



# FRESNO COUNTY FIRE

PROTECTION DISTRICT

*Honor, Integrity, Cooperation & Professionalism*

## MEMORANDUM

**Date:** July 6, 2020

**To:** Board Directors

**Attn:** Mike Del Puppo  
President

**From:** Fire District Staff

**Subject:** **AMENDMENT NO. 1 TO SHORT FORM CONSTRUCTION CONTRACT BETWEEN THE FRESNO COUNTY FIRE PROTECTION DISTRICT AND KUYKENDALL SOLAR**

### BOARD OF DIRECTOR'S BRIEFING PAPER

#### ISSUE:

The bonding company for Kuykendall Solar has requested an addendum to our construction contract.

#### BACKGROUND:

At the February 19, 2020 Board Meeting, the Board approved the final construction contract from Kuykendall Solar.

#### DISCUSSION:

Recently the bonding company for Kuykendall Solar required an addendum to the construction contract to clarify the bond surety's obligations. District legal counsel has reviewed the bonding company's request and has created Amendment No. 1 to the construction contract.

#### ALTERNATIVES:

There are no recommended alternatives.

#### IMPACTS

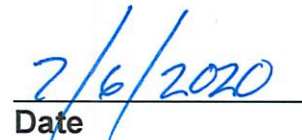
- Fiscal – No known impacts
- Operational – No known impacts
- Legal – No known impacts
- Labor - No known impacts
- Sociopolitical - No known impacts
- Policy - No known impacts
- Health and safety - No known impacts
- Environmental - No known impacts
- Interagency - No known impacts

**RECOMMENDATION:**

It is recommended by Staff that the District Board of Director's approves Amendment No.1 of the Short Form Construction Contract between the District and Kuykendall Solar.

**APPROVED:**

  
\_\_\_\_\_  
Josh I. Chrisman, Administration Officer

  
\_\_\_\_\_  
Date

## **AMENDMENT NO. 1 TO SHORT FORM CONSTRUCTION CONTRACT BETWEEN THE FRESNO COUNTY FIRE PROTECTION DISTRICT AND KUYKENDALL SOLAR**

This Amendment ("Amendment") is made and effective July 6, 2020 by and between the Fresno County Fire Protection District ("District") and Kuykendall Solar ("Contractor") which may collectively be referred to herein as the "Parties." The Parties hereby agree to the following:

### **RECITALS**

- A. On February 10, 2020 District and Contractor entered into a Short Form Construction Contract ("Construction Contract") in which Contractor provides equipment and services related to the construction of certain solar facilities on District property.
- B. As a component of the Construction Contract, Contractor furnished certain Payment and Faithful Performance Bonds consistent with Section 13 of the Construction Contract.
- C. The parties wish to amend the Construction Contract to clarify the requirements and limitations applicable to the bonds, while maintaining the full force and effect of all other terms of the Construction Contract.

### **TERMS**

The Parties agree as follows:

1. **Recitals:** The aforementioned Recitals are incorporated into this Amendment as if set forth fully herein.
2. **Restatement of the Construction Contract:** The Construction Contract is hereby restated in its entirety and shall continue in full force and effect with all of its recitals, terms, and attachments binding on both the District and Contractor, except as stated otherwise in this Amendment. Should a conflict exist between the terms of the Construction Contract and this Amendment, the terms of this Amendment shall prevail.
3. **Amendment to Paragraph 13 of the Construction Contract.** The following text is added to Paragraph 13 of the Construction Contract. Except for the inclusion of the following text, all existing text of Paragraph 13 shall continue in full force and effect without change.

The performance, payment and other bonds required by this Paragraph 13 shall be limited to covering the satisfactory completion of the Contract's Scope of Work and a one-year, standard defective workmanship warranty only. The bond surety's obligations on the performance, payment and other bonds shall exclude all output guarantees, efficiency guarantees, minimum performance guarantees, and saving guarantees. The foregoing limitations on the bond surety's liability shall in no way limit, reduce, or impact Contractor's liability nor any representations and warranties made by Contractor, including but not limited to those in Section 31 of the Contract.

4. Counterparts and Authorized Signatories. This Amendment may be executed in counterparts, including counterparts transmitted by facsimile or electronic transmission, each of which shall be deemed an original but which taken together shall constitute a single agreement between the parties. Each of the undersigned individuals represent and warrant that they are duly authorized to enter into this Amendment and bind their respective Parties.

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the dates listed below:

**FRESNO COUNTY FIRE PROTECTION DISTRICT**

Signed: \_\_\_\_\_ Dated: \_\_\_\_\_  
Mark Johnson, Fire Chief

**KUYKENDALL SOLAR**

Signed: \_\_\_\_\_ Dated: \_\_\_\_\_  
Elizabeth Kuykendall, Owner