

~~Repair~~ Construction and Maintenance Agreement

This Agreement (or "Contract") is made as of March 20, 2024 ("Effective Date") by and between the COUNTY OF PLUMAS, a political subdivision of the State of California, (hereinafter referred to as "County"), and ENGIE Services U.S. Inc., a Delaware corporation, with California State Contractor's License Number 995037 (hereinafter referred to as "Contractor" or "ENGIE Services U.S.").

The parties agree as follows:

1. Scope of Work. Contractor shall provide the County with materials and services as set forth in Exhibits A and C, attached hereto (hereinafter referred to as the "Work").
2. Compensation. County shall pay Contractor for the Work in the manner set forth in Exhibits B and C, attached hereto. The total amount paid by County to Contractor under this Agreement shall not exceed **Ten Million Seven Hundred Fifty-Four Thousand Two Hundred Forty-Six Dollars and 00/100 (\$10,754,246.00)** (hereinafter referred to as the "Contract Amount"), unless the Contract Amount has been adjusted pursuant to Section 15 of this Agreement.
3. Commencement and Term. The date of commencement of the Work shall be the date of execution of this Agreement. **Contract ends on the last day on which Professional Services are provided pursuant to Exhibit C (up to Twenty (20) years from the Effective Date)**, subject to adjustment as stated in Sections 15 and 16.
4. Termination.
 - a. By County for Cause. The County may immediately terminate this Agreement for cause, upon written notice to Contractor following a failure by Contractor to cure a default listed below within thirty (30) days following written notice by County, if Contractor (i) does not supply sufficient skilled workers or materials to ensure the timely and competent performance of the Work in accordance with the terms of this Agreement; (ii) fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between Contractor and the subcontractors; (iii) violates any law, ordinance, rule, regulation, or order of a public authority having jurisdiction over Contractor, the County, or this Agreement; or (iv) has committed any other substantial breach of this Agreement. If the County terminates this Agreement for cause, then Contractor shall not be entitled to receive further payment from the County other than for the value of the services and materials previously provided to the County under this Agreement.
 - b. County's Remedies. Upon terminating this Agreement for cause, County may, without prejudice to any other rights or remedies held by the County under this Agreement or applicable law, take possession of the site and all materials thereon owned by Contractor, and finish the Work by what whatever reasonable method the County deems appropriate. If the County's cost of finishing the Work under this paragraph exceeds the unpaid balance of the Contract Amount, Contractor

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shall pay the difference to the County. This obligation for payment shall survive the termination of this Agreement.

- c. By County for Convenience. The County may, at any time, terminate this Agreement for convenience and without cause. After terminating this Agreement for convenience, the County shall pay Contractor the value of the services and materials previously provided to the County under this Agreement as well as the costs incurred by Contractor by reason of such termination.
- d. By Contractor. If the County fails to make payment as provided in Exhibit B for a period of at least thirty (30) days after the date such payment is due and payable, then Contractor may, upon seven (7) additional days' written notice to the County, terminate this Agreement. Upon such termination, County shall pay Contractor for any Work performed prior to termination as well as the costs incurred by Contractor by reason of such termination.

5. County's Right to Stop and Correct Work. County may direct the Contractor in writing to stop performing the Work until Contractor corrects previously performed Work that is not in accordance with this Agreement, as determined by the County in its ~~sole~~ reasonable discretion. If Contractor does not commence and continue correction with diligence and promptness within seven (7) days after receiving written notice from the County to do so, the County may, without prejudice to any other rights or remedies held by the County under this Agreement or applicable law, correct the Work by ~~what~~ whatever reasonable method the County deems appropriate. In such case, the Contract Amount shall be adjusted to deduct the cost of this correction.

6. Supervision. Contractor shall supervise and direct the Work, using Contractor's best skill and attention. Contractor shall be solely responsible for and have control over the means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work. As soon as practicable after execution of this Agreement, Contractor shall furnish in writing to the County the names of any subcontractors or suppliers Contractor intends to engage in performance of the Work. Contractor shall not contract with any subcontractor or supplier to whom the County has made a timely and reasonable objection.

7. Labor and Materials. Unless otherwise provided in this Agreement, Contractor shall provide and pay for all labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work. Contractor shall enforce strict discipline and good order among Contractor's employees and other persons performing the Work. Contractor shall not employ unfit persons to perform the Work or assign persons to perform tasks related to the Work that these persons are not properly skilled to perform.

8. Warranty. Contractor warrants to the County that: (1) materials and equipment furnished under this Agreement will be new and of good quality unless otherwise required or permitted under this Agreement; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of

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this Agreement. Contractor shall, for a period of one year after substantial completion of the Work, correct Work not conforming to the requirements of this Agreement. If Contractor fails to correct nonconforming Work within a reasonable time, the County may correct the Work, and Contractor shall pay the cost of such correction to the County within fifteen (15) days of Contractor's receipt of County's written request for such payment. This obligation for payment shall survive the termination of this Agreement. Additional warranty terms are set forth in Exhibit C.

9. Taxes. Contractor shall pay any sales, consumer, use, and similar taxes with respect to the materials and services furnished by Contractor under this Agreement.
10. Permits and Fees. Contractor shall obtain any permits, and licenses, and inspections necessary for proper execution and completion of the Work. Fees incurred by Contractor with respect to these permits, and licenses, and inspections shall be reimbursed by the County. County is responsible for hiring and paying for all inspections.
11. Legal Notices. Contractor shall comply with any notices issued by any government agencies having jurisdiction over the Work. Contractor shall give any notices required by any government agencies having jurisdiction over the Work. If Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, then Contractor shall assume full responsibility for such Work and shall bear any costs attributable to such Work.
12. Use of Site. Contractor shall confine its operations at the Work site to areas permitted by law, ordinances, this Agreement, and the County.
13. Cutting and Patching. Contractor shall be responsible for any cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.
14. Clean Up. Contractor shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work. At the completion of the Work, Contractor shall remove its tools, equipment, machinery, and surplus material, and shall properly dispose of waste materials.
15. Changes in the Work. The County, without invalidating this Agreement, may approve changes in the Work within the general scope of this Agreement, consisting of additions, deletions, or other revisions. Additionally, the Scope of Work may be amended by Change Orders issued in accordance with Exhibit C. The Contract Amount and the time for completion of the Work under Section 3 and Exhibit C shall be adjusted in writing to account for such changes, upon mutual agreement of the County and Contractor.
16. Delays in Performance. If Contractor is delayed at any time in the progress of the Work by fire, unusual delay in deliveries, unavoidable casualties, or other causes beyond Contractor's control, then the time for completion of the Work under Section 3 shall be equitably adjusted.
17. Protection of Persons and Property. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs, including all those

Commented [CM1]: Note: it is a conflict of interest for the contractor to hire an inspector of their work. Owner must hire the inspectors.

required by law in connection with performance of the Work. Contractor shall take reasonable precautions to prevent damage, injury, or loss to employees performing the Work, the Work itself and materials and equipment to be incorporated therein, and other property at the Work site or adjacent thereto. Contractor shall promptly remedy damage and loss to property caused in whole or in part by Contractor, its officers, employees, agents, contractors, licensees or servants.

- 18. **Tests and Inspections.** Contractor shall arrange ~~and bear the cost of~~ tests, inspections, and approvals of any portion of the Work required by this Agreement or by laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.
- 19. **Prevailing Wage.** Contractor shall comply with all provisions of the California Public Contract Code and the California Labor Code, including, without limitation, payment of prevailing wage rates to all covered employees of Contractor and any subcontractors pursuant to California Labor Code Sections 1770 through 1780, inclusive. Pursuant to Section 1773 of the California Labor Code, the general prevailing wage rates in the county in which the work is to be done have been determined by the Director of the California Department of Industrial Relations. These wage rates for this project are in the book entitled, "Special Provisions, Notice to Contractors, Proposal and Contract." Addenda to modify wage rates, if necessary, will be issued to holders of the above referenced book. Future effective general prevailing wage rates, which have been predetermined, and are on file with the California Department of Industrial Relations, are referenced but not printed in the general prevailing wage rates. Pursuant to Section 1773.2 of the California Labor Code, General Prevailing Wage Rates included in the book entitled, "Special Provisions, Notice to Contractors. Proposal and Contract" shall be posted by Contractor at a prominent place at the site of the work.
- 20. **Legal Compliance.** Contractor agrees to comply with all applicable terms of state and federal laws and regulations, all applicable grant funding conditions, and all applicable terms of the Plumas County Code and the Plumas County Purchasing and Practice Policies.
- 21. **Amendment.** This Agreement may be amended at any time by mutual agreement of the parties, expressed in writing and duly executed by both parties. No alteration of the terms of this Agreement shall be valid or binding upon either party unless made in writing and duly executed by both parties.
- 22. **Indemnification.** To the furthest extent permitted by law (including without limitation California Civil Code Sections 2782 and 2782.8, if applicable), County shall not be liable for, and Contractor shall defend and indemnify County and its officers, agents, employees and volunteers (collectively 'County Parties'), against any and all claims, deductibles, self-insured retentions, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including reasonable attorneys' fees and court costs (hereinafter collectively referred to as ('Claims'), which arise out of or are in any way connected to the work covered by this Agreement arising either directly or indirectly from any act, error, omission or negligence of Contractor or its officers, employees,

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agents, contractors, licensees or servants, including, without limitation, claims caused by the concurrent negligent act, error or omission, of County Parties. However, Contractor shall have no obligation to defend or indemnify County Parties against claims caused by the active negligence, sole negligence or willful misconduct of County Parties.

23. **Insurance.** Contractor agrees to maintain the following insurance coverage throughout the term of this Agreement:

- a. Commercial general liability (and professional liability, if applicable to the services provided) coverage, with minimum per occurrence limit of ~~the greater of (i) the limit available on the policy, or (ii)~~ one million dollars (\$42,000,000).
- b. Automobile liability coverage (including non-owned automobiles), with minimum bodily injury limit of ~~the greater of (i) the limit available on the policy, or (ii) two hundred fifty thousands dollars one million dollars~~ (\$2501,000) per person and five hundred thousand dollars (\$500,000) per accident, as well as a minimum property damage limit of ~~the greater of (i) the limit available on the policy, or (ii)~~ fifty thousand dollars (\$50,000) per accident.
- c. Each policy of commercial general liability (and professional liability, if applicable to the services provided) coverage and automobile liability coverage (including non-owned automobiles) shall meet the following requirements:
 - i. Each policy shall be endorsed to name the County, its officers, officials, employees, representatives and agents (collectively, for the purpose of this section 9, the "County") as additional insureds. The Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13; and
 - ii. All coverage available under such policy to Contractor, as the named insured, shall also be available and applicable to the County, as the additional insured, subject to the limits on liability set forth in this Agreement; and
 - iii. All of Contractor's available insurance proceeds in excess of the specified minimum limits shall be available to satisfy any and all claims of the County, including defense costs and damages, subject to the limits on liability set forth in this Agreement; and
 - iv. Any insurance limitations are independent of and shall not limit the indemnification terms of this Agreement, subject to the limits of liability set forth in this Agreement; and
 - v. Contractor's policy shall be primary insurance as respects the County, its officers, officials, employees, representatives and agents, and any

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insurance or self-insurance maintained by the County, its officers, officials, employees, representatives and agents shall be in excess of the Contractor's insurance and shall not contribute with it, and such policy shall contain any endorsements necessary to effectuate this provision. The primary and non-contributory endorsement shall be at least as broad as ISO Form 20 01 04 13; and

- vi. To the extent that Contractor carries any excess insurance policy applicable to the work performed under this Agreement, such excess insurance policy shall also apply on a primary and non-contributory basis for the benefit of the County before the County's own primary insurance policy or self-insurance shall be called upon to protect it as a named insured, and such policy shall contain any endorsements necessary to effectuate this provision.

d. Workers Compensation insurance in accordance with California state law.

If requested by County in writing, Contractor shall furnish a certificate of insurance satisfactory to County as evidence that the insurance required above is being maintained. Said certificate of insurance shall include a provision stating that the insurers will not cancel the insurance coverage without thirty (30) days' prior written notice to the County.

~~County reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.~~ Contractor shall require all subcontractors to comply with all indemnification and insurance requirements of this agreement, and Contractor shall verify subcontractor's compliance.

24. Licenses and Permits. Contractor represents and warrants to County that it or its principals have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required for Contractor to practice its profession and to perform its duties and obligations under this Agreement. Contractor represents and warrants to County that Contractor shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for Contractor or its principals to practice its professions and to perform its duties and obligations under this Agreement. In particular, Contractor represents that it holds a current and active licenses as a **Class B, A, C46, and C10** contractor, issued by the State of California, No. **995037**

25. Relationship of Parties. It is understood that Contractor is not acting hereunder as an employee of the County, but solely as an independent contractor. Contractor, by virtue of this Agreement, has no authority to bind, or incur any obligation on behalf of, County. Except as expressly provided in this Agreement, Contractor has no authority or responsibility to exercise any rights or power vested in County. It is understood by both Contractor and County that this Agreement shall not under any circumstances be construed or considered to create an employer-employee relationship or joint venture. Contractor shall secure, at its expense, and be responsible for any and all payments of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment

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Compensation, and other payroll deductions for Contractor and its officers, agents, and employees.

26. **Assignment.** Contractor may not assign, subcontract, sublet, or transfer its interest in this Agreement without the prior written consent of the County, which shall not be unreasonably withheld. Notwithstanding the foregoing, Contractor may assign this Agreement to an affiliate or to a successor in interest following a change in ownership.
27. **Non-discrimination.** Contractor agrees not to discriminate in the provision of service under this Agreement on the basis of race, color, religion, marital status, national origin, ancestry, sex, sexual orientation, physical or mental handicap, age, or medical condition.
28. **Choice of Law.** The laws of the State of California shall govern this agreement and venue for any dispute shall lie in Plumas County, California.
29. **Interpretation.** This agreement is the result of the joint efforts of both parties and their attorneys. The agreement and each of its provisions will be interpreted fairly, simply, and not strictly for or against either party.
30. **Integration.** This Agreement constitutes the entire understanding between the parties respecting the subject matter contained herein and supersedes any and all prior oral or written agreements regarding such subject matter.
31. **Severability.** The invalidity of any provision of this Agreement, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.
32. **Headings.** The headings and captions contained in this Agreement are for convenience only, and shall be of no force or effect in construing and interpreting the provisions of this Agreement.
33. **Waiver of Rights.** No delay or failure of either party in exercising any right, and no partial or single exercise of any right, shall be deemed to constitute a waiver of that right or any other right.
34. **Third Party Beneficiaries.** This Agreement is entered into for the sole benefit of the County and Contractor, and no other parties are intended to be direct or indirect or incidental beneficiaries of this Agreement, and no third party shall have any right in, under, or to this Agreement.
35. **Conflict of Interest.** The parties to this Agreement have read and are aware of the provisions of Government Code section 1090 *et seq.* and section 87100 *et seq.* relating to conflicts of interest of public officers and employees. Contractor represents that it is unaware of any financial or economic interest of any public officer or employee of County relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement and is later discovered by the County, the County may immediately terminate this Agreement by giving written notice to Contractor.

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36. **Notice Addresses.** All notices under this Agreement shall be effective only if made in writing and delivered by personal service or by mail and addressed as follows. Either party may, by written notice to the other, change its own mailing address.

County:

County of Plumas

Quincy, CA 95971

Attention: _____

Contractor: **ENGIE Services U.S. Inc.**
1721 2nd Street, Suite 200
Sacramento, CA 95811
Attention: Project Management Director
Tel: (916) 379-7592

With a copy to:

Legal Department
ENGIE Services U.S. Inc.
35 North Lake Avenue, Suite 900
Pasadena, CA 91101-1892
Attention: Contract Analyst Senior
Tel: 626-377-4948

Attention: _____

37. **Time of the Essence.** Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision thereof, and each such provision is hereby made and declared to be a material, necessary, and essential part of this Agreement.

38. **Contract Execution.** Each individual executing this Agreement on behalf of Contractor represents that he or she is fully authorized to execute and deliver this Agreement.

39. **Retention of Records.** If the maximum compensation payable under section 2 of this Agreement exceeds \$10,000, then, pursuant to California Government Code section 8546.7, the performance of any work under this Agreement is subject to the examination and audit of the State Auditor at the request of the County or as part of any audit of the County for a period of three years after final payment under the Agreement. Each party hereto shall retain all records relating to the performance and administration of this Agreement for three years after final payment hereunder, and Contractor agrees to provide such records either to the County or to the State Auditor upon the request of either the State Auditor or the County.

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40. **Ukraine Sanctions.** Pursuant to Executive Order N-6-22 Contractor is aware that as a compliance with the economic sanctions imposed in response to Russia's actions in Ukraine is required, including with respect to, but not limited to, the federal executive orders identified in the EO and the sanctions identified on the U.S. Department of the Treasury website (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>). Failure to comply may result in the termination of this agreement.

41. **Suspension and Debarment.** The County does not employ vendors or contractors who are listed on the National World Wide Web Site System for Award Management (sam.gov) by Federal General Services Administration (GSA) for the purpose of disseminating information on parties that are debarred from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits, pursuant to the provisions of 31 U.S.C. 6101, note, E.O. 12549, E.O. 12689, 48 CFR 9.404, and each agency's codification of the Common Rule for Non-procurement suspension and debarment.

a. This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

b. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

c. This certification is a material representation of fact relied upon by the County. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

d. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any Contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

42. **Non-Appropriation of Funds.** It is mutually agreed that if, for the current fiscal year and/or any subsequent fiscal years covered under this Agreement, insufficient funds are appropriated to make the payments called for by this Agreement, this Agreement shall be of no further force or effect. In this event, the County shall have no liability to pay any further funds whatsoever to Contractor or furnish any other consideration under this Agreement and Contractor shall not be obligated to perform any further services under

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this Agreement; provided however, that Contractor shall be paid for all work performed to date. If funding for any fiscal year is reduced or deleted for the purposes of this program, the County shall have the option to either cancel this Agreement with no further liability incurring to the County other than payment for work performed to date, or offer an amendment to Contractor to reflect the reduced amount available to the program. The parties acknowledge and agree that the limitations set forth above are required by Article XVI, section 18 of the California Constitution. Contractor acknowledges and agrees that said Article XVI, section 18 of the California Constitution supersedes any conflicting law, rule, regulation or statute.

43. Additional Terms/Conflicts. Exhibit C to this Agreement contains additional contract terms and conditions applicable to the Project that are binding on the Parties. In the event of any conflict between the terms of this Agreement and the terms of any exhibit hereto, the terms of this Agreement shall control, and the conflicting term of the exhibit shall be given no effect. Any limitation of liability contained in an attached exhibit shall be null and void.

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IN WITNESS WHEREOF, this Agreement has been executed as of the date first set forth above.

CONTRACTOR:

ENGIE Services U.S. Inc.,
a Delaware corporation

COUNTY:

County of Plumas, a political subdivision of
the State of California

By: _____

Name: Courtney Jenkins

Title: Vice President and General Manager

By: _____

Name: Christina McCormick

Title: Senior Counsel

By: _____

Name: Greg Hagwood

Title: Chair of the Board, Plumas County
Supervisor District 4

ATTEST:

By: _____

Name: Allen Hiskey

Title: Clerk of the Board

Approved as to form:

Plumas County Counsel

By: _____

Deputy County Counsel

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EXHIBIT A

Scope of Work

1. See Exhibit C for complete Scope of Work.
2. Provide and pay for all labor, materials, taxes, and insurance in accordance with the terms of the Agreement.
3. All Work will comply with the California Building and Electrical Codes and all applicable state and federal laws and regulations.

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EXHIBIT B

Fee Schedule

1. See Exhibit C for complete Fee Schedule
2. The Contract Amount, including authorized adjustments, is the maximum amount payable by the County to Contractor for performance of the Work under this Agreement. No additional amounts will be paid to Contractor for performance of the Work except as expressly stated in this Agreement or authorized in accordance with its terms.
3. Contractor shall promptly pay each subcontractor and supplier, upon receipt of payment from the County, an amount determined in accordance with the terms of the applicable subcontracts and purchase orders.
4. The County shall not have any responsibility to make payments to any subcontractor or supplier.
5. Any payment to Contractor or any partial or entire use or occupancy of the Work by the County shall not constitute acceptance of Work not in accordance with the requirements of this Agreement.
6. **Upon notice from Contractor that the Work is complete, the County will promptly inspect the Work. ~~When (i) the County determines the Work to be acceptable and this Agreement fully performed, (ii) Contractor provides to the County data or documentation establishing payment or satisfaction of all obligations under this Agreement, and (iii) the Contractor submits to the County a release and waiver of any claims or liens arising out of this Agreement, then payment under this Agreement shall become payable by the County.~~
7. Acceptance of payment by Contractor, a subcontractor, or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of payment.