

File No. 250870

Committee Item No. 4

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Budget and Finance Committee Date October 15, 2025

Board of Supervisors Meeting Date _____

Cmte Board

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☒	☐	<u>Board of Education Agenda Item 253-25B5 3/25/2025</u>
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Completed by: Brent Jalipa Date October 9, 2025

Completed by: Brent Jalipa Date _____

1 [Funding and License Agreement - San Francisco Unified School District - Design,
2 Construction, Operation, and Maintenance of an On-Site Solar Photovoltaic System - Not to
3 Exceed \$653,033]

4 **Resolution approving and authorizing the General Manager of the San Francisco Public**
5 **Utilities Commission to execute a Funding and License Agreement between the San**
6 **Francisco Public Utilities Commission and the San Francisco Unified School District**
7 **for the construction, operation, and maintenance of an on-site solar photovoltaic**
8 **system at the Mission Bay School, for an amount not to exceed \$653,033 for a duration**
9 **of 30 years from October 31, 2025, through October 31, 2055, pursuant to Charter,**
10 **Section 9.118.**

11
12 WHEREAS, The San Francisco Public Utilities Commission (SFPUC) serves the San
13 Francisco Unified School District's (SFUSD) electricity; and

14 WHEREAS, Mission Bay School is a new SFUSD campus currently under construction
15 at 1415 Owens Street; and

16 WHEREAS, The current California building code requires SFUSD to install a solar
17 photovoltaic system (solar PV system) at Mission Bay School; and

18 WHEREAS, The solar PV system will also support the City's program to increase
19 development of solar energy in accordance with the Mayor's Executive Directive 05-107,
20 Rooftops for Municipal Solar; and

21 WHEREAS, This solar installation will be the ninth such partnership between SFPUC
22 and SFUSD; and

23 WHEREAS, The Funding and License Agreement (FLA) sets forth the terms and
24 conditions for SFUSD funding and reimbursement, and SFPUC ownership and access to the
25 site; and

1 WHEREAS, The solar PV system will be owned, operated, and maintained by the
2 SFPUC; and

3 WHEREAS, The FLA sets forth the conditions under which SFUSD grants SFPUC
4 license to access and use the site for operation and maintenance of the solar PV system; and

5 WHEREAS, Under the terms of the FLA, SFPUC will reimburse SFUSD up to \$653,033
6 for expenses related to the design, procurement, and installation of the solar PV system; and

7 WHEREAS, The term of the FLA is 30 years, beginning October 31, 2025, through
8 October 31, 2055; and

9 WHEREAS, Charter, Section 9.118(b) requires Board of Supervisors' approval by
10 Resolution of any agreement that extends over 10 years; and

11 WHEREAS, On March 25, 2025, the San Francisco Board of Education approved the
12 FLA in Consent Agenda Item 253-25B5; and

13 WHEREAS, On July 22, 2025, by Resolution No. 25-0124, the SFPUC Commission
14 approved and authorized the General Manager of the SFPUC to execute a FLA between the
15 SFPUC and the SFUSD for the construction, operation, and maintenance of an on-site solar
16 photovoltaic system at the Mission Bay School, for an amount not to exceed \$653,033 and
17 with a duration of 30 years, estimated to commence October 31, 2025, through October 31,
18 2055; now, therefore, be it

19 RESOLVED, That this Board of Supervisors hereby approves the FLA between the
20 SFPUC and the SFUSD for the construction, operation, and maintenance of an on-site solar
21 PV system at the Mission Bay School, pursuant to Section 9.118 of the Charter; and, be it

22 FURTHER RESOLVED, That the Board of Supervisors authorizes the General
23 Manager to enter into amendments or modifications to the FLA that the General Manager
24 determines, in consultation with the City Attorney, are in the best interest of the City, do not
25

1 materially increase the obligations or liabilities of the City or materially diminish the benefits to
2 the City, are necessary or advisable to effectuate the purposes and intent of the Resolution,
3 and are in compliance with all applicable laws, including the City Charter; and, be it

4 FURTHER RESOLVED, That within 30 days of the parties fully executing or amending
5 the FLA, the SFPUC shall provide a signed copy of the Agreement to the Clerk of the Board
6 for inclusion into the official file.

**CITY AND COUNTY OF SAN FRANCISCO
SAN FRANCISCO PUBLIC UTILITIES COMMISSION**

FUNDING AND LICENSE AGREEMENT

between

CITY AND COUNTY OF SAN FRANCISCO

and

SAN FRANCISCO UNIFIED SCHOOL DISTRICT

THIS AGREEMENT (“Agreement”) is made as of February 18, 2025, in the City and County of San Francisco, State of California, by and between the **SAN FRANCISCO UNIFIED SCHOOL DISTRICT** (“SFUSD” or “District”) and the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (“City”) acting by and through the San Francisco Public Utilities Commission (“Department” or “SFPUC”), hereinafter sometimes referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

A. The purpose of this Agreement is to provide funding for the design and construction of an on-site photovoltaic system (“Solar Project”) by SFUSD at the Mission Bay School, located at 1415 Owens Street, San Francisco CA 94158, APNs 8709-25 and 8709-26 (the “Site”), which shall be operated and maintained by the SFPUC. The Solar Project will provide solar electricity to the Site as part of the City and County of San Francisco program to increase the City’s development of solar energy in accordance with the Mayor’s Executive Directive 05-107 (Rooftops for Municipal Solar) dated October 26, 2005.

B. The City, acting by and through the Department, currently serves SFUSD electricity needs from certain generating resources, including but not limited to hydroelectric power from the Hetch Hetchy system. The City and the SFUSD desire to use an on-site photovoltaic system and associated inverters, isolation switches, relay protection equipment and meters to serve some or all of the Site’s building load.

C. SFUSD filed a Notice of Determination with the Office of Planning and Research on June 16, 2022, adopting the findings of the final Environmental Impact Report (EIR) dated November 2021. In conformance with the California Environmental Quality Act (CEQA) and CEQA Guidelines, this final EIR provides objective information regarding the environmental consequences of the proposed project. As noted in the EIR, Mission Bay School will comply with all applicable City and state green building measures as required by Cal Title 24 Part 6 - California Energy Codes and Cal Title Part 11 - California Green Building Standards Codes.

D. The City and SFUSD now wish to enter into this Agreement to set forth the terms and conditions under which SFUSD will fund the design and construction of the Solar Project and SFPUC will reimburse

SFUSD as described in Article 5. After reimbursement, SFPUC will own the Solar Project. SFUSD will grant SFPUC a license to access the Solar Project post-construction for maintenance.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which is acknowledged, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Specific Terms. Unless the context otherwise requires, the following capitalized terms (whether singular or plural) shall have the meanings set forth below:

"ADA" shall mean the Americans with Disabilities Act (including all rules and regulations thereunder) and all other applicable federal, state and local disability rights legislation, as the same may be amended, modified or supplemented from time to time.

"Charter" shall mean the Charter of City.

"Contractor" shall have the meaning as "SFUSD's contractor" if used in this Agreement.

"Controller" shall mean the Controller of City.

"Electric Service" shall mean the provision of electric power by City to SFUSD at the Site pursuant to existing arrangements as set by City and approved by the Board of Supervisors from time to time.

"Emergency" shall mean a condition that gives rise to, or imminently could give rise to, a serious health and/or safety hazard.

"Environmental Attributes" shall mean any and all energy or emissions credits or any other renewable energy, emissions reduction or other environmental attribute, whether related to any renewable portfolio standard or other renewable energy purchase requirement or otherwise, whether existing as of the Effective Date or enacted thereafter.

"Event of Default" shall have the meaning set forth in Section 11.1.

"Excess Power" shall mean the power generated and available from the Solar Project that is above the onsite load requirements.

"Fiscal Quarter" shall mean each period of three (3) calendar months commencing on July 1, October 1, January 1 and April 1, respectively.

"Fiscal Year" shall mean each period of twelve (12) calendar months commencing on July 1 and ending on June 30 during which all or any portion of this Agreement is in effect.

"Funding Request" shall have the meaning set forth in Section 5.3(a).

"Funds" shall mean any and all funds allocated or disbursed to SFUSD under this Agreement.

"Hazardous Material" shall mean any substance, water or material which has been determined by any state, federal or local government authority to be capable of posing a risk of injury to health, safety or property.

"Indemnified Parties" shall mean: (i) City, including the Department and all commissions, departments, agencies and other subdivisions of City; (ii) City's elected officials, directors, officers, employees, agents, successors and assigns; and (iii) all persons or entities acting on behalf of any of the foregoing.

"License" shall mean the conditions under which the SFUSD confers upon the City a personal, non-exclusive, irrevocable, and non-possessory privilege to enter upon and use the License Area of the Site for the Permitted Activities as provided in Appendix C.

"Losses" shall mean any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, judgments, fees, expenses and costs of whatsoever kind and nature (including legal fees and expenses and costs of investigation, of prosecuting or defending any Loss described above) whether or not such Loss be founded or unfounded, of whatsoever kind and nature.

"Normal Operating Hours" shall mean the normal operating hours of Site building's administrative staff which are currently 8 a.m. to 5 p.m. Monday through Friday.

"Permitted Activities" shall mean the use of the Site by the City, its employees, agents, contractors and subcontractors, to permit, research, install, operate, maintain, repair, replace, upgrade, remove and decommission the Solar Project. Any amendments or alterations to the Permitted Activities must be pre-approved in writing by SFUSD. Subject to the execution by SFUSD and City of a mutually acceptable written agreement regarding compensation and other key terms, SFUSD may undertake any of the Permitted Activities on City's behalf consistent with the agreement between the Parties.

"Project Expense" shall have the meaning set forth in Appendix A.

"Prudent Utility Practice" shall mean those practices, methods and procedures, as modified from time to time, that are currently and commonly used by electric utilities to design, construct and operate electric power facilities dependably, reliably, safely, efficiently and economically, with due regard to the state of the art in the electric power industry, as applied in the State of California or in the Western Electricity Coordinating Council area, whichever better represents the application of the considerations above. Such practices, methods and procedures are not limited to the optimum, but rather to any within the scope of those currently and commonly used.

"Site" shall mean the Mission Bay School building located at 1415 Owens St. San Francisco, CA, 94158 APNs 8709-25 and 8709-26.

"Site Plan" shall mean a set of drawings of the potential Site, which drawings shall include in particular the roof, the roof's structural support, electrical drawings showing all relevant details of the electric room where the output from a Solar Project would be connected to the City grid, and the possible conduit routing of the output from the Solar Project to the electrical room.

"Solar Project" or "Project" shall mean a photovoltaic system installed at the Site, to serve the Site's building load, consisting of photovoltaic panels and their mountings, any bird avoidance devices, as well as associated wiring among panels and wiring from the panels and other associated wiring (e.g., data instruments) to the boundary of the Site. Components of the photovoltaic system on the Site will include

racking material, array wiring, wiring from the roof boundary to the switching area on the Site, inverter(s), an AC disconnect switch, a DC disconnect switch, junction boxes, wiring, the Solar Project Meter, and wiring to the PG&E or City main meter.

"Solar Project Meter" shall mean a [time of use or revenue-grade] meter which will measure the output of the Solar Project.

"Solar Project Plan" or "Plan" shall have the meaning set forth in Appendix A.

1.2 Additional Terms. The terms "as directed," "as required" or "as permitted" and similar terms shall refer to the direction, requirement, or permission of the Department. The terms "sufficient," "necessary" or "proper" and similar terms shall mean sufficient, necessary or proper in the sole judgment of the Department. The terms "approval," "acceptable" or "satisfactory" or similar terms shall mean approved by, or acceptable to, or satisfactory to the Department. The terms "include," "included" or "including" and similar terms shall be deemed to be followed by the words "without limitation". The use of the term "subcontractor," "successor" or "assign" herein refers only to a subcontractor ("subcontractor"), successor or assign expressly permitted under Article 13.

1.3 References to this Agreement. References to this Agreement include: (a) any and all appendices, exhibits, schedules, attachments hereto; (b) any and all statutes, ordinances, regulations or other documents expressly incorporated by reference herein; and (c) any and all amendments, modifications or supplements hereto made in accordance with Section 17.2. References to articles, sections, subsections or appendices refer to articles, sections or subsections of or appendices to this Agreement, unless otherwise expressly stated. Terms such as "hereunder," herein or "hereto" refer to this Agreement as a whole.

ARTICLE 2 APPROPRIATION AND CERTIFICATION OF FUNDS; LIMITATIONS ON CITY'S OBLIGATIONS

2.1 Risk of Non-Appropriation of Funds. This Agreement is subject to the budget and fiscal provisions of the Charter. City shall have no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. SFUSD acknowledges that City budget decisions are subject to the discretion of its Mayor and Board of Supervisors. SFUSD assumes all risk of possible non-appropriation or non-certification of funds, and such assumption is part of the consideration for this Agreement.

2.2 Certification of Controller. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

2.3 Automatic Termination for Nonappropriation of Funds. This Agreement shall automatically terminate, without penalty, liability or expense of any kind to City, at the end of any Fiscal Year if funds are not appropriated for the next succeeding Fiscal Year. If funds are appropriated for a portion of any Fiscal Year, this Agreement shall terminate, without penalty, liability or expense of any kind to City, at the end of such portion of the Fiscal Year.

2.4 Supersedure of Conflicting Provisions. In the event of any conflict between any of the provisions of this Article 2 and any other provision of this agreement, the application documents or any other document or communication relating to this agreement, the terms of this Article 2 shall govern.

2.5 Maximum Costs. Except as may be provided by City ordinances governing emergency conditions, City and its employees and officers are not authorized to request SFUSD to perform services or to provide materials, equipment and supplies that would result in SFUSD performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies specified in this Agreement unless this Agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. City is not required to pay SFUSD for services, materials, equipment or supplies provided by SFUSD that are beyond the scope of the services, materials, equipment and supplies agreed upon herein and not approved by a written amendment to this Agreement lawfully executed by City. City and its employees and officers are not authorized to offer or promise to SFUSD additional funding for this Agreement that exceeds the maximum amount of funding as set forth in Section 5.1. Additional funding for this Agreement in excess of the maximum provided herein shall require lawful approval and certification by the Controller. City is not required to honor any offered or promised additional funding which exceeds the maximum provided in this Agreement which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained. The Controller is not authorized to make payments on any agreement for which funds have not been certified as available in the budget or by supplemental appropriation.

ARTICLE 3 TERM

3.1 Effective Date. This Agreement shall become effective when the Controller has certified to the availability of funds as set forth in Section 2.2 and the Department has notified SFUSD thereof in writing.

3.2 Duration of Term. The term of this Agreement shall commence on Effective Date and expire thirty (30) years after the Effective Date, unless earlier terminated as otherwise provided herein. SFUSD shall not begin performance of its obligations under this Agreement until it receives written notice from City to proceed.

3.3 Term for the Construction of the Project. The Contractor will construct and install the Solar Project in sequence of the overall project schedule. The term for the construction and installation of the Solar Project on the Site shall expire five (5) years after the Effective Date.

3.4 Term for the License. The term of the License granted herein shall commence on the Commercial Operation Date (COD) and shall expire twenty-five years after COD.

3.5 Continued Use of Sites After Expiration. If, with the permission of SFUSD, the Solar Project remains on the Site after the Term expires, the Solar Project may continue to be used on all the terms and conditions stated herein, terminable by either Party on ninety (90) days written notice to the other.

ARTICLE 4 IMPLEMENTATION OF PLAN

4.1 Implementation of Plan; Cooperation with Monitoring. SFUSD shall diligently and in good faith implement the Plan on the terms and conditions set forth in this Agreement. SFUSD is obligated to comply with applicable codes and interpretations set forth by the Division of the State Architect (DSA), which is the Authority Having Jurisdiction (AHJ). Should the Plan require changes, SFUSD will notify and keep SFPUC reasonably informed.

4.2 SFUSD's Personnel.

(a) **Qualified Personnel.** The Solar Project Plan shall be implemented only by competent personnel under the direction and supervision of SFUSD.

4.3 Ownership of Results. Drawings, plans, specifications, studies, reports, memoranda, computation sheets, or other documents or Publications prepared by SFUSD or its consultants or any subcontractor in connection with this Agreement or the implementation of the Plan or the services to be performed under this Agreement, shall remain the property of SFUSD. SFPUC shall have the right to access and use all drawings, plans, specifications, studies, reports, memoranda, computation sheets, or other documents or Publications specific to the Solar Project. Notwithstanding the foregoing, SFUSD and SFPUC may retain and use copies for reference and as documentation of its experience and capabilities.

4.4 Services City Agrees to Perform. City agrees to provide funding for the Solar Project which shall be designed and constructed by SFUSD. The Solar Project will be operated and maintained by the SFPUC per the Appendices in this Agreement. Officers and employees of the City are not authorized to request, and the City is not required to reimburse SFUSD for Services beyond the scope of services under this Agreement.

4.5 Work Product.

(a) SFUSD will forward Project-related documents, such as drawings and submittals, to the City for review and approval within twenty-one (21) days. Upon request, SFUSD will demonstrate to City that each element of work or property funded in whole or part with the Funds is directly and integrally related to the Plan as described in this Agreement.

(b) SFUSD has been collaborating with City on Project-related items through design, bidding and procurement. SFUSD will initially fund the Project and request reimbursement under this Agreement. SFUSD has designed the Project to meet current codes, if City requires changes to the Plan, City will notify SFUSD via e-mail and SFUSD will review and respond within five (5) business days.

(c) Change Orders. District shall notify SFPUC of District's receipt of a request for change order that is submitted following the Effective Date of this Agreement that constitutes a Material Change (hereinafter defined) or of any District initiated request for a change order to any contract related to the Solar Project. District's notice will include information and documentation related to the change. SFPUC will notify the District within fourteen (14) days of receipt of the change order and state whether they agree or disagree with the proposed change order. If SFPUC agrees to the change order request, the maximum reimbursement amount shall be amended to include the change order cost.

(d) City has the right to monitor from time to time the administration by SFUSD or any of its subcontractors of any programs or other work, including, without limitation, educational programs or trainings, funded in whole or part by the Funds, to ensure that SFUSD is performing such element of the Plan, or causing such element of the Plan to be performed, consistent with the terms and conditions of this Agreement.

ARTICLE 5 USE AND DISBURSEMENT OF FUNDS

5.1 Maximum Amount of Funds. In no event shall the amount of Funds disbursed hereunder exceed six-hundred and fifty-three thousand, thirty-three dollars (\$653,033.00), plus any construction change orders approved by SFPUC that are directly attributable to the cost for installation of the Solar Project.

5.2 Use of Funds. SFUSD shall use the Funds only for Project Expenses as set forth in Appendix A and for no other purpose.

5.3 Disbursement Procedures. Funds shall be disbursed to SFUSD as follows:

(a) SFUSD shall submit to the Department for approval, in the manner specified for notices pursuant to Article 15, a document (a "Funding Request") substantially in the form attached as Appendix B. Any unapproved Funding Requests shall be returned by the Department to SFUSD with a brief explanation why the Funding Request was rejected. If any such rejection relates only to a portion of Project Expenses itemized in a Funding Request, the Department shall disburse Funds for any other Project Expenses itemized in such Funding Request.

(b) The Department shall make all disbursements of Funds pursuant to this Section through electronic payment or by check payable to SFUSD sent via U.S. mail in accordance with Article 15, unless the Department otherwise agrees in writing, in its sole discretion. For electronic payment, City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through the City's Automated Clearing House (ACH) payments service/provider. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit www.sfgov.org/ach. The Department shall make disbursements of Funds no more than once during each quarter.

ARTICLE 6 REPORTING REQUIREMENTS; AUDITS; PENALTIES FOR FALSE CLAIMS

6.1 Regular Reports. SFUSD shall provide, in a prompt and timely manner, financial, operational and other reports, as requested by the Department, in form and substance satisfactory to the Department. Such reports shall be e-mailed to cparas@sfgov.org.

6.2 Notification of Defaults or Changes in Circumstances. SFUSD shall notify City immediately of (a) any Event of Default or event that, with the passage of time, would constitute an Event of Default; and (b) any change of circumstances that would cause any of the representations and warranties contained in Article 8 to be false or misleading at any time during the term of this Agreement.

6.3 Books and Records. SFUSD shall establish and maintain accurate files and records of all aspects of the Plan and the matters funded in whole or in part with Funds during the term of this Agreement. Without limiting the scope of the foregoing, SFUSD shall establish and maintain accurate financial books and accounting records relating to Project Expenses incurred and Funds received and expended under this Agreement, together with all invoices, documents, payrolls, time records and other data related to the matters covered by this Agreement, whether funded in whole or in part with Funds. SFUSD shall maintain all of the files, records, books, invoices, documents, payrolls and other data required to be maintained under this Section in a readily accessible location and condition for a period of

not less than five (5) years after final payment under this Agreement or until any final audit has been fully completed, whichever is later.

6.4 Inspection and Audit. SFUSD shall make available to City, its employees and authorized representatives, during regular business hours all of the files, records, books, invoices, documents, payrolls and other data required to be established and maintained by SFUSD under Section 6.2. SFUSD shall permit City, its employees and authorized representatives to inspect, audit, examine and make excerpts and transcripts from any of the foregoing. The rights of City pursuant to this Section shall remain in effect so long as SFUSD has the obligation to maintain such files, records, books, invoices, documents, payrolls and other data under this Article 6.

6.5 Submitting False Claims. SFUSD shall at all times deal in good faith with the City, shall only submit a Funding Request to the City upon a good faith and honest determination that the funds sought are for Project Expenses under the Plan, and shall only use Funds for payment of Project Expenses as set forth in Appendix A. Any SFUSD representative who commits any false acts may be liable to the City under the False Claims Act (Gov. Code, §§ 12650, et seq.).

6.6 SFUSD's Board of Education. SFUSD's Board of Education (BOE) is responsible for approving contract modifications, among other duties. The BOE approved the contract modification related to adding the Solar Project to Mission Bay School in October 2023.

ARTICLE 7 TAXES

7.1 SFUSD to Pay All Taxes. SFUSD shall pay to the appropriate governmental authority, as and when due, any and all taxes, fees, assessments or other governmental charges, including possessory interest taxes and California sales and use taxes, levied upon or in connection with this Agreement, the Plan, the Funds or any of the activities contemplated by this Agreement.

ARTICLE 8 REPRESENTATIONS AND WARRANTIES

SFUSD represents and warrants each of the following as of the date of this Agreement and at all times throughout the term of this Agreement:

8.1 Organization; Authorization. San Francisco Unified School District

8.2 Location. SFUSD's operations, offices and headquarters are located at the address for notices set forth in Section 15. All aspects of the Plan will be implemented at the geographic location(s), if any, specified in the Plan.

8.3 No Misstatements. No document furnished or to be furnished by SFUSD to City in connection with the Application Documents, this Agreement, any Funding Request or any other document relating to any of the foregoing, contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

8.4 Conflict of Interest.

(a) Through its execution of this Agreement, SFUSD acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

8.5 Subcontracts. Except as may be permitted under Section 13.3, SFUSD has not entered into any agreement, arrangement or understanding with any other person or entity pursuant to which such person or entity will implement or assist in implementing all or any portion of the Plan.

8.6 Eligibility to Receive Federal Funds. By executing this Agreement, SFUSD certifies that SFUSD is not suspended, debarred or otherwise excluded from participation in federal assistance programs. SFUSD acknowledges that this certification of eligibility to receive federal funds is a material term of the Agreement.

ARTICLE 9 INDEMNIFICATION AND GENERAL LIABILITY

9.1 Indemnification. SFUSD shall indemnify, protect, defend and hold harmless each of the Indemnified Parties from and against any and all Losses arising from, in connection with or caused by: (a) a material breach of this Agreement by SFUSD; (b) a material breach of any representation or warranty of SFUSD contained in this Agreement; (c) any personal injury caused, directly or indirectly, by any act or omission of SFUSD or its employees, subcontractors or agents; (d) any property damage caused, directly or indirectly by any act or omission of SFUSD or its employees, subcontractors or agents; (e) the use, misuse or failure of any equipment or facility used by SFUSD, or by any of its employees, subcontractors or agents, regardless of whether such equipment or facility is furnished, rented or loaned to SFUSD by an Indemnified Party; (f) any tax, fee, assessment or other charge for which SFUSD is responsible under Article 7; or (g) any infringement of patent rights, copyright, trade secret or any other proprietary right or trademark of any person or entity in consequence of the use by any Indemnified Party of any goods or services furnished to such Indemnified Party in connection with this Agreement. SFUSD's obligations under the immediately preceding sentence shall exclude any Loss to the extent caused by the willful misconduct of the Indemnified Party. The foregoing indemnity shall include, without limitation, consultants and experts and related costs and City's costs of investigating any claims against the City.

SFPUC agrees to defend, indemnify and hold harmless SFUSD, its officers, employees and agents ("SFUSD Indemnitees"), from any and all acts, claims, liabilities and losses by whomever asserted arising out of acts or omissions of the SFPUC or its officers, employees, agents, or contractors in providing the Services that SFPUC agrees to perform under this Agreement as set forth in Section 4.4, except those arising by reason of the sole negligence of SFUSD, its officers, employees and agents.

In the event of concurrent negligence of the SFPUC, its officers, employees and agents, and SFUSD and its officers, employees and agents, the liability for any and all claims for injuries or damages to persons and/or property shall be apportioned under the California theory of comparative negligence as presently established or as may hereafter be modified.

9.2 Duty to Defend; Notice of Loss. SFUSD acknowledges and agrees that its obligation to defend the Indemnified Parties under Section 9.1: (a) is an immediate obligation, independent of its other obligations hereunder; (b) applies to any Loss which actually or potentially falls within the scope of

Section 9.1, regardless of whether the allegations asserted in connection with such Loss are or may be groundless, false or fraudulent; and (c) arises at the time the Loss is tendered to SFUSD by the Indemnified Party and continues at all times thereafter. The Indemnified Party shall give SFUSD prompt notice of any Loss under Section 9.1 and SFUSD shall have the right to defend, settle and compromise any such Loss; provided, however, that the Indemnified Party shall have the right to retain its own counsel at the expense of SFUSD if representation of such Indemnified Party by the counsel retained by SFUSD would be inappropriate due to conflicts of interest between such Indemnified Party and SFUSD. An Indemnified Party's failure to notify SFUSD promptly of any Loss shall not relieve SFUSD of any liability to such Indemnified Party pursuant to Section 9.1, unless such failure materially impairs SFUSD's ability to defend such Loss. SFUSD shall seek the Indemnified Party's prior written consent to settle or compromise any Loss if SFUSD contends that such Indemnified Party shares in liability with respect thereto.

The SFPUC acknowledges and agrees that its obligations to defend the SFUSD Indemnitees under Section 9.1: (a) is an immediate obligation, independent of its other obligations hereunder; (b) applies to any Loss which actually or potentially falls within the scope of Section 9.1, regardless of whether the allegations asserted in connection with such Loss are or may be groundless, false or fraudulent; and (c) arises at the time the Loss is tendered to SFPUC by the SFUSD Indemnitees and continues at all times thereafter. SFUSD Indemnitees shall give SFPUC prompt notice of any Loss under Section 9.1 and SFPUC shall have the right to defend, settle and compromise any such Loss; provided, however, that the SFUSD Indemnitees shall have the right to retain its own counsel at the expense of SFPUC if representation of such SFUSD Indemnitee by the counsel retained by SFPUC would be inappropriate due to conflicts of interest between such SFUSD Indemnitee and SFPUC. An SFUSD Indemnitee's failure to notify SFPUC promptly of any Loss shall not relieve SFPUC of any liability to such Indemnitee pursuant to Section 9.1, unless such failure materially impairs SFPUC's ability to defend such Loss. SFPUC shall seek the SFUSD Indemnitee's prior written consent to settle or compromise any Loss if SFPUC contends that such Indemnitee shares in liability with respect thereto.

9.3 Incidental and Consequential Damages. Losses covered under this Article 9 shall include any and all incidental and consequential damages to the extent resulting in whole or in part from SFUSD's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that any Indemnified Party may have under applicable law with respect to such damages.

9.4 Limitation on Liability of City. City's obligations under this agreement shall be limited to the aggregate amount of funds actually disbursed hereunder. Notwithstanding any other provision contained in this agreement, the application documents or any other document or communication relating to this agreement, in no event shall city be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including lost profits, arising out of or in connection with this agreement, the funds, the plan or any activities performed in connection with this agreement. for the avoidance of doubt, the limitations in this section 9.4 shall not apply to SFPUC's indemnification and defense obligations under this agreement, or to SFPUC's gross negligence or willful misconduct in performing its obligations under Section 4.4.

ARTICLE 10 INSURANCE

10.1 Types and Amounts of Coverage. Without limiting SFUSD's liability pursuant to Article 9, SFUSD shall maintain in force, during the full term of this Agreement, insurance in the following amounts and coverages:

- (a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than one million dollars (\$1,000,000) each accident, injury, or illness.
- (b) Commercial General Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations, and
- (c) Commercial Automobile Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- (d) Professional liability insurance for negligent acts, errors or omission with respect to professional or technical services, if any, required in the performance of this Agreement with limits not less than one million dollars (\$1,000,000) each claim.

10.2 Additional Requirements for General and Automobile Coverage. Commercial General Liability and Commercial Automobile Liability insurance policies shall:

- (a) Name as additional insured City and its officers, agents and employees.
- (b) Provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to limits of liability.

10.3 Additional Requirements for All Policies. All policies shall be endorsed to provide at least thirty (30) days' advance written notice to City of cancellation of policy for any reason, nonrenewal or reduction in coverage and specific notice mailed to City's address for notices pursuant to Article 15.

10.4 Required Post-Expiration Coverage. Should any of the insurance required hereunder be provided under a claims-made form, SFUSD shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three (3) years beyond the expiration or termination of this Agreement, to the effect that, should occurrences during the term hereof give rise to claims made after expiration or termination of the Agreement, such claims shall be covered by such claims-made policies.

10.5 General Annual Aggregate Limit/Inclusion of Claims Investigation or Legal Defense Costs. Should any of the insurance required hereunder be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

10.6 Evidence of Insurance. Before commencing any operations under this Agreement, SFUSD shall furnish to City certificates of insurance, and additional insured policy endorsements, in form and with insurers satisfactory to City, evidencing all coverages set forth above, and shall furnish complete copies of policies promptly upon City's request. Before commencing any operations under this Agreement, SFUSD shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

10.7 Effect of Approval. Approval of any insurance by City shall not relieve or decrease the liability of SFUSD hereunder.

10.8 Insurance for Subcontractors and Evidence of this Insurance. If a subcontractor will be used to complete any portion of this agreement, SFUSD's Contractor shall ensure that the subcontractor shall provide all necessary insurance.

10.9 Worker's Compensation. The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

ARTICLE 11 EVENTS OF DEFAULT AND REMEDIES

11.1 Events of Default. The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Agreement:

(a) **False Statement.** Any statement, representation or warranty contained in this Agreement, in the Application Documents, in any Funding Request or in any other document submitted to City under this Agreement is found by City to be false or misleading.

(b) **Failure to Provide Insurance.** SFUSD fails to provide or maintain in effect any policy of insurance required in Article 10.

(c) **Failure to Comply with Representations and Warranties or Applicable Laws.** SFUSD fails to perform or breaches any of the terms or provisions of Article 8 or 16.

(d) **Failure to Perform Other Covenants.** SFUSD fails to perform or breaches any other agreement or covenant of this Agreement to be performed or observed by SFUSD as and when performance or observance is due and such failure or breach continues for a period of ten (10) days after the date on which such performance or observance is due.

(e) **Voluntary Insolvency.** SFUSD (i) is generally not paying its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of SFUSD or of any substantial part of SFUSD's property or (v) takes action for the purpose of any of the foregoing.

(f) **Involuntary Insolvency.** Without consent by SFUSD, a court or government authority enters an order, and such order is not vacated within ten (10) days, (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to SFUSD or with respect to any substantial part of SFUSD's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of SFUSD.

11.2 Remedies upon Event of Default. Upon and during the continuance of an Event of Default, City may do any of the following, individually or in combination with any other remedy:

(a) **Termination.** City may terminate this Agreement by giving a written termination notice to SFUSD of the Event of Default and that, on the date specified in the notice, this Agreement shall terminate and all rights of SFUSD hereunder shall be extinguished. In the sole discretion of the City, SFUSD may be allowed ten (10) days to cure the default. In the event of termination for default, SFUSD will be paid for Project Expenses in any Funding Request that was submitted and approved by City prior to the date of termination specified in such notice.

(b) **Withholding of Funds.** City may withhold all or any portion of Funds not yet disbursed hereunder, regardless of whether SFUSD has previously submitted a Funding Request, except for Funds that the City has already approved for disbursement. Any Funds withheld pursuant to this Section and subsequently disbursed to SFUSD after cure of applicable Events of Default, if granted by the City in its sole discretion, shall be disbursed without interest.

(c) **Offset.** City may offset against all or any portion of undisbursed Funds hereunder or against any payments due to SFUSD under any other agreement between SFUSD and City the amount of any outstanding Loss incurred by any Indemnified Party, including any Loss incurred as a result of the Event of Default.

(d) **Return of Funds.** City may demand the immediate return of any previously disbursed Funds that have been claimed or expended by SFUSD in breach of the terms of this Agreement, together with interest thereon from the date of disbursement at the maximum rate permitted under applicable law.

11.3 Termination for Convenience. City shall have the option, in its sole discretion, to terminate this Agreement at any time for convenience and without cause. City shall exercise this option by giving SFUSD written notice that specifies the effective date of termination. Upon receipt of the notice of termination, SFUSD shall undertake with diligence all necessary actions to effect the termination of this Agreement on the date specified by City and minimize the liability of SFUSD and City to third parties. Such actions shall include, without limitation:

(a) Halting the performance of all work under this Agreement on the date(s) and in the manner specified by City;

(b) Completing performance of any work that City designates to be completed prior to the date of termination specified by City.

In no event shall City be liable for costs incurred by SFUSD or any of its subcontractors after the termination date specified by City, except for those costs incurred at the request of City pursuant to this section.

11.4 Remedies Nonexclusive. Each of the remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The remedies contained herein are in addition to all other remedies available to City at law or in equity by statute or otherwise and the exercise of any such remedy shall not preclude or in any way be deemed to waive any other remedy.

ARTICLE 12 DISCLOSURE OF INFORMATION AND DOCUMENTS

12.1 Proprietary or Confidential Information of City. SFUSD understands and acknowledges that, in the performance of this Agreement or in contemplation thereof, SFUSD may have access to private or confidential information that may be owned or controlled by City and that such information may contain proprietary or confidential information, the disclosure of which to third parties may be damaging to City. SFUSD agrees that all information disclosed by City to SFUSD shall be held in confidence and used only in the performance of this Agreement. SFUSD shall exercise the same standard of care to protect such information as a reasonably prudent nonprofit entity would use to protect its own proprietary or confidential data. Nothing in this section shall be interpreted to prevent SFUSD from complying with its legal obligations, including without limitation under the California Public Records Act (Gov. Code, §§ 7920.000, et seq.) or the Ralph M. Brown Act (Gov. Code, §§ 54950, et seq.).

12.2 Sunshine Ordinance. SFUSD acknowledges and agrees that this Agreement and the Application Documents are subject to Section 67.24(e) of the San Francisco Administrative Code, which provides that contracts, including this Agreement, SFUSD's bids, responses to Requests for Proposals and all other records of communications between City and persons or entities seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in Section 67.24(e) (as it exists on the date hereof) requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. All information provided by SFUSD covered by Section 67.24(e) (as it may be amended from time to time) will be made available to the public upon request.

12.3 Financial Projections. Pursuant to San Francisco Administrative Code Section 67.32, SFUSD agrees upon request to provide City with financial projections (including profit and loss figures) for the activities and/or projects contemplated by this Project and annual audited financial statements thereafter. SFUSD agrees that all such projections and financial statements shall be public records that must be disclosed.

ARTICLE 13 ASSIGNMENTS AND SUBCONTRACTING

13.1 No Assignment by SFUSD. SFUSD shall not, either directly or indirectly, assign, transfer, hypothecate, subcontract or delegate all or any portion of this Agreement or any rights, duties or obligations of SFUSD hereunder without the prior written consent of City. This Agreement shall not, nor shall any interest herein, be assignable as to the interest of SFUSD involuntarily or by operation of law without the prior written consent of City. A change of ownership or control of SFUSD or a sale or transfer of substantially all of the assets of SFUSD shall be deemed an assignment for purposes of this Agreement.

13.2 Agreement Made in Violation of this Article. Any agreement made in violation of Section 13.1 shall confer no rights on any person or entity and shall automatically be null and void.

13.3 Subcontracting. If Appendix D lists any permitted subcontractors, then notwithstanding any other provision of this Agreement to the contrary, SFUSD shall have the right to subcontract on the terms set forth in this Section. If Appendix D is blank or specifies that there are no permitted subcontractors, then SFUSD shall have no rights under this Section.

(a) **Limitations.** SFUSD may subcontract with any of the permitted subcontractors set forth on Appendix D without the prior consent of City; provided, however, that SFUSD shall not thereby be relieved from any liability or obligation under this Agreement and, as between City and SFUSD, SFUSD shall be responsible for the acts, defaults and omissions of any subcontractor or its agents or employees as fully as if they were the acts, defaults or omissions of SFUSD. SFUSD shall ensure that its subcontractors comply with all of the terms of this Agreement, insofar as they apply to the subcontracted portion of the Plan. All references herein to duties and obligations of SFUSD shall be deemed to pertain also to all subcontractors to the extent applicable. A default by any subcontractor shall be deemed to be an Event of Default hereunder. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and City.

(b) **Terms of Subcontract.** Each subcontract shall be in form and substance acceptable to City and shall expressly provide that it may be assigned to City without the prior consent of the subcontractor. In addition, each subcontract shall incorporate all of the terms of this Agreement, insofar as they apply to the subcontracted portion of the Plan. Without limiting the scope of the foregoing, each subcontract shall provide City, with respect to the subcontractor, the audit and inspection rights set forth in Section 6.4. Upon execution of the Agreement, SFUSD shall promptly furnish to City true and correct copies of each subcontract, executed to date related to the Solar Project. Except for the preceding sentence, this section 13.3(b) shall not apply to the subcontractors listed in Appendix D, with whom SFUSD was already in contract prior to the Effective Date of this Agreement.

13.4 SFUSD Retains Responsibility. SFUSD shall remain liable for the performance by any assignee or subcontractor of all of the covenants terms and conditions contained in this Agreement.

ARTICLE 14 INDEPENDENT CONTRACTOR STATUS

14.1 Nature of Agreement. SFUSD shall be deemed at all times to be an independent contractor and is solely responsible for the manner in which SFUSD implements the Plan and uses the Funds. SFUSD shall at all times remain solely liable for the acts and omissions of SFUSD, its officers and directors, employees and agents. Nothing in this Agreement shall be construed as creating a partnership, joint venture, employment or agency relationship between City and SFUSD.

14.2 Direction. Any terms in this Agreement referring to direction or instruction from the Department or City shall be construed as providing for direction as to policy and the result of SFUSD's work only, and not as to the means by which such a result is obtained.

14.3 Not Used.

ARTICLE 15 NOTICES AND OTHER COMMUNICATIONS

15.1 Requirements. Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications hereunder shall be in writing, shall be

addressed to the person and address set forth below and may be sent by U.S. mail or e-mail, and shall be addressed as follows:

If to the Department or City: **SAN FRANCISCO PUBLIC UTILITIES COMMISSION**
525 Golden Gate Avenue
San Francisco, CA 94102
Attn: Jamie Seidel
jseidel@sfgov.org

If to SFUSD: **SAN FRANCISCO UNIFIED SCHOOL DISTRICT**
135 Van Ness Avenue
San Francisco, CA 94102
Attn: John Dutch
dutchj2@sfusd.edu

Any notice of default must be sent by registered mail.

15.2 Effective Date. All communications sent in accordance with Section 15.1 shall become effective on the date of receipt.

15.3 Change of Address. Any party hereto may designate a new address for purposes of this Article 15 by notice to the other party.

ARTICLE 16 COMPLIANCE

16.1 Reserved.

16.2 Nondiscrimination; Penalties.

(a) **Nondiscrimination:** The District is committed to providing equal opportunity for all individuals in education. Contractor understands and agrees that in providing services to the District, Contractor shall comply with Board Policy 0410: Nondiscrimination in District Programs and Activities, which requires that all District programs, activities, and practices be free from discrimination based on race, color, ancestry, national origin, ethnic group identification, age, religion, marital or parental status, physical or mental disability, sex, sexual orientation, gender, gender identity or expression, or genetic information; the perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics. To the extent that the services Contractor will provide to the District under this Agreement include the provision of services to students, Contractor shall comply with Board Policy 6141: Curriculum Development and Evaluation, which recognizes that the District's curriculum may sometimes include instruction related to controversial issues that may arouse strong reactions based on personal values and beliefs, political philosophy, culture, religion, or other influences. The services provided by Contractor shall not reflect adversely upon persons because of their race, color, ancestry, national origin, ethnic group identification, age, religion, marital or parental status, physical or mental disability, sex, sexual orientation, gender, gender identity or expression, or genetic information; the perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics. District certifies that Contractor's programs,

activities, and practices are free from discrimination and that it shall strictly adhere to and comply with District policies.

(b) **Subcontracts.** SFUSD selected McCarthy Building Companies DLR Architects (“DBE”) to be the Design-Build Entity for Mission Bay School and entered into contract in June 2022. The Project is required to adhere to the Proposition A Bond Program’s Project Labor Agreement (PLA). The PLA establishes the terms and conditions of the Project.

16.3 Reserved.

16.4 Tropical Hardwood and Virgin Redwood Ban. Pursuant to § 804(b) of the San Francisco Environment Code, City urges all parties to the agreement not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

16.5 Drug-Free Workplace Policy. SFUSD acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. SFUSD and its employees, agents or assigns shall comply with all terms and provisions of such Act and the rules and regulations promulgated thereunder.

16.6 Resource Conservation; Liquidated Damages. Chapter 5 of the San Francisco Environment Code (Resource Conservation) is incorporated herein by reference. Failure by SFUSD to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract. If SFUSD fails to comply in good faith with any of the provisions of Chapter 5, SFUSD shall be liable for liquidated damages in an amount equal to SFUSD’s net profit under this Agreement, or five percent (5%) of the total contract amount, whichever is greater. SFUSD acknowledges and agrees that the liquidated damages assessed shall be payable to City upon demand and may be offset against any monies due to SFUSD from any contract with City.

16.7 Compliance with ADA. SFUSD acknowledges that, pursuant to the ADA, programs, services and other activities provided by a public entity to the public, whether directly or through a SFUSD or contractor, must be accessible to the disabled public. SFUSD shall not discriminate against any person protected under the ADA in connection with all or any portion of the Plan and shall comply at all times with the provisions of the ADA.

16.8. Requiring Minimum Compensation for Employees. SFUSD shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. SFUSD is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. SFUSD is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, SFUSD certifies that it complies with Chapter 12P.

16.9 Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, no funds appropriated by the City and County of San Francisco for this Agreement may be expended for organizing, creating, funding, participating in, supporting, or attempting to influence any political campaign for a candidate or for a ballot measure (collectively, “Political Activity”). The terms of San Francisco Administrative Code Chapter 12.G are incorporated herein by this reference. Accordingly, an employee working in any position funded under this Agreement shall not engage in any Political Activity during the work hours funded hereunder, nor shall any

equipment or resource funded by this Agreement be used for any Political Activity. In the event SFUSD, or any staff member in association with SFUSD, engages in any Political Activity, then (i) SFUSD shall keep and maintain appropriate records to evidence compliance with this section, and (ii) SFUSD shall have the burden to prove that no funding from this Agreement has been used for such Political Activity. SFUSD agrees to cooperate with any audit by the City or its designee in order to ensure compliance with this section. In the event SFUSD violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement and any other agreements between SFUSD and City, (ii) prohibit SFUSD from bidding on or receiving any new City contract for a period of two (2) years, and (iii) obtain reimbursement of all funds previously disbursed to SFUSD under this Agreement.

16.10 Preservative-treated Wood Containing Arsenic. SFUSD may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term “preservative-treated wood containing arsenic” shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. SFUSD may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude SFUSD from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term “saltwater immersion” shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

16.11 Reserved (Working with Minors.)

16.12 Reserved (Protection of Private Information.)

16.13 Public Access to Meetings and Records. If SFUSD receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, SFUSD shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, SFUSD agrees to open its meetings and records to the public in the manner set forth in Sections 12L.4 and 12L.5 of the Administrative Code. SFUSD further agrees to make good-faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the Administrative Code. SFUSD acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. SFUSD further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

16.14 Reserved (Consideration of Criminal History in Hiring and Employment Decisions.)

16.15 Reserved (Food Service Waste Reduction Requirements.)

16.16 Reserved (Slavery Era Disclosure.)

16.17 Reserved (Distribution of Beverages and Water.)

16.18 Compliance with Other Laws. Without limiting the scope of any of the preceding sections of this Article 16, SFUSD shall keep itself fully informed of City’s Charter, codes, ordinances and

regulations and all state, and federal laws, rules and regulations affecting the performance of this Agreement and shall at all times comply with such Charter codes, ordinances, and regulations rules and laws.

ARTICLE 17 MISCELLANEOUS

17.1 No Waiver. No waiver by the Department or City of any default or breach of this Agreement shall be implied from any failure by the Department or City to take action on account of such default if such default persists or is repeated. No express waiver by the Department or City shall affect any default other than the default specified in the waiver and shall be operative only for the time and to the extent therein stated. Waivers by City or the Department of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by the Department or City of any action requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

17.2 Modification. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

17.3 Administrative Remedy for Agreement Interpretation. Should any question arise as to the meaning or intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Department Head, as the case may be, of the Department who shall decide the true meaning and intent of the Agreement. Such decision shall be final and conclusive.

17.4 Governing Law; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, without regard to its conflict of laws principles. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

17.5 Headings. All article and section headings and captions contained in this Agreement are for reference only and shall not be considered in construing this Agreement.

17.6 Entire Agreement. This Agreement sets forth the entire Agreement between the parties, and supersede all other oral or written provisions. The following appendices are attached to and a part of this Agreement:

Appendix A – Project Expense and Solar Project Plan
Appendix B – Form of Funding Request
Appendix C – License Agreement
Appendix D – List of Subcontractors

17.7 Certified Resolution of Signatory Authority. Upon request of City, SFUSD shall deliver to City a copy of the SFUSD resolution(s) authorizing the execution, delivery and performance of this Agreement, certified as true, accurate and complete by the secretary or assistant secretary of SFUSD.

17.8 Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and

shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

17.9 Successors; No Third-Party Beneficiaries. Subject to the terms of Article 13, the terms of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any person or entity (other than the parties hereto and their respective successors and assigns and, in the case of Article 9, the Indemnified Parties and SFUSD Indemnitees) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

17.10 Survival of Terms. The obligations of SFUSD and the terms of the following provisions of this Agreement shall survive and continue following expiration or termination of this Agreement, for a period of five (5) years or such shorter time as specified in the relevant section:

Section 4.3	Ownership of Results.
Section 6.3	Books and Records.
Section 6.4	Inspection and Audit.
Section 6.5	Submitting False Claims
Article 7	Taxes
Article 9	Indemnification and General Liability
Section 10.4	Required Post-Expiration Coverage.
Article 12	Disclosure of Information and Documents
Section 13.4	SFUSD Retains Responsibility.
Article 17	Miscellaneous

17.11 Further Assurances. From and after the date of this Agreement, SFUSD agrees to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the transactions contemplated by this Agreement and to carry out the purpose of this Agreement in accordance with this Agreement.

17.12 Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

17.13 Board of Supervisors Approval. Notwithstanding anything herein to the contrary, the SFUSD understands and agrees that no officer or employee of the SFPUC has authority to commit the SFPUC to this Agreement unless and until the Board of Supervisors shall have approved this Agreement in accordance with City's Charter. Therefore, any obligations of the SFPUC hereunder are contingent upon such approval, and this Agreement shall not be effective unless and until such approval is obtained. In the event that the Board of Supervisors does not approve this Agreement, then this Agreement shall terminate and shall be of no force and effect whatsoever.

17.14 MacBride Principles--Northern Ireland. Pursuant to San Francisco Administrative Code Section 12F.5, City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. City urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of SFUSD acknowledges and agrees that he or she has read and understood this section.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first specified herein. The signatories to this Agreement warrant and represent that they have the authority to enter into this agreement on behalf of the respective parties and to bind them to the terms of this Agreement

CITY

SFUSD

SAN FRANCISCO PUBLIC UTILITIES
COMMISSION

SAN FRANCISCO UNIFIED SCHOOL
DISTRICT

By: _____
Dennis Herrera
General Manager

DocuSigned by:
By:  _____
F0B323FD061D24C5...
NAME Anne Marie Gordon
TITLE Interim Chief Financial Officer

Date: _____

Date: 3/7/2025 | 11:24 AM PST

Approved as to Form:

David Chiu
City Attorney

By: _____
Camille Stough
Deputy City Attorney

Appendix A – Project Expense and Solar Project Plan

The term “Project Expense” shall mean the Solar Project Plan amount that will be provided by the City to the SFUSD for the permitted purposes as described in the Solar Project Plan.

The term “Solar Project Plan” shall mean:

1. Design, Procurement, and Installation of the Solar Project.

(a) Design of Solar Project. SFUSD will be responsible for providing the fully engineered code compliant design drawings and technical specifications for the Solar Project. The fully engineered design drawings will be incorporated into the SFUSD’s procurement process, as set forth below.

(b) Installation of Solar Project. SFUSD will procure and install the Solar Project. Before beginning any work on procurement and installation of the Solar Project, SFUSD will obtain all necessary permits or approvals, including without limitation, Division of the State Architect approval for the installation of the Solar Project. SFUSD will maintain such approvals as necessary throughout the term of this MOU. SFUSD will provide to the SFPUC copies of all such permits and approvals.

(c) Interconnection of the Solar Project. SFPUC will be responsible for obtaining any agreements or approvals necessary to interconnect the Solar Project with Pacific Gas and Electric Company.

(d) Cost responsibility for the procurement and installation of the Solar Project.

(1) SFPUC will be responsible for SFUSD’s actual, documented, and reasonable costs of purchasing and installing, or contracting to install the Solar Project, including but not limited to the costs of the photovoltaic panels, the inverters, the meters to measure the output of the Solar Project, and the interconnect to the electrical system at the Site, the connection to the building management system for monitoring, and all necessary permits.

(2) Prior to SFUSD proceeding with installation of the Solar Project, the SFPUC will have the right to review and approve all purchases and contract work associated with SFUSD’s procurement and installation, or contracting to install the Solar Project, including but not limited to all scopes of work, designs, drawings, specifications, contracts, task orders, invoices and other relevant project matters.

(3) Taxes. SFPUC will be solely responsible for the payment of federal, state, local and other taxes, fees or other assessments as may be applicable to the SFPUC by reason of its ownership of the Solar Project.

(e) Terms for Installation. SFUSD and the SFPUC will execute mutually acceptable written Terms for Installation that will include, but need not be limited to the following:

(i) an estimate of the SFUSD costs to be paid by the SFPUC;

(ii) the final design and plans for the Solar Project;

(iii) milestones for the completion of key tasks by SFUSD or its third-party developer/contractor and an associated schedule for payments by the SFPUC to SFUSD;

(iv) specifications for the manufacturer warranties that will be required for the photovoltaic system components;

(v) a single line diagram of the Solar Project to be installed including interconnection facilities and the location of the Solar Project Meter.

2. Warranty for the photovoltaic system. Irrespective of the entity named in any warranty for a photovoltaic system component that comprises the Solar Project, all benefits from any such warranty will accrue to the SFPUC.

3. Liquidated Damages. Irrespective of the entity named in any liquidated damages clause from a third-party contractor for the installation of the Solar Project, all benefits from any such liquidated damages clause will accrue to the SFPUC except for Special SFUSD Liquidated Damages (defined below), if SFUSD included such damages in the relevant contract. SFUSD will promptly provide to the SFPUC any amounts collected pursuant to any liquidated damages it receives from a third-party contractor associated with the installation of the Solar Project except for Special SFUSD Liquidated Damages. “Special SFUSD Liquidated Damages” are for damages SFUSD may suffer due to interruption of building operations, damage to the building or loss of building revenue caused by third-party contractor delays and need to be agreed on by SFUSD and the SFPUC at the time that a contract for the installation of the Solar Project is developed. Special SFUSD Liquidated Damages will be separately identified in the contract documents and will be separately assessed against the contractor from standard liquidated damages. Special SFUSD Liquidated Damages will be payable to SFUSD.

4. As-Built Drawings/Reports. Promptly upon completion of the Solar Project, SFUSD will furnish to the SFPUC’s Manager of Distributed Energy Resources Projects two (2) complete copies of final as-built drawings for the Solar Project, with sufficient detail to allow the SFPUC to precisely locate any alterations from the approved system design of the Solar Project. If SFUSD or its agents prepare any environmental, seismic, geophysical or other written report relating to the Site and/or any work performed thereon, SFUSD will furnish these reports to the SFPUC.

Appendix B – Form of Funding Request

FUNDING REQUEST

_____, 20____

<<INSERT NAME OF DEPARTMENT>>

<<INSERT ADDRESS OF DEPARTMENT>>

San Francisco, CA <<INSERT ZIP CODE>>

Re: Mission Bay School Solar Project

Pursuant to Section 5.3 of the Agreement dated as of <<INSERT DATE>>, between SFUSD and the City and County of San Francisco (all capitalized terms defined in the Agreement shall have the same meaning when used herein), SFUSD hereby requests a disbursement of Funds as follows:

Total Amount Requested in
this Request: \$_____

Maximum Amount of
Funds Specified in
Section 5.1 of the
Agreement: \$ 653,033.00

Total of All Funds
Disbursed Prior to this
Request: \$_____

SFUSD certifies that:

- (a) The total amount of Funds requested pursuant to this Funding Request will be used to pay Project Expenses, which eligible expenses are set forth on the attached Schedule 1, to which is attached true and correct copies of all required documentation of such Project Expenses.
- (b) After giving effect to the disbursement requested pursuant to this Funding Request, the Funds disbursed as of the date of this disbursement will not exceed the maximum amount set forth in Section 5.1.
- (c) The representations and warranties made in the Agreement are true and correct in all material respects as if made on the date hereof;
- (d) No Event of Default has occurred and is continuing; and
- (e) The undersigned is an officer of SFUSD authorized to execute this Funding Request on behalf of SFUSD.

SCHEDULE 1 TO REQUEST FOR FUNDING

The following is an itemized list of Project Expenses for which Funds are requested:

Payee	Amount	Description
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The following are attached as part of this Schedule 1:

- (1) the contractor bid detailing the Project Expense for which Funds are requested;
- (2) the front and the back of canceled checks or other written evidence documenting the payment of each invoice;
- (3) for Project Expenses which are wages or salaries, payroll registers containing a detailed breakdown of earnings and withholdings, together with both sides of canceled payroll checks evidencing payment thereof (unless payment has been made electronically).

Appendix C – License Agreement

This License sets forth the conditions under which SFUSD confers upon the City acting by and through SFPUC, a personal, non-exclusive, irrevocable, and non-possessory privilege to enter upon and use the License Area of the Site for the Permitted Activities, subject to the terms, conditions and restrictions set forth below.

1. Access to and Use of the Site

- a. Use of the Site. Subject to the provisions of this Agreement, SFUSD will make the Site available for the operation of the Solar Project
- b. Keys. SFUSD will provide two keys to a Site to SFPUC, one for use by SFPUC’s contractors, and one for use by SFPUC. SFPUC and its contractors shall use the keys to access the Site solely for the purposes set forth in this subsection during Normal Operating Hours, except that the SFPUC may use the keys to access the Site at any time to address an Emergency. SFPUC will contact SFUSD for the current school schedule, coordinate site access with the school schedule, and shall not interfere with any educational activities on the Site.
- c. Notice. Unless otherwise agreed by the Parties, SFPUC will provide SFUSD with at least forty-eight (48) hours before any scheduled work at the Site. Notwithstanding the foregoing, SFPUC may enter the Building without notice in the event of an Emergency.
- d. Access. SFPUC and its agents will have the nonexclusive right of ingress to and egress from the Site over roads, ramps, and other areas within the construction envelope at the Site, subject to coordination with SFUSD as stated in section 1(a), above. Without limiting the foregoing, SFUSD will have the right to alter or amend access routes at any time, and to impose reasonable restrictions on access; provided SFUSD gives the SFPUC reasonable notice of any such alteration or amendment or imposition of any such restrictions. All such access will be subject to building Rules and Regulations as amended from time to time, including those pertaining to badge, permitting, and other security requirements, and the requirements of this Agreement. Building Rules and Regulations will be provided to SFPUC at the commencement of operation of the Solar Project.
- e. Rights of Way for Facilities. SFPUC will have the use and enjoyment of suitable rights of way over lands within the Site, at locations and in a manner to be approved by SFUSD in writing. Such rights of way will be for the purpose of enabling SFPUC to maintain conduits, connections, ducts, pipes and wires, and incidental accessories, equipment and devices which are necessary or convenient in connection with the Permitted Activities, including any installations necessary to provide connectivity to the electricity grid and the statewide interconnected electricity grid (collectively, the “**Infrastructure**”), and will not interfere with SFUSD’s use of the Site. The Solar Project will require connection to the existing SFPUC electricity grid.
- f. SFUSD Access to Building. SFUSD will have the right, at all times and for any purpose, to enter upon the Site without unreasonably or unduly interfering with the Permitted Activities, as defined in the Funding and License Agreement between SFUSD and the City dated February 18, 2025 (“Funding Agreement”).
- g. Changes to Building. SFPUC acknowledges and agrees that (a) SFUSD will have the right at all times to change, alter, expand, and contract the Site or any portion thereof, and (b) SFUSD has made no representations, warranties, or covenants to the SFPUC regarding the design, construction, pedestrian traffic, or views of or relating to the Site. Without limiting the generality of the foregoing, the SFPUC acknowledges and agrees that SFUSD may from time to time adopt rules and regulations relating to security and other operational concerns that may affect SFPUC’s business and its use of the Site. SFUSD will use reasonable efforts to minimize the effect of building changes on the SFPUC’s business.

h. Compliance with Laws/Permits and Approvals. SFPUC, at its expense, will comply with all laws, regulations and requirements of the federal, state, county and municipal authorities, now in force or which may hereafter be in force relative to SFPUC's use of the Site for the Solar Project.

i. Removal. SFPUC, at its sole cost and expense, will remove the Solar Project on expiration or SFPUC's termination of this Agreement. SFPUC will surrender the Site in the same condition as received, free from hazards and clear of all debris. Subject to any applicable building permits and DSA approval, SFPUC will remove all of its property and improvements from the Site. SFPUC will provide at least thirty (30) days' written notice to SFUSD of its intention to remove the Solar Project and will remove the Solar Project within one hundred and eighty (180) days of such notice. If SFUSD determines that the Solar Project must be permanently removed before the expiration of this Agreement, SFUSD will reimburse the SFPUC the remaining depreciated value of the Project removed. The life of the Project will be considered to be twenty-five (25) years and a straight-line method of depreciation value will be used. The basis for the depreciation calculation will be the net final project cost. SFUSD agrees that the Project will not be removed for at least one year from final acceptance of the Project. The net final project cost will be determined from the total project cost, less any rebates, to SFPUC.

j. Repairs After the Installation of the Solar Project. Except in the case of an Emergency or where there is a dangerous condition or interruption in necessary utility or other service to the Site, SFUSD will provide SFPUC's Manager of Distributed Energy Resources Projects with written notice at least one hundred and eighty days (180) days prior to any planned roof repair, rehabilitation projects or other projects that could affect the Solar Project. Subject to any applicable building permits, if the Solar Project must be moved or removed to accommodate such SFUSD projects, SFPUC will move or remove the Solar Project within one hundred and eighty (180) days after notice from SFUSD, unless the Parties agree otherwise. SFPUC shall be responsible for the cost of such removal. Thereafter, the SFPUC may reinstall the Solar Project on the Site subject to the conditions of this Agreement. SFPUC shall be responsible for the cost of such reinstallation.

k. "As Is" Condition. Subject to the terms of this Agreement, SFPUC accepts the Site in its "AS IS" condition, without representation, warranty or covenant of any kind by SFUSD, including without limitation, the suitability of the Site for SFPUC's proposed use.

l. Maintenance. Except as set forth in subparagraph (n) below, SFPUC will at all times during the term of this Agreement, at its sole expense and cost, maintain in good working order, condition and repair all improvements placed in or on the Site pursuant to this Agreement. SFUSD will not be obligated to make any repairs, replacement or renewals of any kind, nature, or description, whatsoever to the Solar Project. SFPUC will use best efforts to repair damage to the Site caused by the SFPUC or its agents within thirty (30) days written notice from SFUSD, except in the case of an Emergency or where the damage creates a dangerous condition or results in interruption of necessary utility or other service to the Site, in which case SFPUC or its agents shall repair the damage as quickly as feasible and in no more than seven (7) days. SFUSD shall maintain the structural and physical integrity of the Site in the "As Is" condition in which it was made available for the installation of the Solar Project.

m. Charges. There will be no charge to SFPUC for the use of the Site for the Permitted Activities in accordance with this Agreement. If any possessory interest taxes are due as a result of the SFPUC's use of the Site, then such taxes will be the SFPUC's responsibility.

n. Limitations on Use. SFPUC will not (i) create a nuisance or commit or permit any waste on any of the Site, (ii) permit the dumping or other disposal of landfill, refuse, hazardous material or any other material that could pose a hazard to health or safety or the environment, on any of the Site; (iii) create or permit any liens, including mechanics', materialmen's and tax liens, to be placed on the Site as a result of SFPUC's activities without promptly discharging the same, and (iv) do anything in, on, under or about the Site that could cause damage or interference to any of SFUSD's facilities. SFPUC will use reasonable precautions to prevent unauthorized persons from gaining access to restricted operational areas and all

other nonpublic areas around the Site. SFPUC shall access and use the Site only for the purposes stated herein and for no other purpose.

o. Exercise of Due Care. SFPUC will use, and will cause its agents to use, due care at all times to avoid any damage or harm to SFUSD facilities and the Site.

2. Ownership, Operation and Use of Solar Project.

a. Ownership of Solar Project. The Solar Project installed at the Site shall be and shall remain the property of SFPUC. Fixed and unmovable parts of the Solar Project (including conduit and replacement roofing material) will become the property of SFUSD upon final removal of the Solar Project by the SFPUC upon expiration or termination of this Agreement. SFPUC shall be responsible for patching of penetrations if the Solar Project is removed.

b. Operation of Solar Project. SFPUC will be responsible for the operation of the Solar Project unless the Solar Project is later made the responsibility of SFUSD pursuant to an executed written agreement between the Parties. SFPUC shall undertake the Permitted Activities in accordance with the terms of this license and Prudent Utility Practice; and in compliance with all permits and applicable laws and regulations.

c. Use of the Output from the Solar Projects. Subject to the provisions of this Agreement, all of the output of the Solar Project shall be used to supply some or all of the SFUSD's electric requirements at the applicable rates set forth in existing arrangements between the Parties for Electric Service. In the event that Excess Power is available from the Solar Project, SFPUC shall have the option to utilize the Excess Power for other loads at the sole discretion of the SFPUC.

3. Connection to Electricity Grid. The Parties understand and agree that the Solar Project shall require connection to the existing interconnected electricity grid or the SFUSD electricity grid. SFUSD and SFPUC engineers shall meet and confer in order to reach agreement upon the best location of the infrastructure in order to accomplish this requirement.

4. Reservation of Rights. SFPUC acknowledges and agrees that SFUSD reserves its rights to change, alter, expand, and contract for activities or services at the Site excluding any services related to the Solar Project. Without limiting the generality of the foregoing, SFPUC acknowledges and agrees that SFUSD may from time to time adopt rules and regulations relating to security and other operational concerns that may affect SFPUC's business and its use of the Site for the Permitted Activities. SFUSD will use reasonable efforts to minimize the effect of SFUSD's changes on SFPUC rights granted under this License.

5. Compliance with Laws/Permits and Approvals. SFPUC, at its expense, shall comply with all laws, regulations, and requirements of federal, state, county and municipal authorities, including all applicable SFUSD Board Policies and Administrative Regulations, now in force or which may hereafter be in force relative to SFPUC's use of the Site for the Permitted Activities, including all legally required approvals following environmental review. SFPUC and its contractors shall comply with the fingerprinting requirements contained in Education Code section 45125.1.

6. Cost of Utility Services. Any utilities or services provided by SFPUC to SFUSD in connection with the Permitted Activities shall be at SFPUC's standard rates applicable to SFUSD.

7. Electric Service Interruptions.

(a) Planned Service Interruptions. SFPUC will work with SFUSD to minimize the number and extent of any interruptions in Electric Service related to the Permitted Activities. All planned Electric Service interruptions related to the Permitted Activities shall be subject to approval by SFUSD, which approval shall not be unreasonably withheld. In the event of a planned Electric Service interruption, SFPUC shall submit a written request to the Head of Facilities for SFUSD at least fifteen ten (15) business days before the interruption date. A failure on the part of SFUSD to respond within five (5) business days shall be deemed an approval of the service interruption.

(b) Expenses of Electric Service Interruptions. Each Party will be responsible for its own expenses, either direct or indirect, related to a planned or Emergency Electric Service interruption or its cancellation.

(c) Planned and Emergency Shut Downs by SFUSD. In the event that SFUSD needs to shut down all or a portion of the electrical system at any of the Sites, SFUSD shall provide as much advance notice to the SFPUC Manager of Renewable Energy Generation Projects as possible. For planned shutdowns, SFUSD shall provide at least ten (10) business days' written notice to SFPUC. In the event of an Emergency shutdown, SFUSD shall provide SFPUC as much prior notice as possible.

(d) Operation of the Solar Project during Emergencies. In an Emergency, if necessary to protect the health or safety of the public or SFUSD's employees or pupils, SFUSD may shut down the Solar Project. SFUSD shall make all reasonable attempts to notify SFPUC and to obtain approval for such actions prior to taking them. If prior notice and approval are impossible, SFUSD shall notify SFPUC and obtain approval as soon as possible thereafter. SFUSD shall work with SFPUC to reconnect the Solar Project as soon as possible. The parties shall establish mutually agreeable emergency protocols for implementation during Emergencies.

8. Training. SFPUC will provide training to appropriate SFUSD personnel regarding the normal and Emergency operation of the Solar Project. SFUSD and SFPUC will coordinate to schedule the training at mutually acceptable times.

9. Solar Project Meter.

(a) Location of Solar Project Meter. SFUSD shall provide, at no expense to SFPUC, a suitable location in the License Area of the Site for a Solar Project Meter and associated equipment.

(b) SFPUC to Provide Solar Project Meter. SFPUC shall meter the output of the Solar Project using Solar Project Meter owned, operated, maintained, and read by SFPUC. SFPUC shall be solely responsible for all costs and charges associated with such metering. Solar Project Meter shall be sealed and the seals shall be broken only upon occasions when meters are to be inspected, tested or adjusted; representatives of SFUSD shall be afforded reasonable opportunity to be present upon such occasions. The meter shall be tested at any reasonable time upon request by either Party.

(c) Defective Solar Project Meter. If Solar Project Meter found to be defective or inaccurate, it shall be repaired and readjusted or replaced. If the Solar Project Meter fails to register, or if the measurement made by a meter during a test varies by more than two (2) percent from the measurement made by the standard meter used in the test, an adjustment to correct all meter records of measurements made by the inaccurate meter shall be made for: (i) the period since the last meter test; or (ii) the actual period during which inaccurate measurements were made if SFPUC determines this period can be established, provided, that the period covered by the correction shall not exceed six (6) months or half the time since the

previous test. If necessary, the corrections may be estimated from the best information available for the period of defect or inaccuracy.

10. Payment for Electricity from Solar Project. SFUSD shall pay SFPUC for the output from the Solar Project used to serve the electric requirements of SFUSD, as measured by the Solar Project Meter, at the otherwise applicable rates for the provision of Electric Service by SFPUC to SFUSD.

11. Incentives from PG&E and Other Sources. SFUSD shall cooperate with SFPUC to obtain from PG&E and any other source(s), any incentives, grants, tax credits, and Environmental Attributes available as a result of the installation and operation of the Solar Project. Environmental Attributes which SFPUC will retain shall also include Renewable Energy Credits (REC) and Low Carbon Fuel Standard (LCFS) Credits. Any such incentives and Environmental Attributes shall be SFPUC property regardless of whom is the recipient from PG&E or any other provider of such incentives and Environmental Attributes.

12. Security. SFUSD will provide the same level of security for the Solar Projects as it uses for its facilities at the Site. SFUSD will report any suspicious activities related to the Solar Project to SFPUC and the San Francisco Police Department.

13. Safety. All SFPUC employees, agents and contractors that access the Site pursuant to this License will comply with all applicable federal, state and local health and safety requirements.

14. Insurance. The City is self-insured. SFPUC shall maintain, and provide a letter to District confirming that it will maintain the self-insurance sufficient to cover potential liabilities related to SFPUC's services described in Section 4.4 of the Agreement.

15. Severability. If any provision or any part of this License is for any reason held to be invalid and/or unenforceable or contrary to public policy, law, statute, or ordinance by a court of competent jurisdiction, the remainder of this License shall not be affected thereby and shall remain valid and fully enforceable; provided, however, that if the invalidity or unenforceability of any provision of this License results in a material failure of consideration, then the party adversely affected thereby shall have the right in its sole discretion to terminate this Agreement by providing written notice of such termination to the other party.

16. Assignment. SFPUC may not assign, sublet, or transfer any of its obligations, rights, or duties under this License without the prior written consent of SFUSD. Any such purported assignment or transfer shall be void, and shall constitute a material breach of this License.

17. Amendment. Each of the parties acknowledges and agrees that this License may be amended only by a writing signed by both the parties and approved or ratified by the governing boards of both parties.

18. Entire Agreement. This License, along with the Funding Agreement, constitutes the entire agreement between the parties with respect to the subject matter hereof, and no prior agreement, statement, promise, or representation made by any party, employee, officer, or agent which is not contained herein shall be binding or valid.

19. Execution in Counterparts. This License may be executed in counterparts, each of which shall constitute an original of the License. Copies of signature pages transmitted to either party via email or facsimile shall be deemed equivalent to original signatures on counterparts.

20. Warrant of Authority. Each of the persons signing this License represents and warrants that such person has been duly authorized to sign this License on behalf of the party indicated, and each of the parties by signing this License warrants and represents that such party is legally authorized and entitled to enter into this License.

21. No Property Interest Created. This License does not create any interest to SFPUC of any property owned or maintained by SFUSD, and is not coupled with any property interest or other interest.

Appendix D – List of Subcontractors

McCarthy Building Companies
DLR Group
Sierra Electric
The Engineering Enterprise
Solar Technologies
SepiSolar



San Francisco
**Water
Power
Sewer**

Services of the San Francisco
Public Utilities Commission

Hetch Hetchy
POWER

Mission Bay School Solar Project

Funding & License Agreement

October 15, 2025

Jamie Seidel
Distributed Energy Resources Projects Manager,
SFPUC -- Power Enterprise



Distributed Energy Resources (DER) Projects

Project Types

- Renewable Energy
- Energy Efficiency
- Electrification

Renewable Energy Portfolio

- 30 Project Locations
- 3.5 MW Solar Capacity
- 550kWh Energy Storage

Project Overview

San Francisco Unified School District (SFUSD) is building a new elementary school in the Mission Bay Neighborhood -- \$129 M.

SFPUC to partner with SFUSD on a solar electric project

Ninth SFPUC solar project with SFUSD



Funding & License Agreement (FLA)

SFPUC funds design & installation of 112kW solar electric system.

- Project Cost – \$653,000
- Work performed under a SFUSD construction contract

30 Year Agreement

- Requires Board of Supervisors Approval per Charter Section 9.118

Solar electric asset will be owned and operated by SFPUC

Environmental Impact Report (EIR) – Approved June 2022



Project Status

- Mission Bay School building construction started October 2022
- Solar construction started February 2025 – 100% complete
- Solar interconnection permission to operate – complete (July 2025)
- Solar asset is operational



San Francisco
Water
Power
Sewer
Services of the San Francisco
Public Utilities Commission

Hetch Hetchy
POWER

Questions?

Thank You



Agenda Item Details

Meeting	Mar 25, 2025 - Regular Meeting: Monitoring Workshop
Category	H. CONSENT CALENDAR
Subject	12. Solar Project Funding and License Agreement between City and County of San Francisco and SFUSD
Type	Action (Consent)
Preferred Date	Mar 25, 2025
Absolute Date	Mar 25, 2025
Fiscal Impact	No
Budgeted	No
Recommended Action	That the Board of Education approve this Solar Project Funding and License Agreement between San Francisco Unified School District and the City and County of San Francisco, by and through the San Francisco Public Utilities Commission (SFPUC), and instruct the Bond Program Director or their designee to sign all documents necessary for the execution of the Agreement on behalf of the District. 253-25B5

BACKGROUND:

This Solar Project Funding and License Agreement (Agreement) between City and County of San Francisco and San Francisco Unified School District (SFUSD), is related to the solar panels to be installed at Mission Bay School, and sets forth the terms, conditions, and roles under which SFUSD will fund the design and construction of the Solar Project and San Francisco Public Utilities Commission (SFPUC) will reimburse SFUSD. After reimbursement, SFPUC will own the Solar Project and SFUSD will grant SFPUC a license to access the Solar Project post-construction for maintenance.

The Solar Project includes a photovoltaic system installed on the roof of Mission Bay School, designed in compliance with applicable codes. The installation consists of photovoltaic panels and their mountings, bird avoidance devices, and associated wiring and equipment. Under this Agreement, SFUSD will grant SFPUC a license to access the site in order to maintain and operate the Solar Project after installation. In this way, the SFPUC is partnering with SFUSD to fund a portion of the project, and relieving SFUSD of an ongoing maintenance obligation, and adding to the SFPUC's solar power generation portfolio. This is a beneficial partnership for both parties.

The City and County of San Francisco will finalize and execute the attached Funding and License Agreement upon Board of Education approval.

Submitted by: John Dutch, Bond Program Director of Construction

Approved by: Licinia Iberri, Bond Program Director

[SFPUC-SFUSD Solar Funding & License Agmt - Mission Bay School - Executed by District.pdf \(514 KB\)](#)

Our adopted rules of Parliamentary Procedure, Roberts Rules, provide for a consent agenda listing several items for approval of the Board by a single motion. Documentation concerning these items has been provided to all board members and the public in advance to assure an extensive and thorough review.

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 25-0124

WHEREAS, The City, through the San Francisco Public Utilities Commission (SFPUC), is the electric utility serving the San Francisco Unified School District (SFUSD); and

WHEREAS, The construction and operation of a photovoltaic system (solar PV system) at an SFUSD site will provide solar electricity as part of the City's program to increase the City's development of solar energy in accordance with the Mayor's Executive Directive 05-107, Rooftops for Municipal Solar, dated October 26, 2005; and

WHEREAS, SFPUC and SFUSD seek to enter into a Funding and License Agreement for the design, construction, maintenance and operation of an on-site solar PV system at the Mission Bay School, located at 1415 Owens Street, San Francisco, California 94158 ("Site"); and

WHEREAS, SFPUC will reimburse SFUSD for the design and construction of the solar PV system in an amount not to exceed \$653,033 and SFPUC will own the solar system; and

WHEREAS, SFUSD will grant SFPUC a license to access the Site for the purpose of operating and maintaining the solar PV system; and

WHEREAS, The term of the Funding and License Agreement will be for thirty (30) years, with the solar PV system anticipated to begin operating in December 2025 until December 31, 2055; and

WHEREAS, On June 15, 2022, the SFUSD Board of Education, acting as the California Environmental Quality Act (CEQA) lead agency, certified a Final Environmental Impact Report (Final EIR) for the Mission Bay School Project (Project); and

WHEREAS, The SFUSD has adopted mitigation measures included in the Final EIR to avoid or substantially lessen the significant environmental effects identified in the Final EIR and set forth in the Mitigation Monitoring and Reporting Program, and has assumed responsibility for their implementation; and

WHEREAS, Authorization of the funding and license agreement is within the scope of the Project authorized under the Final EIR; and

WHEREAS, Staff has made the Final EIR (which consists of the Draft EIR and Response to Comments document), certified by the SFUSD Board of Education, CEQA Findings, and Mitigation Monitoring and Reporting Program that are part of the record of this approval available for review by this Commission and the public at the SFPUC offices, Power Enterprise, 525 Golden Gate Avenue, 7th Floor, San Francisco, California, and those documents are part of the record before this Commission; and

WHEREAS, This Commission has reviewed and considered the information in the Final EIR, CEQA Findings, and Mitigation Monitoring and Reporting Program; and

WHEREAS, Since the SFUSD Board of Education certified the Final EIR, there have been no substantial changes in the Project or changes in Project circumstances that would result in new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the Final EIR; and

WHEREAS, The SFPUC has no direct authority or responsibility with respect to the proposed Project or any Project mitigation measures other than to enable the SFUSD to carry out the solar PV component of the Project through approval and execution of the funding and license agreement to reimburse SFUSD for the design and construction of the solar PV system, and for SFPUC to own, operate and maintain the system once the project is constructed; now, therefore, be it

RESOLVED, This Commission, acting as a Responsible Agency under the CEQA Guidelines sections 15096 and 15381, has reviewed and considered the Final EIR and the record as a whole, finds that the Final EIR is adequate for its use as a Responsible Agency for the Project and adopts SFUSD's CEQA Findings and incorporates them by this reference as though set forth in this Resolution; and be it

FURTHER RESOLVED, This Commission affirms the determination that since the Final EIR was finalized, there have been no substantive Project changes and no substantial changes in Project circumstances that would require revisions to the Final EIR due to the potential involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the Final EIR; and be it

FURTHER RESOLVED, That this Commission hereby approves and authorizes the General Manager to execute a Funding and License Agreement with SFUSD for the construction, operation and maintenance of an on-site solar photovoltaic (solar PV) system at the Mission Bay School, for an amount not to exceed \$653,033 and with a duration of 30 years, subject to Board of Supervisors approval under San Francisco Charter Section 9.118.

I hereby certify that the foregoing resolution was adopted by the San Francisco Public Utilities Commission at its meeting of July 22, 2025.



Director of Commission Affairs
San Francisco Public Utilities Commission



San Francisco Water Power Sewer

Services of the San Francisco Public Utilities Commission

FROM: Jeremy Spitz, Policy and Government Affairs

DATE: July 25, 2025

SUBJECT: [Funding and License Agreement– San Francisco Unified School District – Design, Construction, Operation, and Maintenance of an On-Site Solar Photovoltaic System – Not to Exceed \$653,033]

Please see attached a proposed Resolution approving and authorizing the General Manager of the San Francisco Public Utilities Commission to execute a Funding and License Agreement between the San Francisco Public Utilities Commission and the San Francisco Unified School District for the construction, operation, and maintenance of an on-site solar photovoltaic system at the Mission Bay School, for an amount not to exceed \$653,033 and with a duration of 30 years, for the period of October 31, 2025, through October 31, 2055, pursuant to Section 9.118 of the San Francisco Charter.

The following is a list of accompanying documents:

- Proposed Resolution (Word Doc Version)
- SFPUC Resolution 25-0124 (PDF Version)
- SFPUC and SFUSD Funding and License Agreement (PDF Version)
- San Francisco Board of Education Agenda Item 253-25B5 (PDF Version)

Please contact Jeremy Spitz at jspitz@sfgwater.org if you need any additional information on these items.

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