

PROJECT LABOR AGREEMENT

FOR

**THE FALLBROOK BATTERY ENERGY STORAGE
SYSTEM PROJECT**

SAN DIEGO COUNTY, CALIFORNIA

1. INITIAL PROVISIONS

1.1 This Project Labor Agreement ("Agreement") is entered into by AES Energy Storage, LLC, ("Primary Employer") and the State Building and Construction Trades Council of California ("State Council") and the San Diego County Building & Construction Trades Council ("Local Council") and the local unions who have executed this Agreement, all of whom are referred to collectively as the "Unions."

1.2 The Fallbrook Battery Energy Storage System Project is an approximately 40 MW battery energy storage system project located in San Diego County, California ("Project"). The Project is owned by AES Energy Storage, LLC ("Owner"), but will be transferred to San Diego Gas & Electric Company ("SDG&E"), or a designated affiliate of SDG&E, after completion. It is understood that the final plans for the Project may be subject to modifications and approval by those public agencies possessing lawful approval authority over the Project and that this Agreement applies to the Project as it is finally approved by such entities and agencies.

1.3 Primary Employer is a contractor engaged primarily in the building and construction industry. Primary Employer reserves the right to directly perform construction on the Project with its own employees. Subject to the provisions of this Agreement and the applicable Master Agreement (as defined in Section 1.5), Primary Employer shall retain the right to control and coordinate all Project construction work by determining work scheduling. Primary Employer may also directly enforce any fitness for duty and/or drug and alcohol abuse policy which is agreed to by the Local Council and may also directly remove any employee whether employed directly or by any contractor or subcontractor for breach of reasonable rules promulgated by Primary Employer governing conduct on the job. Primary Employer shall have the right upon receipt of the written complaint of any employee to order corrective action necessary to maintain reasonable and lawful

standards for work place health and safety. Primary Employer shall act as the Coordinator, participate in monthly labor/management meetings, participate in pre-job conferences and mark-up meetings, and, at its option, participate in the resolution of any grievances. This Agreement applies only to the Project as described in Article 2 and not to other activities of the Primary Employer.

1.4 As provided below, all project managers, construction managers, contractors, subcontractors or other persons or entities assigning, awarding or subcontracting Covered Work (as defined in Article 2), or authorizing another party to assign, award or subcontract Covered Work, or performing Covered Work will be subject to this Agreement by executing Attachment A, the Agreement to be Bound (all of whom, including the Primary Employer, are individually and collectively referred to as "Employer" or "Employers"). This Agreement shall only be binding on the Employers signatory hereto; and shall not apply to parents, affiliates, subsidiaries, or other divisions of an Employer unless such parent, affiliate, subsidiary or other division executes Attachment A, the Agreement to be Bound.

1.5 Each Employer shall alone be liable and responsible for its own individual acts and conduct and for any breach or alleged breach of this Agreement. Any alleged breach of this Agreement by an Employer or dispute between a signatory Union(s) and an Employer shall not affect the rights, liabilities, obligations, and duties between the signatory Union(s) and each other Employer party to this Agreement.

1.6 The Unions are labor organizations whose members are construction industry employees who generally work in close proximity to one another at construction jobsites and whose jobs are closely related and coordinated. Each of the Unions is a party to a multi-employer collective bargaining agreement ("Master Agreement") that covers the geographic area of the Project. Where the term Master Agreement is used, it means the existing Master Agreement currently in effect as to each of the Unions.

1.7 A large labor pool represented by the Unions will be required to execute the work involved in the Project. Employers wish and it is the purpose of this Agreement to ensure that a sufficient supply of skilled craft workers are available at the Project, that all construction work and related work performed by the members of the Unions on this Project shall proceed continuously, without interruption, in a safe and efficient manner, economically, with due consideration for the protection of labor standards, wages and working conditions.

1.8 In furtherance of these purposes and to secure optimum productivity, harmonious relations between the parties and the orderly performance of the work, the parties to this Agreement agree to establish adequate and fair wage levels and working conditions and to protect the Project against strikes and lockouts and other interference with the process of the work, including interference that may arise at a common-situs jobsite when union employees have to work alongside non-union employees in their own craft or in those other crafts with which they generally work in close proximity performing work that is closely related and coordinated.

1.9 In the interest of the future of the construction industry in the local area, of which the Unions are a vital part, and to maintain the most efficient and competitive posture possible, the Unions pledge to work and cooperate with the management of the Project to produce the most efficient utilization of labor and equipment in accordance with this Agreement.

2. SCOPE OF AGREEMENT

2.1 This Agreement covers all on-site construction, alteration, painting or repair of buildings, structures and other works and related activities for the Project that is within the craft jurisdiction of one of the Unions and which is directly or indirectly part of the Project, including, without limitation, energy storage, start-up, site preparation, survey work and soils and material inspection and testing, all on-site fabrication work provided such work is within the fabrication provision of a local master or national agreement of one of the Unions, demolition of existing

structures, and all construction, demolition or improvements required to be performed as a condition of approval by any public agency. On-site fabrication work includes work done for the Project in temporary yards or areas near the Project. All fabrication work over which the Owner possesses the right of control, including, without limitation, the fabrication of air-handling systems and ducts and HVAC sheet metal work, and which is traditionally claimed as on-site fabrication, shall be performed on-site. For the convenience of the Primary Employer or other Employers, such work may be performed off-site. In that event, such fabrication work shall be performed in accordance with the union standards established by this Agreement for the appropriate craft Union or a fabrication agreement approved by the craft's International Union. Purchase of manufactured items in a genuine manufacturing facility for the supply of products is not considered fabrication. On-site construction shall also include the site of any batch plant constructed solely to supply materials to the Project. Construction of offsite utilities, when performed by a utility involved with connecting this project to the grid, shall not be considered Covered Work. All work within the scope of this Agreement is referred to as "Covered Work" in this Agreement.

2.2 Covered Work includes Project startup and commissioning, including, but not limited to, system testing, loop checks, rework and modifications, functional and operational testing up to and including the final running test. It is understood that the Owner, manufacturer's and vendor's representatives, and plant operating personnel may supervise and direct this activity. A manufacturer or its representatives may perform industry standard work to satisfy its guarantee or warranty prior to start-up of a piece of equipment.

2.3 The following are excluded from the definition of Covered Work:

2.3.1 Specialized or technical work requiring specialized training, unique skills, or a level of specific technical experience which employees

represented by the Union do not possess. At least ten (10) working days notice shall be given to the Local Council before any work is performed pursuant to this Section.

2.3.2 Any work associated with the Supervisory Control and Data Acquisition ("SCADA") components and housing of SCADA systems, provided that all raceways and wire trays, and all electrical cabling and termination, including fiber optic cabling for such systems, is Covered Work and not subject to this exception.

2.3.3 All work of non-manual employees, including, but not limited to, superintendents, supervisors and assistant supervisors, staff engineers or designers, inspectors, quality control and quality assurance personnel, timekeepers, mail carriers, clerks, office workers, messengers, guards, security and safety personnel, emergency medical and first aid technicians, and other professional, engineering, administrative, supervisory, environmental compliance, executive and management employees or other employees not covered by the Master Labor Agreement of one of the Unions.

2.3.4 Work performed by employees of an Original Equipment Manufacturer ("OEM") on the OEM's equipment, if required by the standard warranty agreement between the OEM and the Primary Employer in order to maintain the warranty or guarantee on such equipment consistent with industry practice. A redacted (unpriced) copy of such OEM agreement shall be provided to the applicable Union upon request.

2.3.5 All off-site manufacture and handling of materials, equipment or machinery (except at dedicated staging, lay-down or storage areas). Delivery of materials to the Project site is not Covered Work.

2.3.6 Any work performed on, near, or leading to the Project and undertaken by state, county, city or other governmental bodies, or their contractors; or by public utilities or their contractors.

2.3.7 Work covered under a separate agreement with the outside line branch of the IBEW.

3. SUBCONTRACTING

3.1 Primary Employer, and each other Employer agree that they will contract for the assignment, awarding or subcontracting of Covered Work, or authorize another party to assign, award or subcontract Covered Work, only to a person, firm, corporation or other entity that, at the time the contract is executed, has become a party to this Agreement by executing Attachment A, the Agreement to be Bound.

3.2 Primary Employer and each other Employer agree that it will subcontract Covered Work only to a person, firm, corporation or other entity who is or becomes party to this Agreement and who is or becomes signatory to either a Master Agreement with the craft Union having traditional and customary building trades craft jurisdiction over the work or, only in the case of a national contractor, a national agreement with the International Union(s) of the craft Union(s) having traditional and customary jurisdiction over the work. Any Employer (including Primary Employer) performing Covered Work on the Project shall, as a condition to performing Covered Work on the Project, become signatory to and perform all work under the terms of this Agreement and the applicable Master Agreement, except that a national contractor need not become signatory to a Master Agreement. Before being authorized to perform any Covered Work, Employers (other than Primary Employer) shall become a party to this Agreement by signing Attachment A, the "Agreement to be Bound." Every Employer shall notify the Local Council and the State Council in writing within five business days after it has subcontracted work, and shall at the same time provide to the Local Council and the State Council a copy of the executed Agreement to be Bound.

3.3 Nothing in this Agreement shall in any manner whatsoever limit the rights of the Primary Employer, or any other Employer, to subcontract Covered

Work or to select its contractors or subcontractors; provided, however, that all Employers, at all tiers, assigning, awarding, contracting or performing, or authorizing another to assign, award, contract or perform Covered Work shall be required to comply with the provisions of this Agreement. Primary Employer and every other Employer shall notify each of its contractors and subcontractors of the provisions of this Agreement and require as a condition precedent to the assigning, awarding or subcontracting of any Covered Work or allowing any subcontracted Covered Work to be performed, that all such contractors and subcontractors at all tiers become signatory to this Agreement and the Master Agreement. Any Employer that fails to provide the Local Council and State Council with the Agreement to be Bound executed by its contractor or subcontractor shall be liable for any failure of that contractor or subcontractor, or any contractor or subcontractor at a lower tier, to comply with the provisions of this Agreement, including any contributions to any trust funds that the contractor or subcontractor, or any subcontractor to that subcontractor, fails to make.

4. WAGES AND BENEFITS

4.1 All employees covered by this Agreement (including foremen and general foremen if they are covered by the Master Agreement) shall be classified and paid wages, other compensation including, but not limited to, travel, subsistence, and shift premium pay, and contributions made on their behalf to multi-employer trust funds, all in accordance with the then current multi-employer Master Agreement of the applicable Union.

4.2 Any special interest bargaining which establishes wage rates, classifications, zones, or wage escalations which apply exclusively to the Project will not be recognized. In addition, there shall be no redlining of the Project in any future multi-employer collective bargaining agreements by singling out, either by name or by effect, the Project or the Employers for less favorable wages, benefits or

working conditions than are generally accorded other industrial projects in the same general geographic area.

5. UNION RECOGNITION

5.1 The Employers recognize the Unions signatory to this Agreement as the sole and exclusive collective bargaining agents for their respective construction craft employees performing Covered Work for the Project, and further recognize the traditional and customary craft jurisdiction of each Union.

5.2 All employees performing Covered Work shall be or shall become and then remain members in good standing of the appropriate Union as a condition of employment on or before the eighth (8th) day of employment, or the eighth (8th) day following the execution of this Agreement, whichever is later.

5.3 The Unions shall be the source of all craft employees for Covered Work for the Project. Employers agree to be bound by the hiring and layoff practices of the respective Union, including hiring of apprentices, and to utilize its registration facilities and referral systems.

5.4 In the event the referral facilities maintained by the Unions do not refer the employees as requested by the Employer within a forty-eight (48) hour period after such requisition is made by the Employer (Saturdays, Sundays and holidays excepted), the Employer may employ applicants from any source, but shall arrange for a dispatch to be issued for such applicant from the Union within twenty-four (24) hours of the commencement of employment, and the dispatch shall upon request be issued by the Union to the employee. Employer will notify the Unions of such gate-hires.

5.5 Each Union shall have the right to designate a working journeyperson as a steward. The steward shall be a qualified employee performing the work of that craft and shall not exercise any supervisory functions. Each steward shall be concerned with the employees of the steward's Employer and not with the

employees of any other Employer. A steward shall be allowed sufficient time to perform his duties.

6. WORK STOPPAGES AND LOCKOUTS

6.1 During the term of this Agreement there shall be no strikes, sympathy strikes, picketing, work stoppages or slow downs, handbilling where the handbilling relates to an Employer or Owner at or within the immediate vicinity of the Project, or interference with the work or other disruptive activity at the Project by the Union or by any employee and there shall be no lockout by the Employer. Failure of any Union or employee to cross any picket line established at the Employer's Project site is a violation of this Article.

6.2 The Union shall not sanction, aid or abet, encourage or continue any work stoppage, strike, picketing or other disruptive activity at the Employer's Project site and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activities which violate this Article. Any employee who participates in or encourages any activity which violates this Article or which interferes with the normal operation of the Project shall be subject to disciplinary action, including discharge, and if justifiably discharged for the above reasons, shall not be eligible for rehire on the Project.

6.3 The Union shall not be liable for acts of employees for which it has no responsibility. The business manager(s) of the respective local union(s) will immediately instruct, order and use the best efforts of his office to cause the local union(s) to cease any violations of this Article. The principal officer or officers of a local union will immediately instruct, order and use the best efforts of his office to cause the employees the local union represents to cease any violations of the Article. A local union complying with this obligation shall not be liable for unauthorized acts of employees or members it represents. The failure of the Employer to exercise its right in any instances shall not be deemed a waiver of its right in any other instance.

6.4 The Union(s) agrees that if any union or any other persons, whether parties to this Agreement or otherwise, engage in any picketing or work stoppages, the signatory Unions shall consider such work stoppage or picketing to be illegal, and refuse to honor such picket line or work stoppage.

6.5 In the event of any work stoppage, strike, sympathy strike, picketing interference with the work or other disruptive activity in violation of this Article, the Employer may suspend all or any portion of the project work affected by such activity at the Employer's discretion and without penalty.

6.5.1 There shall be no strikes, sympathy strikes, picketing, work stoppages, slowdowns, interference with the work, or other disruptive activity affecting the project site during the term of this Agreement. Any Union which initiates or participates in a work stoppage in violation of this Article, or which recognizes or supports the work stoppage of another union, agrees as a remedy for said violation, to pay liquidated damages in accordance with Section 6.6.8 of this Article.

6.6 In lieu of, or in addition to, any other action at law or equity, any party may institute the following procedure when a breach of this Article is alleged, after the Union(s) and/or local union(s) has been notified of the fact.

6.6.1 The party invoking this procedure shall notify Arbitrators who the parties to this agreement agree shall be the permanent Arbitrators under this procedure. In the event that either of the permanent Arbitrators is unavailable at any time, the American Arbitration Association shall select an alternative arbitrator within twenty-four (24) hours of notice. Notice to the Arbitrator shall be by the most expeditious means available, with notice by fax or electronic means or any other effective written means, to the party alleged to be in violation and the involved International Union President, and/or local union.

6.6.2 Upon receipt of said notice, the Arbitrators named above shall set and hold a hearing within twenty-four (24) hours if it is contended that the violation still exists.

6.6.3 The Arbitrator shall notify the parties by fax or electronic means or any other effective written means of the place and time he has chosen for this hearing. Said hearing shall be completed in one session. A failure of any party or parties to attend said hearing shall not delay the hearing of evidence or issuance of an Award by the Arbitrator.

6.6.4 The sole issue at the hearing shall be whether or not a violation of this Article has in fact occurred. The Award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without an opinion. If any party desires an opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of, the Award. The Arbitrator may order cessation of the violation of this Article by the Union, and such Award shall be served on all parties by hand or registered mail upon issuance.

6.6.5 Such Award may be enforced by any court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to hereinabove in the following manner. The fax or electronic notice of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the Arbitrator's Award as issued under Section 6.6.4 of this Article, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The Court's order or orders enforcing the Arbitrator's Award shall be served on all parties by hand or by delivery to their last known address or by registered mail.

6.6.6 Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure or which interfere with compliance therewith are hereby waived by the parties to whom they accrue.

6.6.7 The fees and expenses of the Arbitrator shall be borne by the party or parties found in violation, or in the event no violation is found, such fees and expenses shall be borne by the moving party.

6.6.8 If the Arbitrator determines that a violation has occurred in accordance with Section 6.6.4 above, the party or parties found to be in violation shall pay as liquidated damages the following amounts: for the first shift in which the violation occurred, \$15,000; for the second shift, \$20,000; for the third shift, \$25,000; for each shift thereafter on which the craft has not returned to work, \$25,000 per shift. The Arbitrator shall determine whether the specified damages in this Section shall be paid to the Owner or the Primary Employer. The Arbitrator shall retain jurisdiction to determine compliance with this Article and this Article.

6.7 The procedures contained in Section 6.6 shall be applicable to alleged violations of this Article. Disputes alleging violation of any other provision of this Agreement, including any underlying disputes alleged to be in justification, explanation or mitigation of any violation of this Article, shall be resolved under the grievance procedures of Article 8.

6.8 Notwithstanding the provisions of Section 6.1 above, it is agreed that, with forty-eight (48) hours prior notice to the Primary Employer, a Union retains the right to withhold the services of its members from a particular contractor or subcontractor who fails to make timely payments to the Union's benefit plans, or fails to timely pay its weekly payroll, in accordance with its agreements with the Union; provided, however, that in the event the Union or any of its members withholds their services from such contractor or subcontractor, Primary Employer shall have the right to replace such contractor or subcontractor with any other contractor or subcontractor who executes the Agreement to be Bound.

6.9 In the event that any applicable labor agreement expires and the parties to that agreement fail to reach agreement on a new contract by the date of expiration, a Union shall continue to provide employees to the Employers working

on the Project under all the terms of the expired agreement until a new agreement is negotiated, at which time all terms and conditions of that new agreement shall be applied to Covered Work at the Project, except to the extent they conflict with any provision of this Agreement. In addition, if the new labor agreement provides for wage or benefit increases, then any Employer shall pay to its employees who performed Covered Work at the Project during the hiatus between the effective dates of such labor agreements, an amount equal to any such wage and benefit increases established by the new labor agreement for such work performed.

7. HOURS OF WORK, OVERTIME, SHIFTS AND HOLIDAYS

7.1 The standard work day shall consist of eight (8) hours of work between 6:00 a.m. and 5:30 p.m. with one-half hour designated as an unpaid period for lunch. The standard work week shall be five (5) consecutive days of work commencing on Monday. Nothing herein shall be construed as guaranteeing any employee eight (8) hours of work per day or forty (40) hours of work per week.

7.2 It is recognized by the parties to this Agreement that the standard work week may not be desirable or cost effective for some projects, and other arrangements for hours of work will be considered. Such proposed modifications to the standard work week shall be worked out between the Primary Employer and the Union. Project schedule, manpower requirements, the geographic locations of the project and other appropriate factors, will be taken into consideration by the parties in reaching an understanding on work schedules.

7.3 It will not be a violation of this Agreement when the Employer considers it necessary to shut down to avoid the possible loss of human life because of an emergency situation that could endanger the life and safety of an employee. In such cases, employees will be compensated only for the actual time worked. In the case of a situation described above whereby the Employer requests employees to wait in a designated area available for work, the employees will be compensated for the waiting time.

7.4 At the option of the Primary Employer and with one week's notice, a four (4) day per week, ten (10) hour per day work shift may be established. The regular work week shall be from Monday through Thursday. Pay for each of these four (4) days shall be ten (10) hours at the straight time hourly rate. In such shifts, one and one half times the regular straight time rate of pay will be paid for (a) hours eleven (11) and twelve (12) in a day and at double time for hours over twelve (12) in a day; (b) the first ten (10) hours of work on Friday and at double time for hours over ten (10) hours. Work on the Saturday and Sunday shall be paid at double time. There shall be no make-up days.

7.5 Recognized holidays shall be as follows: New Year's Day, Martin Luther King, Jr. Day, Presidents' Day, Memorial Day, Fourth of July, Labor Day, Veterans Day, Thanksgiving Day, Day after Thanksgiving, and Christmas Day. Under no circumstances shall any work be performed on Labor Day except in cases of emergency involving life or property. In the event a holiday falls on Saturday, the previous day, Friday, shall be observed as such holiday. In the event a holiday falls on Sunday, the following day, Monday, shall be observed as such holiday. There shall be no paid holidays. If employees are required to work on a holiday, they shall receive the appropriate rate; but in no case shall such overtime rate be more than double the straight time rate.

8. GRIEVANCE PROCEDURE

8.1 It is mutually agreed that any question arising out of and during the term of this Agreement involving its interpretation and application (other than jurisdictional disputes and successorship) shall be considered a grievance. Questions between or among parties signatory to a Master Agreement arising out of or involving the interpretation of a Master Agreement shall be resolved under the grievance procedure provided in that Master Agreement.

8.2 The Primary Employer and other Employers, as well as the Unions, may bring forth grievances under this Article.

8.3 A grievance shall be considered null and void if not brought to the attention of the Employer(s) within five (5) working days after the incident that initiated the alleged grievance occurred or was discovered, whichever is later. The term "working days" as used in this Article shall exclude Saturdays, Sundays and holidays regardless of whether any work is actually performed on such days.

8.4 Grievances shall be settled according to the following procedure, except that grievances that do not involve an individual grievant shall be discussed by the Primary Employer, State Council and Local Council and then, if not resolved within 5 working days of written notice unless extended by mutual consent, commence at Step 4:

Step 1

The Steward and the grievant shall attempt to resolve the grievance with the craft supervisor within five (5) working days after the Grievance has been brought to the attention of the Employer.

Step 2

In the event the matter remains unresolved in Step 1 above after five (5) working days, within five (5) working days thereafter, the alleged grievance may be referred in writing to the Business Manager(s) of the Union(s) affected and the site construction manager or Labor Relations representative of the Employer(s) for discussion and resolution. A copy of the written grievance shall also be mailed/faxed/mailed to the Primary Employer.

Step 3

In the event the matter remains unresolved in Step 2 above after five (5) working days, within five (5) working days thereafter, the grievance may be referred in writing to the Business Manager(s) of the affected Union(s) involved and the Manager of Labor Relations of the Employer(s) or the Manager's designated representative, and the Primary Employer for discussion and resolution.

Step 4

If the grievance is not settled in Step 3 within five (5) working days, either party may request the dispute be submitted to arbitration or the time may be extended by mutual consent of both parties. The request for arbitration and/or the request for an extension of time must be in writing with a copy to the Primary Employer. Should the parties be unable to mutually agree on the selection of an Arbitrator, selection for that given arbitration shall be made by seeking a list of seven (7) labor arbitrators with construction experience from the Federal Mediation and Conciliation Service and alternately striking names from the list of names on the list until the parties agree on an Arbitrator or until one name remains. The first party to strike a name from the list shall alternate between the party bringing forth the grievance and the party defending the grievance. Primary Employer shall keep a record of the sequence and shall notify the parties to the grievance as to which party has the right to strike a name first.

8.5 The Arbitrator shall conduct a hearing at which the parties to the grievance shall be entitled to present testimonial and documentary evidence. Hearings will be transcribed by a certified court reporter. The parties shall be entitled to file written briefs after the close of the hearing and receipt of the transcript.

8.6 Upon expiration of the time for the parties to file briefs, the Arbitrator shall issue a written decision that will be served on all parties and on the Primary Employer. The Arbitrator shall have the authority to utilize any equitable or legal remedy to prevent and/or cure any breach or threatened breach of this Agreement. The Arbitrator's decision shall be final and binding as to all parties signatory to this Agreement.

8.7 The cost of the Arbitrator and the court reporter, and any cost to pay for facilities for the hearing, shall be borne equally by the parties to the grievance. All other costs and expenses in connection with the grievance hearing shall be borne by the party who incurs them.

8.8 The Arbitrator's decision shall be confined to the issue(s) posed by the grievance and the Arbitrator shall not have the authority to modify, amend, alter, add to or subtract from, any provision of this Agreement.

8.9 Any party to a grievance may invite the Primary Employer to participate in resolution of a grievance. The Primary Employer may, at its own initiative, participate in Steps 1 through 3 of the grievance procedure.

8.10 In determining whether the time limits of Steps 2-4 of the grievance procedure have been met, a written referral or request shall be considered timely if it is personally delivered, faxed or postmarked within the five (5) working day period. Any of the time periods set forth in this Article may be extended in writing by mutual consent of the parties to the grievance, and any written referral or request shall be considered timely if it is personally delivered, faxed or postmarked during the extended time period.

9. JURISDICTIONAL DISPUTES

9.1 The assignment of Covered Work will be solely the responsibility of the Employer performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

9.2 All jurisdictional disputes between or among the Building and Construction Trades Unions and their employees, parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Employers and Unions parties to this Agreement.

9.2.1 If a dispute arising under this Article involves the Northern California Carpenters Regional Council or any of its subordinate bodies, an Arbitrator shall be chosen by the procedures specified in Article V, Section 5, of the

Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch, and Thomas Pagan, and the Arbitrator's hearing on the dispute shall be held at the offices of the Local Council within 14 days of the selection of the Arbitrator. All other procedures shall be as specified in the Plan.

9.3 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Employer's assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge. Each Employer will conduct a pre-job conference with the Local Council prior to commencing work. The Primary Employer and any general contractor will be advised in advance of all such conferences and may participate if they wish. Pre-job conferences for different Employers may be held together.

10. GENERAL WORKING CONDITIONS

10.1 Employment begins and ends at the Project site, so long as Primary Employer provides sufficient parking for each employee on the Project site.

10.2 The selection of craft foremen and/or general foremen shall be entirely the responsibility of the Employer, it being understood that in the selection of such foremen and/or general foremen the Employer will give primary consideration to the qualified individuals referred to the Employer who are available in the local area. After giving such consideration, the Employer may select such individuals from other areas. The number of foremen and general foremen required shall be in accordance with the respective local craft Master Agreements. All foremen shall take orders from the designated Employer representatives.

10.3 There shall be no limit on production by employees or restrictions on the full use of tools or equipment. Employees using tools shall perform any of the work of the trade and shall work under the direction of the craft foremen. There shall be no restrictions on efficient use of manpower other than as may be required by safety regulations.

10.4 The Employer shall establish and employees shall observe such reasonable project job site work rules as the Employer deems appropriate. These rules will be reviewed and discussed at the pre-job conference, distributed to all employees, posted at the project site by the Employer, and may be amended thereafter as necessary.

10.5 The Primary Employer will utilize the same Controlled Substance Policy as used in another recent large industrial project approved by the Local Council.

11. MANAGEMENT RIGHTS

11.1 The Employer retains and shall exercise full and exclusive authority and responsibility for the management of its operations and work forces, except as expressly limited by the terms of this Agreement or a Master Agreement. This authority includes, but is not limited to, the right to:

11.1.1 Plan, direct and control the operation of all the work.

11.1.2 Decide the number and type of employees required for the work.

11.1.3 Hire, promote and layoff employees as deemed appropriate to meet work requirements and/or skills required.

11.1.4 Discharge, suspend or discipline employees for just cause as provided in the work rules.

11.1.5 Assign and schedule work at its sole discretion and determine when overtime will be worked. There shall be no refusal by a Union to perform work, including overtime work, assigned. Such cases shall be subject to the grievance procedure.

11.1.6 Utilize any safe work methods, procedures or techniques and select and use any type or kind of materials, apparatus or equipment regardless of source, manufacturer or designer, except as limited by Section 2.1.

11.1.7 Purchase materials or equipment from any source it deems appropriate.

11.2 The foregoing listing of management rights shall not be deemed to exclude other functions not specifically set forth herein. The Employers, therefore, retain all legal rights not specifically enumerated in this Agreement.

12. JOINT LABOR/MANAGEMENT MEETINGS

12.1 During the period of any work performed under this Agreement, a joint Labor/Management meeting will be held on an approximately monthly basis or more frequently as needed between the Primary Employer, the other Employers, the Local Council and the signatory Unions. The purpose of these meetings is to promote harmonious labor/management relations, ensure adequate communications and advance the proficiency and efficiency of the craft workers and contractors performing work at the Project. These monthly (or more frequent) meetings will also include discussion of safety, craft resource requirements, scheduling and productivity of work performed at the Project.

12.2 A Pre-Job Conference will be held prior to the commencement of work to establish the scope of work in each Employer's contract. When a contract has been let to an Employer(s) covered by this Agreement, a Pre-Job Conference and/or Mark-Up Meeting shall be required upon request of any Union, Employer or the Primary Employer.

12.3 The Primary Employer will schedule and attend all Pre-Job Conferences and Mark-Up Meetings.

13. SUCCESSORSHIP AND SURVIVABILITY

13.1 The subcontracting obligations described in Article 3 are independent obligations of Primary Employer which shall survive any full or partial termination of Primary Employer's involvement in the Project for any reason, including, without limitation: (i) any full or partial termination or transfer of Primary Employer's right to control and coordinate construction work on the Project; (ii) any full or partial termination or transfer of a contract, if any, between Primary Employer and any Owner for any Covered Work; (iii) the transfer of all or any portion of the

Project or any interest in the Project by any Project Owner; or (iv) any other event that results in the replacement of Primary Employer with another contractor.

13.2 The parties agree that: (i) if Primary Employer's involvement in the Project is terminated as described in Section 13.1 and (ii) Covered Work is performed by a contractor or subcontractor that is not in compliance with the provisions of Article 3, then Primary Employer shall pay liquidated damages, as described in Section 13.3, to compensate for the actual damages caused by reason thereof. The parties agree that such damages would be unreasonably difficult, costly, inconvenient or impracticable to calculate and, accordingly, they agree to liquidated damages, which bear a reasonable relationship to the actual harm suffered by the Unions and their members, as provided in Section 13.3 ("Liquidated Damages").

13.3 In that Liquidated Damages are owed as described in Section 13.2, Primary Employer shall pay \$30.00 for each hour that work was performed on the Project within the scope of this Agreement by employees of contractors or subcontractors who are not signatory to this Agreement. The Liquidated Damages shall be paid as follows: Fifteen Dollars (\$15.00) per hour to the qualified pension plan and Fifteen Dollars (\$15.00) per hour to the qualified health and welfare plan of the Union(s) having jurisdiction over the work performed by the contractor(s) or subcontractor(s) not signatory to this Agreement. The parties agree that a Union shall enforce, collect and receive Liquidated Damages pursuant to Article 13 on behalf of its qualified pension plan and its qualified health and welfare plan. The qualified pension plans and the qualified health and welfare plans shall have no right to independently enforce the provisions, including, but not limited to, the Liquidated Damages provisions contained in Article 13.

13.4 Upon execution and delivery of an agreement assuming all the obligations of this Agreement, and determination by the Unions that the successor is financially responsible, Primary Employer shall be released from liability for the

payment of liquidated damages under Section 13.3, and Primary Employer shall have no liability for any breach of this Agreement by a successor employer or contractor. A successor shall be considered financially responsible if the Unions, in the exercise of their reasonable judgment, determine that the successor is financially capable of completing the Project and complying with the obligations and undertakings of the Primary Employer under this Agreement, including any obligation to pay Liquidated Damages under Section 13.3.

13.4.1 The Unions authorize the Local Council to execute and deliver a release on their behalf pursuant to a resolution adopted at a duly noticed meeting of the Local Council.

13.5 This Article 13 shall be enforceable in any court of competent jurisdiction, and shall not be subject to the grievance procedure of Article 8.

14. LABOR MANAGEMENT COOPERATION TRUST

14.1 Within 10 days of the first hour of Covered Work being performed on the Project, Primary Employer shall contribute the sum of \$25,000 to the California Construction Industry Labor-Management Cooperation Trust or its designee. After such payment is made, there shall be no further obligation by the Primary Employer, Owner or any other Employer(s) to make any contribution to the Trust.

15. GENERAL PROVISIONS

15.1 If any article or provision of this Agreement shall become invalid, inoperative and/or unenforceable by operation of law or by declaration of any competent authority of the executive, legislative, judicial or administrative branches of the federal or state government, the Employers and the State Council shall suspend the operation of such article or provision during the period of its invalidity, and the Primary Employer and the State Council shall negotiate in its place and stead an article or provision that will satisfy the objections to its validity and that, to the greatest extent possible, will be in accord with the intent and purpose of the article or provision in question. The new article or provision

negotiated by the Primary Employer and the State Council shall be binding on all parties signatory to this Agreement.

15.1.1 If the Primary Employer and the State Council are unable within thirty (30) calendar days to negotiate a substitute article or provision, any of them may at any time thereafter submit the matter directly to interest arbitration pursuant to the procedures set forth in Section 8.4, Step 4, and Sections 8.5 through 8.7. The Arbitrator shall have the authority to modify, amend and alter the Agreement by providing a substitute article or provision to replace the one(s) that have become invalid, inoperative or unenforceable. The Arbitrator's decision, and the new article or provision, shall be final and binding on all parties signatory to the Agreement.

15.2 If any article or provision of this Agreement shall be held invalid, inoperative or unenforceable by operation of law, or by any tribunal of competent jurisdiction, the remainder of the Agreement or application of such article or provision to persons or circumstances other than to which it has been held invalid, inoperative or unenforceable shall not be affected.

15.3 Except as enumerated in this Agreement, all other terms and conditions of employment described in the Master Agreement of the Union having traditional and customary jurisdiction over the work shall apply.

15.4 The provisions of this Agreement shall take precedence over conflicting provisions of any Master Agreement or any other national, area or local collective bargaining agreement except for all Covered Work performed under the NTL Articles of Agreement, the National Stack/Chimney Agreement and the National Cooling Tower Agreement; all instrument calibration and loop checking Covered Work shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians and Covered Work within the craft jurisdiction of the Elevator Constructors will be performed under the terms of the National Agreements of the International Union of Elevator

Constructors; provided that Articles 6, 8 and 9 of this Agreement shall apply to all Covered Work.

15.5 Each person executing this Agreement represents and warrants that he or she is authorized to execute this Agreement on behalf of the party or parties indicated.

15.6 This Agreement may be executed in any number of counterparts, and each counterpart shall be deemed to be an original document. All executed counterparts together shall constitute one and the same document, and any signature pages may be assembled to form a single original document.

15.7 To the fullest extent consistent with the applicable Master Agreement and trust agreement, it is agreed that any liability under this Agreement by Primary Employer, the State Council, the Local Council, a Union, or any other Employer shall be several and not joint. Any alleged breach of this Agreement by a party shall not affect the rights, liabilities, obligations, and duties among the other parties or between that party and any other party.

15.8 Any notices required under this Agreement shall be given as follows:

To Primary Employer:

Manish Kumar, Vice President
AES Energy Storage, LLC
4300 Wilson Boulevard
Arlington, VA 22203
Telephone: 703-522-1315

To the State Council:

Robbie Hunter, President
State Building and Construction Trades
Council of California
1231 I Street, Suite 302
Sacramento, CA 95814
Telephone: (916) 443-3302

To the Local Council:

Tom Lemmon, Business Manager
San Diego County Building and
Construction Trades Council
3737 Camino del Rio #202
San Diego, CA 92108
Telephone: (619) 521-2914

With a copy to:

David B. Chidlaw
Sheppard Mullin, LLP
501 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619-338-6500

With a copy to:

Tanya A. Gulesserian
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
Telephone: (650) 589-1660

Any party may notify the other in writing if its person designated to receive notice is changed.

16. WAIVER

16.1 The parties, hereby acknowledge that this Agreement is a lawful pre-hire agreement within the meaning of Section 8(f) of the National Labor Relations Act applicable to all parties who employ individuals to perform Covered Work on the project; and the Primary Employer and each other Employer hereby expressly waives its right to contest, challenge, repudiate or void (hereinafter collectively "challenge") this Agreement, directly or indirectly, on any basis, in any proceeding before any federal, state or local court, agency or other tribunal, including the National Labor Relations Board, or before any arbitrator or hearing officer, including any challenge to the validity of this Agreement that is raised as a defense to any action or claim brought by the Unions. This Agreement shall be a complete defense to any such challenge.

16.2 Each Employer further agrees that it shall not solicit, finance or participate in any challenge to this Agreement by any other person or entity. Payment of regular annual dues to an organization or association does not constitute "solicitation," "financing" or "participation in" a challenge as those terms are used in this Agreement.

16.3 This Article shall be enforced pursuant to Article 8 of this Agreement and any grievance shall commence at Step 3 of Section 8.4. The parties agree that the economic damages to the Unions from a breach of this Article include the reasonable fees and costs of defense.

17. HELMETS TO HARDHATS

17.1 The Employers and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans and members of the National Guard and Reserves who are interested in careers in the building and construction industry. The Employers and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (the "Center"), a joint Labor-Management Cooperation Trust Fund, established under the authority of Section 6(b) of the Labor-Management Cooperation Act of 1978, 29 U.S.C. Section 175(a), and Section 302(c)(9) of the Labor-Management Relations Act, 29 U.S.C. Section 186(c)(9), and a charitable tax exempt organization under Section 501(c)(3) of the Internal Revenue Code, and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and metering, support network, employment opportunities and other needs as identified by the parties.

17.2 The Unions and Employers agree to coordinate with the Center to create and maintain an integrated database of veterans and members of the National Guard and Reserves interested in working on this Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans and members of the National Guard and Reserves for bona fide, provable past experience.

17.3 In recognition of the work of the Center and the value it will bring to the Project, Primary Employer shall make a onetime contribution of \$5,000 to the

Center on behalf of itself and all other Employers employing workers under the terms of this Agreement.

17.4 The Center shall function in accordance with, and as provided in the Agreement and Declaration of Trust creating the fund, and any amendments thereto, and any other of its governing documents. Each Employer performing work covered by this Agreement approves and consents to the appointment of the Trustees designated pursuant to the Trust Agreement establishing the Center and hereby adopts and agrees to be bound by the terms and provisions of the Trust Agreement.

18. TERM OF AGREEMENT

18.1 The term of this Agreement shall commence on the date indicated below as the date of execution, and shall continue in effect until completion of all Covered Work pursuant to Article 2.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and effective as of January 13th, 2020.

AES ENERGY STORAGE, LLC



By: Manish Kumar, Vice President

STATE BUILDING &
CONSTRUCTION TRADES COUNCIL
OF CALIFORNIA



By: Robbie Hunter, President

SAN DIEGO COUNTY BUILDING &
CONSTRUCTION TRADES COUNCIL

DocuSigned by:



By: Tom Lemmon, Business Manager

UNIONS

DocuSigned by:
Dave Gauthier SMART Local 206

DocuSigned by:
David Osborne IW Local 229
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DocuSigned by:
Paul Colmenero Roofers and Waterproofers Local 45
 97581004B0E0439...

Chris Brisson BAC Local 4
 AC65DA0CD04746D...

DocuSigned by:
Ed Learn Gunite Workers Local 345

DocuSigned by:
Jack Alvarado Cement Masons Local 500

DocuSigned by:
James Preciado Plaster Tenders Local 1414

DocuSigned by:
Luis Miramontes Boilermakers Local 92
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[Signature] IBEW Local 569

DocuSigned by:
Jose Estrada Teamsters Local 166

DocuSigned by: E...
[Signature] IUEC Local 18

DocuSigned by:
Michael Patterson Allied Workers Local 5

DocuSigned by:
[Signature] Laborers Local 1184

DocuSigned by:
Mike Hartley U.A. Local 230

DocuSigned by:
Ricardo Perez U.A. Local 345

DocuSigned by:
Sergio Rascon Laborers Local 300

DocuSigned by:
Todd Barry Road Sprinklersfitters Local 669

DocuSigned by:
Tom Castleman Plasterers Local 200
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DocuSigned by:
Valentine R. Macdo Laborers Local 89
 AC5093278764412...

UNIONS

12 Ronald J. Sikorski
Ronald J. Sikorski, Bus. Mgr.

Ronald J. Sikorski, Bus. Mgr.

[Handwritten signature]



ATTACHMENT A
AGREEMENT TO BE BOUND

PROJECT LABOR AGREEMENT
THE FALLBROOK BATTERY ENERGY STORAGE SYSTEM PROJECT

The undersigned hereby certifies and agrees that:

- 1.) It is an Employer as that term is defined in Section 1.4 of the Fallbrook Battery Energy Storage System Project Labor Agreement ("Agreement") because it has been, or will be, awarded a contract or subcontract to assign, award or subcontract Covered Work on the Project (as defined in Sections 1.2 and 2.1 of the Agreement), or to authorize another party to assign, award or subcontract Covered Work, or to perform Covered Work.
- 2.) In consideration of the award of such contract or subcontract, and in further consideration of the promises made in the Agreement and all attachments thereto (a copy of which was received and is hereby acknowledged), it accepts and agrees to be bound by the terms and conditions of the Agreement, together with any and all amendments and supplements now existing or which are later made thereto.
- 3.) If it performs Covered Work, it will be bound by the legally established trust agreements designated in local master collective bargaining agreements, and hereby authorizes the parties to such local trust agreements to appoint trustees and successor trustee to administer the trust funds, and hereby ratifies and accepts the trustees so appointed as if made by the undersigned.
- 4.) It has no commitments or agreements that would preclude its full and complete compliance with the terms and conditions of the Agreement.
- 5.) It will secure a duly executed Agreement to be Bound, in form identical to this document, from any Employer(s) at any tier or tiers with which it contracts to assign, award, or subcontract Covered Work, or to authorize another party to assign, award or subcontract Covered Work, or to perform Covered Work.

DATED: _____ Name of Employer _____

(Authorized Officer & Title)

(Address)

Attachment A-1

ATTACHMENT B
SUBSCRIBER AGREEMENT

The undersigned hereby adopt the Trust Agreement known as the California Construction Industry Labor-Management Cooperation Trust Agreement, hereinafter referred to as "Trust" and agree to be bound by the terms thereof. The undersigned employer Subscriber and Union hereby grant Powers of Attorney to the Board of Trustees now holding office, or to the successors, to administer the Trust as representatives of the employer and Union respectively, with full power and authority to act for the employer and Union in all matters of administration of the Trust. In no event shall the Union or employer be responsible for any act or omission of the Trustees nor shall the Union or employer have any liability for any debt or liability of the Trust or its Trustees.

The employer Subscriber shall pay to the Trust the amount specified by the Agreement at the time specified by the Project Labor Agreement. The undersigned employer Subscriber acknowledges that the failure by the employer to timely remit required contributions will result in liquidated damages being payable under the Trust Agreement to which the employer Subscriber is hereby bound.

The undersigned represent and warrant that they are authorized to execute this Agreement on behalf of their respective organizations and that by their respective execution of this Subscriber Agreement their respective organizations are fully bound hereto and the provisions of the Trust Agreement.

By: _____
Name: _____

Date

By: Robert Hunter
State Building & Construction
Trades Council

10/12/2020
Date

Attachment B-1