

**AGREEMENT BETWEEN CITY OF MARTINEZ,
MARTINEZ UNIFIED SCHOOL DISTRICT
AND RISING SUN ENERGY CENTER**

This Agreement is made on ___ day of March, 2018, by and between the CITY OF MARTINEZ (“CITY”), a municipal corporation, MARTINEZ UNIFIED SCHOOL DISTRICT (“MUSD”), a school district, and RISING SUN ENERGY CENTER (“RISING SUN”), a non-profit entity.

RECITALS

WHEREAS, RISING SUN is a Bay Area nonprofit workforce development organization which promotes local resource conservation via a young adult employment program called California Youth Energy Services (“CYES”); and

WHEREAS, RISING SUN offers services such as employing and training members of the youth community to perform community outreach to provide energy and water conservation assessments and installations to local residents at no cost to the customer; and

WHEREAS, RISING SUN operates these services through setting up satellite CYES site offices in cities that wish to obtain the services of the CYES program at the cost of the operation of the satellite office located within the city; and

WHEREAS, MUSD wishes to provide the site of the satellite office in the CITY in order to assist the youth community in participating in the CYES program; and

WHEREAS, CITY, RISING SUN, and MUSD wish to enter into a consolidated agreement that will establish the terms and conditions of the CYES program being sited and operated within the CITY.

WITNESSETH

NOW, THEREFORE, CITY, MUSD, and RISING SUN hereby mutually covenant and agree to the following:

1. RISING SUN shall provide CITY with a CYES program, as specifically described in the Statement of Work entitled “Exhibit A Rising Sun Energy Center California Youth Energy Services City of Martinez Statement of Work” which is attached hereto as Exhibit “A” and incorporated by reference herein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit “A” or Appendix A, the Agreement shall prevail.
2. MUSD shall provide RISING SUN office space in accordance with the terms of the “Site Office Space” section of Appendix “A” to Exhibit “A”, in order for RISING SUN to provide the CYES program services described by Exhibit “A” to the CITY. This Agreement may not be construed to be a lease or agreement for letting of facilities. MUSD shall permit RISING SUN to enter and utilize the MUSD office space entirely free of rent or any other charge. RISING SUN shall at all times comply with the reasonable directions of MUSD in utilizing the MUSD

office facilities described by Appendix "A". MUSD shall be solely responsible for its own costs of providing all in-kind contributions (including office space and facilities) under this Agreement and shall not be entitled to any reimbursement of its costs from any party to this Agreement. The City shall, in turn, pay Rising Sun the full \$20,000 amount as stipulated in this agreement.

4. CITY agrees that it shall pay RISING SUN the amount of \$20,000 (twenty thousand dollars) for the services being provided by RISING SUN under this Agreement. Payment shall be made in accordance with the "Payment Schedule" section of Exhibit "A". The amount stated by this section shall constitute the sum total monetary compensation to be paid by CITY to any party for provision of services and/or in-kind contributions under this Agreement, including the provision of office space, equipment, supplies, materials, or labor under this Agreement.

5. The status of RISING SUN is that of an independent contractor operating, having control of his/her work and the manner in which it is performed. RISING SUN is not considered to be an officer, an employee, or an agent of CITY nor MUSD, nor shall it hold itself out as, or represent that it is, an officer, employee or agent of CITY or MUSD. RISING SUN is required to obtain a business license with the CITY. A copy of the business license application is included as Exhibit C.

6. RISING SUN agrees that it has not employed or retained any company or person, other than a bona fide employee working solely for RISING SUN, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for RISING SUN, any fee, commission, percentage, brokerage fee, gifts, or any other considerations, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the CITY shall have the right to annual and cancel this Agreement without liability of any sort and/or, in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage brokerage fee, gift, or contingent fee.

All reports, drawings, calculations, plans, specifications, and other documents prepared or obtained pursuant to the terms of this Agreement shall be endorsed by RISING SUN and delivered to and become the property of the CITY with the exception of proprietary/copyrighted information (as in agreements or software services). In addition, data prepared or obtained under this Agreement shall be made available upon request, to the City. The foregoing notwithstanding, said documents, plans, etc., which are site specific for the subject project shall not be used for any other work without the consent of RISING SUN.

RISING SUN and its subconsultants shall keep and maintain full and complete documentation and accounting records, including all records, employees' time sheets and correspondence pertaining to this Agreement. RISING SUN shall make such documents and records available for review and/or audit evaluation by representatives of the CITY at all reasonable times during the contract period and for at least four (4) years from the date of final payment. Upon written request by the CITY, RISING SUN shall provide the CITY with copies of all pertinent reports and correspondence.

7. RISING SUN shall provide properly skilled professional and technical personnel to perform all services under this Agreement. RISING SUN shall not engage the services of any person or person now employed by the CITY, except with the written permission of the CITY. Except as otherwise provided herein, RISING SUN shall not assign or sublet any portion of the services to be performed under this Agreement without the prior written consent of the CITY. Said consent may be withheld with or without reasons. In the event that the CITY, in writing, approves any assignment or subletting of this Agreement or the retention of sub-consultants by RISING SUN, RISING SUN shall provide to the CITY copies of each and every sub-consultant contract prior to the execution thereof by RISING SUN and sub-consultant.

8. RISING SUN shall comply with all Federal, State and Local laws, statutes, ordinances, rules, and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement, including without limitation laws requiring licensing and non-discrimination in employment because of race, creed, color, sex, age, marital status, physical or mental disability, national origin or other prohibited bases.

9. CITY has relied upon the professional ability and training of RISING SUN as a material inducement to enter into this Agreement. RISING SUN shall perform in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that payment for or acceptance of RISING SUN's work by CITY shall not operate as a waiver or release. RISING SUN shall indemnify and hold harmless the CITY from and against any and all claims or expenses caused or occasioned directly or indirectly by RISING SUN's failure to so perform.

10. INDEMNIFICATION.

A. RISING SUN assumes all responsibility for damages to property or injury or death to persons caused by the performance, errors or omissions of RISING SUN and its agents or employees. To the extent permitted by law, RISING SUN shall indemnify, hold harmless, release and defend CITY, its officers, employees and agents from and against any and all actions, claims, demands, damages, disability, losses, failure to comply with any current or prospective laws, and expenses including attorneys' fees and other defense costs or liabilities of any nature that may be asserted by any person or entity including RISING SUN from any cause whatsoever including another's concurrent negligence arising out of or in any way connected with the activities of RISING SUN, its employees and agents hereunder and regardless of CITY's passive negligence. CITY agrees to provide RISING SUN with reasonable notification of legal claims and/or lawsuits which CITY may receive and for which CITY will request indemnification under this Section.

This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable for or for RISING SUN under Workers' Compensation, disability or other employee benefits acts, acceptance of insurance certificates required under this Agreement, or the terms, applicability or limitations of any insurance held by RISING SUN.

B. RISING SUN assumes all responsibility for damages to property or injury or death to persons caused by the performance, errors or omissions of RISING SUN and its agents or employees. To the extent permitted by law, RISING SUN shall indemnify, hold harmless, release and defend

MUSD, its officers, employees and agents from and against any and all actions, claims, demands, damages, disability, losses, failure to comply with any current or prospective laws, and expenses including attorneys' fees and other defense costs or liabilities of any nature that may be asserted by any person or entity including RISING SUN from any cause whatsoever including another's concurrent negligence arising out of or in any way connected with the activities of RISING SUN, its employees and agents hereunder and regardless of MUSD's passive negligence. MUSD agrees to provide RISING SUN with reasonable notification of legal claims and/or lawsuits which MUSD may receive and for which MUSD will request indemnification under this Section.

This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable for or for RISING SUN under Workers' Compensation, disability or other employee benefits acts, acceptance of insurance certificates required under this Agreement, or the terms, applicability or limitations of any insurance held by RISING SUN.

C. To the extent permitted by law, CITY shall indemnify, hold harmless, release and defend MUSD, its officers, employees and agents from and against any and all actions, claims, demands, damages, disability, losses, failure to comply with any current or prospective laws, and expenses including attorneys' fees and other defense costs or liabilities of any nature that may be asserted by any person or entity including CITY from any cause whatsoever including another's concurrent negligence arising out of or in any way connected with the activities of CITY, its employees and agents, except to the extent that such injury or damage arises out of the active negligence or willful acts of MUSD, its officers, employees or agents. MUSD agrees to provide CITY with reasonable notification of legal claims and/or lawsuits which MUSD may receive and which MUSD will request indemnification in under this paragraph.

D. To the extent permitted by law, MUSD shall indemnify, hold harmless, release and defend CITY, its officers, employees and agents from and against any and all actions, claims, demands, damages, disability, losses, failure to comply with any current or prospective laws, and expenses including attorneys' fees and other defense costs or liabilities of any nature that may be asserted by any person or entity including MUSD from any cause whatsoever including another's concurrent negligence arising out of or in any way connected with the activities of MUSD, its employees and agents, except to the extent that such injury or damage arises out of the active negligence or willful acts of CITY, its officers, employees or agents. CITY agrees to provide MUSD with reasonable notification of legal claims and/or lawsuits which CITY may receive and which CITY will request indemnification in under this paragraph.

11. RISING SUN INSURANCE COVERAGE

Without limiting RISING SUN's indemnification provided hereunder, RISING SUN shall take out and maintain at all times during the life of this contract, up to the date of acceptance of the work by the CITY, the following policies of insurance with a Best rating of no less than A-:VII.

- a. Workers' Compensation insurance to cover its employees, and RISING SUN shall require all sub-consultants similarly to provide Workers' Compensation insurance as required by the Labor Code of the State of California for all of the sub-

consultant's employees. All Workers' Compensation policies shall be endorsed with the provision that it will not be canceled without first giving thirty (30) days prior notice to the CITY and MUSD.

In the event any class of employees engaged in hazardous work under the Contract is not protected under Workers' Compensation Statutes, RISING SUN shall provide, and shall cause all sub-consultants to provide, adequate and suitable insurance for the protection of its employees not otherwise protected. Such policy must be acceptable to CITY and MUSD and shall provide that it will not be canceled without first giving thirty (30) days notice to the CITY and MUSD.

RISING SUN's Worker's Compensation insurance shall include the following language: "All rights of subrogation are hereby waived against the CITY and MUSD, their officers and employees when acting within the scope of their appointment or employment."

- b. Commercial general liability insurance including personal injury and property damage insurance for all activities of RISING SUN and its sub-consultants arising out of or in connection with this contract, written on a commercial general liability form including, but not limited to, Broad Form Property Damage, blanket contractual, completed operations, cross liability, x, c, u hazards, subcontractors named as additional insureds (inapplicable if no subcontractors or subconsultants), vehicle coverage, products liability and employers non-ownership liability coverage in an amount no less than two million dollars (\$2,000,000) combined, single limit personal injury and property damage for each occurrence. The completed operations and product liability insurance shall continue for not less than 365 days following acceptance of the work by CITY. The commercial general liability policy shall be endorsed with the following language:
 - (1) The CITY OF MARTINEZ and MARTINEZ UNIFIED SCHOOL DISTRICT are named as additional insureds for all liability arising out of the operations by or on behalf of the named insured, and this policy protects the additional insureds, their officers, agents and employees against liability for personal and bodily injuries, deaths or property damage or destruction arising in any respect, directly or indirectly, in the performance of the contract.
 - (2) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as though separate policies had been issued to each insured.
 - (3) The insurance provided herein is primary and no insurance held or owned by the CITY OF MARTINEZ or MARTINEZ UNIFIED SCHOOL DISTRICT shall be called upon to contribute to a loss.

- (4) The coverage provided by this policy shall not be canceled without thirty (30) days prior written notice given to the CITY of MARTINEZ and MARTINEZ UNIFIED SCHOOL DISTRICT.

12. During the term of this Agreement, the CITY and MUSD shall each provide commercial general liability and property damage coverage or its equivalent with a single limit of two million dollars (\$2,000,000). Each party shall name the other and its officers, officials, employees, and volunteers as additional insured on all said insurance carried by each for the life of this Agreement and shall annually furnish the other with written proof of said coverage. Upon request each party shall be given a copy of the other party's applicable insurance policies. Each party shall be provided written notices of cancellation or material change in coverage 30 days prior to cancellation or change in coverage.

13. The CITY shall furnish RISING SUN, to the extent that they are available, CITY standards, details, specifications, and regulations applying to the Project and other such information which may be helpful to RISING SUN in performance of its service. Any and all additional data necessary for design shall be the responsibility of RISING SUN.

14. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the CITY within its sole discretion upon written notice to RISING SUN and MUSD. MUSD may terminate this Agreement upon thirty (30) days' written notice to RISING SUN and CITY only for good cause, including destruction or loss of premises or material breach of this Agreement by RISING SUN or the CITY. RISING SUN may terminate this Agreement upon thirty (30) days' written notice to the CITY only for good cause, including without limitation, RISING SUN's serious illness or material breach of this Agreement by the CITY. RISING SUN's written notice of termination shall contain a full explanation of the facts and circumstances constituting good cause. Upon termination, all finished and unfinished documents, project data and reports shall, at the option of the CITY, become its sole property and shall, at RISING SUN's expense, be delivered to the CITY or to any party the CITY may so designate. In the event of termination by RISING SUN, RISING SUN shall only be compensated for all work RISING SUN satisfactorily performs prior to the time CONSULTANT delivers to the CITY the termination notice, unless other arrangements are agreed to by the CITY. In the event of termination by the CITY or MUSD, RISING SUN shall be compensated for all work satisfactorily performed prior to the time RISING SUN receives the termination notice, and shall be compensated for all materials ordered by RISING SUN, and services of others ordered by RISING SUN prior to receipt of the CITY'S termination notice, whether or not such materials or instruments of services of others have actually been delivered to RISING SUN or to the CITY, provided that RISING SUN is not able to cancel such orders for materials or services of others. In the event this Agreement is terminated pursuant to this section, RISING SUN shall not be entitled to any additional compensation over that provided herein; nor shall RISING SUN be entitled to payment for alleged damages or injuries (including lost opportunity damages) purportedly caused by the termination of this Agreement by the CITY or MUSD pursuant to this section.

15. Should RISING SUN fail to perform any of its obligations hereunder, within the time and in the manner provided or otherwise violate any of the terms of this Agreement, the CITY may terminate this Agreement by giving written notice of such termination, stating the reasons for

such termination in such event. RISING SUN shall be compensated as above, provided, however, there shall be deducted from such amount the amount of damage, if any, sustained by CITY by virtue of RISING SUN's breach of this Agreement.

16. This Agreement shall inure to the benefit of, and be binding upon, the successors in interest, legal representatives, trustees, and permitted assigns of either party.

17. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to included terms and a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure, section 1856. No modification hereof shall be effective unless and until such modification is evidenced by a writing signed by parties to this Agreement.

18. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. After receipt of a demand for assurance, either party's failure to provide within a reasonable time but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances is a breach of this Agreement by that party. Acceptance of any improper delivery of service or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

19. All notices permitted or required hereunder shall be addressed as follows:

If to the CITY: Anne Cardwell
 Assistant City Manager
 City of Martinez
 525 Henrietta Street
 Martinez, CA 94553

If to MUSD: Superintendent
 Martinez Unified School District
 921 Susana Street
 Martinez, CA 94553

If to RISING SUN Program Director
 Rising Sun Energy Center
 2998 San Pablo Avenue
 Berkeley, CA 94704

20. This Agreement shall be construed in accordance with the law of the State of California. Venue shall be in the County of Contra Costa.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement on the day first above written in the CITY OF MARTINEZ, California.

CITY OF MARTINEZ

Dated: _____, 2018

By: _____
Title: _____

MARTINEZ UNIFIED SCHOOL DISTRICT

Dated: _____, 2018

By: _____
Title: _____

RISING SUN ENERGY CENTER

Dated: _____, 2018

By: _____
Title: _____

APPROVED AS TO FORM

By _____
Assistant City Attorney

By _____
School District Legal Counsel

By _____
Attorney for Rising Sun Energy Center

Attachments:

- Exhibit A: Statement of Work
- Appendix A: In-Kind Contributions

- Exhibit B: Proof of Required Insurance
 - Workers' Compensation Insurance
 - Commercial General Liability Insurance
 - Commercial General Liability – Auto Insurance

- Exhibit C: Business License Application