provided* that (y) such failure to perform will not be deemed a default hereunder if it is excused by a provision of this Contract; and (z) if such cure cannot be effected in thirty (30) calendar days, Firebaugh will be deemed to have cured the default upon the commencement of a cure within thirty (30) calendar days and diligent subsequent completion thereof; or
- (ii) any representation furnished by Firebaugh in this Contract which was false or misleading in any material respect when made; or
- (iii) any failure by Firebaugh to pay any amount to ENGIE Services U.S. which is not paid within ten (10) calendar days after written notice from ENGIE Services U.S. that the amount is past due.

ARTICLE 17. REMEDIES UPON DEFAULT

Section 17.01 Termination for Cause. If there is an Event of Default by either Party under this Contract, unless such Event of Default has been cured within the applicable time periods for a cure set forth in ARTICLE 16, the non-defaulting Party may terminate this Contract by providing three (3) Business Days' written notice to the defaulting Party in the case of a monetary default and ten (10) Business Days' written notice to the defaulting Party in the case of a non-monetary default. Upon termination of this Contract, each Party will promptly return to the other all papers, materials, and property of the other held by such Party in connection with this Contract. Each Party will also assist the other in the orderly termination of this Contract and the transfer of all aspects hereof, tangible and intangible, as may be necessary for the orderly, non-disrupted business continuation of each Party. If this Contract is so terminated, ENGIE Services U.S. will be entitled to payment for Work satisfactorily performed, but, as to all requirements of this Section 12.02(b), only to the extent of the indemnity obligations contained in this Contract.

Section 17.02 Remedies Upon Default by ENGIE Services U.S. If an Event of Default by ENGIE Services U.S. occurs, Firebaugh will be entitled to obtain any available legal or equitable remedies, including, without limitation, terminating this Contract, or recovering amounts due and unpaid by ENGIE Services U.S. and/or damages, which will include Firebaugh's reasonable, actual, direct out-of-pocket losses incurred by reason of such Event of Default and any cost of funding; loss of anticipated payment obligations; and any payment or delivery required to have been made on or before the date of the Event of Default and not made, including interest on any sums due, and losses and costs incurred as a result of terminating this Contract and all costs and expenses reasonably incurred in exercising the foregoing remedies.

Section 17.03 Remedies upon Default by Firebaugh. If an Event of Default by Firebaugh occurs, ENGIE Services U.S. will be entitled to obtain any available legal or equitable remedies through arbitration proceedings instituted pursuant to ARTICLE 19 including, without limitation, terminating this Contract or recovering amounts due and unpaid by Firebaugh, and/or damages which will include ENGIE Services U.S.'s reasonable, actual, direct out-of-pocket losses incurred by reason of such Event of Default and any cost of funding; loss of anticipated payment obligations; and any payment or delivery required to have been made on or before the date of the Event of Default and not made, including

Interest on any sums due, and losses and costs incurred as a result of terminating this Contract and all costs and expenses reasonably incurred in exercising the foregoing remedies.

ARTICLE 18. CONDITIONS BEYOND CONTROL OF THE PARTIES

Section 18.01 Excusable Events. If any Party is delayed in, or prevented from, performing or carrying out its obligations under this Contract by reason of any Excusable Event, such circumstance will not constitute an Event of Default, and such Party will be excused from performance hereunder and will not be liable to the other Party for or on account of any loss, damage, injury or expense resulting from, or arising out of, such delay or prevention. Notwithstanding the foregoing, no Party will be excused from any payment obligations under this Contract as a result of an Excusable Event.

Section 18.02 Utility Work. Firebaugh expressly understands and agrees that Excusable Events may occur due to Interconnection Facilities work that may need to be performed by the local electric utility ("Utility") in order for ENGIE Services U.S. to fully implement the Project. "Interconnection Facilities" means any distribution or transmission lines and other facilities that may be required to connect equipment supplied under this Contract to an electrical distribution/transmission system owned and maintained by the Utility. Any Interconnection Facilities work that may be required will be performed by the Utility under the Interconnection Agreement.

ARTICLE 19. GOVERNING LAW AND RESOLUTION OF DISPUTES

Section 19.01 Governing Law. This Contract is governed by and must be interpreted under the laws of the State where the Work is performed, without regard to the jurisdiction's choice of law rules.

Section 19.02 Initial Dispute Resolution. If a dispute arises out of or relates to this Contract, the transaction contemplated by this Contract, or the breach of this Contract (a "Dispute"), either Party may initiate the dispute resolution process set forth in this ARTICLE 19 by giving notice to the other Party. The Parties will endeavor to settle the Dispute as follows:

- (i) *Field Representatives' Meeting*: Within fifteen (15) Business Days after notice of the Dispute, ENGIE Services U.S.'s senior project management personnel will meet with Firebaugh's project representative in a good faith attempt to resolve the Dispute.
- (ii) *Management Representatives' Meeting*: If ENGIE Services U.S.'s and Firebaugh's project representatives fail to meet, or if they are unable to resolve the Dispute, senior executives for ENGIE Services U.S. and for Firebaugh, neither of whom have had day-to-day management responsibilities for the Project, will meet, within thirty (30) calendar days after notice of the Dispute, in an attempt to resolve the Dispute and any other identified disputes or any unresolved issues that may lead to a dispute. If the senior executives of ENGIE Services U.S. and Firebaugh are unable to resolve a Dispute or if a senior management conference is not held within the time provided herein, either Party may submit the Dispute to mediation in accordance with Section 19.03.

Section 19.03 Mediation. If the Dispute is not settled pursuant to Section 19.02, the Parties will endeavor to settle the Dispute by mediation under the Commercial Mediation Procedures of the American Arbitration Association. Mediation is a condition precedent to arbitration or the institution of legal or equitable proceedings by either Party. Once one Party files a request for mediation with the other Party and with the American Arbitration Association, the Parties agree to conclude the mediation within sixty (60) calendar days after filing the request. Either Party may terminate the mediation at any time after the first session, but the decision to terminate must be delivered in person by the Party's representative to the other Party's representative and the mediator. If the Dispute is not resolved by mediation within sixty (60) calendar days after the date of filing of the request for mediation, then either Party may request arbitration, subject to the consent of the other Party, or pursue any other dispute resolution procedure available to such Party, including filing a lawsuit with a court of competent jurisdiction.

Section 19.04 Multiparty Proceeding. Either Party may join third parties whose joinder would facilitate complete resolution of the Dispute and matters arising from the resolution of the Dispute.

Section 19.05 Lien Rights. Nothing in this ARTICLE 19 limits any rights or remedies not expressly waived by ENGIE Services U.S. that ENGIE Services U.S. may have under any lien laws or stop notice laws.

ARTICLE 20. REPRESENTATIONS AND WARRANTIES

Section 20.01 Each Party warrants and represents to the other that:

- (i) it has all requisite power and authority to enter into this Contract, to perform its obligations hereunder and to consummate the transactions contemplated hereby;

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

ARTICLE 21. LIQUIDATED DAMAGES

Failure to Complete the Work by the Time for Completion, as such may be extended in accordance with the terms of this Contract, and in the manner provided for by this Contract shall subject ENGIE Services U.S. to liquidated damages in the amount of \$500 per day. The actual occurrence of damages and the actual amount of the damages which Firebaugh would suffer if the Work were not completed within the required time for performance of the Work are dependent upon many circumstances and conditions which could prevail in various combinations and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages. Damages which Firebaugh would suffer in the event of such delay include, but are not limited to, loss of the use of the Work, disruption of activities, costs of administration and supervision, and the incalculable inconvenience and loss suffered by the public. Accordingly, the Parties agree that the amount set forth herein shall be presumed to be the amount of damages which Firebaugh shall directly incur as a result of each calendar day by which completion of the Work is delayed beyond the time required as adjusted by Change Orders. Such liquidated damages shall be Firebaugh's sole measure of damages for ENGIE Services U.S.'s failure to reach Final Completion within the Time for Completion.

If liquidated damages accrue as described above, Firebaugh, in addition to all other remedies provided by law, shall have the right to assess the liquidated damages at any time, and to withhold liquidated damages (and any interest thereon) at any time from any and all Retention or progress payments, which would otherwise be or become due to ENGIE Services U.S. If the retained percentage or withheld progress payments are not sufficient to discharge all liabilities of ENGIE Services U.S. incurred under this Article, ENGIE Services U.S. and its sureties shall continue to remain liable to Firebaugh until all such liabilities are satisfied in full.

If Firebaugh accepts any Work or makes any payment under the Contract after a default by reason of delays, the payment or payments shall in no respect constitute a waiver or modification of any Contract provisions regarding time of completion and liquidated damages.

ARTICLE 22. NOTICE

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

TO ENGIE SERVICES U.S.: ENGIE Services U.S. Inc.
500 12th Street, Suite 300
Oakland, CA 94607
Tel: (415) 735-9135
Attention: Shira Zingman-Daniels, Project Manager

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

TO Firebaugh: City of Firebaugh
1133 P Street
Firebaugh, CA 93622
Tel:
Attention:

With a COPY TO: Lozano Smith

7404 North Spalding Avenue
Fresno, CA 93720
Tel: 559.431.5600
Attention: Jim Sanchez

ARTICLE 23. COMPLIANCE WITH LAW

Each and every provision of law and clause required by law to be inserted into this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein. ENGIE Services U.S. shall comply with all applicable federal, state, and local laws, rules, regulations and ordinances, including but not limited to the requirements of the California Government Code, the California Labor Code, the California Public Contracts Code, the Fair Employment and Housing Act, Workers' Compensation requirements, tax obligations, prevailing wage and public works requirements, as applicable, the City of Firebaugh Municipal Code, and others. ENGIE Services, U.S. agrees that it shall comply with all legal requirements for the performance of duties under this Contract and that failure to do so shall constitute material breach.

ARTICLE 24. CONSTRUCTION OF CONTRACT

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

ARTICLE 21. BINDING EFFECT

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

ARTICLE 22. NO WAIVER

The failure of ENGIE Services U.S. or Firebaugh to insist upon the strict performance of this Contract will not constitute or be construed as a waiver or relinquishment of either Party's right to thereafter enforce the same in accordance with this Contract in the event of a continuing or subsequent default on the part of ENGIE Services U.S. or Firebaugh.

ARTICLE 23. SEVERABILITY

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

ARTICLE 24. HEADINGS

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

ARTICLE 25. COUNTERPARTS; INTEGRATION

This Contract may be executed in counterparts (and by different Parties hereto in different counterparts), each of which will constitute an original, but all of which when taken together will constitute a single contract. This Contract constitutes the entire contract among the Parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Contract cannot be amended, modified, or terminated except by a written instrument, executed by both Parties hereto. Delivery of an executed counterpart of a signature page of this Contract by email will be effective as delivery of a manually executed counterpart of this Contract.

[the Parties' signatures appear on the following page]

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

ENGIE SERVICES U.S.:

Firebaugh:

ENGIE Services U.S. Inc.

City of Firebaugh

By: _____
Name:
Title:

By: _____
Name:
Title:

ATTACHMENT A

FIREBAUGH’S FACILITIES and EXISTING EQUIPMENT

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

Facility	Address	Square Feet
Water Site 1	½ Mile North of Ave 7, East of San Joaquin River, Firebaugh, CA 93622	n/a
Water Site 2	Levee & Vasquez Dr., Firebaugh, CA 93622	n/a
Rodeo	1668 11 th St, Firebaugh, CA 93622	n/a
Maldonado Park	1777 Thomas Conboy Ave, Firebaugh, CA 93622	n/a
Sewer Plant	N Helm Canal Rd 1/3 Mile East of Birch Dr, Firebaugh, CA 93622	1,150
Landfill	7 th St & Poso Canal Rd, Firebaugh, CA 93622	n/a
Community Center	1668 11 th St, Firebaugh, CA 93622	9,925
City Hall	1133 P St, Firebaugh, CA 93622	4,470
PAL Building	16 th St & Q St, Firebaugh, CA 93622	2,560
Fire Department	1575 11 th St, Firebaugh, CA 93622	1,000

(b) The existing equipment is that which is listed in ENGIE Services U.S.’s Recommendations dated: 25 March 2019.

ATTACHMENT B

STANDARDS OF OCCUPANCY and CONTROL

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

Facility	Area or HVAC Equipment	Occupancy Schedule	Existing HVAC Schedule	Existing Heating Occupied/Unoccupied Temperature	Existing Cooling Occupied/Unoccupied Temperature	Proposed HVAC Schedule	Proposed Heating Occupied/Unoccupied Temperature	Proposed Cooling Occupied/Unoccupied Temperature
City Hall	All	8AM – 5PM	7AM – 6PM	70/62	72/82	7AM – 6PM	70/62	72/82
Community Center	All	8AM – 5PM, Twice/Month 5PM – 9PM, Wednesdays	7AM – 6PM, Twice/Month 4PM – 10PM, Wednesdays	70/62	72/82	7AM – 6PM, Twice/Month 4PM – 10PM, Wednesdays	70/62	72/82
Sewer Plant	All	24/7	24/7	70/70	72/72	24/7	70/70	72/72
PAL Building	All	9AM – 3PM, Once per Three Months	8AM – 4PM, Once per Three Months	70/62	72/82	8AM – 4PM, Once per Three Months	70/62	72/82
Fire Department	All	8AM – 12PM	7AM – 1PM	70/62	70/62	7AM – 1PM	70/62	72/82

**ATTACHMENT C
SCOPE OF WORK**

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

Energy Conservation Measures (ECM) to Be Implemented

ECM #	Description
1	HVAC Upgrades – Packaged Units Upgrades
2	Wireless Thermostats
3	Well Pump VFDs
4	Solar Generating Facilities

ENERGY CONSERVATION MEASURES

Below please find the detailed scope per ECM.

ECM 1 – HVAC UPGRADES

SCOPE OF WORK

Tables 1 and 2 below provide the locations for the facilities with packaged unit upgrades and the count of packaged units by site.

Table 1: HVAC Packaged Units Project Locations

Site
City Hall
Sewer Plant
PAL Building
Fire Department
Community Center

Table 2: Count and Tonnage of HVAC Packaged Units

Building	Packaged Units						Total Units	Total Tonnage
	2 Ton	3 Ton	3.5 Ton	4 Ton	5 Ton	15 Ton		
City Hall		2		1			3	10
Sewer Plant	1						1	2
PAL Building		1	1				2	6.5
Fire Department					1		1	5
Community Center					2	2	4	40
Total Count	1	3	1	1	3	2	11	63.5

Scope of Work:

1. Remove and dispose of existing mechanical equipment.
2. Dispose of refrigerant, piping, and equipment in accordance with applicable codes and regulations.
3. Coordinate schedules for installation of rooftop equipment with the City of Firebaugh. The City of Firebaugh will make arrangements to have buildings unoccupied during any equipment rigging.
4. Provide crane lift safety plan and rigging for lifts. No one is allowed to be in the building during crane lift operations.
5. Provide and install new like-for-like units, using Carrier brand or equivalent in the location of the existing equipment.
6. ENGIE Services U.S. will install new curb, adapter curb, metal stand, or sleepers, as required, for installation of new mechanical equipment and weather proofing.

7. Packaged units 5 tons and larger will have an economizer.
8. At the Community Center:
 - a. Replace the (2) 10-ton units serving the Main Hall with (2) new 15-ton ground mounted units with outside air economizers.
 - b. Move the units back away from the building to increase the duct radius to allow for better air flow.
 - c. Increase concrete housekeeping pads and fenced area with 6' chain linked fence to accommodate larger units and new location of units.
 - d. Replace electrical disconnects and breakers and increase the wire size from the new breakers to the electrical disconnects.
9. Start-up by factory trained personnel and commissioning per factory specifications.
10. Provide As-Built drawings with operation & maintenance manuals (hard copy and electronic) and provide on-site operations training to City of Firebaugh Maintenance staff.

Exclusions:

- Repairing or replacing existing damaged, blocked, or leaky ductwork, or cleaning dirt or mildew.
- Repairing existing damaged pipes, valves, and related parts and components.
- Structural modifications or seismic upgrades to the roof or surrounding structures
- Fire and fire/smoke dampers, dust control, and fire proofing
- Modifications to fire alarm and smoke control systems
- Hazardous Substances testing or abatement are excluded.

ECM 2 – SMART THERMOSTAT UPGRADES

SCOPE OF WORK

ENGIE Services U.S. will replace existing thermostats with smart thermostats that are controlled wirelessly by the City of Firebaugh through the manufacturer’s hosted website.

Table 3 below lists the locations and counts for installation of replacement smart thermostats.

Table 3: Smart Thermostat Project Locations

Site	# of Thermostats
City Hall	5
Sewer Plant	1
PAL Building	2
Fire Department	1
Community Center	5
Total	14

Inclusions

1. Install wireless thermostats with wireless mesh network gateways and repeaters with a physical ethernet connection to gateway at each site.
2. City of Firebaugh will provide network connectivity at each building with packaged AC.

Exclusions

1. Annual fees (expected to be \$3 per thermostat) for use of web-enabled capabilities.
2. Monthly fees (expected to be \$15 per month) for Pelican AnyWhere 4G/LTE Cellular Service at the Community Center, Sewer Plant, and PAL Building.
3. IT drops and internet access for wireless gateways.

ECM 3 – WELL PUMP VFDS

SCOPE OF WORK

ENGIE Services U.S. will replace the existing motor starters at the City of Firebaugh well sites with variable frequency drives (VFDs) for the 75 horsepower well pumps. New VFDs will be mounted at the same location of the existing motor

electrical disconnects. The VFDs shall be controlled by the existing Water Plants' PLC to match the City's existing sequence of operations and control methods.

Table 4 below lists the location and counts for the installation of VFDs.

Table 4: VFD Project Locations

Site	# of VFDs
Water Site #1 - Well #13, Well #15, Well #16	3
Water Site #2 – Well #11, Well #12	2
Total	5

ECM 4 – SOLAR GENERATING FACILITIES

Table 5 below lists the locations for the solar PV installations and the structure type.

Table 5: Solar PV Locations

SG #	Facility	Type	First Year System Production (kWh)	Ground Clearance Height
1	Well Site #1	Ground Mount	482,862	3'
2	Well Site #2	Ground Mount	375,756	3'
3	Rodeo	Canopy	72,856	14'
4	Maldonado Park	Canopy	46,266	10'
5	Sewer Plant	Ground Mount	562,905	3'
6	Landfill	Ground Mount	75,167	3'

SCOPE OF WORK – GENERAL

1. Prepare and submit design drawings to the City of Firebaugh for approval and to local Utility for interconnection permits.
2. Provide geotechnical evaluations necessary for design requirements.
3. Provide Utility interconnection drawings and application management services.
4. Provide and coordinate installation of the NGOM and NEM metering.
5. Procure materials and equipment necessary for construction.
6. All project management and construction management necessary for a full and complete installation.
7. Provide labor, supervision, and coordination with the City of Firebaugh for the installation of photovoltaic modules and supporting structures, electrical distribution and control systems.
8. Provide and install PV modules and all necessary mounting hardware for each system.
9. Provide and install inverters and necessary electrical equipment and conduits to connect to the electrical switchgear or meter. Electrical shut-downs are anticipated at each site. Time of shutdown will be coordinated with the City of Firebaugh and Utility and may include weekends.
10. Provide and install solar canopy structures. The canopy structure design will include a painted canopy structure 10-14 feet in height and a pier depth of 8 feet deep and assumes no de-watering, benching, shoring, or casing. ENGIE Services U.S. has been given the reasonable opportunity to conduct due diligence to determine whether de-watering, benching, shoring, or casting is required in order to prepare and propose the Scope of Work. ENGIE Services U.S. assumes the risk of delays and/or increased costs due to failure to account for needed de-watering, benching, shoring, or casting.
11. The ground mount system at the Landfill site shall be a ballasted system, with no ground penetration for either electrical or structural racking.
12. DC wiring and AC wiring within the solar canopies and ground mount structures shall be copper wire. Aluminum wire shall be used from each system's AC combiner to the main point of connection at the site's electrical switchgear.

13. Provide and install (5) new LED lighting fixtures (RAB PRT42N or equivalent) for canopies (one for each 27' bay) at the Rodeo and Maldonado Park.
14. All ground mounted systems will be tilted 25 degrees from horizontal, canopy structures will be tilted 7 degrees from horizontal.
15. Provide as-built drawings and Operations & Maintenance manuals in electronic format upon Project completion.
16. Provide tree removal, as required.
17. Provide lighting fixture and bollard removal, as required.
18. Provide miscellaneous backfill and restoration of landscaping in areas of work.
19. Start-up, test, and commission the Generating Facilities in accordance with design plan and applicable industry standards.
20. Secure the Project Location and provide traffic redirection during rigging operations, and during the move-in and move-out of large equipment. City of Firebaugh will assist with the foregoing site logistics by coordinating access and scheduling with ENGIE Services U.S.

SOLAR PV SCOPE OF WORK – STRUCTURAL

PV Layouts

The following photos are schematic engineering layouts. The schematic engineering layouts and the electrical routing related to them are subject to change due to field conditions and upon completion of final engineering.

Solar Generating Facility #1 – Water Site #1

Figure 1 – Water Site #1



Inclusions:

- Removal of all trees and shrubs in the area where the solar PV arrays will be located.
- Permanent perimeter 6' high chain link fencing around the solar PV installation, with (1) 20 feet wide swinging gate for access.

Exclusions:

- Ground maintenance in solar PV area after installation (weed abatement).
- FEMA has mapped this area to have a base flood elevation of 6' to 8' in the case of a 100-year storm. At the direction of the City, ENGIE Services U.S has assumed a clearance height of 3 feet. A required clearance of over 3 feet, if required due to the site's determined base flood elevation, is excluded from the cost. ENGIE Services U.S. has been given the reasonable opportunity to conduct due diligence to determine required clearance in order to prepare and propose the Scope of Work. ENGIE Services U.S. assumes the risk of delays and/or increased costs due to failure to account for appropriate clearance.
- A PG&E gas line runs through the solar PV area, but it has not been located at this time. If it is determined that the location of the gas line will highly impact the array due to the necessary setback requirements from PG&E's easement, a redesign may be required. All impacts of the gas line are excluded from the cost.

Solar Generating Facility #2 – Water Site #2

Figure 2 – Water Site #2



Inclusions:

- Removal of shrubs in the area where the solar PV arrays will be located.
- Permanent perimeter 6’ high chain link fencing around the solar PV installation, with (1) 20 feet wide swinging gate for access.

Exclusions:

- Ground maintenance in solar PV area after installation (weed abatement).
- FEMA has mapped this area to have a base flood elevation of 6’ to 8’ in the case of a 100-year storm. At the direction of the City, ENGIE Services U.S has assumed a clearance height of 3 feet. A required clearance of over 3 feet, if required due to the site’s determined base flood elevation, is excluded from the cost. ENGIE Services U.S. has been given the reasonable opportunity to conduct due diligence to determine required clearance in order to prepare and propose the Scope of Work. ENGIE Services U.S. assumes the risk of delays and/or increased costs due to failure to account for appropriate clearance.
- Tree removal has been excluded, as it is understood that there will be no shading impacts.

Solar Generating Facility #3 – Rodeo

Figure 3 – Rodeo



Inclusions:

- Removal of all trees around the location of the solar PV area.
- Minimum of 14 foot height clearance for the proposed canopy.

Solar Generating Facility #4 – Maldonado Park

Figure 4 – Maldonado Park



Inclusions:

- Removal of (2) trees underneath the location of the solar PV area.
- Minimum of 10 foot height clearance for the proposed canopy.

Solar Generating Facility #5 – Sewer Plant

Figure 5 – Sewer Plant



Exclusions:

- Ground maintenance in solar PV area after installation (weed abatement).

Solar Generating Facility #6 – Landfill

Figure 6 – Landfill



Inclusions:

- Permanent perimeter 6' high chain link fencing around the solar PV installation, with (1) 20 feet wide swinging gate for access.
- Ballasted systems, with no ground penetration for structural or electrical work.

Exclusions:

- Ground maintenance in solar PV area after installation (weed abatement).

COMMUNITY IMPACT

ENGIE will fund 3 years of a PAL recreation program for the Firebaugh community through a local non-profit up to \$8,000 maximum per year.

GENERAL PROJECT EXCLUSIONS AND CLARIFICATIONS APPLICABLE TO ALL SCOPES:

- The City of Firebaugh will be responsible for paying for inspections and any required Building, Mechanical, and Electrical Permits.
- ENGIE Services U.S. has assumed Construction will be allowed to proceed smoothly and in a continuous flow. No allowance has been made to demobilize and remobilize resources due to schedule interruptions. ENGIE Services U.S. assumes the risk of delays and/or increased costs due to failure to account for scheduling interruptions, demobilization, and remobilization of resources.
- Temporary utilities are to be provided by the City of Firebaugh at no cost to ENGIE Services U.S. (including, without limitation, trailer power, phone lines, and construction power).
- Remediation and/or removal and disposal of Hazardous Substances, including asbestos containing materials, to be by the City of Firebaugh, unless specifically included in the Scope of Work. If ENGIE Services U.S.

encounters material suspected to be hazardous, ENGIE Services U.S. will notify the City of Firebaugh's representative and stop further work in the area until the material is tested and, if Hazardous Substances, removed by the City of Firebaugh. CEQA or other environmental studies, if required, will be the responsibility of the City of Firebaugh.

- Access to areas of construction will be blocked to the public during construction for safety.
- ENGIE Services U.S. will require the assistance of the City of Firebaugh personnel to secure the Project Location and to provide traffic redirection during rigging operations, and during the move-in and move-out of large equipment.
- No allowance has been made for structural upgrades to existing structures, except as specifically set forth in this Scope of Work. ENGIE Services U.S. assumes the risk of delays and/or increased costs due to failure to account for required structural upgrades.
- It is assumed that all roof structures can handle the new HVAC units, so no allowances have been made to upgrade or repair the roof structures if required for new HVAC unit installations. ENGIE Services U.S. assumes the risk of delays and/or increased costs due to failure to account for required roof structure upgrades.
- No allowance has been made for screening of new or existing equipment, except as specifically set forth in this Scope of Work. ENGIE Services U.S. assumes the risk of delays and/or increased costs due to failure to account for screening of new or existing equipment.
- No temporary heating or cooling services have been included in the Contract Amount. ENGIE Services U.S. will attempt to phase Construction in such a way as to avoid complete interruptions of service.
- ENGIE Services U.S. standard construction means and methods will be used.
- The City of Firebaugh will provide access to the Facilities, laydown areas at the work sites, and a reasonable number of parking spaces for ENGIE Services U.S. and ENGIE Services U.S.'s subcontractor vehicles in parking lots at the Facilities.
- Work will be performed during normal work hours; no overtime hours are included in the Contract Amount.
- The Scope of Work assumes that, unless specifically identified otherwise, all existing systems are functioning properly and are up to current codes. ENGIE Services U.S. has been given the reasonable opportunity to inspect such systems to determine that such systems are functioning and up to current code in order to prepare and propose the Scope of Work. ENGIE Services U.S. will not be responsible for repairs or upgrades to existing systems that are not functioning properly or compliant with current codes, unless the need for such repairs and/or upgrades are known or should be to ENGIE Services U.S. through the exercise of due diligence. No allowances have been made to bring existing systems up to code. ENGIE Services U.S. assumes the risk of delays and/or increased costs due to ENGIE Services U.S.'s failure to account for needed system upgrades.
- No allowance has been made to repair or replace damaged or inoperable existing equipment that is not specifically being replaced under the Scope of Work. When such items are discovered, ENGIE Services U.S. will immediately notify a representative of the City of Firebaugh. ENGIE Services U.S. assumes the risk of delays and/or increased costs due to failure to account for required repairs and/or replacements.
- No allowance has been made for underground obstructions or unsuitable soil conditions encountered during trenching or other excavation. ENGIE Services U.S. assumes the risk of delays and/or increased costs due to failure to account for underground obstructions or unsuitable soil conditions.
- Smoke detectors and fire alarm system work is excluded.
- The PV shade structure is not weather tight and will not provide shelter from rain.
- Installing water hose bibs for washing the panels is excluded.
- Decorative fascia along the perimeter of the panels and decorative covering underneath the panels are excluded.
- Parking lot repairs are excluded, except to the extent of damage caused by ENGIE Services U.S. or its subcontractors.
- Repair or replacement of existing housekeeping pads, concrete pads, or base repair of existing walkway lighting are excluded, except as specifically set forth in this Scope of Work.
- Painting, unless specified herein, is excluded.
- With respect to lighting equipment maintenance and/or lamp and ballast retrofitting, the City of Firebaugh will properly ground lighting fixtures before ENGIE Services U.S. commences Work in compliance with applicable codes.
- With respect to installation of new lighting fixture installations, prior to commencement of the lighting fixture installation, the City of Firebaugh will provide an existing or new grounding conductor or solidly grounded raceway with listed fittings at the lighting fixture junction box that is properly connected to the facility grounding electrode system in compliance with the latest NEC requirements adopted by the authority having jurisdiction. This Scope of Work includes, if applicable, properly terminating the lighting fixtures to the existing grounding conductor or to the existing solidly grounded raceway with listed fittings at the lighting fixture junction box.
- Where this Scope of Work includes pulling new wiring for lighting fixtures from an existing lighting panel, a grounding conductor must be included in the lighting circuits. The City of Firebaugh is responsible for providing an existing or new grounding conductor terminal bar at the lighting panel that is properly connected to the

Facility grounding electrode system in compliance with the latest NEC adopted by the authority having jurisdiction.

- With respect to Projects with new equipment connecting to the Facility's existing electrical distribution system, ENGIE Services U.S. will not be responsible for the electrical integrity of the existing electrical system, e.g., the condition and proper termination of current-carrying, grounded, and grounding conductors, bus taps, protective elements, the proper protection of existing wire through knockouts, or missing components. The City of Firebaugh is responsible for providing and maintaining the facility's electrical distribution system that meets the latest NEC and guidelines adopted by the authority having jurisdiction.
- ENGIE Services U.S. is not responsible for repairing or replacing existing damaged, blocked, or leaky ductwork, or cleaning dirt or mildew.
- ENGIE Services U.S. will not be responsible for existing damaged pipes, valves, and related parts and components.
- Unless specifically included in this Scope of Work, existing valves, dampers, linkages, and piping specialties to which new controls/building automation system are being connected are to be in proper functioning condition. If existing device is found to be improperly functioning, the City of Firebaugh may repair or compensate ENGIE Services U.S. for repair / replacement of the device.
- Depth of piers for canopy and ground mount installations are assumed to be 8 ft. No allowances have been made should soils report indicate that depth of piers should be deeper due to soil quality and/or seismic concerns, or additional seismic concerns requires deeper footings. ENGIE Services U.S. has been given the reasonable opportunity to conduct due diligence to determine appropriate pier depth in order to prepare and propose the Scope of Work. ENGIE Services U.S. assumes the risk of delays and/or increased costs due to failure to account for appropriate pier depth.

ENGIE Services U.S. Warranty criteria for specific pieces of equipment:

1. HVAC - PACKAGED UNITS - The ENGIE Services U.S. Warranty commences immediately upon the occurrence of uninterrupted operation for a duration of 2 weeks, wherein ENGIE Services U.S. determines proper operation. With respect to the Packaged Units, ENGIE Services U.S. will provide written notice to City of Firebaugh of the date the ENGIE Services U.S. Warranty commences.
2. HVAC - MOTORS/VFDs/GENERATORS - The ENGIE Services U.S. Warranty commences immediately upon the occurrence of uninterrupted operation for a duration of 2 weeks, wherein ENGIE Services U.S. determines proper operation. With respect to the Motors/VFDs/Generators, ENGIE Services U.S. will provide written notice to City of Firebaugh of the date the ENGIE Services U.S. Warranty commences.
3. HVAC - WEB-ENABLED THERMOSTAT WEB CONTROL - The ENGIE Services U.S. Warranty commences immediately upon the occurrence of two weeks of uninterrupted operation of controlled equipment while providing reasonable comfort. "Uninterrupted operation" is defined as: no involuntary shutdowns due to control problems. "Reasonable comfort" is defined as: maintaining occupied spaces controlled by the system within +/- 4 degrees of setpoint. Temperature setpoints will be set up upon installation. With respect to the Web-enabled Thermostat Controls, ENGIE Services U.S. will provide written notice to City of Firebaugh of the date the ENGIE Services U.S. Warranty commences.
4. SOLAR GENERATING FACILITIES - - The ENGIE Services U.S. Warranty commences immediately when the Generating Facility is capable of generating expected energy and the Utility is ready to issue the permission-to-operate letter.
 - a. Solar Module Warranty – solar modules will be provided with a 25-year manufacturer production warranty.
 - b. Solar Inverter Warranty – inverters will be provided with a 10-year manufacturer parts and service warranty.

Substantial & Final Completion Forms per Scope of Work:

The table below provides the number of substantial and final completion forms that will be used to document beneficial use and final completion of each scope of work.

Scope of Work	Location	Total Quantity of Substantial Completions	Total Quantity of Final Completions
ECM 1 - HVAC Upgrades – Packaged Units Upgrades	5 Sites	5, for entire ECM	5: for entire ECM
ECM 2 - Wireless Thermostats	5 Sites	5, for entire ECM	5: for entire ECM
ECM 3 - Integrated Switchgear & VFD	5 Sites	5, for entire ECM	5: for entire ECM
ECM 4 - Solar Generating Facilities	6 Sites	6, for entire ECM	6: for entire ECM

ATTACHMENT D
MONITORING INSTALLATION SCOPE OF WORK

Overview of DAS Network Installation and Equipment Requirements

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

ENGIE Services U.S. DAS Monitoring Installation:

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

**ATTACHMENT E
M&V SERVICES**

EQUIPMENT AND FACILITIES COVERED

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

Facility	Address
Water Site 1	½ Mile North of Ave 7, East of San Joaquin River, Firebaugh, CA 93622
Water Site 2	Levee & Vasquez Dr., Firebaugh, CA 93622
Rodeo	1668 11 th St, Firebaugh, CA 93622
Maldonado Park	1777 Thomas Conboy Ave, Firebaugh, CA 93622
Sewer Plant	N Helm Canal Rd 1/3 Mile East of Birch Dr, Firebaugh, CA 93622
Landfill	7 th St & Poso Canal Rd, Firebaugh, CA 93622
Community Center	1668 11 th St, Firebaugh, CA 93622
City Hall	1133 P St, Firebaugh, CA 93622
PAL Building	16 th St & Q St, Firebaugh, CA 93622
Fire Department	1575 11 th St, Firebaugh, CA 93622

I. Definitions:

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

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

“**Actual Energy Rate**” means, for any Measurement Period, utility rates calculated by ENGIE Services U.S. using actual utility billing information supplied by Firebaugh for that Measurement Period.

“**Annual M&V Fee**” means a fee payable annually in advance by Firebaugh to ENGIE Services U.S., in consideration of the provision of up to five (5) years of M&V Services. The Annual M&V Fee for the first Measurement Period will be Eight Thousand One Hundred Dollars (\$8,100.00). The Annual M&V Fee will be increased annually thereafter at the rate of three percent (3%) per annum for the first five (5) Measurement Periods, each increase to be effective on the first day of the corresponding Measurement Period. The Annual M&V Fee for each Measurement Period after the fifth (5th) Measurement Period will be negotiated in good faith by the Parties, not later than ninety (90) days prior to the end of the preceding Measurement Period, on the basis of then-prevailing market rates for, e.g., labor and equipment.

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

“**Average Energy Unit Savings**” means, with respect to any number of consecutive Measurement Periods, the arithmetic mean of the Energy Unit Savings for such number of Measurement Periods.

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

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

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

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

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

“**Energy Savings Term**” means the period beginning on the first day of the Construction Period and ending on the earlier of: (i) the day immediately preceding the twentieth (20th) anniversary of the M&V Commencement Date; (ii) the termination of the Contract; (iii) the termination by Firebaugh of the M&V Services in accordance with this

Attachment E, Section (II)(G); or (iv) the failure by Firebaugh to pay the Annual M&V Fee in accordance with this Attachment E, Section (II)(H)(i).

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

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

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

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

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

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

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

Measurement Year	Guaranteed Savings
1	\$307,459
2	\$318,353
3	\$329,634
4	\$341,316
5	\$353,413
6	\$365,939
7	\$378,911
8	\$392,343
9	\$406,252
10	\$420,656
11	\$435,572
12	\$451,018
13	\$467,013
14	\$483,577
15	\$500,729
16	\$518,491
17	\$536,885
18	\$555,933
19	\$575,659
20	\$596,086

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

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

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

II. Terms and Conditions

A. Guaranteed Savings.

- i. Savings Guarantee. In consideration of the payment of the Annual M&V Fee, and upon the terms and subject to the conditions set forth herein, ENGIE Services U.S. warrants that Firebaugh will realize total EC Savings during the Energy Savings Term of not less than the total Guaranteed Savings (the “Savings Guarantee”), as the same may be adjusted from time to time for changes in Energy Rate Factors, Energy Use Factors and consequential revisions to the relevant Baseline.
- ii. Guarantee Payment. For any Measurement Period in which there is a Guarantee Shortfall, ENGIE Services U.S. will pay to Firebaugh, within thirty (30) calendar days after the acceptance by Firebaugh of the Energy Savings Report for such Measurement Period, the Guarantee Payment for that Measurement Period.
- iii. Services or Retrofits in Lieu of Guarantee Payment. If in the judgment of Firebaugh, Firebaugh would benefit from additional energy services or energy saving retrofits, Firebaugh and ENGIE Services U.S. may mutually agree that ENGIE Services U.S. will provide such services or retrofits in lieu of the Guarantee Payment for such Measurement Period. For the purposes of this Contract, such services or retrofits will have a deemed value equal to the Guarantee Shortfall for that Measurement Period.
- iv. Excess Savings. For any Measurement Period in which there are Excess Savings, Firebaugh will repay to ENGIE Services U.S., to the extent of such Excess Savings, any Guarantee Payments previously paid by ENGIE Services U.S. to Firebaugh and not previously repaid to ENGIE Services U.S. by Firebaugh, and the Excess Savings for such Measurement Period will be reduced by the amount of such repayment. If ENGIE Services U.S. has provided services or retrofits in lieu of the Guarantee Payment for a prior Measurement Period, such that the Guarantee Payment for such Measurement Period cannot be repaid by Firebaugh, then in lieu of such repayment Excess Savings will be increased by the deemed value of such services or retrofits.
- v. Excusable Events. If ENGIE Services U.S. is delayed in, or prevented from, accurately calculating the actual EC Savings for any day of any Measurement Period by reason of any Excusable Event, such circumstance will not constitute a default, and ENGIE Services U.S. will be excused from performing the M&V Services while such event is continuing. During such event, Projected Energy Savings for the month(s) in which such event is continuing will be used in lieu of actual data; *provided* that if three (3) or more years of post M&V Commencement Date data are available for such month(s), the historical average of such data for such month(s) will be used in lieu of Projected Energy Savings.
- vi. Average Energy Unit Savings. For any Measurement Period beginning with the fifth (5th) Measurement Period, upon completion of that Measurement Period’s Energy Savings Report, ENGIE Services U.S. has the right to calculate the Average Energy Unit Savings which have occurred over all previous Measurement Periods. The Average Energy Unit Savings will be applied to all subsequent Measurement Periods to determine the Energy Unit Savings for each remaining Measurement Period. After applying such Average Energy Unit Savings for each subsequent Measurement Period and calculating the resulting EC Savings, if the *sum* of (i) such calculated EC Savings for any future Measurement Period *plus* (ii) the Annual M&V Fee for such Measurement Period is greater than the Guaranteed Savings for that Measurement Period, then such excess will be Excess Savings and the Savings Guarantee will have been met for that Measurement Period. If such *sum* of (i) calculated EC Savings for any future Measurement Period *plus* (ii) the Annual M&V Fee for such Measurement Period is less than the Guaranteed Savings for that Measurement Period, then ENGIE Services U.S. will apply Accumulated Savings then outstanding to determine whether there is a Guarantee Shortfall for that Measurement Period. If a Guarantee Shortfall is calculated to exist for a future Measurement Period, ENGIE Services U.S. may, in its sole discretion, pay to Firebaugh, not later than the ninetieth (90th) day of such future Measurement Period, the net present value of the Guarantee Shortfall for any or all of such future Measurement Period(s). Net present value will be determined using a discount rate of ten percent (10%).

B. Changes in Energy Use Factors.

- i. Adjustments to Baselines. Firebaugh will notify ENGIE Services U.S. in writing within ten (10) Business Days of any change in any Energy Use Factor. In addition, data collected by ENGIE Services U.S.

during or before the Energy Savings Term may indicate a change in the energy use pattern at the Facilities or any portion thereof and require a change to one or more Baselines. ENGIE Services U.S. will determine the effect that any such change will have on EC Savings and present to Firebaugh a written analysis of the effects of such changes. ENGIE Services U.S. will also make corresponding revisions to the Baselines and/or EC Savings that it deems appropriate in its reasonable discretion.

- ii. Adjustments to Guaranteed Savings. If a change in any Energy Rate Factor or Energy Use Factor results in a reduction of EC Savings, then the Guaranteed Savings for the corresponding Measurement Period(s) will be decreased by the same amount. ENGIE Services U.S. will notify Firebaugh, in writing, of all such changes.
- iii. Changes to Facilities. Firebaugh or ENGIE Services U.S. may from time to time propose to make changes to the Facilities for the express purpose of increasing EC Savings or addressing events beyond its control. It is agreed that these changes will only be made with the written consent of both Parties, which will not be unreasonably withheld. The Baseline will not be adjusted to reflect any changes agreed to under this Attachment E, Section (II)(B)(iii).
- iv. Baseline Adjustment. If ENGIE Services U.S. proposes changes to the Facilities that would not unreasonably interfere with the conduct of Firebaugh's business or cause Firebaugh to incur additional costs, and Firebaugh does not consent to the changes, then ENGIE Services U.S. will adjust the Baselines upward by the amount of savings projected from the changes.
- v. Projected Energy Savings. During the Energy Savings Term, when the ultimate effect of the Work on EC Savings cannot be accurately determined due to pending construction or changes to the Scope of Work, Projected Energy Savings for the Facilities will be used until the effect of the changes can be determined by ENGIE Services U.S.
- vi. Assessment Work. ENGIE Services U.S. has the right to charge Firebaugh for Assessment Work, which will be billed at current ENGIE Services U.S. engineering rates and will be paid by Firebaugh within thirty (30) calendar days after receiving ENGIE Services U.S.'s invoice. Before initiating Assessment Work, ENGIE Services U.S. will notify Firebaugh in writing of the intent and estimated cost associated with the Assessment Work. Firebaugh will, within forty-five (45) calendar days, give ENGIE Services U.S. written permission to proceed or, alternatively at no charge to ENGIE Services U.S., to stipulate that the Projected Energy Savings for the portion of the Facility in question be used for the purpose of meeting the Savings Guarantee for such Measurement Period and thereafter. If ENGIE Services U.S. does not receive written notice within forty-five (45) calendar days, the Projected Energy Savings for the portion of the Facility in question will be used until such time as Firebaugh approves the Assessment Work.
- vii. Change Order – Savings Effect. ENGIE Services U.S. will calculate the energy impact of any Change Orders.
- viii. Changes in Savings Calculations. Any changes made by ENGIE Services U.S. to the savings calculations will be presented to Firebaugh in advance. Firebaugh will have thirty (30) calendar days to challenge or question the changes in writing.
- ix. Inspection of Facilities. Firebaugh agrees that ENGIE Services U.S. will have the right, with prior notice, to inspect the Facilities to determine if Firebaugh has consistently complied with its obligations as set forth above. ENGIE Services U.S. will not exercise such right in a manner that unreasonably interferes with the business of Firebaugh. If any inspection discloses that Firebaugh has failed, on or prior to the date of such inspection, to be in compliance with any of its obligations, then the Guaranteed Savings will be assumed to have been achieved for the portion of the Energy Savings Term during which such failure will have existed.
- x. Interference. Firebaugh may not cause, and will take all commercially reasonable steps to prevent any third party from causing, any overshadowing, shading or other interference with the solar insolation that falls on the Generating Facility. Upon discovering, or otherwise becoming aware of, any actual or potential overshadowing, shading or other interference with insolation, Firebaugh will promptly notify ENGIE Services U.S. If an unforeseeable overshadowing or shading condition not caused by ENGIE Services U.S. or its subcontractors exists and continues for five (5) Business Days or more, Firebaugh agrees that the Guaranteed Savings for such Generating Facility will be reduced based upon such shading condition, and ENGIE Services U.S. may present Firebaugh with a proposed reduction to the Guaranteed Savings reflecting such overshadowing, shading or other interference.

C. Firebaugh Maintenance. Beginning at Beneficial Use or Substantial Completion for any portion of the Work, Firebaugh will maintain such portion of the Work and upon Final Completion will maintain the Project, in accordance with the maintenance schedules and procedures recommended by ENGIE Services U.S. and by the

manufacturers of the relevant equipment, such maintenance to include maintaining all landscaping (including tree trimming) in and around the Generating Facilities.

D. Energy Savings Report. Annually during the first five (5) Measurement Periods of the Energy Savings Term, ENGIE Services U.S. will submit to Firebaugh an energy savings report containing a precise calculation of the EC Savings during the applicable Measurement Period (an “Energy Savings Report”). ENGIE Services U.S. will use its best efforts to submit such Energy Savings Report within ninety (90) calendar days after receipt of all needed information for a Measurement Period, unless additional information is needed to accurately calculate the EC Savings, in which case Firebaugh will be notified of such a situation within the ninety (90) calendar-day period.

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

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

G. Annual M&V Fee.

- i. Invoicing and Payment. The Annual M&V Fee for the first Measurement Period will be invoiced by ENGIE Services U.S. to Firebaugh in a lump sum on the M&V Commencement Date. All subsequent Annual M&V Fees will be invoiced by ENGIE Services U.S. on the first day of the corresponding Measurement Period. Firebaugh, or its designee, will pay ENGIE Services U.S. such Annual M&V Fee, without any retention amount withheld, within thirty (30) calendar days after its receipt of the corresponding invoice. Unless Firebaugh gives ENGIE Services U.S. prior written notice of its intent to terminate the M&V Services, any failure to timely pay the Annual M&V Fee in accordance with this Attachment E, Section (II)(H) will be a material default by Firebaugh under the Contract, and ENGIE Services U.S., in addition to any other legal, contractual and equitable remedies available to it, will have no obligation thereafter to perform M&V Services or to make Guarantee Payments.
- ii. Any amount not paid when due will, from and after the due date, bear Interest. Accrued and unpaid Interest on past due amounts (including Interest on past due Interest) will be due and payable upon demand.
- iii. Not Refundable. The Annual M&V Fee is not refundable for any reason.

H. Calculations.

- i. Calculation of Accumulated Savings. Accumulated Savings will be increased, for any Measurement Period, by the amount of Excess Savings during such Measurement Period, and will be decreased, for any Measurement Period, by the *difference*, to the extent positive, between (i) the Guaranteed Savings for such Measurement Period *minus* (ii) the EC Savings for such Measurement Period. For the avoidance of doubt, Accumulated Savings will not be reduced below zero.
- ii. Calculation of EC Savings. EC Savings for any Measurement Period will be equal to the *sum*, for such Measurement Period, of (i) the Energy Use Savings, *plus* (ii) the Stipulated Non-Energy Savings, in each case as adjusted for changes in Energy Use Factors during such Measurement Period. EC Savings achieved during the Construction Period will be included in the EC Savings for the first Measurement Period.
- iii. Calculation of Energy Use Savings. Energy Use Savings will be calculated by ENGIE Services U.S. as the *product* of (i) the Energy Unit Savings *multiplied by* (ii) the greater of (a) the applicable Base Energy Rate or (b) the applicable Actual Energy Rate.
- iv. Calculation of Excess Savings. From and after the M&V Commencement Date, Excess Savings will be calculated by ENGIE Services U.S. as the *difference*, to the extent positive, between (i) the EC

Savings for the relevant Measurement Period *minus* (ii) the Guaranteed Savings for such Measurement Period. During the Construction Period, Excess Savings will be calculated by ENGIE Services U.S. in the manner set forth in this Attachment E, Section (III). For the avoidance of doubt, Excess Savings will not be reduced below zero.

- v. Calculation of Guarantee Shortfall. The Guarantee Shortfall, for any Measurement Period, will be calculated by ENGIE Services U.S. as the *difference*, to the extent positive, between (i) the Guaranteed Savings for such Measurement Period *minus* (ii) the sum of (a) EC Savings for such Measurement Period plus (b) Accumulated Savings then outstanding.

III. Methodologies and Calculations

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

Table E-1: Measurement and Verification Methods

ECM	ECM Description	M&V Method	
		Electric Usage	Electric Demand
1	HVAC Upgrades	Stipulated	N/A
3	Well Pump VFDs	Stipulated	N/A
4	Solar Generating Facilities	Option B	N/A

1. M&V Option B: Energy savings performance of Scope of Work are measured and verified at the end-use site. Option B techniques are designed for projects where long-term continuous measurement of performance is desired and warranted. Under Option B, while some parameter may be stipulated or measured once then stipulated, some individual loads are continuously monitored to determine performance; and this measured performance is compared with an equipment-use Baseline to determine the Energy Unit Savings.
 - a. ENGIE Services U.S. will supply a one-time report to Firebaugh detailing any initial measurements taken to establish usage Baselines or other parameters. Ongoing post-retrofit measurements will be compared to the Baselines, and the quantified Energy Unit Savings will be calculated and presented in ongoing reports. During the Construction Period, the Energy Unit Savings will be calculated by adding the savings measured for the whole months between Substantial Completion or Beneficial Use of the EC Measure and the M&V Commencement Date.
 - b. Scope of Work
No baseline measurements are necessary because pre-retrofit PV production is zero. Kilowatt-hours produced by the PV system will be measured using automated metering. Measured interval production kilowatt-hours will be compared against production shown on the monthly utility bills and any differences will be reconciled. Projected kWh production is shown in *Table E-2* below and is projected to degrade by 0.5% per year.

Table E-2: First Year Solar PV Production (ECM-4)

Location / ECM	Projected Annual Production (kWh)
Water Site 1	458,719
Water Site 2	356,968
Rodeo	69,213
Maldonado Park	43,953
Sewer Plant	534,760
Landfill	71,409
Total	1,535,022

- c. Assumptions: Once Work is Substantially Complete, these savings will be measured and verified monthly for the Energy Savings Term.

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

Table E-3: First Year Stipulated Savings

Location / ECM	Projected Annual Savings (kWh)
ECM-1: Community Center	1,865
ECM-1: City Hall	4,934
ECM-1: Sewer Plant	1,774
ECM-1: PAL Building	1,355
ECM-1: Fire Department	1,769
ECM-3: Water Site 1	105,524
ECM-3: Water Site 2	44,593
Total	161,814

3. Base Energy Rates: EC Savings will be calculated using the Base Energy Rates or Actual Energy Rates for that meter, whichever results in greater EC Savings. Actual Energy Rates will be calculated at the end of each Measurement Period using utility billing information for that Measurement Period and using the same methodology as was employed to determine the base energy rate in the Recommendations.

The Base Energy Rates listed here are to be increased each Measurement Period on a cumulative basis by four percent (4%) beginning on the first anniversary of the M&V Commencement Date and continuing on the first day of each Measurement Period thereafter.

Table E-4: Base Energy Rates

Location	Electricity Rate (\$/kWh)
ECM-4: Water Site 1	0.1818
ECM-4: Water Site 2	0.1938
ECM-4: Rodeo	0.2173
ECM-4: Maldonado Park	0.2139
ECM-4: Sewer Plant	0.1439
ECM-4: Landfill	0.2251
ECM-1: Community Center	0.2479
ECM-1: City Hall	0.2438
ECM-1: Sewer Plant	0.1620
ECM-1: PAL Building	0.2419
ECM-1: Fire Department	0.2419
ECM-3: Water Site 1	0.2206

ECM-3: Water Site 2	0.2563
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**ATTACHMENT F
MAINTENANCE SERVICES**

EQUIPMENT AND FACILITIES COVERED

ENGIE Services U.S. will perform preventive maintenance services (“Maintenance Services”) as set forth in this Attachment E with respect to Generating Facilities being constructed on Firebaugh’s property at the following Project Locations:

Facility	Address
Water Site 1	½ Mile North of Ave 7, East of San Joaquin River, Firebaugh, CA 93622
Water Site 2	Levee & Vasquez Dr., Firebaugh, CA 93622
Rodeo	1668 11 th St, Firebaugh, CA 93622
Maldonado Park	1777 Thomas Conboy Ave, Firebaugh, CA 93622
Sewer Plant	N Helm Canal Rd 1/3 Mile East of Birch Dr, Firebaugh, CA 93622
Landfill	7 th St & Poso Canal Rd, Firebaugh, CA 93622

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

I. Definitions

“**Annual Maintenance Fee**” means a fee payable annually in advance by Firebaugh to ENGIE Services U.S., in consideration of the provision of up to twenty (20) years of Maintenance Services. The Annual Maintenance Fee for the first Measurement Period will be Nine Thousand Three Hundred Five Dollars (\$9,305.00). The Annual Maintenance Fee will be increased annually thereafter at the rate of three percent (3%) per annum for the first five (5) Measurement Periods, each increase to be effective on the first day of the corresponding Measurement Period. The Annual Maintenance Fee for each Measurement Period after the fifth (5th) Measurement Period will be negotiated in good faith by the Parties, not later than ninety (90) days prior to the end of the preceding Measurement Period, on the basis of then-prevailing market rates for, e.g., labor and equipment.

II. Term

So long as Firebaugh pays to ENGIE Services U.S. the Annual Maintenance Fee, ENGIE Services U.S. will provide the Maintenance Services, as described herein, up to twenty (20) years from the M&V Commencement Date on an annualized basis. At the end of this term, Firebaugh may:

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

III. Annual Maintenance Fee; Reporting

The Annual Maintenance Fee for the first Measurement Period will be invoiced by ENGIE Services U.S. to Firebaugh in a lump sum on the M&V Commencement Date. All subsequent Annual Maintenance Fees will be invoiced by ENGIE Services U.S. on the first day of the corresponding Measurement Period. Firebaugh, or its designee, will pay ENGIE Services U.S. such Annual Maintenance Fee, without any retention amount withheld, within thirty (30) calendar days after its receipt of the corresponding invoice. Any failure to timely pay the Annual Maintenance Fee in accordance with this Attachment F will be a material default by Firebaugh, and ENGIE Services U.S., in addition to any other legal, contractual and equitable remedies available to it, will have no obligation thereafter to provide Maintenance Services.

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

The Annual Maintenance Fee is not refundable for any reason.

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

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

IV. Preventive Maintenance Services Provided

ENGIE Services U.S. will provide the following Maintenance Services during the term:

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

V. Repair Services

If a Generating Facility is damaged and requires safe-off, repair, demolition and/or reconstruction, Firebaugh must contact the ENGIE Services U.S. PV Operations & Maintenance Manager. In the event of damage, any component of the Generating Facility installed by ENGIE Services U.S. can be repaired or reconstructed by ENGIE Services U.S. at Firebaugh's request. Firebaugh must submit a request for quotation to the ENGIE Services U.S. PV Operations & Maintenance Manager. ENGIE Services U.S. will inspect the damage and provide a written quotation and complete scope of work to Firebaugh to restore the Generating Facility to normal operational condition. Before proceeding with repairs, ENGIE Services U.S. and Firebaugh must execute a work order, on ENGIE Services U.S.'s form, for the agreed scope of work and quotation amount. Repair work is done on a time and materials basis.

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

VI. Warranty Services

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

VII. Services and Equipment to Be Covered by Firebaugh

ENGIE Services U.S.'s obligations under this Attachment F are expressly conditioned upon Firebaugh's payment of the Annual Maintenance Fee and providing and being responsible for the following, without cost to ENGIE Services U.S.:

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

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

