

CAMPBELL UNION SCHOOL DISTRICT

Linear Fluorescent Lighting Retrofit at Rolling Hills, Rosemary, Marshall Lane, Forest Hill, Sherman Oaks, Capri

This Agreement is made this _____ day of _____, 2017, by and between Campbell Union School District (“District”) and _____ (“Company”) with respect to the following recitals:

A. District, a public school district organized and existing under the laws of the State of California, desires to reduce the steadily rising costs of meeting the energy needs at its facilities.

B. The District has performed an audit and assessment of the energy consumption characteristics of the lighting systems in school sites within the District, based upon showing the benefits of implementing certain energy conservation measures. The analysis includes data showing that the anticipated cost to the District for the electrical energy provided by the energy conservation measures implemented in the District will be less than the anticipated marginal cost to the District of electrical energy that would have been consumed by the District in the absence of those measures.

C. In reliance upon the analysis, the District is entering into this Agreement as authorized by Government Code section 4217.10, et seq. Pursuant to this Agreement, District agrees to purchase from Company certain lighting systems and related installation services as further described herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. Services; Time for Completion. Company will install lighting systems and perform related services (the “Retrofit”) at each of the sites and in conformance with the specifications listed in **Exhibit A**. The Retrofit shall be completed _____ days after the issuance of a Notice to Proceed by the District, which shall issue within fifteen (15) days of receipt by the District of all documentation required from the Company under this Agreement, including but not limited to the Bonds required by section 3 hereof.
2. Contract Price. The total cost (“Contract Price”) to District for the Retrofit is \$ _____. The Contract Price shall not be increased over the course of this Agreement unless pursuant to a valid Change Request (see Section 9 below) and written consent by District. Unless Company submits securities pursuant to Public Contract Code section 22300, District will retain 5% of all progress payments until Company completes its work and the District accepts each completed Retrofit. Company will submit billing invoices on a monthly basis for work completed in that month. All billing invoices shall be due and payable thirty (30) days after the date of the invoice.

District shall pay any and all taxes based on or in any way computed with reference to the Retrofits being provided under this Agreement, including but not limited to sales taxes but excluding taxes based on Company's net income.

3. Bonds. Company will provide the District with the following bonds (collectively, the "Bonds") within ten (10) business days of execution of this Agreement:

- a) a corporate surety bond, in a sum not less than 100 percent of the amount of the Contract Price, to guarantee the faithful performance of the Contract Price ("Performance Bond"), issued in the form of **Exhibit B**; and
- b) pursuant to the requirements of Civil Code section 3247, et. seq., a corporate surety bond, in a sum not less than 100 percent of the amount of the Contract Price, to guarantee the payment of wages for services engaged and of bills contracted for materials, supplies, and equipment used in the performance of the Contract Price ("Payment Bond"), issued in the form of **Exhibit C**.

Company shall not proceed with any on-site construction activities until the Payment and Performance Bonds have been secured and delivered to the District.

4. Access. Following the issuance of the Notice to Proceed, Company shall submit to the District's Construction Manager ("Manager") a request for access for each site listed in Exhibit A, showing the anticipated dates and hours of work for each site. Access to each site listed in Exhibit A will be granted to Company only with prior notice by Company to and with the explicit consent of the Manager. The Manager shall take all reasonable steps to accommodate Company's requested access timetable for each site and shall designate, in consultation with District staff, the days and hours each site will be available. The District reserves the right to deny Company or its employees access to any site at any time that such access will impair the District's operations. Company and its employees, agents and subcontractors shall comply with applicable law regarding construction or maintenance activities at each site, including but not limited to the fingerprinting requirements of Education Code section 45125.2. At the sole discretion of District, Company and its employees, agents and subcontractors shall be subject to mandatory background check.

5. Workforce Qualifications. Company represents that it or its principals or employees assigned to provide the Retrofits under this Agreement have or shall have in effect all licenses, credentials, permits and has otherwise all legal qualifications to perform this Agreement.

6. Conformance to Agreement Documents and Labor Warranty. Company represents and warrants that the Retrofit furnished pursuant to this Agreement shall conform to all of the requirements set forth in Exhibit A. Company warrants that the installation of the Retrofit shall be free from defects in workmanship for a period of one (1) year from the date of completion of the Retrofit.

7. Liquidated Damages. Company agrees to complete the Retrofit pursuant to the terms of this Agreement within the time for performance stated in section 1 unless Company receives a written extension of time for the Retrofit from the District. Company's failure to complete the Retrofit on time shall subject Company to liquidated damages. The actual occurrences of damages and the actual amount of damages which the District will suffer if the Retrofit is not completed on time is dependent upon many circumstances and conditions and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages occasioned by delay. Damages which the District would suffer in the event of delay include loss of use of the Retrofit, disruption of college activities, cost of administration and the loss suffered by the public by reason of delay. Accordingly, the parties agree that the amount herein set forth as liquidated damages shall be presumed to be the amount of damages actually sustained by the District due to Company's failure to complete the Retrofit on time. The amount of liquidated damages to be paid by Company to the District for failure to complete the Retrofit on time will be \$ [REDACTED] for each calendar day by which completion of the Retrofit is delayed beyond the time for performance stated in section 1.

If Company becomes liable for liquidated damages, District, in addition to all other remedies provided by law, shall have the right to deduct the amount owed as liquidated damages from the Contract Price due Company. In all events, Company and its sureties shall remain liable to District until all such liabilities are satisfied in full.

8. Change Management Procedures. It may become necessary to amend this Agreement for reasons including, but not limited to the following: duly approved changes by the District to the scope of the work or the specifications for the Retrofit; extensions of time duly approved by the District; or environmental or architectural conditions not previously identified. In the event either party desires to change this Agreement, the following procedures shall apply:

(a) The party requesting the change will deliver a request ("Change Request") to the other party. The Change Request will describe the nature of the change, the reason for the change, and the effect the change will have on the scope of work. A Change Request may be initiated either by the District or by Company.

(b) The parties will evaluate the Change Request and negotiate in good faith the changes to the Retrofit and additional fees, if required to implement the Change Request. If both parties agree to implement the Change Request, both parties will sign the Change Request, indicating the acceptance of the changes by the parties.

(c) Upon execution of a Change Request and approval thereof by the District's governing board, said Change Request will be incorporated into, and made part of, this Agreement.

9. Energy Savings Guarantee. Company hereby represents, warrants and guarantees that following completion of the Retrofit, the District's energy savings shall be in the

amount projected by Exhibit A, and that light levels in the affected sites following the Retrofit shall meet or exceed standards set by the Illuminating Engineering Society (IES).

10. Indemnity. Company shall defend, indemnify, and hold harmless District and its agents, employees, Board of Trustees, and members of the Board of Trustees, from and against claims, damages, losses, and expenses (including costs and attorneys fees) arising out of or resulting from performance of this Agreement including, but not limited to: any infringement of the patent rights, copyright or trademark of any person or persons in consequence of the use by District of equipment supplied pursuant to this Agreement; Company's use of the site; Company's completion of its duties under this Agreement; or injury to or death of persons (including third parties) or damage to property or damage to District, its agents, employees, Board of Trustees, members of the Board of Trustees, or third parties for any act, omission, negligence, or willful misconduct of Company or its respective agents, subcontractors, employees, material or equipment suppliers, invitees, or licensees. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph.

11. Independent Contractor Status. While engaged in carrying out the terms and conditions of this Agreement, Company is an independent contractor, and not an officer, employee, agent, partner, or joint venturer of the District.

12. Workers' Compensation Insurance. Company agrees to provide all necessary workers' compensation insurance for Company's principals and employees, if any, at Company's own cost and expense.

13. Prevailing Wage. Pursuant to the provisions of Section 1770 et seq. of the Labor Code of the State of California, which are hereby incorporated by reference and made a part hereof, the Director of Industrial Relations has determined 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 this Contract. Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, apprenticeship or other training programs, and similar purposes. Copies of the rates are on file at District's principal office. The rate of prevailing wage for any craft, classification or type of workmanship to be employed on the Retrofits is the rate established by the applicable collective bargaining agreement which rate so provided is hereby adopted by reference and shall be effective for the life of this Agreement or until the Director of the Department of Industrial Relations determines that another rate be adopted. It shall be mandatory upon Company and on any subcontractor to pay not less than the said specified rates to all workers employed in the execution of this Agreement.

Company and any subcontractor under Company as a penalty to District shall forfeit not more than One Hundred Dollars (\$100.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for such work or craft in which such worker is employed. The difference between such stipulated prevailing wage rates

and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by Company.

Company and each subcontractor shall keep or cause to be kept an accurate record for work on the Retrofits showing the names, addresses, social security numbers, work classification, straight time and overtime hours worked and occupations of all laborers, workers and mechanics employed by them in connection with the performance of this Agreement or any subcontract thereunder, and showing also the actual per diem wage paid to each of such workers, which records shall be open at all reasonable hours to inspection by District, its officers and agents and to the representatives of the Division of Labor Law Enforcement of the State Department of Industrial Relations.

The Retrofits are subject to compliance monitoring and enforcement by the DIR in accordance with the provisions of Sections 1725.5, 1771.1, 1771.3, 1771.4, 1771.5, and 1771.7 of the Labor Code. This requirement applies regardless of whether the Retrofits will use State funds. In order to be qualified to enter into, or engage in the performance of any contract of public work (as defined by Division 2, Part 7, Chapter 1 (§§1720 *et seq.*) of the Labor Code), a contractor or subcontractor must be currently registered and qualified under Labor Code section 1725.5 to perform public work as defined by Division 2, Part 7, Chapter 1 (§§1720 *et seq.*) of the Labor Code.

14. Working Hours. In accordance with the provisions of Sections 1810 to 1815, inclusive, of the Labor Code of the State of California, which are hereby incorporated and made a part hereof, the time of service of any worker employed by Company or a subcontractor doing or contracting to do any part of the Retrofits contemplated by this Agreement is limited and restricted to eight hours during any one calendar day and forty hours during any one calendar week, provided, that work may be performed by such employee in excess of said eight hours per day or forty hours per week provided that compensation for all hours worked in excess of eight hours per day, and forty hours per week, is paid at a rate not less than one and one-half (1½) times the basic rate of pay. Company and every subcontractor shall keep an accurate record showing the name of and the actual hours worked each calendar day and each calendar week by each worker employed by them in connection with the Retrofits. The records shall be kept open at all reasonable hours to inspection by representatives of District and the Division of Labor Law Enforcement. Company shall as a penalty to District forfeit Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Agreement by Company or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day, and forty hours in any one calendar week, except as herein provided.

15. Apprentices. Company agrees to comply with Chapter 1, Part 7, Division 2, Sections 1777.5 and 1777.6 of the California Labor Code, which are hereby incorporated and made a part hereof. These sections require that contractors and subcontractors employ apprentices in apprenticeable occupations in a ratio of not less than one hour of apprentice's work for each five hours of work performed by a journeyman (unless an

exemption is granted in accordance with Section 1777.5) and that contractors and subcontractors shall not discriminate among otherwise qualified employees as indentured apprentices on any public works solely on the ground of sex, race, religious creed, national origin, ancestry or color. Only apprentices as defined in Labor Code Section 3077, who are in training under apprenticeship standards and who have signed written apprentice agreements, will be employed on public works in apprenticeable occupations. The responsibility for compliance with these provisions is fixed with Company for all apprenticeable occupations.

16. Insurance. Company shall secure and maintain for the term of this Agreement general liability, automobile liability, worker's compensation, and employer's liability insurance with combined single limits of at least [redacted] coverage per occurrence, or [redacted] per person, [redacted] million per accident and [redacted] per property loss, and an aggregate of no less than [redacted] million.

17. Transportation Charges. Company agrees to deliver all equipment prepaid unless otherwise specified. All costs for delivery and packaging of equipment are the responsibility of Company unless otherwise stated.

18. Inspection. All equipment furnished must be in conformity with the specifications and Agreement documents and will be subject to inspection and approval by District after delivery. District reserves the right to reject and return at the risk and expense of the Company any portion of the equipment which may be defective or which fails to comply with the specifications in Agreement documents.

19. Assignment of Agreement. Company agrees not to assign, transfer or convey any rights accruing under this Agreement without the prior written consent of District.

20. Safety Regulations. All equipment and supplies furnished, and/or all work performed, shall meet all applicable safety regulations of the Division of Industrial Safety of the State of California, and Health & Safety code of the State of California.

21. Default. Either party may terminate this Agreement upon three (3) days written notice to the other party if the other party is in default and fails within such three (3) day period to cure such default. A party will be deemed to be in default under this Agreement if it: (a) fails to comply with any obligation, term or covenant under this Agreement; or (b) made any representation or warranty pursuant to this Agreement that was false or misleading in any material respect when made. Termination of this Agreement will not affect or diminish the rights or claims or remedies available to the non-defaulting party arising by reason of any default.

22. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The parties also agree that, in the event of litigation, venue shall be in the proper state or federal court located in Santa Clara County, California.

23. Notices. Communications hereunder shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at their respective places of business.

24. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon District and Company and their respective successors and assigns.

25. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or under unenforceable any other provision hereof.

26. Amendments. The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties.

27. Entire Agreement. This Agreement constitutes the entire agreement between the parties. There are no understandings, agreements, representations or warranties, express or implied, not specified in this Agreement. Company, by the execution of this Agreement, acknowledges that Company has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF the parties have executed this Agreement on the date first herein above written.

CAMPBELL UNION SCHOOL DISTRICT

By: _____
Name: _____
Title: _____
Date: _____

[COMPANY NAME]

By: _____
Name: [NAME] _____
Title: [TITLE] _____
Date: _____