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SAN BERNARDINO COUNTY

ORIGINAL

Contract Number

22-805

SAP Number

Project and Facilities Management Department
Project Management

Department Contract Representative	Scott Hughes
Telephone Number	909-387-5000
Contractor	Proterra Builders, Inc.
Contractor Representative	Steven Richardson
Telephone Number	650-441-2540
Contract Term	365
Original Contract Amount	$279,622
Amendment Amount	
Total Contract Amount	$279,622
Project Name	800MHz Padua – Replacement Generator Project
Cost Center	7700003100
WBSE	10.10.0992

IT IS HEREBY AGREED AS FOLLOWS:

CONSTRUCTION AGREEMENT

This Construction Agreement ("Agreement" or "Contract") is made effective this September 13, 2022 ("Agreement Date") by and between SAN BERNARDINO COUNTY ("County") and Proterra Builders, Inc. ("Contractor") for the construction of the 800MHz Padua – Replacement Generator Project ("Project").

ARTICLE I

CONTRACT DOCUMENTS AND INTERPRETATION

1.1 DEFINITIONS

The meanings of all capitalized terms used in the Contract Documents and not otherwise defined herein are contained in the General Conditions. If not defined in the General Conditions, they shall have the meaning assigned to them elsewhere in the Contract Documents. If not defined in the General Conditions or elsewhere, they shall have the meanings reasonably understood to apply to them by the context of the portion of the Contract Documents where such terms are used.

1.2 CONTRACT DOCUMENTS

The "Contract Documents" except for modifications issued after execution of this Agreement, consist of the following documents, all of which are either attached hereto as exhibits or are incorporated herein by this reference:

1.2.1 Advertisement For Bids (Project No. 10.10.0990, 10.10.0992 & 10.10.0998), dated May 27, 2022.

1.2.2 Bidder's Proposal dated July 12, 2022.

1.2.3 General Conditions

1.2.4 Performance Bond

1.2.5 Labor and Material Bond

1.2.6 Special Conditions

1.2.7 Bid documents entitled "800MHz Antenna Generator Projects – Lease Through American Towers".

1.2.8 Specifications, entitled "800MHz Antenna Generator Projects – Lease Through American Towers".

1.2.9 Drawings, entitled "800MHz Antenna Generator Projects – Lease Thru American Towers".

1.2.10 Addendum No. 1, dated July 5, 2022.

1.2.11 Addendum No. 2, dated July 6, 2022.

1.2.12 Certified copy of the record of action of the Board of Supervisors, San Bernardino County meeting of September 13, 2022.

1.3 ENTIRE AGREEMENT

The Contract Documents represent the entire and integrated agreement between County and Contractor, all other representations or statements, whether verbal or written, are merged herein. The Agreement may be amended only by written modification. The San Bernardino County Board of Supervisors, or its authorized designee, must approve any amendment to this Agreement.

ARTICLE II

THE WORK

2.1 SCOPE OF WORK

2.1.1 Contractor will furnish all materials, labor, tools, equipment, apparatus, facilities, transportation, construction, landscaping, clean-up, and all other construction services of any type necessary to complete all Work in strict conformity with the Contract Documents. Except with regard to any material to be provided and/or installed by County, Contractor shall fully commission and turn over a complete operational and fully functional Project to County. Without limiting the generality of this Section, Contractor shall provide the following Work and services:

a. Contractor shall provide, install and complete as specified and pay for all labor, materials and equipment, tools, supplies, construction equipment and machinery, construction, start-up and testing, utilities, transportation, and other facilities and services (including any temporary materials, equipment, supplies and facilities) necessary for the proper execution and completion of the complete, operational, and fully functional Project, including the permanent interconnection for electricity, natural gas, water supply, and any other utilities and demonstration of fully satisfactory operation of all systems and equipment. The County will pay connection fees directly to the utilities for all permanent water and electrical connections.

b. Contractor shall supervise and direct the Work, and shall furnish the services of all supervisors, forepersons, skilled and unskilled labor, and all other personnel necessary to construct the complete, operational, and fully functional Project. Contractor shall provide, manage and organize such personnel as necessary to complete the Work in accordance with all requirements of the Contract Documents.

c. Contractor shall obtain, at Contractor's expense, all governmental and private approvals, permits and licenses, required to complete the Work; provided, however, County will be responsible for paying the cost of all County imposed fees necessary for the Project. Contractor shall construct a complete, operational, and fully functional Project in full compliance with all Applicable Laws, codes and standards (both public and private), including but not limited to, the standards included and warranties expressed in the Contract Documents and manufacturer's recommendations pertaining to individual items of equipment or systems.

2.2 STANDARD OF PERFORMANCE

In addition to and without limiting Contractor's other obligations under the Contract Documents, Contractor shall at all times in its performance of its obligations under the Contract Documents conform to the following general standards of performance:

2.2.1 Comply with the requirements of the Contract Documents;

2.2.2 Comply with Applicable Laws;

2.2.3 Conform to the standard of care applicable to those who provide construction of the type called for by this Agreement for projects of a scope and complexity that is comparable to the Project;

2.2.4 Furnish efficient business administration of the Work, utilizing senior level management and other qualified personnel to manage the Work; and

2.2.5 Apply its best and highest skill and attention to completing the Work in an expeditious and economical manner, consistent with the express best interests of the County and within the limitations of the Contract Sum and Contract Time.

ARTICLE III

TIME FOR PERFORMANCE

3.1 CONTRACT TIME

The Date of Commencement of the Work shall be fixed in a Notice to Proceed issued by the County. If County's issuance of a Notice to Proceed is delayed due to Contractor's failure to provide insurance documents or bonds within ten (10) calendar days after the date of award of the Contract by the Board of Supervisors or Chief Executive Officer, one (1) calendar day will be deducted from the number of days to achieve Final Completion of the Work for every day of delay in County's receipt of such documents. This right is in addition to and does not affect County's right to demand forfeiture of Contractor's Bid Security, or any other rights or remedies available to County if Contractor persistently delays in providing the required documentation. Contractor agrees to promptly commence the Work after the Notice to Proceed is issued by the County and to achieve Final Completion of the entire Work within **365 calendar days** after the Date of Commencement ("Contract Time"). The Contract Time may be extended only by the written authorization of the County.

3.2 LIQUIDATED DAMAGES

3.2.1 County and Contractor recognize that time is of the essence in this Agreement and that the County may suffer financial loss, including but not limited to, the loss of grant funds, additional contract administration expenses, and loss of public use if the Work is not completed within the Contract Time, including any extensions thereof allowed in accordance with the Contract Documents.

3.2.2 Contractor and County agree to liquidate damages with respect to Contractor's failure to achieve Final Completion of the Work within the Contract Time. The Parties intend for the liquidated damages set forth herein to apply to this Contract as set forth in Government Code Section 53069.85. Contractor acknowledges and agrees that the liquidated damages are intended to compensate County solely for Contractor's failure to meet the deadline for Final Completion and shall not excuse Contractor from liability from any other breach, including any failure of the Work to conform to the requirements of the Contract Documents.

3.2.3 In the event that Contractor fails to achieve Final Completion of the Work within the Contract Time, Contractor agrees to pay County **$750 per day** for each calendar day that Final Completion is delayed.

3.2.4 Contractor acknowledges and agrees that the foregoing liquidated damages have been set based on an evaluation by County of damages that it will incur in the event of the late completion of the Work. Contractor and County agree that because of the nature of the Project it would be impractical or extremely difficult to fix the amount of actual damages incurred by the County due to a delay in completion of the Work. Accordingly, the County and Contractor have agreed to such liquidated damages to fix Contractor's costs and to avoid later disputes. It is understood and agreed by Contractor that any liquidated damages payable pursuant to this Agreement are not a penalty and that such amounts are not manifestly unreasonable under the circumstances existing as of the effective date of this Agreement.

3.2.5 It is further mutually agreed that County shall have the right to deduct liquidated damages against progress payments or retainage and that the County will issue a unilateral Construction Change Directive and reduce the Contract Sum accordingly. In the event the remaining unpaid Contract Sum is insufficient to cover the full amount of liquidated damages, Contractor shall pay the difference to County.

ARTICLE IV

CONTRACT SUM

4.1 CONTRACT SUM

4.1.1 Total Compensation. County shall pay the Contractor, and Contractor agrees to accept, in current funds for the Contractor's complete performance of the Work in accordance with the Contract Documents the Contract Sum of:

BASE BID.....$279,622

4.1.2 All Inclusive Price. The Contract Sum, subject to additions and deductions, is the total amount payable by County to Contractor for performance of the Work under the Contract Documents and is deemed to cover all costs arising out of or related to the performance of the Work, including, without limitation, the effects

of natural elements upon the Work, unforeseen difficulties or obstructions affecting the performance of the Work (including, without limitation, unforeseen conditions at the Site that do not constitute Differing Site Conditions) and fluctuations in market conditions and price escalations (whether occurring locally, nationally or internationally) from any cause, including, without limitation, causes beyond the control or foreseeability of the Contractor.

4.2 RETENTION

Payment shall not be made more often than once each thirty (30) days, nor shall amount paid be in excess of ninety-five percent (95%) of the Contract Sum at time of Final Completion. Applications for Payment shall not be deemed properly completed unless certified payrolls and any other mandatory submittals have been properly completed and submitted for each week worked during the time period covered by said payment request. Final payment is to be made sixty (60) days subsequent to filing of Notice of Completion. Contractor may, upon Contractor's written request, and approved by the Board of Supervisors, at Contractor's expense, deposit substitute securities, as stated in Government Code Section 16430, and as authorized by Public Contract Code 22300, in lieu of retention monies withheld to insure performance.

4.3 PAYMENT BY ELECTRONIC FUND TRANSFER

Contractor shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Contractor's designated checking or other bank account. Contractor shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.

ARTICLE V

BONDS, INDEMNITY AND INSURANCE

5.1 BONDS

Contractor will furnish a Labor and Material Payment Bond in an amount equal to one hundred percent (100%) of the Contract Sum, and a Performance Bond in an amount equal to one hundred percent (100%) of the Contract Sum. The Bonds must comply with all requirements in the Contract Documents, be on County approved bond forms, and be secured from a surety company satisfactory to the County within ten (10) calendar days of the award of the Contract. The Bonds shall remain in full force and effect for a period of one (1) year following the date of filing of the Notice of Completion. The Performance Bond shall name the County as beneficiary under the bond.

5.2 INDEMNIFICATION

To the fullest extent possible permitted by law, Contractor assumes liability for and agrees, at the Contractor's sole cost and expense, to promptly and fully indemnify, defend (with counsel reasonably approved by County) (even if the allegations are false, fraudulent, or groundless), and hold harmless the County and its authorized officers, employees, agents and volunteers (Indemnitees) from and against any and all claims (including claims against the County seeking compensation for labor performed or materials used or furnished to be used in the work or alleged to have been furnished on the project, including all incidental or consequential damages resulting to the County from such claims), allegations, actions, suits, arbitrations, administrative proceedings, regulatory proceedings, or other legal proceedings, demands, losses, costs, damages, judgments, liens, stop notices, penalties, anticipated losses of revenue and/or liability, and expenses (including, but not limited to, any fees of accountants, attorneys, experts or other professionals, or investigation expenses) arising out of, resulting from, or in any way (either directly or indirectly) related to the contract, the work, the project or any breach of the Contract by Contractor (or any of its officers, agents, employees, subcontractors, or any person performing any of the work, or from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the Indemnitees on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The Contractor's indemnification obligation applies to the Indemnitee's "passive" negligence but does not apply to the Indemnitee's "sole" or "active" negligence or "willful misconduct" within the meaning of Civil Code section 2782 provided such "active" negligence or "willful misconduct" is determined by agreement of the

parties or by findings of a court. In instances where an Indemnitee's "active" negligence accounts for only a percentage of the liability for the claim involved, the obligation of the Contractor will be for that entire percentage of liability for the claim not attributable to the "active" negligence or "willful misconduct" of the Indemnitees. The County shall be consulted with regard to any proposed settlement.

The duty of the Contractor to indemnify and hold harmless the Indemnitees includes the separate and independent duty to defend the Indemnitees, which duty arises immediately upon receipt by Contractor of the tender of any claim from the County. The Contractor's obligation to defend the County shall be at Contractor's sole expense, and not be excused because of the Contractor's inability to evaluate liability or because the Contractor evaluates liability and determines that the Contractor is not liable. The duty to defend shall apply whether or not a claim has merit or is meritless, or which involves claims or allegations that any or all of the Indemnitees were actively, passively, or concurrently negligent, or which otherwise asserts that the Indemnitees are responsible, in whole or in part, for any claim. The Contractor shall respond within thirty (30) calendar days to the tender of any claim for defense and/or indemnity by the County, unless the County agrees in writing to an extension of this time. The defense provided to the Indemnitees by Contractor shall be by well qualified, adequately insured, and experienced legal counsel acceptable to the County Counsel.

It is the intent of the parties to the Contract that the Contractor and its subcontractors of all tiers shall provide the Indemnitees with the broadest defense and indemnity permitted by law. In the event that any of the defense, indemnity, or hold harmless provisions are found to be ambiguous, or in conflict with one another, it is the parties' intent that the broadest and most expansive interpretation in favor of providing defense and/or indemnity to the Indemnitees be given effect.

Contractor shall ensure, by written subcontract agreement, that each of Contractor's subcontractors of every tier shall protect, defend, indemnify and hold harmless the Indemnitees with respect to all claims arising out, in connection with, or in any way related to each such subcontractor's work in the same manner in which Contractor is required to protect, defend, indemnify, and hold the Indemnitees harmless. In the event Contractor fails to obtain such defense and indemnity obligations from its subcontractors as required herein, Contractor agrees to be fully responsible to the Indemnitees according to the terms of this Section.

Contractor's indemnification and defense obligations set for in this Section are separate and independent from the insurance requirements and do not limit, in any way, the applicability, scope, or obligations set forth in such insurance requirements. The purchase of insurance by the Contractor with respect to the obligations required herein shall in no event be construed as fulfillment or discharge of such obligations.

Contractor's obligations under this Section are binding on Contractor's and its subcontractors' successors, heirs and assigns and shall survive the completion of the work or termination of the Contractor's performance of the work.

5.3 INSURANCE

The Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

5.3.1 Basic Insurance Requirements

a. Additional Insured

All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies, shall contain endorsements naming the County and its authorized officers, employees, agents, and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall

be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

b. Waiver of Subrogation Rights

The Contractor shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the County.

c. Policies Primary and Non-Contributory

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

d. Severability of Interests

The Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and the County or between the County and any other insured or additional insured under the policy.

e. Proof of Coverage

The Contractor shall furnish Certificates of Insurance to the County Department administering the contract evidencing the insurance coverage at the time the contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, the Contractor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

f. Acceptability of Insurance Carrier

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

g. Deductibles and Self-Insured Retention

Any and all deductibles or self-insured retentions in excess of $10,000 shall be declared to and approved by Risk Management.

h. Failure to Procure Coverage

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Contractor or County payments to the Contractor will be reduced to pay for County purchased insurance.

i. Insurance Review

Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become

reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

5.3.2 Insurance Specifications

a. Workers' Compensation/Employers Liability

A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with $250,000 limits covering all persons including volunteers providing services on behalf of the Contractor and all risks to such persons under this contract.

If Contractor has no employees, it may certify or warrant to the County that is does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

b. Commercial/General Liability Insurance

The Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars ($1,000,000), per occurrence. The policy coverage shall include:

(a) Premises operations and mobile equipment.
(b) Products and completed operations.
(c) Broad form property damage (including completed operations).
(d) Explosion, collapse and underground hazards.
(e) Personal injury
(f) Contractual liability.
(g) $2,000,000 general aggregate limit

c. Automobile Liability Insurance

Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars ($1,000,000) for bodily injury and property damage, per occurrence.

If the Contractor is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars ($2,000,000) for bodily injury and property damage per occurrence.

If the Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

Environmental Liability Insurance with a combined single limit of not less than five million ($5,000,000) per claim or occurrence and a separate aggregate for the contract project. The required additional insured endorsement shall protect the County without any restrictions.

If insurance coverage is provided on a "claims made" policy, the "retroactive date" shall be shown and must be before the date of the start of the contract work. The claims made insurance shall be maintained or "tail" coverage provided for a minimum of five (5) years after contract completion.

d. Course of Construction/Installation (Builder's Risk) Property Insurance

Course of Construction/Installation (Builder's Risk) Property Insurance providing all risk, including theft coverage for all property and materials to be used on the project. The insurance policy shall not have any coinsurance penalty.

e. Umbrella Liability Insurance

An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

f. Subcontractor Insurance Requirements

The Contractor agrees to require all parties or subcontractors, including architects or others it hires or contracts with related to the performance of this contract to provide insurance covering the contracted operations with the basic requirements for all contracts in Sections 5.3.1 and the insurance specifications for all contracts in 5.3.2, (including waiver of subrogation rights) and naming the County as an additional insured. The Contractor agrees to monitor and review all such coverage and assumes all responsibility ensuring that such coverage is provided as required here.

ARTICLE VI

CONTRACTOR'S DUTIES AND RESPONSIBILITIES

6.1 GENERAL SCOPE OF WORK

6.1.1 Contractor shall provide all materials, labor, equipment, and undertake all efforts necessary or appropriate to construct the Project in accordance with the requirements of the Contract Documents, all governmental approvals, all Applicable Law, and all other applicable safety, environmental and other requirements taking into account the constraints affecting the Project Site. Except as otherwise specifically provided in this Contract, all materials, services and efforts necessary to achieve Final Completion of the Project and elements thereof on or before the deadlines provided in the Contract Documents shall be Contractor's sole responsibility. The costs of all such materials, services and efforts are included in the Contract Sum.

6.1.2 The Contractor and all Subcontractors shall obtain any required licenses from the local jurisdiction where the Project is located (i.e. local City or County), prior to commencement of Work.

6.2 BEFORE STARTING WORK

Contractor shall submit the following to County for review and acceptance within fourteen (14) calendar days after the Date of Commencement fixed in County's Notice to Proceed, and as a condition to payment: (i) detailed Project Schedule including each deadline specified in the Contract Documents; (ii) Schedule of Submittals; (iii) material Procurement Schedule; and (iv) a Schedule of Values in accordance with the requirements of the General Conditions and other Contract Documents.

6.3 INITIAL CONFERENCE

Within twenty (20) calendar days after the Date of Commencement fixed in County's Notice to Proceed, a conference attended by County and Contractor and others as appropriate will be held to establish a working understanding among the Parties as to the Work and to discuss the schedules, progress meetings, procedures

for handling submittals, processing Applications for Payment, maintaining required records, coordination with Contractor Team Members, and other Project administration matters.

6.4 EVALUATION OF PRELIMINARY SUBMITTALS

At least ten (10) calendar days before submission of the first Application for Payment, a conference attended by Contractor, County and others as appropriate, will be held to review for acceptability the submittals required by the Contract Documents. No progress payment shall be made to Contractor until the required submittals are acceptable to County. The detailed Project Schedule will be acceptable to County as providing an orderly progression of the Work to completion within any specified Milestones and the Contract Time, but such acceptance will neither impose on County responsibility for the sequencing, scheduling or progress of the Work nor interfere with nor relieve Contractor from Contractor's full responsibility therefore. The format and structure of the Project Schedule will be set forth in the Contract Documents and approved by County. County's acceptance shall not be deemed to confirm that the schedule is a reasonable plan for performing the Work. Contractor's schedule of submittal will be acceptable to County as providing a workable arrangement for reviewing and processing the required submittals.

6.5 CONSTRUCTION

Contractor shall perform Construction in accordance with the requirements of the Contract Documents.

6.5.1 Construction shall be performed by Contractor and Subcontractors and suppliers who are selected, paid and acting in accordance with the procedures outlined in the Contract Documents.

6.5.2 The Contractor shall keep the County informed of the progress and quality of the Work in the form of periodic written reports and meetings, as determined by the County, but no less than monthly.

6.5.3 As a condition of final payment to Contractor, Contractor shall provide written certification that the Work has been constructed in accordance with the Contract Documents.

ARTICLE VII

CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

In order to induce County to enter into this Agreement, Contractor makes the following representations and warranties:

7.1 Contractor has visited the Site and has reasonably examined the nature and extent of the Work, Site, locality, actual conditions, as-built conditions, and all federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.

7.2 Contractor has reasonably examined all reports of exploration and tests of subsurface conditions, as-built drawings, drawings or reports available for construction purposes, of physical conditions, or conditions which may be apparent at the Site and accepts the criteria set forth in these documents and the Contract Documents to the extent of the information contained in these documents upon which the Contractor is entitled to rely. Contractor agrees that except for the information so identified, Contractor does not and shall not rely on any other information contained in these documents.

7.3 After Contract award, Contractor will conduct or obtain any additional examinations, investigations, explorations, tests, reports and studies, including but not limited to geotechnical investigations that pertain to the surface and subsurface conditions, as-built conditions, underground facilities and all other physical conditions at or contiguous to the Site as Contractor considers necessary for the performance or furnishing of Work at the Contract Sum, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.

7.4 Contractor has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, test, reports and studies with the terms and conditions of the Contract Documents.

7.5 Contractor has given County prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered before Contract award in or among the Contract Documents and actual conditions and the written resolution thereof through Addenda issued by County is acceptable to Contractor.

7.6 Contractor is duly organized, existing and in good standing under applicable state law, and is duly qualified to conduct business in the State of California.

7.7 Contractor has duly authorized the execution, delivery and performance of this Agreement, the other Contract Documents and the Work to be performed herein. The Contract Documents do not violate or create a default under any instrument, agreement, order or decree binding on Contractor.

7.8 Contractor certifies that neither it nor its principals, or other key decision makers, or subcontractors is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency or on the Federal Government Excluded Parties List System (www.epls.gov). Contractor agrees that signing this Contract shall constitute signature of this Certification.

7.9 During the term of the Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Contractor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VII of the Civil Rights Act of 1964, the California Fair Housing and Employment Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

7.10 Contractor agrees to comply with the Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and standards issued pursuant to the Americans with Disabilities Act. Contractor will also comply with the current edition of the California Building Code (California Code of Regulations, Title 24, Part 2).

7.11 Contractor agrees to comply and certify compliance with the Drug Free Workplace Act of 1990 per Government Code Section 8350 et seq.

7.12 Contractor acknowledges it will comply with the provisions of Public Contract Code section 4100-4108 regarding subcontractors. The Contractor hereby agrees to reimburse the County for costs incurred by the awarding authority in the substitution of subcontractors. Where a hearing is held pursuant to the provisions of Chapter 4 of the Public Contract Code (commencing with Section 4100) by the awarding authority or a duly appointed hearing officer, the County shall prepare and certify a statement of all costs incurred by the County for investigation and conduct of the hearing, including the costs of any hearing officer and shorthand reporter appointed. The statement shall then be sent to the Contractor who shall reimburse the County for such costs. If not paid separately, such reimbursement may be deducted from any money due and owing to the Contractor prior to acceptance of the Work. For the purposes of a hearing for the substitution of subcontractors (pursuant to the Public Contract Code commencing with Section 4100) the awarding authority shall be the Director of the Project and Facilities Management Department, or his/her designee.

7.13 The Contractor hereby agrees to comply with the State Labor Code and certifies through signature of this Contract that, in accordance with Section 3700 of the State Labor Code, Contractor is aware of the provisions of Section 3700 of the Labor Code 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 will comply with such provisions before commencing the performance of the Work of this Contract.

7.14 The Contractor acknowledges that he will be held responsible for compliance with the provisions of Sections 1777.5 and 1776 of the State Labor Code.

7.15 Contractor shall comply with Senate Bill 854 (signed into law on June 20, 2014) including, but not limited to, the following requirements: (1) no contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5; (2) no contractor or subcontractor may be awarded a contract for public work or perform work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5; (3) this Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations; (4) Contractor shall post job site notices regarding compliance monitoring and enforcement by the Department of Industrial Relations; and (5) Contractor must submit certified payroll at least monthly to the Labor Commissioner in a format prescribed by the Labor Commissioner.

7.16 As required by Labor Code Section 1771.1(a) "A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

ARTICLE VIII

PROJECT ACCESS, RECORD RETENTION AND AUDITS

8.1 At all times during construction of the Project, Contractor shall coordinate with the County to provide employees, subcontractors, and consultants of County reasonable unrestricted access to observe, monitor and inspect the Project. The County's access to observe, monitor and inspect shall include the right to review all documents and files relating to the Project, as well as construction on the Site, including all tests and inspections relating to construction of the Project.

8.2 Contractor expressly acknowledges it is aware of and will comply with all record retention and audit requirements contained in the Contract Documents. These requirements include, but are not limited to, the maintenance of an Official Project File that must be preserved a minimum of five (5) years, the protection of records from fire or other damage, the maintenance of all records in accordance with generally accepted accounting principles, and the agreement that the County or its designated representative shall have the right to review, to audit, and to copy any records and supporting documentation pertaining to the performance of this Agreement.

ARTICLE IX

MISCELLANEOUS PROVISIONS

9.1 INDEPENDENT CONTRACTOR

Contractor is, and shall be, acting at all times in the performance of this Agreement as an independent Contractor. Contractor shall secure at its expense, and be responsible for any and all payment of all taxes, social security, state disability insurance compensation, unemployment compensation and other payroll deductions for Contractor and its officers, agents and employees and all business licenses, if any, in connection with the services to be performed hereunder.

9.2 COUNTY EMPLOYEES AND OFFICIALS

Contractor shall employ no County official nor any regular County employee in the Work performed pursuant to this Agreement. No officer or employee of County shall have any financial interest in this Agreement in violation of applicable provisions of law.

Contractor agrees to provide or has already provided information on former San Bernardino County administrative officials (as defined below) who are employed by or represent Contractor. The information provided includes a list of former County administrative officials who terminated County employment within the

last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Contractor. For purposes of this provision, "County Administrative Official" is defined as a member of the Board of Supervisors or such officer staff, Chief Executive Officer or member of such officer staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

9.3 INACCURACIES OR MISREPRESENTATIONS

If during the course of the administration of this agreement, the County determines that the Contractor has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this contract may be immediately terminated. If this contract is terminated according to this provision, the County is entitled to pursue any available legal remedies.

9.4 IRAN CONTRACTING ACT OF 2010

(Public Contract Code sections 2200 et seq.)
(Applicable for all Contracts of one million dollars ($1,000,000) or more)

In accordance with Public Contract Code section 2204(a), the Contractor certifies that at the time the Contract is signed, the Contractor signing the Contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 (http://www.dgs.ca.gov/pd/Resources/PDLegislation.aspx) as a person (as defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable.

Contractors are cautioned that making a false certification may subject the Contractor to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205.

9.5 NOTICES

Any notices or special instructions required to be given in writing under this Agreement shall be given either by personal delivery to Contractor's agent (as designated by Contractor) or to County's Engineer and County Counsel as the situation shall warrant, or by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, addressed as follows:

COUNTY	CONTRACTOR
Project and Facilities Management Department	As shown on page one of this
Project Management	Contract
385 North Arrowhead Ave., 3rd Fl.	
San Bernardino, CA 92415-0184	

9.6 CONTRACT EXECUTION

This Contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Contract. The parties shall be entitled to sign and transmit an electronic signature of this Contract (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Contract upon request.

ARTICLE X

The contract is delivered by Proterra Builders, Inc., Contractor, to County for acceptance by its Board of

Supervisors at San Bernardino, California, and is deemed to have been entered into at San Bernardino, California.

IN WITNESS WHEREOF, the Board of Supervisors of San Bernardino County has caused this Contract to be subscribed by its duly authorized officers, in its behalf, and the said party of the second part has signed this Contract.

SAN BERNARDINO COUNTY

▶ _____

Curt Hagman, Chairman, Board of Supervisors

Dated: SEP 13 2022

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
San Bernardino County

By _____ Deputy

Proterra Builders, Inc.
(Print or type name of corporation, company, contractor, etc.)

By ▶ Steven S. Richardson
Digitally signed by Steven S. Richardson
Date: 2022.08.22 17:14:37 -07'00'
(Authorized signature - sign in blue ink)

Name Steven S. Richardson
(Print or type name of person signing contract)

Title President
(Print or Type)

Dated: 08/22/2022

Address 16470 Pauhaska Place

Apple Valley , CA 92307

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
▶	▶ Digitally signed by Scott Hughes Date: 2022.08.24 10:29:23-07'00'	▶
Katherine Hardy, Deputy County Counsel	Scott Hughes , Supervising Project Manager	Don Day, Director PFMD
Date	Date	Date

Supervisors at San Bernardino, California, and is deemed to have been entered into at San Bernardino, California.

IN WITNESS WHEREOF, the Board of Supervisors of San Bernardino County has caused this Contract to be subscribed by its duly authorized officers, in its behalf, and the said party of the second part has signed this Contract.

SAN BERNARDINO COUNTY

▶

Curt Hagman, Chairman, Board of Supervisors

Dated:

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
San Bernardino County

By

Deputy

Proterra Builders, Inc.
(Print or type name of corporation, company, contractor, etc.)

By ▶ Steven S. Richardson Digitally signed by Steven S. Richardson Date: 2022.08.22 17:14:37 -07'00'
(Authorized signature - sign in blue ink)

Name Steven S. Richardson
(Print or type name of person signing contract)

Title President
(Print or Type)

Dated: 08/22/2022

Address 16470 Pauhaska Place

Apple Valley , CA 92307

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
▶	▶	▶ Donald Day Digitally signed by Donald Day DN: C=US, E=donald.day@res.sbcounty.gov, O=San Bernardino County, OU=Project & Facilities Management, CN=Donald Day Date: 2022.08.26 20:29:54-07'00'
Katherine Hardy, Deputy County Counsel	Scott Hughes , Supervising Project Manager	Don Day, Director PFMD
Date 8-23-22	Date	Date