

Public Works Contract

SOLAR ARRAY OPERATIONS AND MAINTENANCE AGREEMENT

City Agreement No. _____

City Budget Code: 53060110-53320

This Public Works Contract (this “**Contract**”) is entered into by and between the City of Napa, a California charter city (“**City**”), and McDonell Electric Inc., a California corporation (“**Contractor**”), effective as of the date last signed by the City, which is identified on the signature page as the “Effective Date,” for work on the City’s Solar Array Operations and Maintenance Project (“**Project**”).

1. Scope of Work. Contractor will perform the work specified in **Exhibit A, Scope of Work**, attached hereto and incorporated herein, and will provide all labor, materials, equipment, supplies, transportation, and any and all other items or services necessary or incidental to the work (collectively, the “**Work**”), in accordance with the terms and conditions in this Contract, including all attachments to the Contract, and in compliance with all applicable federal, state, and local laws, regulations, codes, ordinances, rules, licenses, and permits (collectively, “**Laws**”). To the extent that any attachment contains provisions that conflict or are inconsistent with the terms set forth in the body of this Contract, the Contract terms will control. This Project requires a valid California contractor’s license for the following classification(s): C10 – Electrical.

2. Contract Price. As full and complete compensation for Contractor’s timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract, City will pay Contractor not to exceed \$300,000.00 (the “**Contract Price**”) for all of Contractor’s direct and indirect costs to perform the Work, including all labor, materials, supplies, equipment, taxes, insurance, bonds and all overhead costs, in accordance with the payment provisions contained herein. Contractor will not be entitled to any additional compensation, unless and only to the extent authorized by written change order executed by the City in advance of performing the change order work.

2.1 Payment. Contractor must submit a detailed payment application on the first day of each month during the Contract Time, defined in Section 3 below, and/or upon completion, for the Work performed during the preceding month, itemizing costs for labor, materials, and equipment, and any incidental costs incurred. City will pay the undisputed amount due within 30 days after Contractor has submitted a complete and accurate payment application, subject to Public Contract Code § 20104.50. Contractor warrants that title to all Work and all materials and equipment incorporated into the Work will pass to City free of any claims, liens, or encumbrances upon payment to Contractor.

2.2 Retention.

✓ **City will not withhold retention.**

2.3 Bonds.

(A) *Payment and Performance Bonds.* If the Contract Price is over \$25,000, then Contractor must provide City with a payment bond and a performance bond, each for at least 100% of the Contract Price, using the bond forms included with this Contract as **Exhibit C, Bond Forms**, and submit the bonds with the executed Contract. Each bond must be issued by a surety admitted in California. If an issuing surety cancels a bond or becomes insolvent, Contractor must provide a substitute bond from a surety acceptable

to City, within seven days following written notice from City. If Contractor fails to substitute an acceptable surety within the specified time, City may, in its sole discretion, suspend further Work until the surety is replaced to City's satisfaction, or terminate the Contract for default. Any delay in completion due to suspension of Work pursuant to this Section is deemed unexcused delay by Contractor for purposes of calculating liquidated damages.

(B) *Warranty Bond*. If the contract price is over \$25,000, then upon completion of the Work, Contractor must submit a warranty bond, using the form included in Exhibit B, Bond Forms, to guarantee its Work as specified in Section 15, below. The warranty bond must be issued by a surety admitted in California for 15% of the final Contract Price or as otherwise specified in Exhibit A. If an issuing surety cancels the bond or becomes insolvent, Contractor must provide a substitute bond from a surety acceptable to City, within seven days following written notice from City.

3. Time for Completion. Contractor will fully complete the Repair Work from the start date set forth in the City's written notice to proceed ("**Contract Time**") through October 31, 2030. A "working day" means a weekday when the City is open for business, and does not include holidays observed by the City.

4. Liquidated Damages. Time is of the essence in the performance of this Contract. If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of \$0 per day for each day of unexcused delay in completion, and such liquidated damages may be deducted from payment otherwise due to Contractor under this Contract.

5. Responsibility for Work.

5.1 Standards. Contractor will ensure that the Work is performed in an efficient and skillful manner, consistent with generally recognized best practices. The quality of all workmanship, materials, and equipment will meet or exceed current City standards, and all materials and equipment must be new and of the best quality for the intended use, unless otherwise specified in Exhibit A.

5.2 Control. Contractor is responsible for supervising and directing all aspects of the Work to facilitate the timely completion of the Work. Contractor is solely responsible for and required to exercise full control over the Work, including the construction means, methods, techniques, sequences, procedures, and safety precautions and programs. Contractor will, at all times, perform the Work in a manner to avoid bodily harm to persons or damage to any property. From the date of commencement of the Work until either the date on which the City accepts the Project as complete or the effective date of termination of the Contract, whichever is later, Contractor bears all risks of injury or damage to the Work and the materials and equipment delivered to any Work site by any cause, including fire, earthquake, wind, weather, vandalism, or theft.

5.3 Correction of Defects. Contractor will promptly correct or replace, at no additional cost to City, any Work that City determines is deficient or defective, including workmanship, materials, or equipment. If Contractor fails to correct or replace such deficient or defective Work following notice from City, City may correct or replace the deficient or defective Work and deduct the cost from payment otherwise due to Contractor.

6. Permits, Certificates, and Licenses.

6.1 General. Contractor, at its sole expense, must obtain and maintain, at all times under this Contract, all appropriate permits, certificates, and licenses, including, but not limited to, the required California contractor's license and a City business license.

6.2 In-Use Off-Road Diesel-Fueled Fleets. If the Work involves the use of vehicles subject to the California Air Resources Board's In-Use Off-Road Diesel-Fueled Fleets Regulation (13 CCR § 2449 et seq.) ("**Off-Road Regulation**"), Contractor must submit to City, with the executed Contract, valid Certificates of Reported Compliance for its fleet and its listed subcontractors, if applicable, in accordance with the Off-Road Regulation, and must comply with the Off-Road Regulation, unless exempt thereunder.

7. Indemnification. To the fullest extent permitted by law, Contractor will indemnify, defend with counsel acceptable to City, and hold harmless City, its elected and appointed officials, officers, employees, agents, volunteers, and consultants (individually, an "Indemnitee") from and against any and all liability, demands, loss, damage, claims, settlements, expenses, fines, and costs (including, without limitation, attorney fees, expert witness fees, and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Contractor's acts or omissions with respect to this Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnitee. This indemnification obligation is not limited by any limitation on the amount or type of damages or compensation payable under Workers' Compensation or other employee benefit acts, or by insurance coverage limits, and will survive the expiration or termination of this Contract. City will notify Contractor of any third-party claim pursuant to Public Contract Code § 9201.

8. Insurance. Contractor will obtain and maintain, at all times under this Contract, the insurance coverage required in this Section to cover the activities of Contractor and its subcontractors relating to or arising from performance of the Work. Each policy must be issued by a company licensed to do business in California, and with a strength and size rating from A.M. Best Company of A-VIII or better. Contractor must provide City with certificates of insurance and required endorsements as evidence of coverage with the executed Contract and before the City issues a notice to proceed with the Work. The procurement of the required insurance will not be construed to limit Contractor's liability under this Contract or to fulfill Contractor's indemnification obligations under this Contract. The following policies and endorsements are required for this Contract:

8.1 Workers' Compensation Insurance and Employer's Liability. The workers' compensation and employer's liability insurance policy must comply with the requirements of the California Labor Code, providing coverage of at least \$1,000,000 or as otherwise required by statute. If Contractor is self-insured, Contractor must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations ("**DIR**").

8.2 Commercial General Liability ("CGL"). The CGL insurance policy must be issued on an occurrence basis and written on a comprehensive general liability form, and include coverage for liability arising from Contractor's or its subcontractor's acts or omissions in performing the Work, including Contractor's protective coverage, blanket contractual, products and completed operations, broad form property damage, vehicular coverage, and employer's non-ownership liability coverage, with limits of at least \$1,000,000 per occurrence and \$2,000,000 general aggregate.

8.3 Automobile Liability. The automobile liability insurance policy must provide coverage of at least \$1,000,000 combined single-limit per accident for bodily injury, death, or property damage, including hired and non-owned auto liability.

8.4 Subrogation Waiver. Each required policy must include an endorsement that the insurer waives any right of subrogation it may have against the City or the City's insurers.

8.5 Required Endorsements. The CGL policy and the automobile liability policy must include the following specific endorsements:

(A) The City, including its elected and appointed officials, officers, employees, agents, volunteers, and consultants (collectively, "**Additional Insured**") must be named as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and the policy must protect the Additional Insured against any and all liability for personal injury, death or property damage or destruction arising directly or indirectly in the performance of the Contract.

(B) The inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

(C) The insurance provided is primary and no insurance held or owned by City may be called upon to contribute to a loss.

(D) This policy does not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.

9. Labor Code Compliance. Unless the Contract is for construction work of \$25,000 or less or alteration, demolition, or repair work of \$15,000 or less, the Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, beginning at § 1720, and the related regulations, including, but not limited to, requirements pertaining to wages, working hours and workers' compensation insurance, as further specified below. Contractor must also post all job site notices required by Laws pursuant to Labor Code § 1771.4.

9.1 Prevailing Wages. Each worker performing Work under this Contract that is covered under Labor Code § 1720, 1720.3, or 1720.9, must be paid at a rate not less than the prevailing wage as defined in §§ 1771 and 1774 of the Labor Code. The prevailing wage rates are on file with the City Engineer's office and are available online at <http://www.dir.ca.gov/DLSR>. Pursuant to Labor Code § 1775, Contractor and any subcontractor will forfeit to City as a penalty up to \$200 for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate, in addition to paying each worker the difference between the applicable wage rate and the amount actually paid.

9.2 Working Day. Pursuant to Labor Code § 1810, eight hours of labor consists of a legal day's work. Pursuant to Labor Code § 1813, Contractor will forfeit to City as a penalty the sum of \$25 for each day during which a worker employed by Contractor or any subcontractor is required or permitted to work more than eight hours during any one calendar day, or more than 40 hours per calendar week, unless such workers are paid overtime wages under Labor Code § 1815. All Work must be carried out during regular City working days and hours unless otherwise specified in Exhibit A or authorized in writing by City.

9.3 Payroll Records. Contractor and its subcontractors must maintain certified payroll records in compliance with Labor Code §§ 1771.4, 1776, and 1812, and all implementing regulations promulgated by the DIR. For each payroll record, Contractor and its subcontractors must certify under penalty of perjury that the information in the record is true and correct, and that it has complied with the requirements of Labor Code §§ 1771, 1811, and 1815. Unless the Contract Price is \$25,000 or less, Contractor must electronically submit certified payroll records to the Labor Commissioner as required under Laws.

9.4 Apprentices. If the Contract Price is \$30,000 or more, Contractor must comply with the apprenticeship requirements in Labor Code § 1777.5.

9.5 DIR Monitoring, Enforcement, and Registration. This Project is subject to compliance monitoring and enforcement by the DIR pursuant to Labor Code § 1725.5, and, subject to the exception set forth below, Contractor and any subcontractors must be registered with the DIR to perform public works projects. The registration requirements of Labor Code § 1725.5 do not apply if the Contract Price is for \$25,000 or less.

10. Workers' Compensation Certification. Under Labor Code § 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code § 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

11. Project Site Conditions.

11.1 General. Contractor is responsible for properly securing the Project site to avoid property damage or injury, including damage to the Work or other real or personal property, and injury to any persons, including members of the public. Contractor is liable for any damage caused by Contractor or its subcontractors to the Work, City's property, the property of adjacent or nearby property owners, and the work or personal property of other contractors working for City.

11.2 Clean and Safe. Contractor must maintain the Project site and staging and storage areas in a clean and neat condition and must ensure it is safe and secure. On a daily basis, Contractor must remove and properly dispose of debris and waste materials from the Project site. Contractor is solely responsible for maintaining workplace safety in compliance with all applicable safety Laws.

11.3 Inspection. Contractor will make the Work accessible at all times for inspection by the City.

11.4 Hazardous Materials. Unless otherwise specified in the Contract, including the attachments hereto, this Contract does not include the removal, handling, or disturbance of any asbestos or other hazardous materials, as identified by any Laws. If Contractor encounters materials on the Project site that Contractor reasonably believes to be asbestos or other hazardous materials, and the asbestos or other hazardous materials have not been rendered harmless, Contractor may continue Work in unaffected areas reasonably believed to be safe, but must immediately cease Work on the area affected and report the condition to City. No asbestos, asbestos-containing products or other hazardous materials may be used in performance of the Work.

11.5 Unidentified Utilities. As required by Government Code § 4215, if, during the performance of the Work, Contractor discovers utility facilities not identified by City in the Contract, Contractor must immediately provide written notice to City and the utility. City assumes responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Project site if those utilities are not identified in the Contract. Contractor will be compensated for the costs of locating, repairing damage not due to Contractor's failure to exercise reasonable care, and removing or relocating utility facilities not indicated in the Contract with reasonable accuracy, and for equipment on the Project necessarily idled during such work. Contractor will not be assessed liquidated damages for delay in completion of the Work, to the extent the delay was caused by City's failure to provide for removal or relocation of the utility facilities.

11.6 Excavation and Trenching.

(A) *Notice of Excavation.* In performing any excavations or trenching work, Contractor must comply with all applicable requirements in Government Code § 4216 et seq.

(B) *Four Feet or More.* If the trenching or excavation extends deeper than four feet below the surface, then Contractor must comply with Public Contract Code § 7104, which provides that Contractor will promptly, and before the following conditions are disturbed, provide written notice to City if Contractor finds any of the following conditions: (1) material that Contractor believes may be a hazardous waste, as defined in 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 the provisions of existing Laws; (2) subsurface or latent physical conditions at the site differing materially from those indicated in this Contract; or (3) unknown physical conditions at the site of any unusual nature, materially different from those ordinarily encountered and generally recognized as inherent in work of the character required by the Contract. Upon notice, City will promptly investigate the condition(s) and if City finds that the condition(s) will cause an increase or decrease in Contractor's cost of, or the time required for, performance of any part of the Work, City will issue a change order. In the event a dispute arises between City and Contractor regarding any of the conditions specified in this subsection (B), or the terms of a change order issued by City, Contractor will not be excused from completing the Work within the Contract Time and must proceed with all Work to be performed under the Contract, but may pursue a claim against City in accordance with Section 16.

(C) *Five Feet or More.* If the trenching or excavation extends deeper than five feet below the surface and the Contract Price exceeds \$25,000, then Contractor must comply with Labor Code § 6705, which requires the submission of a detailed plan to City for acceptance in advance of the excavation. The detailed plan must show the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation. If the plan varies from the shoring system standards, it must be prepared by a California registered civil or structural engineer.

12. Change Orders. City may direct, in writing, changes to the scope or requirements of the Contract, including additions or deletions to all or any part of the Work, and Contractor must comply with any such City-directed change in the Work. If any such change causes an increase or decrease in the cost of the Work or in the time required to perform such Work, Contractor will submit a change order request to City, with a detailed explanation of the resulting change in the cost or time to perform the Work and attach all appropriate documentation substantiating the claimed cost or delay. City, in its sole discretion, will determine whether, and to what extent, the change order request warrants an adjustment to the Contract Price and/or Contract Time, and will include any such adjustment(s) in a written change order. Contractor must receive written authorization from City before performing any Work that is not included in Exhibit A or an authorized change order.

13. As-Built Drawings. Unless otherwise specified in Exhibit A, Contractor must maintain and update a separate set of as-built drawings while the Work is being performed, showing changes from the Work as planned in Exhibit A or any drawings incorporated into this Contract. The as-built drawings must be updated as changes occur, on a daily basis, if necessary. Contractor will provide the as-built drawings to City upon request and upon completion of the Work.

14. **Records.** Contractor will maintain complete and accurate records with respect to the Work and all costs to perform the Work. Contractor must maintain its records relating to this Contract for a period of five years after City's acceptance of the Project or following Contract termination, whichever occurs first. Subject to prior notice to Contractor, City is entitled to inspect or audit any of Contractor's records relating to the Project during Contractor's normal business hours. Contractor's records may also be subject to examination and audit by the California State Auditor, pursuant to Government Code § 8546.7.

15. Completion and Warranty.

15.1 Final Inspection. When the Work required by this Contract is fully performed, Contractor must provide written notification to City requesting final inspection. Based on City's inspection, City may prepare a punch list of any items that are incomplete, missing, defective, incorrectly installed, or otherwise not compliant with the Contract. The omission of any non-compliant item from a punch list will not relieve Contractor from fulfilling all requirements of the Contract. Contractor's failure to complete any punch list item within the time specified in the punch list will not waive or abridge its warranty obligations for any such items that must be completed by the City or by a third party retained by the City due to Contractor's failure to timely complete any such outstanding item.

15.2 Acceptance. Upon completion or correction of all punch list items, as verified by City's inspection, and upon satisfaction of all other Contract requirements, the City Engineer will accept the Project by issuing a written notice of acceptance, effective upon the date set forth therein. In order to avoid delay of Project close out, the City may elect, acting in its sole discretion, to accept the Project as complete subject to exceptions for any punch list items that are not completed within the time specified in a punch list and may withhold up to 150% of City's estimated cost to complete the remaining items from final payment due to Contractor.

15.3 Warranty. Contractor guarantees and warrants the Work and the materials used or provided for the Project will be free from defects for a period of one year, beginning upon the date of the City's written notice of acceptance issued in accordance with Section 15.2 ("**Warranty Period**"). During the Warranty Period, upon notice from the City of any defect in the Work or the materials, Contractor must, at its sole expense, promptly repair or replace the defective Work or materials, including repair or replacement of any other Work or materials that are displaced or damaged during the warranty work, excepting any damage resulting from ordinary wear and tear. Work performed during the Warranty Period ("**Warranty Work**") will be subject to the warranty provisions in this Section 15.3 for a one-year period that begins upon completion of such Warranty Work to City's satisfaction.

16. Dispute Resolution. Any dispute arising under or related to this Contract is subject to the dispute resolution procedures of Public Contract Code §§ 9204 and 20104 et seq., which are incorporated by reference.

17. Termination. City reserves the right to terminate the Contract for convenience or for cause upon written notice to Contractor. Upon receipt of such notice, Contractor must: immediately stop the Work, including under any terms or conditions that may be specified in the notice; comply with City's instructions to protect the completed Work and materials; and use its best efforts to minimize further costs.

17.1 Termination for Convenience. In the event of City's termination for convenience, Contractor waives any claim for damages, including for loss of anticipated profits from the Project. If City terminates the Contract for convenience, City will only owe Contractor payment for the Work satisfactorily performed before Contract termination, as well as five percent of the total value of the Work performed as of the date of notice of termination or five percent of the value of the Work yet to be completed, whichever is less, which is deemed to cover all overhead and profit to date.

17.2 Termination for Cause. The City may terminate this Contract for cause for any material default. Contractor may be deemed in default for a material breach of or inability to perform the Contract, including Contractor's refusal or failure to supply sufficient skilled workers, proper materials, or equipment to perform the Work within the Contract Time; refusal or failure to make prompt payment to its employees, subcontractors, or suppliers or to correct rejected work; disregard of Laws; lack of financial capacity to complete the Work within the Contract Time; or

responsibility for any other material breach of the Contract requirements. If City terminates the Contract for cause, City will only owe Contractor payment for the Work satisfactorily performed before Contract termination.

18. Waiver. A waiver by City of any breach of any term, covenant, or condition in this Contract will not be deemed a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, regardless of the character of any such breach.

19. Conflicts of Interest. Contractor, its employees, subcontractors, and agents, may not have, maintain or acquire a conflict of interest in relation to this Contract in violation of any City ordinance or policy or in violation of any California law, including under Government Code § 1090 et seq. and under the Political Reform Act as set forth in Government Code § 81000 et seq. and its accompanying regulations. Any violation of this Section constitutes a material breach of the Contract.

20. Discrimination Prohibited.

20.1 General. Discrimination against any prospective or present employee engaged in the Work on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, marital status, or any other protected class is strictly prohibited. Contractor and its subcontractors are required to comply with all applicable Laws prohibiting discrimination, including Napa Municipal Code (“NMC”) section 2.92.040, which obligates every contractor or subcontractor under a contract or subcontract to the City for public works, subject to City Charter Section 101, in the sum \$25,000 or more, to refrain from discriminatory employment practices on the basis of sex, race, color, religious creed, national origin or ancestry of any employee of, or applicant for employment with, such contractor or subcontractor, and which is incorporated herein by reference.

20.2 Affirmative Actions. Contractor certifies that it and its “principal subcontractors,” as defined in NMC section 2.92.020, have performed, or will perform, the affirmative actions set forth in NMC section 2.92.050, as applicable, including the requirement to file a compliance report with the City Manager, pursuant to NMC section 2.92.050(C).

21. Independent Contractor. City and Contractor intend that Contractor will perform the Work under this Contract as an independent contractor. Contractor will have control of the Work and is solely responsible for its means and methods in performing the Work. Contractor is not an employee of City and is not entitled to participate in health, retirement or any other employee benefits from City.

22. Assignment of Unfair Business Practice Claims. Under Public Contract Code § 7103.5, Contractor and its subcontractors agree to assign to City all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or any subcontract. This assignment will be effective at the time City tenders final payment to Contractor, without further acknowledgement by the parties.

23. Notice. Any notice, billing, or payment required by or pursuant to the Contract must be made in writing, signed, dated, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, or by email as a PDF file. Notice is deemed effective upon delivery, except that service by U.S. Mail is deemed effective on the second business day after deposit for delivery. Notice for each party must be given as follows:

City:

Kelly Pennington
Water Control Systems Superintendent
CITY OF NAPA
P.O. Box 660
NAPA, CA 94559-0660
kpennington@cityofnapa.org

Contractor:

Eric McDonell
President
McDonell Electric, Inc.
382 Tesconi Ct.
Santa Rosa, CA 94501
eric@mcdonellelectric.com
Contractor's Authorized Representative

24. General Provisions.

24.1 Compliance with All Laws. Contractor will comply with all applicable Laws, including, but not limited to, unemployment insurance benefits, FICA Laws, conflict of interest Laws, and health and safety Laws. Work may only be performed by qualified and experienced workers who are not employed by the City and who do not have any contractual relationship with City, with the exception of this Contract.

24.2 Provisions Deemed Inserted. Every provision of law required to be inserted in the Contract is deemed to be inserted, and the Contract will be construed and enforced as though such provision has been included. If it is discovered that through mistake or otherwise that any required provision was not inserted, or not correctly inserted, the Contract will be deemed amended accordingly.

24.3 Assignment and Delegation. This Contract will not be assigned or transferred in whole or in part, nor will any of the Contractor's duties be delegated, without the City's prior written consent. Any attempt to assign, transfer, or delegate this Contract, in whole or any part, without the City's prior written consent will be void and of no force or effect. Any consent by the City to one assignment, transfer, or delegation will not be deemed to be consent to any subsequent assignment, transfer, or delegation. This Contract is binding on Contractor's and City's lawful heirs, successors and permitted assigns.

24.4 Third Party Beneficiaries. There are no intended third party beneficiaries to this Contract.

24.5 Governing Law, Jurisdiction, and Venue. The interpretation, validity, and enforcement of this Contract will be governed and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Contract will be filed and heard in a court of competent jurisdiction in the County of Napa. Contractor waives any right it may have pursuant to Code of Civil Procedure § 394 to file a motion to transfer any action arising from or relating to this Contract to a venue outside of Napa County, California.

24.6 Modification. This Contract may not be amended or modified orally. No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.

24.7 Entire Agreement. This Contract and the document(s) incorporated herein, including authorized amendments or change orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor concerning the subject matter hereof. This Contract supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Contract are complementary; what is called for in one is binding as if called for in all.

24.8 Severability. If any term of the Contract (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Contract will be construed as not containing that term, and the remainder of the Contract will remain in full force and effect; provided, however, this Section will not be applied to the extent that it would result in a frustration of the parties' intent under the Contract.

24.9 Interpretation. Each party to this Contract has had an opportunity to review this Contract, and to consult with its respective legal counsel regarding the meaning of this Contract. Accordingly, Civil Code § 1654 will not apply to interpret any uncertainty in the meaning of this Contract.

24.10 Signatures. The individuals executing this Contract represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Contract on behalf of the respective legal entities of the Contractor and the City.

[Signatures are on the following page.]

The parties hereto have executed this Contract to be effective on the Effective Date set forth below.

CITY:

CITY OF NAPA, a California charter city

By: _____
Joy Eldredge, Utilities Director

Date: _____
("Effective Date")

COUNTERSIGNED:

Erika Leahy, City Auditor

APPROVED AS TO FORM:

Christopher Diaz, Interim City Attorney

CONTRACTOR:

McDonell Electric Inc., a California corporation
Business Name

s/ _____ Seal:

Eric McDonell, Chief Executive Officer

Date: _____

License No. 787794 - Expires June 30, 2026
Contractor's California License Number(s) and Expiration Date(s)

Attachments:

Exhibit A: Scope of Work
Exhibit B: Compensation Rates and Charges
Exhibit C: Bond Forms

Exhibit A
SCOPE OF WORK

1.0. SCOPE OF SERVICES. Contractor will perform the following Services, in accordance with the terms of the Agreement.

1. Provide a Customer Service Support Hotline:
 - a. Support technicians who specialize in remote troubleshooting to provide step-by-step diagnosis instructions. Support to be provided 8 hours per day, Monday through Friday.
2. Provide Monitoring Website:
 - a. Customer website should be updated at least every 15 minutes for monitoring operational and environmental performance of the solar power system.
 - b. All site data should be downloadable to Customer's computer in Microsoft Excel format.
 - c. Customer will be provided with login credentials for use during the term of the Agreement.
3. Annual Performance Reports:
 - a. Provide Annual Performance Reports reflecting actual vs. expected performance of the System for the period with a comparison of performance to a typical weather year.
 - b. Environmental benefits will be estimated and included.
 - c. Annual Operations and Maintenance records will be provided to Customer upon request.
4. Daily Performance Monitoring and Notification:
 - a. Continuous monitoring of Customer's System via experienced solar monitoring technicians.
 - b. Operational status (inverter and system on/off) and performance alerts (actual vs. expected performance) to be continuously monitored by the Operations Center system computers and monitoring technicians automatically receive alerts of system anomalies.
 - c. Monitoring technicians identify and respond to system alerts including contacting Customer's system administrator.
5. Annual Preventative Maintenance, Inspections & Testing:
 - a. Array
 - i. Inspect PV modules for damage, discoloration or de-lamination.
 - ii. Inspect mounting system for damage or corrosion.
 - b. Trackers
 - i. Inspect tracker components for damage or corrosion.
 - ii. Inspect tracker controllers for damage.
 - iii. Lubricate tracker motors and jackscrews.
 - iv. Verify proper operation and alignment.
 - c. Inverter
 - i. Torque checks on critical electrical terminations.
 - ii. Clean all filters and fans.
 - iii. Inspect inverter pad and container.
 - iv. All other preventive maintenance required by OEM warranty.
 - d. Electrical BOS
 - i. Inspect ground braids, electrodes and conductors for damage
 - ii. Perform thermo-graphic analysis of combiner boxes, inverters, transformers, and conductor connections to buses, breakers or disconnects.
 - e. Meteorological Station
 - i. Inspect weather measurement equipment for damage.
 - ii. Clean pyranometers and reference cells.
 - f. Site Conditions
 - i. Inspect drainage conditions.

- ii. Inspect vegetation for array shading or fire hazards.
 - iii. Inspect safety conditions and proper signage.
 - g. Maintenance Reporting
 - i. Record results of all inspections
 - ii. Take photographs of any damage or defects identified
 - iii. Inform Owner and warranty providers of all deficiencies identified
 - iv. Provide Owner with recommendations for corrective actions
- 6. Performance Review:
 - a. Review of the following System performance data with a performance engineer and proposal of a recommend action plan where applicable:
 - i. Expected vs. Actual system production (kWh)
 - ii. System Availability
 - iii. Recoverable Degradation
 - iv. Performance Index
 - v. Operation and Maintenance Records
 - vi. Safety, Accidents and Environmental Reporting
 - vii. Proposal of Recommended Actions
- 7. Corrective Maintenance to include:
 - a. On-site troubleshooting & diagnostics of all system components
 - b. Inverter and Data Acquisition System resets:
 - i. Unlimited remote resets (if capability enabled and connection available)
 - ii. Up to two on-site resets per year
 - c. Processing of warranty claims on behalf of Customer and verification of replaced equipment
 - d. Management of repair and replacement for equipment out of warranty
- 8. Warranty and Support:
 - a. The O&M plan includes procedures for assisting in warranty claims in the event of faulty components, ensuring the system is protected against manufacturer defects for the specified warranty period

2.0. SCHEDULE OF PERFORMANCE.

2.1. REQUESTS FOR SERVICES. Upon request by City, Contractor will provide the Services described above, beginning on the "Effective Date", and ending on October 31, 2030. The Services will be provided for a variety of individual matters, as required by the City. Upon request by the City's Authorized Representative for Contractor to perform Services for a particular matter, Contractor will provide a written estimate of the time within which Services for the matter will be completed, and the estimated cost for providing the requested Services. Following written authorization from the City's Authorized Representative, Contractor will perform and complete the Services as specified in the written authorization. Contractor is not entitled to payment for any Services performed without written authorization, or for Services that exceed the scope of a written authorization. For purposes of this Section, the written estimate and written authorization may be provided on paper or in an electronic form.

3.0. PREVAILING WAGE COMPLIANCE. If this Agreement includes work performed during the "design and preconstruction phases of construction" (including inspection or field surveying services), as defined by "Prevailing Wage Laws" (as set forth in the California Labor Code, including section 1720 et seq.), the City hereby determines that those Services are "public works,"

and this Agreement is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, and all related regulations, including requirements pertaining to wages, working hours, and workers' compensation insurance, and the following provisions. SubContractors performing "public works" under this Agreement are subject to all of the requirements of this Section.

- 3.1. Prevailing Wages.** Contractor must comply with the prevailing wage requirements applicable in Napa County for each craft, classification, or type of worker needed to perform the Services, including employer payments for health and welfare, pension, vacation, and apprenticeship. The prevailing wage rates are on file with the City Engineer's office and are also available online at <http://www.dir.ca.gov/DLSR>. Pursuant to Labor Code section 1775, Contractor will forfeit to City as a penalty up to \$200 for each calendar day, or portion of a day, for each worker paid less than the applicable prevailing wage rate, in addition to paying each such worker the difference between the applicable prevailing wage rate and the amount actual paid to the worker.
- 3.2. Working Hours.** Pursuant to Labor Code section 1810, eight hours of labor constitutes a legal day's work. Pursuant to Labor Code section 1813, Contractor will forfeit to City as a penalty, the sum of \$25 for each day during which a worker employed by Contractor is required or permitted to work more than eight hours during any one calendar day, or more than 40 hours per calendar week, unless such worker is paid overtime wages pursuant to Labor Code section 1815. All Services must be performed during City's regular business days and hours, except as otherwise specified in this Agreement or subject to City's prior written authorization.
- 3.3. Payroll Records.** Contractor must maintain certified payroll records in compliance with Labor Code sections 1776 and 1812, and any implementing regulations promulgated by the Department of Industrial Relations ("**DIR**"). For each payroll record, Contractor must certify under penalty of perjury that the information in the payroll is true and correct and complies with the requirements of Labor Code sections 1771, 1861, and 1815. Contractor must electronically submit certified payroll records as required by Labor Code section 1771.4(a).
- 3.4. Apprentices.** If the total compensation payable under this Agreement is \$30,000 or more, Contractor must comply with the apprenticeship requirements in Labor Code section 1777.5.
- 3.5. Compliance.** The Agreement is subject to compliance monitoring and enforcement by the DIR. Pursuant to Labor Code section 1725.5, Contractor must be registered with the DIR to perform public works projects, subject to any applicable exceptions, if any. Contractor must post all job site notices required by laws or regulations pursuant to Labor Code section 1771.4. Pursuant to Labor Code section 1861, by executing this Agreement, Contractor certifies as follows: "I am aware of the provisions of Labor Code 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing performance of the work on this contract."

EXHIBIT "B"

COMPENSATION RATES AND CHARGES

Hourly Rate Schedule:

Job Title/Classification	Regular Rate	Overtime Rate	Double Time Rate
Journeyman Electrician	\$185 per hour	\$278 per hour	\$370 per hour
Apprentice	\$120 per hour	\$180 per hour	\$240 per hour

Overtime:

Work over 8 hours in a day and/or work over 40 hours in a week is overtime.

Double Time:

Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight hours on the seventh consecutive day of work in a workweek.

Category/Item	Rate
Travel	\$185 per hour
Material and equipment rental markup	%15
Rental fees Scissor lift	\$600 per day plus markup

Module Cleaning

Modules cleaning will vary based on the system size and type. Some systems require renting a scissor lift and additional fall protection which will increase price. Generally, the pricing is between \$6.60 and \$9.75 per module, but no less than \$600 total.

5-year Annual Operations s Maintenance (OCM) Agreement – Solar

1000 Sage Canyon Rd, St Helena, CA 34574

Overview

This Operations and Maintenance (OCM) agreement is designed to ensure the optimal performance, safety, and longevity of the solar and/or battery storage system. The

system may include but not limited to photovoltaic (PV) modules, inverters, Battery storage, monitoring, mounting structures, and other components necessary for the generation of solar and battery storage energy. Annual OCM is recommended to maximize energy production and prevent operational issues.

Site OCM is performed once a year.

1. Routine Operations

- **Monitoring:** Real-time data is collected to track performance, energy output, and system health. Monitoring platforms can alert operators to anomalies such as underperformance, shading issues, or equipment malfunctions.

2. Preventative Maintenance

Preventative maintenance to mitigate the risk of system downtime and to ensure long-term reliability.

- **Visual Inspections:**
 - **Modules:** Inspect the solar panels for any damage, discoloration, cracks, or dirt accumulation that could reduce energy efficiency.
 - **Inverters:** Check inverters for any signs of overheating, unusual noises, or malfunctions. Ensure all fans and cooling systems are functioning correctly to avoid overheating and prolong the life of the inverters
 - **Wiring and Connections:** Ensure that all electrical connections are secure and free of corrosion or wear. Tighten any loose connections and look for any frayed or damaged cables.
 - **Mounting Structures:** Inspect the mounting and racking systems for stability, signs of corrosion, and proper alignment.

3. Cleaning:

- **Panels:** Solar panels should be cleaned periodically (typically once a year) to maintain efficiency, especially in regions with heavy dust or pollution.
 - **Inverters:** When applicable clean air filters and cooling fans to ensure efficient operation.
 - **Debris:** Report any debris or obstacles. Such as critter nests in equipment, modules soiling, and weed mitigation.

4. Corrective Maintenance

- **Fault Detection:** If performance dips below expected levels or alarms are triggered by the monitoring system, diagnostic tools should be used to locate and address the issue.
- **Repairs:** Address malfunctioning components such as inverters, damaged panels, or faulty wiring immediately to minimize downtime and prevent further damage. Replacement parts should be sourced from vendors and manufacturers to ensure compatibility and quality.
- **Component Replacement:** Over time, certain components like inverters, batteries, modules may need replacement.

5. Performance Testing

- **Annual Testing:** An annual performance test should be conducted to assess the overall health of the system. This includes checking power output against design expectations, measuring module efficiency, and ensuring inverter output is within specifications.
- **Thermal Imaging:** When needed thermographic inspection can be used to identify hot spots on the system, which may indicate faulty components such as malfunctioning inverters, modules, or broken connections.

6. Documentation and Reporting

- **Maintenance Logs:** Detailed records of inspections, maintenance activities, and any repairs will be provided.

7. Warranty and Support

- **Warranty Claims:** The OCM plan includes procedures for assisting in warranty claims in the event of faulty components, ensuring the system is protected against manufacturer defects for the specified warranty period.

By following this comprehensive OCM plan, the solar energy system will operate at maximum efficiency, reducing the risk of downtime, and ensuring that the system provides reliable, clean energy for years to come.

Description of work	Year 1	Year 2	Year 3	Year 4	Year 5
One day of Travel, inspections, review monitoring, and writing a report	\$11,033	\$11,374	\$11,726	\$12,088	\$12,462
One array cleaning for (1920) ground mount PV modules	\$5,731	\$5,909	\$6,091	\$6,280	\$6,474
Total per year:	\$16,764	\$17,283	\$17,817	\$18,368	\$18,936

Exhibit C
BOND FORMS

Payment and Performance Bonds are required for contracts over \$25,000.

Payment Bond

City of Napa ("City") and McDonell Electric, Inc., a California corporation ("Contractor") have entered into a contract ("Contract") for work on the Solar Array Operations and Maintenance Project ("Project"). The Contract is incorporated by reference into this Payment Bond ("Bond").

1. **General.** Under this Bond, Contractor as principal and _____, its surety ("Surety"), are bound to City as obligee in an amount not less than the Contract Price of \$ _____, under California Civil Code § 9550 et seq., to ensure payment to authorized claimants. This Bond is binding on the respective successors, assigns, owners, heirs, or executors of Surety and Contractor.
2. **Surety's Obligation.** If Contractor or any of its subcontractors fails to pay a person authorized in California Civil Code § 9100 to assert a claim against a payment bond, any amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Contractor and its subcontractors, under California Unemployment Insurance Code § 13020 with respect to the work and labor, then Surety will pay the obligation.
3. **Beneficiaries.** This Bond inures to the benefit of any of the persons named in California Civil Code § 9100, so as to give a right of action to those persons or their assigns in any suit brought upon this Bond. Contractor must promptly provide a copy of this Bond upon request by any person with legal rights under this Bond.
4. **Duration.** If Contractor promptly makes payment of all sums for all labor, materials, and equipment furnished for use in the performance of the Work required by the Contract, in conformance with the time requirements set forth in the Contract and as required by California law, Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
5. **Waivers.** Surety waives any requirement to be notified of and further consents to any alterations to the Contract or extensions of time for performance of the Work under the Contract. Surety waives the provisions of Civil Code §§ 2819 and 2845. City waives requirement of a new bond for any supplemental contract under Civil Code § 9550. Any notice to Surety may be given in the manner specified in the Contract and sent to Surety as follows:

Attn: _____
Address: _____
City/State/Zip: _____
Phone: _____
Fax: _____
Email: _____

6. **Law and Venue.** This Bond will be governed by California law, and venue for any dispute pursuant to this Bond will be in the Superior Court of Napa County, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.

7. **Effective Date; Execution.** This Bond is entered into and is effective on _____,
20__.

SURETY:

Business Name

s/ _____

Date

Name, Title

(Attach Acknowledgment with Notary Seal and Power of Attorney)

CONTRACTOR:

Business Name

s/ _____

Date

Name, Title

s/ _____

Date

Name, Title

APPROVED BY CITY:

s/ _____

Date

Name, Title

END OF PAYMENT BOND

Performance Bond

City of Napa ("**City**") and McDonell Electric, Inc., a California corporation ("**Contractor**") have entered into a contract ("**Contract**") for work on the Solar Array Operations and Maintenance Project ("**Project**"). The Contract is incorporated by reference into this Performance Bond ("**Bond**").

1. **General.** Under this Bond, Contractor as principal and _____, its surety ("**Surety**"), are bound to City as obligee for an amount not less than the Contract Price of \$ _____ to ensure Contractor's faithful performance of its obligations under the Contract. This Bond is binding on the respective successors, assigns, owners, heirs, or executors of Surety and Contractor.
2. **Surety's Obligations.** Surety's obligations are co-extensive with Contractor's obligations under the Contract. If Contractor fully performs its obligations under the Contract, including its warranty obligations under the Contract, and Contractor has timely provided a warranty bond as required under the Contract, Surety's obligations under this Bond will become null and void upon City's acceptance of the Project, excluding any exceptions to acceptance, if any. Otherwise, Surety's obligations will remain in full force and effect until expiration of the one-year warranty period under the Contract.
3. **Waiver.** Surety waives any requirement to be notified of and further consents to any alterations to the Contract made under the applicable provisions of the Contract documents, including changes to the scope of Work or extensions of time for performance of Work under the Contract. Surety waives the provisions of Civil Code §§ 2819 and 2845.
4. **Application of Contract Balance.** Upon making a demand on this Bond for completion of the Work prior to acceptance of the Project, City will make the Contract Balance available to Surety for completion of the Work under the Contract. For purposes of this provision, the Contract Balance is defined as the total amount payable by City to Contractor as the Contract Price minus amounts already paid to Contractor, and minus any liquidated damages, credits, or backcharges to which City is entitled under the terms of the Contract.
5. **Contractor Default.** Upon written notification from City that Contractor is in default under the Contract, time being of the essence, Surety must act within seven calendar days of receipt of the notice to remedy the default through one of the following courses of action:
 - 5.1 Arrange for completion of the Work under the Contract by Contractor, with City's consent, but only if Contractor is in default solely due to its financial inability to complete the Work;
 - 5.2 Arrange for completion of the Work under the Contract by a qualified contractor acceptable to City, and secured by performance and payment bonds issued by an admitted surety as required by the Contract documents, at Surety's expense; or
 - 5.3 Waive its right to complete the Work under the Contract and reimburse City the amount of City's costs to have the remaining services completed.
6. **Surety Default.** If Surety defaults on its obligations under the Bond, City will be entitled to recover all costs it incurs due to Surety's default, including legal, design professional, or delay costs.
7. **Notice.** Any notice to Surety may be given in the manner specified in the Contract and sent to Surety as follows:

Attn: _____

Address: _____
City/State/Zip: _____
Phone: _____
Fax: _____
Email: _____

8. **Law and Venue.** This Bond will be governed by California law, and venue for any dispute pursuant to this Bond will be in the Superior Court of Napa County, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.
9. **Effective Date; Execution.** This Bond is entered into and effective on _____, 20____.

SURETY:

Business Name

s/ _____

Date

Name, Title

(Attach Acknowledgment with Notary Seal and Power of Attorney)

CONTRACTOR:

Business Name

s/ _____

Date

Name, Title

s/ _____

Date

Name, Title

END OF PERFORMANCE BOND

Warranty Bond

City of Napa, a California charter city ("City"), and McDonell Electric, Inc., a California corporation ("Contractor") have entered into a contract, dated _____, 20____ ("Contract") for work on the Solar Array Operations and Maintenance Project ("Project"). The Contract is incorporated by reference into this Warranty Bond ("Bond").

1. **General.** Under this Bond, Contractor as principal and _____, its surety ("Surety"), are bound to City as obligee in the maximum amount of 15% of the final Contract Price, unless otherwise specified in the Contract.
2. **Warranty Period.** The Contract requires Contractor to guarantee its work and that of its subcontractors on the Project, against defects in materials or workmanship which are discovered during the one-year period commencing with City's acceptance of the Project ("Warranty Period").
3. **Surety's Obligations.** If Contractor faithfully carries out and performs its guarantee under the Contract, and, on due notice from City, repairs and remedies, at its sole expense, any and all defects in materials and workmanship in the Project which are discovered during the Warranty Period, or if Contractor promptly reimburses City for all loss and damage that City sustains because of Contractor's failure to makes such repairs in accordance with the Contract requirements, then Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
4. **Waiver.** Surety waives the provisions of Civil Code §§ 2819 and 2845.
5. **Notice.** Any notice to Surety may be given in the manner specified in the Contract and sent to Surety as follows:

Attn: _____
Address: _____
City/State/Zip: _____
Phone: _____
Fax: _____
Email: _____
6. **Law and Venue.** This Bond will be governed by California law, and venue for any dispute pursuant to this Bond will be in the Napa County Superior Court, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.

[Signatures are on the following page.]

7. **Effective Date; Execution.** This Bond is entered into and is effective on _____,
20____.

SURETY:

Business Name

s/ _____

Date

Name, Title

(Attach Acknowledgment with Notary Seal and Power of Attorney)

CONTRACTOR:

Business Name

s/ _____

Date

Name, Title

APPROVED BY CITY:

s/ _____

Date

Name, Title

END OF WARRANTY BOND