

**FUNDING AGREEMENT
FOR THE
CALIFORNIA FLATS SOLAR PROJECT**

THIS FUNDING AGREEMENT, hereinafter, "AGREEMENT", is made and entered into by and between the County of Monterey, a political subdivision of the State of California, hereinafter, "County", and California Flats Solar, LLC, hereinafter, "PROJECT APPLICANT", with reference to the following facts and circumstances:

RECITALS

A. PROJECT APPLICANT has applied to County for approval of a Combined Development Permit for the California Flats Solar Project (hereinafter, "Project"), located in South Monterey County, requiring building plan review, building permits, and construction building inspection (hereinafter, "Services"). Additional work associated with Services has been identified to process the Project application and complete the Project.

B. In accordance with Section 4.2 of the Development Agreement between the County and the PROJECT APPLICANT, due to the magnitude and complexity of the Project, the County Building Official, hereinafter, "OFFICIAL", and PROJECT APPLICANT agree that it is necessary and desirable that County engage California Code Check, Inc. (hereinafter, "Contractor") to provide construction building inspection services for completion of the Project. The Development Agreement, approved by the County Board of Supervisors on February 10, 2015, is incorporated herein by this reference and is on file with Clerk of the Board of County.

C. County and PROJECT APPLICANT hereby agree that County shall engage Contractor to provide the services specified in the Scope of Work in the Professional Services Agreement, hereinafter, "PSA", between County and Contractor, attached to this AGREEMENT as Exhibit "1" and incorporated herein by reference. County shall manage the Project work performed by Contractor.

D. A fundamental premise of this AGREEMENT is that nothing herein is to be construed as a representation, promise, or commitment on the part of County to give special treatment to, or exercise its discretion favorably for the Project, in exchange for PROJECT APPLICANT's obligation to cover County's cost of retaining Contractor and providing County staff to work on the Project.

E. The subject matter of this AGREEMENT is the PROJECT APPLICANT's funding of construction building inspection services provided by Contractor and County for the Project. This AGREEMENT also covers the County fee for contract administration.

F. The County department costs associated with construction building inspection services for the Project will be funded through land use application fees to be deposited and paid by the PROJECT APPLICANT pursuant to the applicable Monterey County Fee Resolution approved by the Monterey County Board of Supervisors in effect at the time services are rendered by County.

G. PROJECT APPLICANT agrees that the deposit, based on an estimated amount of construction building inspection services and County department costs to be conducted during the term of this AGREEMENT, will be collected. Withdrawals from the deposit will be made by the County to pay for construction building inspection services conducted by Contractor and services provided by County departments for completion of the Project.

H. PROJECT APPLICANT agrees that funds will be deposited in the initial amount of \$250,000 upon approval of the AGREEMENT with a total deposit amount not to exceed an overall amount of \$1,003,424 to allow funding for the completion of construction building inspection services performed by Contractor and services provided by County departments for completion of the Project. County and PROJECT APPLICANT further agree that the initial deposit may be supplemented with additional deposits when construction building inspection services and/or County department costs and fees are warranted beyond the amount initially deposited to complete the Project.

I. PROJECT APPLICANT agrees that there is a minimum deposit threshold of \$50,000 with a collectible maximum deposit amount of \$250,000. County agrees to notify and request replenishment of the deposit from the PROJECT APPLICANT when the \$50,000 minimum threshold has been met. PROJECT APPLICANT acknowledges that replenishment of the deposit will be made within two (2) weeks of notification by the County. PROJECT APPLICANT further acknowledges that if there is a delay beyond the two (2) week period, continued services provided by Consultant and County departments will not be authorized which may delay completion of the Project.

J. PROJECT APPLICANT and County agree that funds held as a deposit will be interest bearing and computed at the County interest rate established by the County Treasury Department.

K. County and PROJECT APPLICANT make this AGREEMENT with full knowledge of the requirements of State and local law, including, but not limited to the Monterey County Code.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED IN THIS AGREEMENT, PROJECT APPLICANT AND COUNTY AGREE AS FOLLOWS:

1. Deposits to Fund PSA and County Costs and Fees. PROJECT APPLICANT shall deposit an amount equal to the County's estimated cost for construction building inspection services and the estimated County's costs and fees. This amount totals \$753,424 and includes:

Contractor's Estimated Budget:	\$531,800
County Estimated Budget and Fees:	
County Departments Budget:	\$218,200
Contract Processing Fee (RMA) (non-refundable):	\$ 3,000
Contract Processing Fee (County Counsel) (non-refundable):	\$ 424

PROJECT APPLICANT shall make a first deposit of \$250,000 with County, including the maintenance of the minimum threshold amount of \$50,000, no later than October 23, 2015. Future deposits are due within the two (2) week timeframe of notice by the County to the PROJECT APPLICANT when the minimum threshold has been reached. These deposits shall be a condition precedent to County's obligation under this AGREEMENT.

PROJECT APPLICANT will make two future deposits with a maximum threshold of \$250,000 and \$253,424 to fully fund the AGREEMENT to a maximum deposit of \$753,424. PROJECT APPLICANT and County agree that future deposits will be required based on a minimum threshold of \$50,000 to be consistently on deposit with the County. County has the ability to adjust the minimum threshold based on the quarterly progress report.

2. Project Contingency. An additional \$250,000 shall be included in the PSA between County and Contractor to cover contingencies. This Project Contingency totals two hundred fifty thousand dollars, and is subject to the procedures in *Section 3, Transfer from Project Contingency Account, specified in "Exhibit A", Scope of Services/Payment Provisions, of the PSA for the Project.*

3. Maximum Budget Under AGREEMENT. The maximum amount which may be charged to PROJECT APPLICANT under this AGREEMENT is \$1,003,424.

Contractor's Estimate Budget:	\$ 531,800
County Departments' Budget:	\$ 218,200
Contract Processing Fee (RMA) (non-refundable):	\$ 3,000
Contract Processing Fee (County Counsel) (non-refundable):	\$ 424
Project Contingency:	\$ 250,000

Maximum Charge Under AGREEMENT: \$1,003,424

4. Within thirty (30) days after the end of each quarter, County shall provide quarterly progress reports to the PROJECT APPLICANT showing Contractor and County charges from the prior quarter associated with completion of task(s) as specified in "Exhibit A" of the PSA (Scope of Services/Payment Provisions for the Project) with Contractor. Any funds remaining at completion of Contractor and County services shall be returned to the PROJECT APPLICANT.

5. Engagement of Contractor. This AGREEMENT is based on County engaging Contractor in accordance with the PSA between County and Contractor, attached hereto and incorporated by this reference as Exhibit "1". Contractor shall be responsible only to County, and nothing in this AGREEMENT imposes any obligation on County or Contractor to PROJECT APPLICANT other than to devote the time and attention to assisting with the processing of the construction building inspection services for the Project. County shall provide direction and guidance to Contractor. Contractor's contact(s) with PROJECT APPLICANT shall only be through County. PROJECT APPLICANT, its agents, employees, consultants, representatives or partners shall not contact Contractor directly in any manner unless at a public hearing, meeting, or workshop for the Project.

6. Payments to Contractor and County.

a. Contractor

Contractor's invoices shall be paid from funds deposited by PROJECT APPLICANT in the amount of \$531,800 and according to Exhibit A, Scope of Services/Payment Provisions, of Exhibit "1" and attached to this AGREEMENT.

Should this AGREEMENT be terminated prior to July 1, 2018, any unearned balance of the deposit made by PROJECT APPLICANT to fund Contractor's PSA shall be returned to PROJECT APPLICANT within sixty (60) days of receipt of notice of termination by County.

b. County Administration Costs and Fees

The costs and fees for services provided by County departments shall be based upon the applicable Monterey County Fee Resolution approved by the Monterey County Board of Supervisors in effect at the time the services are provided.

The PROJECT APPLICANT agrees to deposit land use application fees in an estimated amount of \$218,200 to cover all County staff costs associated with the construction building inspection services for the PROJECT in accordance with the applicable County of Monterey Land Use Fee Schedule. PROJECT APPLICANT agrees to deposit the estimated amount of \$218,200 according to the schedule outlined in Paragraph 1, "Deposits to Fund PSA and County Costs and Fees" of this AGREEMENT.

Services designated as a "Fee" in this AGREEMENT in the amount of \$3,424 are non-refundable.

Should this AGREEMENT be terminated prior to July 1, 2018, any unearned balance of the refundable deposit made by PROJECT APPLICANT to fund County departments' work on construction building inspection services shall be returned to PROJECT APPLICANT within sixty (60) days of receipt of notice of termination by County.

c. Project Contingency

An additional \$250,000 covers potential contingencies, and transfer of any Project Contingency funds into the Contractor's Estimated Budget shall require the approval of both County and PROJECT APPLICANT, pursuant to Section 3, Transfer from Project Contingency Account, of "Exhibit A" of the PSA. Within five (5) working days of receipt of a request from County, PROJECT APPLICANT shall approve or disapprove the Request for Transfer from Project Contingency and, if approved, at the same time submit a check to the County for the amount requested.

If PROJECT APPLICANT takes more than five (5) working days to respond to a Request for Transfer from Project Contingency, additional costs may accrue to Contractor, which may result in another Request for Transfer from Project Contingency.

Should this AGREEMENT be terminated prior to July 1, 2018, any unearned balance of any deposited Project Contingency made by PROJECT APPLICANT to fund Contractor's or County departments' work on construction building inspection services shall be returned to PROJECT APPLICANT within sixty (60) days of receipt of notice of termination by County.

7. No Promise or Representation. PROJECT APPLICANT and County agree that nothing in AGREEMENT is to be construed as a representation, promise, or commitment on the part of County to give special treatment to, or exercise its discretion favorably for the Project, it being understood that PROJECT APPLICANT's funding obligation under AGREEMENT is undertaken without regard to County's actions regarding the Project.

8. Term. AGREEMENT shall become effective October 1, 2015 and continue through July 1, 2018, unless terminated pursuant to Paragraph 9 or amended pursuant to Paragraph 13 of AGREEMENT.

9. Termination. AGREEMENT shall terminate on July 1, 2018, but may be terminated earlier by PROJECT APPLICANT or County, by giving thirty (30) days' written notice to the other. Upon such termination, PROJECT APPLICANT shall immediately pay any outstanding invoices, as well as pay for any work performed by Contractor through effective date of termination.

10. Entire Agreement. AGREEMENT and its attachments constitute the entire agreement between the PROJECT APPLICANT and County respecting the matters set forth herein. County and PROJECT APPLICANT each represent that neither has relied on any promise, inducement, representation, or other statement made in connection with AGREEMENT that is not expressly contained herein.

11. Negotiated Agreement. It is agreed and understood by PROJECT APPLICANT and County that AGREEMENT has been arrived at through negotiations and that neither is deemed the party which prepared AGREEMENT within the meaning of Civil Code Section 1654.

12. Assignment. Neither County nor PROJECT APPLICANT shall have the right to assign its respective rights and obligations hereunder without the written consent of the other party. This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

13. Amendment. This AGREEMENT may be amended, modified or supplemented only in writing by both County and PROJECT APPLICANT.

14. Contracting Officer. The contracting officer of County, and the only entity authorized by law to make or amend AGREEMENT on behalf of County, is the County of Monterey Board of Supervisors or a County employee whom they have specifically authorized.

15. Waiver. The failure of a party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a party of any condition or of any breach of any term contained in this AGREEMENT shall be effective unless in writing, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach in any other instance or a waiver of any other condition or breach of any other term.

16. Governing Law. AGREEMENT shall be construed, interpreted and applied in accordance with the laws of the State of California applicable to commercial contracts entered into and to be performed wholly in California.

17. Construction. The language in all parts of AGREEMENT shall be construed, in all cases, according to its fair meaning. The parties acknowledge that each party has reviewed AGREEMENT and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of AGREEMENT.

18. Conflict with Professional Services Agreements between Contractor and County. In the event of a conflict between the provisions of AGREEMENT and the Professional Services Agreements between County and Contractor, the provisions of AGREEMENT shall govern.

19. Relationship of Parties. The parties agree that this AGREEMENT establishes only a funding arrangement between the parties, and that the parties are not joint venturers or partners.

20. Indemnification. PROJECT APPLICANT agrees to defend, indemnify and hold County harmless in any action brought by any third party in which the authority of the County to enter into AGREEMENT or the validity of AGREEMENT is challenged.

21. Counterparts. This AGREEMENT may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same AGREEMENT.

22. Notices. Notice to the parties in connection with AGREEMENT shall be given personally or by regular mail addressed as follows:

TO COUNTY: Daniel Dobrilovic, Building Official
County of Monterey
Resource Management Agency - Building Services
168 W. Alisal Street, 2nd Floor
Salinas, CA 93901

TO PROJECT
APPLICANT: Brian Kunz, Vice President, Project Development
First Solar Development, LLC
135 Main Street, 6th Floor
San Francisco, CA 94105

Notice shall be deemed effective at the time of personal delivery or seventy-two (72) hours after mailing.

IN WITNESS WHEREOF, PROJECT APPLICANT and County have executed AGREEMENT which shall be effective as of the last date opposite the respective signatures below.

COUNTY OF MONTEREY

By: [Signature]

Contracts/Purchasing Officer or designee

Date: 10-5-15

CALIFORNIA FLATS SOLAR, LLC*

By: [Signature]
(Signature of Chair, President or Vice President)

Its: Brian Kunz, VP Project Development
(Print Name and Title)

Date: September 10, 2015

By: [Signature]
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)

Its: Beth Deane, VP and Assistant Secretary
(Print Name and Title)

Date: 9/10/15

Approved as to Form and Legality
Office of the County Counsel

By: [Signature]
Deputy County Counsel

Date: 9-11-15

Reviewed as to fiscal provisions **TAB**
[Signature]
Auditor-Controller
County of Monterey **10-5-15**

*INSTRUCTIONS: IF APPLICANT is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set for in the Agreement together with the signatures of two specified officers. If APPLICANT is a partnership, the name of the partnership shall be set forth in the Agreement together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. IF APPLICANT is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign this Agreement.

EXHIBIT 1

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
CALIFORNIA CODE CHECK, INC.
AND THE COUNTY OF MONTEREY
TO PROVIDE
CONSTRUCTION BUILDING INSPECTION
SERVICES
FOR THE
CALIFORNIA FLATS SOLAR PROJECT**

**COUNTY OF MONTEREY AGREEMENT FOR PROFESSIONAL SERVICES
WITH SURVEYORS, ARCHITECTS, ENGINEERS & DESIGN PROFESSIONALS
(MORE THAN \$100,000)***

This Professional Services Agreement ("Agreement") is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter "County") and:
California Code Check, Inc.
(hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1. **SERVICES TO BE PROVIDED.** The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The services are generally described as follows:
Provide construction building inspection services for the California Flats Solar Project

2. **PAYMENTS BY COUNTY.** County shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement shall not exceed the sum of \$ 781,800.

3. **TERM OF AGREEMENT.** The term of this Agreement is from October 1, 2015 to July 1, 2018, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and CONTRACTOR may not commence work before County signs this Agreement.

4. **ADDITIONAL PROVISIONS/EXHIBITS.** The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

- Exhibit A Scope of Services/Payment Provisions
- Exhibit B Incorporation of Request for Qualifications (RFQ) #10336 and Statement of Qualifications Document

5. **PERFORMANCE STANDARDS.**

5.01. CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the County, or immediate family of an employee of the County.

5.02. CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

*Approved by County Board of Supervisors on _____.

5.03. CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6. PAYMENT CONDITIONS.

6.01. CONTRACTOR shall submit to the Contract Administrator an invoice on a form acceptable to County. If not otherwise specified, the CONTRACTOR may submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice as the County may require. The Contract Administrator or his or her designee shall certify the invoice; either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

6.02. CONTRACTOR shall not receive reimbursement for travel expenses unless set forth in this Agreement.

7. TERMINATION.

7.01. During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.

7.02. The County may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.

8. INDEMNIFICATION.

8.01 For purposes of the following indemnification provisions ("Indemnification Agreement"), "design professional" has the same meaning as set forth in California Civil Code section 2782.8. If any term, provision or application of this Indemnification Agreement is found to be invalid, in violation of public policy or unenforceable to any extent, such finding shall not invalidate any other term or provision of this Indemnification Agreement and such other terms and provisions shall continue in full force and effect. If there is any conflict between the terms, provisions or application of this Indemnification Agreement and the provisions of California Civil Code Sections 2782 or 2782.8, the broadest indemnity protection for the COUNTY under this Indemnity Agreement that is permitted by law shall be provided by CONTRACTOR.

8.02 Indemnification for Design Professional Services Claims:

CONTRACTOR shall indemnify, defend and hold harmless COUNTY, its governing board, directors, officers, employees, and agents against any claims that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONTRACTOR, its employees, subcontractors, and agents in the performance of design professional services under this Agreement, excepting only liability arising from the sole negligence, active negligence or willful misconduct of the COUNTY, or defect in a design furnished by the COUNTY.

8.03 Indemnification for All Other Claims or Loss:

For any claim, loss, injury, damage, expense or liability other than claims arising out of the CONTRACTOR's performance of design professional services under this Agreement, CONTRACTOR shall indemnify, defend and hold harmless COUNTY, its governing board, directors, officers, employees, and agents against any claim for loss, injury, damage, expense or liability resulting from or alleging injury to or death of any person or loss of use of or damage to property, arising from or related to the performance of services under this Agreement by CONTRACTOR, its employees, subcontractors or agents, excepting only liability arising from the sole negligence, active negligence or willful misconduct of the COUNTY, or defect in a design furnished by the COUNTY.

9.0 INSURANCE.

9.01 Evidence of Coverage:

Prior to commencement of this Agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition the Contractor upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's, Contracts/Purchasing Department, unless otherwise directed. The Contractor shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and such, insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

9.02 Qualifying Insurers:

All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

9.03 Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Modification (Justification attached; subject to approval).

Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Modification (Justification attached; subject to approval).

Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

Modification (Justification attached; subject to approval).

Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

Modification (Justification attached; subject to approval).

9.04 Other Insurance Requirements.

All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed

operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

10. RECORDS AND CONFIDENTIALITY.

- 10.01 Confidentiality. CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.
- 10.02 County Records. When this Agreement expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement.
- 10.03 Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.

- 10.04 Access to and Audit of Records. The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 10.05 Royalties and Inventions. County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.
11. **NON-DISCRIMINATION.** During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations, which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.
12. **COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANT.** If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.
13. **INDEPENDENT CONTRACTOR.** In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability, which County may incur because of CONTRACTOR's failure to pay such taxes.

14. **NOTICES.** Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR'S contract administrators at the addresses listed below:

FOR COUNTY:	FOR CONTRACTOR:
Dalia Mariscal-Martinez, Management Analyst II	Brian Spain, Vice President
Name and Title	Name and Title
County of Monterey, Resource Management Agency 168 West Alisal Street, 2nd Floor Salinas, CA 93901	California Code Check, Inc. 5905 Capistrano Avenue, Suite F Atascadero, CA 93422
Address	Address
(831) 755-8966	(805) 792-1109
Phone	Phone

15. **MISCELLANEOUS PROVISIONS.**

- 15.01 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.
- 15.02 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.
- 15.03 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 15.04 Contractor. The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR'S officers, agents, and employees acting on CONTRACTOR'S behalf in the performance of this Agreement.
- 15.05 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 15.06 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
- 15.07 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.

- 15.08 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.09 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 15.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 15.12 Non-exclusive Agreement. This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 15.13 Construction of Agreement. The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 15.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 15.15 Authority. Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 15.16 Integration. This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.
- 15.17 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

This space is left blank, intentionally.

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY

By: [Signature]
Contracts/Purchasing Officer or designee

Date: 10-5-15

By: _____
Department Head (if applicable)

Date: _____

By: _____
Board of Supervisors (if applicable)

Date: _____

Approved as to Form¹

By: [Signature]
Deputy County Counsel

Date: 9-11-15

Approved as to Fiscal Provisions²

By: [Signature]
Auditor/Controller

Date: 8/28-15

Approved as to Liability Provisions³

By: _____
Risk Management

Date: _____

CONTRACTOR

California Code Check, Inc.
Contractor's Business Name*

By: [Signature]
(Signature of Chair, President, or Vice-President)*

Tom Harris President
Name and Title

Date: 8/27/15

By: [Signature]
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)*

Jeff Foster Secretary
Name and Title

Date: 8/27/15

County Board of Supervisors' Agreement Number: _____

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

¹Approval by County Counsel is required for all Professional Service Agreements over \$100,000

²Approval by Auditor/Controller is required for all Professional Service Agreements

³Approval by Risk Management is required only if changes are made in paragraph 8 or 9

EXHIBIT A - SCOPE OF SERVICES/PAYMENT PROVISIONS

To Agreement by and between
County of Monterey, hereinafter referred to as "County"
and
California Code Check, Inc., hereinafter referred to as "CONTRACTOR"

A. SCOPE OF SERVICES

CONTRACTOR shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

- A.1** The Monterey County Resource Management Agency (RMA) - Building Services has identified a need for the CONTRACTOR to provide an onsite inspector(s) for completion of construction building inspection services for the California Flats Solar Project (hereinafter, "Project").

Upon County's request, CONTRACTOR shall provide the County with a Principal Inspector for completion of the Project. At the County's request, additional inspector(s) may be assigned as needed. CONTRACTOR will provide Senior Inspector(s) to meet the County's request. All assigned inspector(s) will have current knowledge in the latest building codes, local ordinances and the standard accepted methods and means of building construction. Said inspector(s) shall be fully qualified and capable of completing scheduled construction building inspections on any and all types of building construction and occupancy types required for the Project. Inspector(s) shall be qualified to perform structural, non-structural, plumbing, mechanical, electrical, disabled access, energy compliance, green building code inspections to insure compliance with applicable codes, ordinances and laws governing construction.

The Principal Inspector and/or Senior Inspector(s) provided by the CONTRACTOR shall be International Code Council (ICC) Certified, with experience in the application of the trades inspected.

Inspector(s) shall be required, as applicable, to assist contractors, architects, engineers, builders, and California Flats Solar, LLC (hereinafter, "Applicant") in regards to required compliance with codes, and will issue approval and/or required correction notices as needed for each and every inspection performed for the Project. Violations of any nature will be documented and reported to the County's Building Official.

Inspections shall be performed during the County's normal working hours unless special arrangements have been otherwise made with the County.

A.2 MINIMUM COVERAGE:

One (1) Principal Inspector provided by the CONTRACTOR will be assigned to oversee the Project from beginning to Project end and complete inspections as required. Any additional inspector(s) that may be required for the Project will be classified as Senior Inspector(s). There will be a four (4) hour minimum coverage for each inspector per day, plus travel time. Travel time is estimated at two and one-half (2 ½) to three (3) hours per day, per inspector (CONTRACTOR's Atascadero Office to the Project worksite).

EXHIBIT A - SCOPE OF SERVICES/PAYMENT PROVISIONS

The standard work week for calculating OT and DT hours, referred to as the 5/8s (five (5) days at eight (8) hours per day) work week, will be assumed as the designated work week unless an alternative work week is requested. Any alternative work weeks offered by the County can be adopted for the Project including 4/10s (four (4) days at ten (10) hours per day) and 9/80s (nine (9) days at a total of eighty (80) hours), as long as all CONTRACTOR staff hours are invoiced directly to the County.

OVERTIME (OT)/DOUBLE TIME (DT):

OT and DT hours will be calculated based on Federal and State labor laws.

ALTERNATIVE WORK WEEKS:

CONTRACTOR "Days of the Week" is designated from Saturday to Friday for calculating OT and DT hours. If a different schedule for the "Days of the Week" is preferred by the County for the purpose of calculating OT and DT, the alternative schedule will need to be established from the first day of the Project. Once the CONTRACTOR's first payroll has been processed, the "Days of the Week" designation for the purpose of calculating OT & DT will not be changeable.

CONTRACTOR assumes the standard work week for calculating OT and DT hours will be a 5/8s work week unless an alternative workweek is requested. Any alternative workweeks offered by the County can be adopted for the Project including 4/10s and 9/80s, if CONTRACTOR staff hours are invoiced directly to the County.

OT/DT CALCULATION:

OT and DT hours will be calculated based on Federal and State labor laws as follows:

5/8s One and one-half (1 ½) times the inspector's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a work week; and

One and one-half (1 ½) times the inspector's regular rate of pay for all hours worked in excess of forty (40) hours in any work week; and

Double the inspector's regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) on the seventh (7th) consecutive day of work in a work week.

4/10s One and one-half (1 ½) times the inspector's regular rate of pay for all hours worked in excess of ten (10) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a work week; and

One and one-half (1 ½) times the inspector's regular rate of pay for all hours worked in excess of forty (40) hours in any workweek; and

Double the inspector's regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) on the seventh (7th) consecutive day of work in a work week.

EXHIBIT A - SCOPE OF SERVICES/PAYMENT PROVISIONS

9/80s One and one-half (1 ½) times the inspector's regular rate of pay for all hours worked in excess of nine (9) hours up to and including twelve (12) hours in any workday (except the one (1) day a week designated as the eight (8) hour day), and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a work week; and

One and one-half (1 ½) times the inspector's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours for the designated eight (8) hour day for each week, and

One and one-half (1 ½) times the inspector's regular rate of pay for all hours worked in excess of forty (40) hours in any work week; and

Double the inspector's regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) on the seventh (7th) consecutive day of work in a work week.

CONTRACTOR warrants that the cost charged for services under the terms of this Agreement are not in excess of those charged to any other client for the same services performed by the same individuals.

B.2 CONTRACTORS BILLING PROCEDURES

Payment shall be based upon satisfactory acceptance of services provided. CONTRACTOR shall invoice monthly to include listing a description of the construction building inspection and hourly rate charges by individual for each inspection. CONTRACTOR shall provide as supporting documentation to all monthly invoices copies of CONTRACTOR personnel approved timecards that substantiate hours billed.

County may, in its sole discretion, terminate the Agreement or withhold payments claimed by CONTRACTOR for services rendered if CONTRACTOR fails to satisfactorily comply with any term or condition of this Agreement.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by County.

County shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were completed.

DISALLOWED COSTS: CONTRACTOR is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

EXHIBIT A - SCOPE OF SERVICES/PAYMENT PROVISIONS

PAYMENT PROVISIONS

Invoices for written reports of daily activities for inspectors performing construction building inspection services under the AGREEMENT shall be submitted monthly and shall identify and document the services being delivered. Invoices for services performed in conjunction with construction building inspections shall be billed monthly (by the tenth day of the month). All invoices shall include the number of hours on-site for inspections performed, travel time to and from the site, copies of CONTRACTOR personnel approved timecards and state the percentage of the budget expended to date and shall include the following:

1. Invoice Coversheet

California Code Check, Inc.
Construction Building Inspection Services for California Flats Solar Project

Date: _____ Invoice No. _____

Original Agreement Term: *October 1, 2015 – July 1, 2018*
 Original Agreement Amount: *\$781,800.00 (\$531,800.00 base budget plus \$250,000.00 project contingency)*

This Invoice:

<i>Number of Hours</i>	<i>Rate</i>	<i>Total Charge</i>
	<u><i>Principal Inspector</i></u>	
_____	<i>\$99.00/hour</i>	\$ _____
_____	<i>\$148.50/hour (overtime)</i>	\$ _____
_____	<i>\$198.00/hour (double time)</i>	\$ _____
	<u><i>Senior Inspector(s)</i></u>	
_____	<i>\$89.00/hour</i>	\$ _____
_____	<i>\$133.50/hour (overtime)</i>	\$ _____
_____	<i>\$178.00/hour (double time)</i>	\$ _____

Grand Total of this Invoice: \$ _____
Remaining Balance (after this Invoice): \$ _____
Total Not to Exceed Amount: \$531,800.00
Percentage of Budget Expended: _____ %

Approved as to Work/Payment: _____ *Date* _____
Daniel Dobrilovic, Building Official

All Invoices Are To Be Sent To:
 Sylvia Sanchez, Senior Account Clerk
 County of Monterey Resource Management Agency
 Finance Division
 168 West Alisal Street, 2nd Floor, Salinas, CA 93901
 Telephone: (831) 755-4822

EXHIBIT A - SCOPE OF SERVICES/PAYMENT PROVISIONS

2. Invoice Detail

Each monthly invoice will include the information as referenced in Section 1 of Payment Provisions, Invoice Coversheet and include the invoice amount not to exceed the allowable budget amount.

Each invoice for services performed shall indicate the hours worked by task and by staff member, with the corresponding billing rates. Payment of these services will be based on the documentation provided by the CONTRACTOR and within the "Not to Exceed" budget allocated for the service.

The County may request further documentation of the number of hours worked by task and by staff member, with the corresponding billing rates. The information will be used to complete the file and to ensure proper payment for services.

3. Transfer from Project Contingency Account

Transfer of funding from the Project Contingency Account (total contingency of \$250,000) requires the prior written approval of the County Building Official and the Project Applicant.

A recommendation for such a transfer shall be presented in writing by CONTRACTOR to the County's On-site Inspector, at the earliest possible date. The recommendation shall include:

- The dollar amount;
- The anticipated date the funded work would begin;
- The duration of the work;
- The entity (CONTRACTOR) to whom the funds would be transferred/allocated; and
- The justification for the expenditure.

Within five (5) working days of receipt of the recommendation, the County's Building Official or designee, will contact CONTRACTOR to discuss its recommendation. Within ten (10) working days thereafter, the County Building Official or designee will approve, deny, or approve a revised version of the recommendation received from CONTRACTOR, and will send his decision in writing to the Project Applicant, and CONTRACTOR.

Unless he denies the recommended transfer, the County Building Official or designee will ask the Project Applicant to make a decision within five (5) working days regarding the recommended transfer from the Project Contingency Account. If necessary, reasonable efforts will be made to reach a compromise.

Upon receipt of the Project Applicant's written approval by the County Building Official or designee, the funding transfer will be made. At the same time, a letter authorizing the work funded by the approved transfer will be sent to CONTRACTOR.

**EXHIBIT B – INCORPORATION OF RFQ #10336 AND
STATEMENT OF QUALIFICATIONS DOCUMENT**

The County invited submittals to Request for Qualifications (RFQ) through RFQ #10336, Plan Review Services. California Code Check, Inc. submitted a responsive and responsible Statement of Qualifications to perform the services listed in RFQ #10336. The Agreement entered into between County and California Code Check, Inc. on June 28, 2012 was amended on August 26, 2014 to include construction building inspection services.

RFQ #10336 and the Statement of Qualifications submitted by California Code Check, Inc. are hereby incorporated into the Agreement by this reference.